

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/23/4448**

**Property: Flat 37c Lenzie Way, Glasgow G21 3TB (“the Property”)**

### **The Parties:-**

**Mrs Rose Quarcoo, 88 Belvidere Avenue, Glasgow G31 4PA (“the homeowner”)**

**Homesbook Factoring Limited, registered in Scotland (SC458281) and having their Registered Office at 111 Cowgate, Kirkintilloch, Glasgow G66 1JD (“the property factors”)**

### **Tribunal Members:**

**George Clark (Legal Member/Chairman) and Sandra Brydon (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland Housing and Property Chamber decided that the property factors have not failed to comply with any of OSP2, OSP3, OSP4 and Sections 1(A-F), 2.1, 2.2, 2.5, 3.3, 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 7.1, 7.2, 7.9, 7.11 and 7.12 of the Property Factors Code of Conduct effective from 16 August 2021.**

### **Background**

1. By application, dated 12 December 2023, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with OSP2, OSP3, OSP4 and Sections 1(A-F), 2.1, 2.2, 2.5, 3.3, 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 7.1, 7.2, 7.9, 7.11 and 7.12 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code”). The Code does not have Sections 7.9, 7.11 or 7.12, so the Tribunal did not consider any references to such Sections.

2. The homeowner stated that she had acquired the Property in October 2018. At that time there was no factor in place. On 14 September 2023, she received a letter from iResolve Legal, demanding payment of £4,145.05 on behalf of the property factors. She had had no dealings with the property factors, so, on 30 September 2023, she forwarded a formal complaint to them.
3. On 18 November 2023, she received another letter from a debt collection agency, demanding payment of £3,922.34. She contacted them to say the alleged fees were being disputed. On the same day, she also contacted the property factors regarding their failure to reply to her complaint of 30 September.
4. On 20 November 2023, she received an email from Mr Wilson McMillan advising her that the Director of the property factors had asked him to review her complaint. Mr McMillan emailed his review findings to her on 28 November 2023. He was unable to confirm if a letter or email had been issued to the homeowner regarding the appointment of the property factors or whether a Written Statement of Services ("WSS") had been issued to her.
5. On 12 December 2023, the homeowner received an email from her tenant, confirming he was not receiving any correspondence from the property factors either personally or addressed to the homeowner.
6. The homeowner's position was that she had no documentation or knowledge that the property factors are operating as factors for the Property. She had not received their WSS or an introduction letter regarding their appointment. There were no records of the legal basis of an arrangement between the homeowner and the property factors, so she refused to be subjected to any terms of engagement claims.
7. The property factors provided written representations on 8 March 2024. They included copies of Mr McMillan's review findings, a letter of 8 April 2019 intimating to all owners in the development a meeting to be held on 30 April with a view to appointing property factors, a Minute of that meeting, a letter of 11 June 2019, addressed to the homeowner at the Property address, confirming that the property factors would be assuming responsibility for factoring the development on 1 July and providing their banking details for payment of fees, and an email exchange of May 2023 between the homeowner and Mr Craig Rodger of the property factors in which the homeowner enquired about the possibility of the property factors assuming factoring responsibilities for another development in which the homeowner owned a flat. The Minutes of the Meeting of 30 April 2019 indicated that the homeowner had been present.
8. Mr McMillan stated in his review that copies of the property factors' WSS and Complaints Procedure were handed to those who attended the meeting on 30 April 2019, with further copies emailed or posted to those unable to attend the meeting. He also referred to the fact that the homeowner had stated in an email of 30 September 2023 to iResolve Legal that she was "unaware of this

factor”, yet on 15 May 2023 she had emailed Mr Rodger asking him about taking over the factoring for another development.

### **First Case Management Discussion**

9. A Case Management Discussion was held on the morning of 15 May 2024. The homeowner was present. The property factors were represented by Mr Craig Rodger.
10. The Tribunal told the Parties that it was essential to establish whether or not the property factors had in fact been validly appointed as, should that not be the case, her application must be dismissed as incompetent. She could not complain about the service of the property factors if there was no contractual relationship with them. The homeowner denied having attended or being represented at the meeting of 30 April 2019, despite the Minute indicating that those attending included 37c Lenzie Way. Mr Rodger said that he would be able to track down the actual attendance sheet for the meeting.
11. The homeowner told the Tribunal that she had proceeded on the basis that the development owners were self-factoring. She had no communication prior to the demand letter in September 2023.
12. Mr Rodger pointed out that the development comprises 151 flats in 4 blocks, with 89 of the flats being in the homeowner’s block. There is a Notice Board outside the Property which gives such information as the cleaner’s sheet showing a log of stair cleaning, and emergency numbers for repairs. The sheets on the Board are clearly branded with the property factors’ name. The homeowner confirmed that she inspects the Property at least twice a year but had not paid any attention to the Notice Board.
13. It was clear to the Tribunal that it would not be possible to determine whether the homeowner’s application was competent, far less make a decision on the merits, until the issue of the appointment or otherwise of the property factors was established. Accordingly, the Tribunal decided to continue the case to a further Case Management Discussion and to issue appropriate Directions to the Parties.
14. The Tribunal’s Direction was in the following terms:
  - “1. The property factors are required to provide copies of all documentation that they wish the Tribunal to consider relating to their appointment, including the Attendance Sheet for a meeting held on 30 April 2019, and copies of all Invoices for factoring services and common repairs rendered to the homeowner since 1 July 2019.
  2. The homeowner is required to provide evidence showing the date on which she became registered in the Scottish Landlord Register, details of the dates on which tenants have moved in and/or vacated the Property during her period of ownership (tenants’ names should not be supplied) and a copy of the email of 12 December 2023 from her tenant confirming that no mail from the property factors to the homeowner has been delivered by post or by hand during the period of his tenancy.”
15. On 26 June 2024, the property factors responded to the Direction. They provided

a letter from Beltrami & Co, solicitors, Glasgow, who confirmed that they hold Mandates dated between 3 July 2018 and 30 April 2019. 54 of them are from homeowners approving the appointment of the property factors and 3 do not approve it. A further 14 owners have signed and returned the Mandates but have not indicated approval or otherwise of the property factors' appointment. The property factors also provided copies of four Invoices, dated 1 May 2020, 17 November 2021, 28 March 2022 and 1 August 2022, all addressed to the homeowner at the Property. The property factors stated that they can only produce records from May 2020, when they adopted accountancy software called Xero in order to manage their invoices.

16. On 27 June 2024, the homeowner responded to the Direction. She provided evidence of her Landlord Registration on 9 March 2019 and stated that the current tenant has been in in the Property since 15 March 2022. The tenancy prior to that ran from 14 November 2018 to 1 March 2022. She also provided a copy of an email of 10 December 2023 from her current tenant, confirming he has not received any mail from the property factors addressed to the homeowner at the Property and an email from Councillor Graham Campbell on 17 May 2024, stating his recollection that approximately 25 owners were represented at the meeting on 30 April 2019 and that he chaired the part of the meeting at which the vote was taken. Those present voted universally to appoint the property factors. She also provided an email of 25 January 2024 from Anne McLaughlan MP to a Seymour Lopez stating that she attended the meeting and that she thought 20-30 people were present. She did not think that a vote took place, but suggested that be checked with Councillor Campbell. The homeowner included responses from five other owners in the Development to a letter she had sent them regarding the meeting. Four said they had not attended and the fifth owner said she had been present, a vote had been taken and she had voted in favour of the appointment of the property factors.

## **Second Case Management Discussion**

17. A second Case Management Discussion was held by means of a telephone conference call on the morning of 2 October 2024. The homeowner was present and the property factors were again represented by Mr Craig Rodger.
18. The Tribunal questioned Mr Rodger about the meeting of 30 April 2019. Councillor Campbell's recollection was that there were about 25 people there, but the Minute indicated more than 90 were present. Mr Rodger told the Tribunal that he had been unable to locate the attendance sheet for the meeting. He stated that Councillor Campbell was not at the meeting of 30 April 2019. There had been a number of stair and block meetings. The Member of Parliament had been present. Mr Rodger confirmed that one other owner has raised the same issues as the homeowner and that they have raised proceedings in the sheriff court against the homeowner to recover unpaid factoring charges, but that action is on hold meantime.
19. The homeowner queried the fact that the Mandates referred to in the solicitor's letter covered a period that began before the meeting of 30 April 2019. Mr

Rodger responded that they sought Mandates in advance and it was only when they felt they had a sufficient number to merit the proposal going forward that they called the meeting.

20. The homeowner insisted that she had had no contact whatsoever from the property factors until she received the letter demanding payment from iResolve Legal in September 2023 and she referred the Tribunal to the email from her present tenant to the effect that no letters from the property factors had arrived at the Property. She confirmed that the present tenant moved in on 15 March 2022. She pointed out that the property factors had used her home address when they wanted to pursue her for debt and asked why everything else was, according to the property factors, sent to the Property. Mr Rodger told the Tribunal that, when issues regarding debt recovery arose, they would check the landlord Register and then write to both addresses. If no response was received, they would employ tracing agents. They used normal post if they did not have email details for owners.
21. It was clear to the Tribunal that there were significant issues of fact on which the Parties were not agreed and that, accordingly, it would be necessary to continue the case to a full evidential Hearing. The homeowner's contention is that the property factors were never validly appointed, that she never received from them any communication following the meeting of 30 April 2019, that factoring bills have not arrived at the Property or at her home address and that there is no contractual relationship between the Parties. The property factors have produced a Minute of the meeting of 30 April 2019, which suggests the homeowner was present or represented at the meeting, and a number of invoices addressed to the homeowner at the Property. The Minute also indicates that Anne McLaughlin MP was at the meeting, and Councillor Campbell has indicated that he was there and chaired part of the meeting, but his name does not appear on the Minute. There is also a clear disparity between the Minute and the emails from Ms McLaughlin and Councillor Campbell as regards the number who attended the meeting. The Tribunal will expect the Parties to provide in advance of the Hearing any supplementary evidence they wish the Tribunal to consider in relation to attendance at that meeting.
22. The Tribunal noted that the present tenant only moved in on 15 March 2022, so would not be in a position to know whether any correspondence from the property factors arrived at the Property prior to that date.
23. The Parties understood that, if the Tribunal found, following the Hearing, that there is no contract between the Parties whereby the property factors provide factoring services, the homeowner's application must fail.
24. The Tribunal continued the case to an in-person evidential Hearing.

## Hearing

25. A Hearing was held at Glasgow Tribunals Centre on the morning of 28 January 2025. The homeowner was present and was supported by her husband. The

property factors were represented by Mr Craig Rodger and Mr Wilson McMillan. Neither Party called any witnesses. The Ordinary Member of the Tribunal participated by means of a video link.

26. The homeowner made the Tribunal aware that she had lodged further written representations on 28 January 2025, the day prior to the Hearing. The Tribunal Members had not seen these. The property factors confirmed they had received them but had had insufficient time to consider them fully. The Tribunal reserved judgement on whether they should be accepted at such a late stage. These representations included an exchange of emails between Councillor Graham Campbell and a former owner at Lenzie Place. Councillor Graham confirms that he organised a meeting at which a majority vote to appoint the property factors was taken. The meeting had been attended by representatives of the police and NG Homes and Mr Rodger had told the meeting that a majority of residents had already signed up. Councillor Graham stated, however, that the meeting had taken place on "18 April 2018". The representations also included a copy of a letter of 11 June 2019, addressed to "The Owner", 37C Lenzie Way, informing the owner of the preferred method of payment of factoring fees and providing bank details, and an email of 16 December 2024 from the property factors to the homeowner in which they stated that they did not have her email address until sometime in March 2024.
27. The Tribunal told the Parties that it would hear evidence first on the question of whether there was a contract between the property factors and the homeowner. The Tribunal would then hear evidence relating to the alleged failures to comply with the Code of Conduct. If the Tribunal decided there was no contract, it would dismiss the application in its entirety. The Parties confirmed that they understood the process involved.
28. The homeowner told the Tribunal that she did not attend and was not represented at the meeting of 30 April 2019. The property factors said that everyone at the meeting had signed in. He stated that Councillor Campbell had been unable to attend, and that Anne McLaughlan MP had attended in his place. Mr Rodger said that he had prepared the Minutes himself. He added that there had been a number of meetings before the one in question, but he insisted Councillor Campbell had not attended the meeting on 30 April 2019. He referred to the homeowner's late representations and said that the meeting to which the Councillor was referring was not the one held on 30 April 2019. It was a meeting called by an owner, DMcK, to discuss ongoing problems within the development. That was why NG Homes (North Glasgow Homes) were represented. They would not have been at the meeting of 30 April 2019, which had been called specifically to discuss the appointment of the property factors to appoint the factors.
29. Mr Rodger told the Tribunal that invites to the meeting had been hand-delivered by him, posted through individual letter boxes. The three other owners in the stair had received theirs. Subsequent to their appointment, the property factors had put up a notice board with basic information, including a cleaners' sheet, 24-hour emergency numbers and a "no smoking" notice. They also wrote to all owners, following their appointment, with a "welcome pack" which included a

copy of their WSS and their bank details.

30. The homeowner insisted she had not received the letter and that her tenant would have informed her if one had arrived. She pointed out that the property factors had been unable to find a letter with her name on it, inviting her to the meeting. Mr McMillan responded that he had found the generic letter, but it would not have been the property factors' practice to keep copies of the individual letters to each owner. They would "top and tail" copies of the generic letter. Mr Rodger said that the owner's name would have been on the envelope in which the letter was delivered.
31. The homeowner then explained to the Tribunal her reason for contacting the property factors in May 2023, when, according to her written representations, she had no knowledge of the property factors until she was contacted by a debt collection agency in September of that year. She said that she had called round all the property factors in Glasgow with a view to appointing one of them as factors of another block in which she owned a flat. She had not received, either at her home address or at the Property address, any communication whatsoever from the property factors. She assumed the block was self-factored, but she had also not been told of any shared communal costs.
32. The property factors told the Tribunal that, following their appointment, they had reinstated the communal electricity to the block, replaced the stair lights, repainted the common stair and installed around the development a number of large yellow signs which made it clear that they were factoring the development. They could not believe that the homeowner had failed to notice these on her twice-yearly inspection visits to the Property.
33. The homeowner challenged the property factors in relation to their accounting system. The property factors had said that monthly invoices had been posted to her, but the homeowner's position was that they could not prove that they had in fact been posted, only that they had been generated. Their Factoring Arrears policy in their WSS sets out a series of actions which "may" be carried out when an account is outstanding. The property factors had not followed these steps, namely, to send written reminder after 4 weeks, to instruct sheriff officers after 6 weeks to issue a 7 day letter and, after 7 weeks, to instruct court action. The property factors responded that any arrears from one month would show up in the Invoice of the following month and so on.
34. The homeowner then turned to the complaints process. She raised her complaint on 14 September 2023 with the debt recovery agents, who replied on 18 September. On 30 September, the agents had indicated that she should make it a formal complaint against the property factors, which she did. In November 2023, she followed up her complaint with the property factors and on 20 November 2023. Mr McMillan replied. On 28 November, he issued the outcome of his review of the complaint. Mr McMillan told the Tribunal that, if the property factors receive a complaint, they ask him to look at it. He then contacts the complainer and tries to provide a timescale for a response and, when he issues his findings, he signposts the complainer to the Tribunal. In the present case, he had made no recommendations that the complaint be upheld.

35. In her closing remarks, the homeowner said the property factors were hiding behind the word “may” in the debt recovery procedure set out in their WSS. Basic processes are not in place, and she questioned whether the property factors were a fit and proper organisation. The minutes of the meeting of 30 April 2019 were a fabrication and the property factors did not have a majority mandate for their appointment. She also had a question mark about their inability to provide an attendance sheet for the meeting.
36. In their closing remarks, the property factors stated that, for any development they take on, they obtain as many mandates as they can prior to a meeting with owners. They had a majority in favour before the meeting of 30 April 2019. They repeated that they could not believe that the homeowner appeared to have no idea about paying for stair cleaning and the communal electricity and, despite twice-yearly inspections by her, she appeared not to have noticed the fact that the stair had been painted and the communal electricity supply reinstated, providing stair lighting and that she had failed to notice very large and obvious signage that clearly indicated that there were property factors in place.

### **Findings of Fact**

- i. The homeowner is the proprietor of the Property, which is part of a development of flats and maisonettes in the Springbank area of Glasgow.
- ii. The property factors, in the course of their business, manage the common parts of the block of which the Property forms part. The property factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors were registered on The Scottish Property Factor Register on 12 September 2014. Their present registration is dated 13 September 2017.
- v. The homeowner has notified the property factors in writing as to why she considers that the property factors have breached the Code of Conduct under the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 12 December 2023, under Section 17(1) of the Act.

### **Reasons for Decision**

37. The Tribunal decided, on the balance of probabilities, that the meeting of 30 April 2019 had not been the one attended by Councillor Graham. In his email to a former owner, he said that the meeting took place on 18 April 2018. The Tribunal accepted that he may have been mistaken as regards the year, but the fact that he recalled that it was attended by NG Homes, who would not have been invited to attend a meeting called solely to discuss the appointment of factors, tended to support the Tribunal’s conclusion. The Tribunal did not make



a finding as to whether the homeowner was present or represented. The property factors had been unable to produce a sign-in sheet. The Tribunal accepted that the Minutes of the meeting might have been incorrect as regards the owners present or represented, but, even if they were, it was clear that the property factors had in fact been appointed to factor the development, whether the homeowner was aware of that or not. Their solicitors had confirmed that they hold 54 mandates and those present at the meeting of 30 April 2019 had approved their appointment. This had also been the outcome of the meeting chaired by Councillor Graham. They were carrying out the factor's duties, organising common repairs and billing the owners. Some owners were in debt, but a significant number must have paid their factoring charges, so there appeared to be no argument that they had not been appointed, so all owners were bound to meet their bills. Accordingly, the Tribunal was able to consider the homeowner's complaints regarding their service.

38. The homeowners' position was that she had never received any communication from the property factors. She had not received an invitation letter to the original meeting, had not received the "welcome pack" and had not received any bills or reminders either at the Property or at her home address. She had not received correspondence sent to her home address from the property factors' solicitor and had not noticed on any of her twice-yearly inspections that the communal electricity to the stair had been reconnected, the lights replaced and the stair painted, nor the notice board within the stair or the large yellow board outside or other such boards around the development.
39. The Tribunal did not regard it as credible that the homeowner, an experienced landlord, had failed to notice the improvements and the signs. She must have realised that common repairs were being carried out, and yet she did not, it seemed, think it necessary to investigate why this was happening but she was not being asked to contribute to the cost.
40. The Tribunal also did not regard it as credible that she had never received any communication from the property factors, including bills that were being sent out monthly, annual statements, their welcome pack with bank details, or that she had not received their solicitors' letter. The Tribunal did not accept her point about the property factors having no proof of postage. The Tribunal's view was that it would be normal practice for a property factor to use a mail-merge facility or to send generic letters in personalised envelopes.
41. Having considered carefully all the evidence before it, the Tribunal decided, on the balance of probabilities, that the homeowner had been aware of the appointment of the property factors and that she did not first learn of their appointment when she received a letter from debt recovery agents on 14 September 2023.
42. The Tribunal did not uphold any of the homeowner's complaints under Sections 1(A-F), 2.1, 2.2, 2.5, 3.3, 4.1, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9 of the Code of Conduct. Her contention was that she was not bound by any WSS, as the property factors had not been validly appointed. The Tribunal had rejected that argument. The homeowner had not made any specific complaints under

Sections 1, 2 or 3. All were predicated on the assumption that the property factors had never been appointed and, therefore, had no authority to incur expenses on behalf of the owners. Accordingly, the Tribunal **did not uphold the complaints** regarding the content of the WSS (Section 1), communication and consultation (Section 2) or property factors' financial obligations (Section 3). Section 4 relates to debt recovery. The homeowner argued that the property factors had not followed the steps that, in their WSS, they said "may be carried out". The Tribunal accepted that the process followed had not happened within the timescales indicated in the WSS, but the use of the word "may" gives the property factors discretion to decide whether to carry out certain actions to pursue debt and the fact that, in the present case, they had not done so in the timescales indicated had worked to the homeowner's advantage, as the property factors could have pursued legal action much sooner than they did. Accordingly, the Tribunal **did not uphold the complaints under Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9** of the Code of Conduct.

43. It appears from the application that the homeowner raised a complaint against the debt recovery agents on the day she received their letter and that, on 26 September, they advised her that she should send her complaint directly to the property factors, which she did on 30 September. She does not appear to have received a response from the property factors and, when she received a letter from another debt collection agency on 18 November, she contacted the property factors about their failure to respond to her complaint. Mr McMillan contacted her two days later and advised her of the outcome of his review on 28 November 2023.
44. The WSS advises that the property factors have a complaints resolution procedure, a copy of which is available on request. Neither Party provided the Tribunal with a copy of the procedure, but there was no suggestion from the homeowner that it does not exist or that it does not comply with the requirements of the Code of Conduct. Accordingly, the Tribunal **did not uphold the complaints under Section 7.1 of the Code of Conduct**. The WSS makes reference to the Tribunal and the property factors' response to the complaint, contained in an email from Mr McMillan to her of 28 November 2023 reminds her that, should she be dissatisfied with his findings, she has recourse to the Tribunal, and gives the Tribunal's address. This email is the final response of the property factors to her complaint, so the Tribunal **did not uphold** the complaint under Section 7.2 of the Code of Conduct.
45. The Tribunal noted that it appeared that the homeowner had made a complaint on 30 September 2023, which had not been answered and resulted in her having to contact the property factors again on 18 November. The Tribunal's view was that, although it had not had sight of the complaints procedure, the homeowner's complaint was dealt with expeditiously after 18 November. It is for an Applicant to make their case to the Tribunal and to provide such documents as they think are necessary to support their claim, and, whilst it seemed likely that the delay/failure to deal with the complaint between 30 September and 18 November 2023 would not comply with the property factors' complaints procedure, in the absence of sight of the procedure, the Tribunal could not make a finding to that effect.

## **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.**

**George Clark**

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**Legal Member**

**30 January 2025**

**Date**