

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/PF/22/2528

6G Hazelden Park, Glasgow, G44 3HA ('the Property')

Anthony Halifax residing at 6G Hazelden Park, Glasgow, G44 3HA ('the Homeowner')

Hacking and Paterson ('the Factor')

Tribunal members:

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

Background

1. The Tribunal issued a Property Factor Enforcement Order dated 16th October 2023 ('PFEO') in the following terms:

'ONE. The Factor must pay the homeowner £300 for the inconvenience he has suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order.'

TWO. The Factor must provide the Homeowner with a clear and transparent account and reconciliation for the Garden and Fabric Funds Account showing all debits, credits and balances of the account and transaction details within 28 days of the Property Factor Enforcement Order.'

2. The Tribunal administration sent the parties the PFEO by emails dated 18th October 2023.

3. The Factor sent the Tribunal a letter dated 1st November 2023 in the following terms and provided copies of the documents detailed:

'We write having received the Property Factor Enforcement Order and to enclose a cheque from our own funds of £300 and the following and enclosed provides the Homeowner with a clear and transparent account and

reconciliation for the Garden and Fabric Funds Account showing all debits, credits and balances of the account and transaction details.

Garden Fund

We enclose an annotated version of the previously provided spreadsheet and account information, as follows;

- *Entries marked D are deposits to the account, for monies ingathered from the homeowners via the contributions included in their common charges invoice.*
- *OB is the opening balance transferred into this account from an earlier Garden Fund bank account, per the Bank's accounting software.*
- *The numbers 1-8 cross-reference the details provided in the spreadsheet, now updated with this information to make the account statement even easier to understand.*
- *The remaining entries are interest payments and adjustments made by the Bank.*

The Bank account statement itself provides a detailed account of all debits, credits transactions and balances, is available to all homeowners at any time and was provided to the Applicant upon request. The common charges invoices issued to the homeowners include details of deposits to and expenditure from the fund.

Fabric Fund

We enclose account information, annotated as follows;

- *Entries marked D are deposits to the account, for monies ingathered from the homeowners via the contributions included in their common charges invoice.*
- *There are 2 uplifts to pay for works at the property, details enclosed include the relevant invoices and emails with the Applicant, evidencing that the Applicant is fully aware of how the funds are used and the transparent nature of this.*
- *Entries marked I/A are interest payments and adjustments made by the Bank.*

As previously explained, this information itself is in excess of the service HPMS provides to the Applicant and HPMS do not offer a financial accounting service to the Applicant's development. If the groups of homeowners collectively wish to obtain a more detailed account this would be an Additional Service subject to the relevant procedure and additional charges.

We trust this is in order.'

4. The Homeowner sent the Tribunal an email dated 2nd November 2023 advising that the information provided by the Factor was not sufficient to comply with the PFEO. The email was in the following terms:

'Today, I received correspondence from Hacking & Paterson with a statement for the Garden and Fabric funds in response to your PFEO. This provision is not compliant with, or meets the tribunals requirements. What Hacking & Paterson provided is:

- (a) not a reconciliation,*
- (b) not clear,*
- (c) not transparent*

(d) not traceable as there is no detail provided for Owners to enable / validate traceability.

(e) no reference as to what any specific transaction was for

(f) no reference as to when and on what date the activity took place

(g) no reference as to the Owner who instructed and or authorised and approved the activity as required by the Deed of Conditions / the Act (2011)

(h) no reference as to what the credits recorded on Owners Bills relate to and / or their source

(I) not referenced to accounting or billing periods. This reflects the level of information previously provided to me and to you at the Hearing.

I do not opine this is a credible attempt by H&P to meet the PFEO issued by the Tribunal or to provide me and other Owners with an accounting process that:

- i. accords with your instructions;
- ii. can be understood from an Owners perspective;
- iii. meets the requirements of Section 2 of the Act.

Furthermore, this system which alludes to comply with the Tribunal PFEO was provided by H&P 99 days later, which exceeds the 28 days set by the Tribunal for H&P compliance. From this response it is now evident that Hacking & Paterson have no intent in changing the format of these accounts for the future. The implication of this is that they are in non compliance with the Property Factors Act 2011, and if this is not corrected, I will be in the position where I will have to make another complaint at the next billing point as the PFEO does not prescribe the a permanent change of the accounting information which resulted in the Tribunal issuing the PFEO for Hacking & Pattersons default to the 2011 Act.

In summary, Hacking & Patterson has not met the requirements of the PFEO or is it in compliance with the requirements of the Property Factors Act 2012, and that the information provided has barely changed from the original documents. These documents provided by Hacking & Paterson indicates that they do not seem to accept their responsibilities of the Property Factors Act 2011 which states:

Section 3.1 states - "While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply".

Section 3.2 states: "The overriding objectives of this section are to ensure property factors: • protect homeowners' funds; • provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor; make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income". The Tribunal determined there has been a failure by H&P to comply with the code of conduct for property factors and/or the property factor's duties, issued a PFEO, and is legally obliged to ensure H&P comply with its decision of the 27 July 2023.'

5. Productions lodged by the Homeowner on 9th May 2025:
 - 5.1 Letter dated 1st November 2025 from the Factor to the Tribunal.
 - 5.2 Garden Fund Bank Account.
 - 5.3 Fabric Fund Bank Account.
 - 5.4 Garden Fund Spreadsheet.
 - 5.5 Common Charges Statement.
 - 5.6 Tribunal decision dated 27th July 2023.
 - 5.7 Email from the Homeowner to the Tribunal dated 2nd November 2023.
 - 5.8 Letter from the Factor dated 21st March 2024 re the Garden and Fabric Fund accounts.
 - 5.9 Letter from the Factor dated 25th February 2025 in response to the case hearing notification.
 - 5.10 Section 3.3(a)(i) of the Deed of Conditions.
 - 5.11 Garden Fund Rules per the Factor.
6. A hearing took place in respect of the applications at 10am on 19th May 2025 at the Glasgow Tribunal Centre, York Street, Glasgow.

The Homeowner attended along with his supporter and neighbour Brian Rodden.

The Factor was represented by Gordon Buchanan, Director of Hacking and Paterson.

6.1 Oral submissions by Mr Halifax:

6.1.1 At the start of the hearing there was some confusion over the difference between the proposed PFEO and the actual PFEO. Mrs Taylor explained that the Proposed PFEO was dated 27th July 2023 and the final PFEO was dated 16th October 2023. Mr Halifax advised that he had not received a copy of the final PFEO. Mrs Taylor confirmed that the Tribunal administration had sent an email to Mr Halifax dated 18th October 2023 sending him a copy of the proposed PFEO. She also explained that the terms of the PFEO was identical to the terms of the proposed PFEO. Mr Halifax advised that he had not received the email dated 18th October 2023. Notwithstanding this fact he accepted that the final PFEO was dated 16th October 2023. He also accepted the Factor's letter dated 1st November 2023 and cheque in the sum of £300 had been provided timeously.

6.1.2 Mr Halifax made detailed submissions explaining why the documents lodged by the Factor on 1st November 2023 were not sufficient. This decision summarises the main submissions (not all of the submissions) made by Mr Halifax.

6.1.3 Mr Halifax explained that the documents provided by the Factor with their letter dated 1st November 2023 do not meet the requirements of either the PFEO or sections 3.1 and 3.2 of the 2021 Code of Conduct. He explained in detail the reasons the documents are deficient. A summary of the reasons is as follows:

- The documentation is not clear and transparent.
- In relation to the garden fund account no evidence has been provided that the garden fund policy has been complied with.
- No fabric fund spreadsheet has been provided.
- The documents are neither accounts nor reconciliations.
- They do not show opening and closing balances.
- No detail of interest earned has been included.
- They do not detail the homeowners contributions.
- The documentation does not show recharges.
- They do not show who authorized the payments
- The spreadsheet is neither an account nor a reconciliation
- The documents provided are a 'hotch potch'. The required information has not been provided in one document that is easy to understand.
- The documents are not transparent, self explanatory or easy to understand.
- The documents provided have not included the current financial position of the funds.
- The information provided is misleading and confusing.
- The Homeowners in the development are generally elderly and many will be unable to understand these documents.
- The documents provided are a do it yourself kit for homeowners.
- The Deed of Conditions states that quarterly accounts must be provided and quarterly garden and fabric fund accounts have not been provided.
- The information provided by the Factor contains errors as the Factor has included a sum that was due by an individual Property.
- The documentation refers to BOS without explanation.
- The documents have not been audited.

- The documents for the two accounts cover different periods.

6.1.5 Mr Halifax explained that he did not understand why the Factor had not provided the required information. They are denying the owners information they are entitled to. He is concerned that going forward the Factor will continue to provide information that is deficient. He stated that the Factor should be required to provide a complete statement including the following details:

- (i) The report period.
- (ii) The opening and closing balances.
- (iii) Interest earned.
- (iv) The Homeowners' contributions.
- (v) The purpose of the transactions.
- (vi) The transaction date.
- (vii) Who approved the transaction.

He also asked the tribunal to award him compensation of £1000 due to the stress and anxiety caused by the Factor's handling of these matters.

6.2 Mr Buchanan made the following oral representations:

6.2.1 He does not agree with Mr Halifax's statements that the information provided is deficient and he does not agree with the suggestion that the information provided is difficult to follow. He has endeavored to provide the Tribunal and Mr Halifax with the required information. He had to strike a balance between providing concise information and providing an over load of data.

6.2.2 In connection with the Garden Fund, he has provided an annotated copy of the Bank of Scotland statement. It shows all debits, credits and the balance of the account. The transactions have been annotated numerically. He explained the details of the annotations. He advised that the remaining entries on the bank account are interest payments and adjustments made by the bank.

6.2.3 He explained that if requested by Mr Halifax these statements could be provided quarterly.

6.2.4 He explained that he has not provided up to date financial details of the garden and fabric fund accounts as the information provided covers the period of the complaints detailed in the application.

6.2.5 In connection with the Fabric Fund he explained that has provided a copy of the fabric fund bank account statement. The statement details the two uplifts that were made during the period to Ken Jack and Clean Tek. These two payments /

transactions are also detailed in the common charges statements that have been provided.

7. Decision

7.1 The Tribunal has to determine if the Factor has complied with the terms of the PFEO.

7.2 The Tribunal determine that clause One of the PFEO had been complied with as the Factor sent the Homeowner a cheque for £300 on 1st November 2023, which was within 28 days of 18th October 2023, the date the PFEO was sent to the parties.

7.3 As already detailed, clause Two of the PFEO required *the Factor to provide the Homeowner with a clear and transparent account and reconciliation for the Garden and Fabric Funds Account showing all debits, credits and balances of the account and transaction details.*

7.4 The Tribunal's decision dated 27th July 2023 in relation to complaint 7 (the Garden & Fabric Funds) included the following decisions:

Section 3.1

The Tribunal noted that Productions referred to by the Factor were:-

(i) An email dated 11th June 2021 from the Factor's Director Gordon Buchanan to the Homeowner and others. There was a separate paragraph within that letter in relation to the Garden Fund in the following terms:

'I attach a copy of the Garden Fund Account statements dating from October 2018 to date, the entries with a minus are withdrawals. ... I attach a spreadsheet from our accounts showing how the withdrawals have been processed and the corresponding statement dates, with some withdrawals covering more than one transaction when processed. We do not hold an income/expenditure report further to this, however I hope this will give you confidence in this regard.'

(ii) Bank of Scotland bank statements for the Garden Fund relating to the period 10th October 2018 to 8th June 2021. The bank statements showed inter alia twenty debits from the account.

(iii) A summary spreadsheet showing some debits (twelve in total) from the Garden Fund Account for the period 2nd November 2018 to 13th August 2020 had been exhibited to the Homeowner.

(iv) The Factor's 'General Garden Fund Policy: The garden fund is contributed on an equal basis by all homeowners (64 at Hazelden Park). The current level of contribution at Hazelden Park (as at 23/8/21) is £480 per quarter, apportioned cost £7.50 per homeowner per quarter. A Garden Fund is typically used for expenditure related to Development common parts, such as the landscaped areas and common/amenity areas (such as car parking, car park lighting etc). A Garden Fund is not typically used for expenditure related to Block common parts (ie the buildings and their interiors) or Lock-Ups. Proposals can be raised by any homeowner to the collective homeowners, including via consultation with HPMS. HPMS may propose the use of a Garden Fund. Use of the Garden Fund is subject to consultation where considered necessary. The

fund should be credited amongst the homeowners on the basis as it is collected, ie on an equal basis (by all 64 homeowners at Hazelden Park). Decisions about a Garden Fund should be made by the collective homeowners. Decision making methods can include:(1)Pre-instruction Notification, ie letter from HPMS proposing to use the fund, allowing the homeowners to provide feedback/instruction or (2)Voting, ie homeowners invited to Vote by response to HPMS on a proposal (voting methods can include online via My H&P App/Portal, letter/e-mail or telephone).'

The Tribunal determine that the garden fund spreadsheet provided by the Factor was insufficiently detailed as it did not include all of the entries shown on the Garden Fund Bank Account that had been produced and therefore it was not sufficient to give the Homeowner confidence that he knows what he is being asked to pay for, how the charges were calculated and that no improper payment requests are included in relation to the Garden Fund. No Fabric Fund spreadsheet was provided. Accordingly, the Tribunal determine that the Factor has breached section 3.1 of the Code of Conduct in relation to Complaint Seven.

Section 3.2

The Tribunal determine that the garden fund spreadsheet provided by the Factor was insufficiently detailed as it did not include all of the entries shown on the Garden Fund Bank Account that had been produced and therefore there was not sufficient clarity and transparency in relation to the Garden Fund. No Fabric Fund spreadsheet/account had been produced. Accordingly, the Tribunal determine that the Factor has breached section 3.2 of the Code of Conduct in relation to Complaint Seven.

OSP3

The Tribunal find as a matter of fact that the Garden Fund spreadsheet provided by the Factor did does not provide a full reconciliation of the Garden Fund Account as it does not detail all of the payments that are shown on the Garden Fund Bank Statements. The Tribunal determine that the Garden Fund Spreadsheet is not clear as it does not enable the Homeowner to easily understand the payments that have been made to and from the Garden Fund. The Tribunal determine that the Factor is in breach of OSP 3 in relation to Complaint Seven.'

7.5 In response to the PFEO the Factor provided:

7.5.1 A letter dated 1st November 2023 explaining the documents provided and the annotations provided to the documents.

7.5.2 A copy of the Fabric Fund bank statement.

7.5.3 A copy of the sales invoice from Ken Jack.

7.5.4 Emails from the Factor to the Homeowner dated 17th and 19th September 2019.

7.5.5 A copy of the common charges account for the period 29th November 2020 to 28th February 2021.

7.5.6 A copy of the common charges account for the period 1st March 2021 to 28th May 2021.

7.5.7 Emails from the Factor to the Homeowner dated 9th February 2021.

7.5.8 A copy of the garden fund bank statements which had been annotated.

7.5.9 A copy of the spreadsheet detailing the garden fund transactions which had already been provided by the Factor on 2nd November 2022.

7.6 The Tribunal acknowledge that the Factor has produced details of all of the Transactions in relation to the Garden and Fabric Funds. However, the Tribunal find that the information is not easy to follow or understand. To make sense of the information provided the reader has to interpret the information provided. In addition, the Factor has not provided a spreadsheet for the Fabric fund, which was a failing detailed in the Tribunal's decision dated 27th July 2023.

7.7 The Tribunal acknowledge that the letter from the Factor to the Homeowner dated 1st November 2023 states that if the Factor were to provide a more detailed account an additional fee would be payable. The Tribunal determine that the fact that the Factor's written statement of services does not include the cost of providing a detailed account is not a justification for not providing the clear and transparent accounts required in terms of clause Two of the PFEO.

7.8 The Tribunal determine that the information provided by the Factor on 1st November 2023 is not a clear and transparent account and reconciliation of the Garden and Fabric fund accounts as required by clause TWO of the PFEO.

7.9 The Tribunal determine that the Factor has failed to comply with Clause Two of the PFEO.

7.9 In connection with the deficiencies described by the Homeowner the Tribunal find that the following matters are outwith the requirements of the PFEO:

- Evidence that the garden fund policy has been complied with.
- Detailing the identity of the person who authorized the payments.
- Detailing the current financial position of the funds.
- Auditing of the accounts.

7.10 In connection with the Homeowner's request for an award to compensation in the sum of £1000 the Tribunal do not have jurisdiction to make such an award which was not part of the original PFEO.

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.

Jacqui Taylor

SignedDate 27th May 2025

Chairperson