



**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 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

**Chamber Reference:** FTS/HPC/PF/24/4464

**Property address:** 24 Forth House, Abbotshall Road, Kirkcaldy, KY1 1AN (“the Property”)

**The Parties**

**Mr Gordon Hume, 24 Forth House, Abbotshall Road, Kirkcaldy, KY1 1AN (“the Homeowner”)**

**Ross and Liddell Ltd., Unit 21A, City Quay, Camperdown Street, Dundee, DD1 3JA (“the Property Factor”)**

**Tribunal Members**

**Ms H Forbes (Legal Member)**  
**Ms E Williams (Ordinary Member)**

**Decision**

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to carry out their property factor duties.

The decision is unanimous.

**Background**

1. By application received in the period between 25<sup>th</sup> September and 13<sup>th</sup> November 2024, the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraph 2.4 of the Code, and had failed to carry out its property factor duties.
2. The Property Factor representative lodged written representations on 19<sup>th</sup> and 25<sup>th</sup> June 2025.

## **The Case Management Discussion**

3. A Case Management Discussion ("CMD") took place by telephone conference on 26<sup>th</sup> June 2025. The Homeowner was in attendance. Ms Jennifer Johnston was in attendance on behalf of the Property Factor. The Property Factor was represented by Mr David Doig, Solicitor.
4. The Legal Member explained that this was a procedural hearing and that the matter would proceed to an evidential hearing. There was some discussion regarding the application and the procedure to be adopted at the hearing.
5. Following discussion, parties indicated they were content with the matter to be dealt with at the CMD, rather than proceed to a hearing. The Tribunal adjourned to consider matters. The Tribunal agreed to hear evidence at the CMD, with the proviso that, if it was considered further evidence was required, a hearing may be set down.

## **Findings in Fact and Law**

6.
  - (i) The Homeowner was the registered proprietor of the Property from 15<sup>th</sup> October 2021 until 25<sup>th</sup> April 2025.
  - (ii) The Property Factor is registered under registration number PF000196.
  - (iii) The Property Factor provides factoring services to the development of 35 properties, of which the Property forms part.
  - (iv) A quorate meeting of owners took place on 26<sup>th</sup> June 2024. Included in the discussion at the meeting was the issue of parking permits at the development.
  - (v) Six people present voted in favour of the introduction of parking permits at the development.
  - (vi) The Homeowner was authorised to place three proxy votes, all of which were in favour of the introduction of parking permits.
  - (vii) Eight people present did not vote.
  - (viii) Those present were informed that the proposal for parking permits would be implemented as the majority were in favour of the proposal.
  - (ix) On 15<sup>th</sup> July 2024, the Property Factor informed the Homeowner that the minute-taker at the meeting had left the employment of the Property Factor.

- (x) The Property Factor discussed the outcome of the meeting with the Homeowner, before issuing a minute of the meeting on 16<sup>th</sup> July 2024.
- (xi) By email dated 17<sup>th</sup> July 2024, the Homeowner was informed that the proposal for parking permits required to be opened up afresh to the entire development as doubt had been cast over the legitimacy of the voting process.
- (xii) A ballot paper was issued to each homeowner, stating that a majority of owners would require to vote in favour of the proposal.
- (xiii) The result of the ballot was 17 against the proposal and 15 in favour.
- (xiv) By email dated 19<sup>th</sup> July 2024, the Homeowner lodged a complaint.
- (xv) By letters dated 15<sup>th</sup> August and 6<sup>th</sup> September 2024, the Property Factor responded to the complaint.
- (xvi) The Property Factor failed in carrying out their property factor duties by failing to ensure that the outcome of the meeting of 26<sup>th</sup> June 2024 was properly recorded.
- (xvii) The Property Factor failed in carrying out their property factor duties by failing to carry out proper enquiries to confirm the outcome of the meeting of 26<sup>th</sup> June 2024.
- (xviii) The Property Factor failed in carrying out their property factor duties by arranging a further vote, when a proper vote had already taken place.

### **The Homeowner's position**

7. The Homeowner explained there were few people present at the meeting on 26<sup>th</sup> June 2024, but the meeting was quorate. There was a heated discussion and the matter of parking permits went to a vote. The outcome of the vote was obvious, given how few people were there. Six people raised their hands to vote in favour of the parking proposal, and this could be clearly seen. There were two members of staff there for the Property Factor. The Homeowner had three proxy votes. The owners who had asked him to vote had informed him they were in favour of the proposal. The Homeowner was aware of another homeowner who was not in favour of the proposal and he passed this information to the Property Factor staff at the meeting. There was no request at the meeting from the Property Factor for abstentions or 'no' votes. After the vote was taken, there was discussion at the meeting as to how the proposal would work. No one stated at the meeting that they were unhappy with the way in which the vote had been taken.
8. The Homeowner was in contact with one of those who had granted him a proxy vote – CP – during the day of the meeting. He was aware that CP initially wanted to vote in favour of the proposal to have parking permits,

provided each property had a designated space. CP was made aware during the day that designated spaces were not part of the proposal. CP confirmed to the Homeowner at 16.27 that they remained in favour of the proposal. The Homeowner said he had a clear instruction from CP to vote in favour of the proposal.

9. There was a delay by the Property Factor in issuing the minutes. By email dated 9<sup>th</sup> July 2024, the Property Factor confirmed that permits would be assigned to each property. The Homeowner was informed on 15<sup>th</sup> July 2024 that the minute-taker had left the Property Factor's employment. The Homeowner discussed the meeting with the Property Factor staff, confirming those who had voted in favour, by name and apartment number. A minute was issued on 16<sup>th</sup> July 2024, confirming the outcome of the meeting. On 17<sup>th</sup> July 2024, the Homeowner was informed that doubt had been cast over the legitimacy of the process, and the vote was to be opened up again.
10. The Homeowner said he was aware that one homeowner went to the Property Factor after the meeting and said they wanted to change their vote to reflect they were against the proposal. The Homeowner was aware of messages circulating among homeowners, and some lobbying taking place. The Homeowner was aware that one homeowner who had raised their hand to vote in favour of the proposal was stating after the meeting that they meant to abstain.
11. The Homeowner said a lot of time was spent trying to set up the meeting. The Property Factor's letter prior to the meeting stated the vote would be binding. People cannot just change their minds afterwards. The Property Factor changed the rules from a binding decision at the meeting, and decided to send out a new ballot. The Property Factor said there would require to be an absolute majority for the vote to be carried, but only 32 people out of 35 voted. The Homeowner said the Title Deed did not allow the Property Factor to decide to change a binding vote.

### **The Property Factor's position**

12. The Property Factor's position was set out in the written representations, which were adopted by Mr Doig. A vote was cast at the meeting, and a majority ostensibly identified by a narrow margin. Following the meeting, it became apparent that the record of votes cast was incorrect. One owner advised they had been recorded as a vote in favour, when they had actually abstained. The meeting records were incorrect and could not be relied upon. The apparent majority decision had been extinguished. A further proprietor advised the Property Factor that their proxy vote made by the Homeowner had been recorded in favour of the proposal instead of against it. The error in the recording of the minutes and the apparent misrepresentation of another owner reinforced the precarious nature of the decision and compelled the Property Factor to revisit the matter with the homeowners.

13. The Property Factor recognises there was inconvenience to homeowners, but no homeowner was put to the expense of having a carpark entry system installed on an ex-facie voidable decision.
14. Mr Doig said the homeowner CP had emailed the Property Factor at 12.13 on the date of the meeting, stating they were not supporting the proposal unless there was a permit for each property and a numbered space. The Property Factor became aware after the vote that this was actually a qualified vote, which should not have counted as a vote in favour of the proposal. A further voter who was present said the narrative in the minutes was not correct.
15. Ms Johnson reiterated that one homeowner present at the meeting stated afterwards that they had abstained rather than voting in favour of the proposal.
16. Ms Johnson said the issue of the email from CP was not taken into account until after the meeting.
17. Ms Johnson said there was a third issue in that another one of those for whom the Homeowner held a proxy contacted the Property Factor and said they did not understand what was being voted on. The homeowner was moving out of the development a few days after the vote, but was still entitled to vote.
18. Ms Johnson said it was unusual that votes against the proposal had not been asked for at the meeting.
19. Ms Johnson said no clear decision was made at the meeting. Ms Johnson was unable to answer questions from the Tribunal as to how the confusion arose at the meeting, leading to the decision being wrongly recorded.

### **Reasons for decision**

20. The Tribunal did not consider there had been a failure to comply with paragraph 2.4. There was no refusal by the Property Factor to issue requested documentation.
21. The Tribunal considered, on the evidence before it, that the Property Factor failed in carrying out their property factor duties by failing to ensure that the outcome of the meeting of 26<sup>th</sup> June 2024 was properly recorded, by failing to carry out proper enquiries to confirm the outcome of the meeting of 26<sup>th</sup> June 2024, and by arranging a further vote, when a proper vote had already taken place.
22. The Tribunal found the Homeowner to be a credible witness, who had the benefit of being present at the meeting of 26<sup>th</sup> June 2024.
23. The Tribunal noted that the Property Factor stated in their letter of 15<sup>th</sup> August 2024 – 'I have discussed matters with our team who agree that the meeting

scheduled for 26<sup>th</sup> June 2024 was properly convened and quorate as you have stated and that following discussion a vote took place which resulted a decision of 9-8 in favour of implementing a parking permit system at the development.' This coincides with the Homeowner's account of the meeting. A vote took place. A decision was taken. The Homeowner was able to identify by name and property number the six people who voted in favour of the proposal. The Property Factor staff seemed to agree with the Homeowner's recollection and issued a minute in those terms. It was only thereafter that issues arose.

24. The Tribunal considered that, on the evidence before it, and on the balance of probabilities, it was likely that a homeowner changed their mind after the meeting, rather than their vote having been incorrectly recorded. If there was no request for abstentions or votes against the Proposal, the Tribunal did not consider it credible that someone raised their hand by mistake to vote in favour of the proposal. If that had been the case, the voter would be expected to have raised the issue at the meeting, instead of which, those present took part in a discussion about the matter after the vote had taken place. It appears that everyone present knew that the proposal had been carried at the meeting. The fact that someone contacted the Property Factor thereafter to say no vote had been cast makes no sense, when everyone present appears to have accepted at and after the meeting that a majority voted in favour.
25. The Tribunal was satisfied, on the evidence before it and on the balance of probabilities, that the Homeowner held three proxy votes, all of which were in favour of the proposal. The Tribunal did not agree that there had been any misrepresentation by the Homeowner, as suggested in the representations for the Property Factor. The Property Factor ought not to have later relied upon an email from CP sent at 12.13 without carefully checking with the Homeowner and CP exactly what CP's position was at the time the meeting took place.
26. The Tribunal considered the Property Factor was remiss in allowing the apparent change of mind of another of the voters who had granted a proxy vote to the Homeowner to influence their decision to have another vote. It is clearly stated in the Property Factor's letter of 6<sup>th</sup> September 2024 that this owner contacted the Property Factor to confirm that, *on reflection*, they were not in support of the proposal proceeding. A vote properly made and recorded cannot be changed on reflection. The Homeowner clearly held a mandate from this owner to vote in favour of the proposal at the time the vote was taken. The Property Factor ought not to have allowed this apparent change of mind to influence their decision to re-take the vote.
27. The Tribunal accepted the Property Factor was correct in carrying out enquiries when issues were raised. It was incumbent upon the Property Factor to ensure the vote was properly conveyed and recorded, to ensure that action was not taken on a voidable decision. All the evidence appears to show that the vote was properly conveyed and recorded. It was not a voidable decision.

28. The Tribunal was not persuaded that the conditions referred to in the Title Deeds provide that a vote could never be challenged or changed. If legitimate concerns were raised concerning the process or the recording of a vote, it would be incumbent upon the Property Factor to carry out enquiries. If it was found that the vote had not been carried out properly, or had been recorded incorrectly, it would be perverse to expect the Property Factor to proceed to take action based on any such questionable decision.

### **Proposed Property Factor Enforcement Order (PFEO)**

29. Having determined that the Property 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.

79. 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.

80. 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.**

# H Forbes

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**Legal Member**

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Legal Member

Date 7<sup>th</sup> July 2025