

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/24/2727

Balgray Court, 33 Cleveden Drive, Glasgow, G12 0SD ('the Property')

Alastair Baird residing at Flat 5E, 33 Cleveden Drive, Glasgow, G12 0SD ('the Homeowner and Applicant')

Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF ('the Factor and Respondent')

Tribunal members:

Jacqui Taylor (Chairperson) and Ahsan Khan (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with OSP 11 and section 3.1 of the 2021 Code of Conduct.

The decision is unanimous.

Background

1. The Homeowner is heritable proprietor of the property flat 5E, 33 Cleveden Drive, Glasgow, G12 0SD ('the Property'). He purchased the Property, together with his wife, in 2007. The Property is a flat on the fifth floor of a block of forty five flats and one caretaker's flat.
2. Newton Property Management Limited are registered factors of the Property. They have factored the Property since December 2020.
3. The Homeowner submitted a C2 application to the Tribunal dated 17th June 2024. He applied to the Tribunal for a determination that the Property Factor had failed to comply with OSP 11 and sections 3.1, 3.4 and 3.12 of the Property Factor Code of Conduct 2021 and Property Factor duties.

4. The Letter of notification from the Homeowner to the Factor dated 4th June 2024 notifies the Factor that he believes the Factor has breached sections OSP 11, 3.1, 3.4 and 3.12 of the code. The letter is in the following terms:

'Newton have been unwilling to provide complete information, despite repeated request, in relation to a number of invoiced items. The issue was first raised following receipt of the August 2023 Common Charges Invoice and remains unresolved by the issue of the May 2024 invoice.'

(i) Fabric Fund: Newton have failed to provide owners an annual statement of the Fabric Fund. In addition, they have used the Fabric Fund to pay for Christmas decorations (Christmas tree) which is an inappropriate use of what is a designated fund.

(ii) Charges for abortive site visits: All owners have been charged for the failure of one owner to provide access to their flat on two separate occasions for a common repair. According to the contractor access was arranged with the owner but was not available at the agreed times and the contractor has reasonably charged for the abortive visits. These charges should have been invoiced to the flat owner. In addition, despite request, Newton have not provided a copy of the contractor's quotation for the original work. The quotation is required to better understand what was involved.

(iii) Common Electric Charges. It has not been possible to reconcile charges with copies of the electricity bills provided. Not all bills have been provided. Owners have been charged more than the sum of the bills provided. The discrepancy may be accounted for by a missing bill. There is an overlap in the dates of supply when the supplier was charged. Potentially owners have been double charged the standing charge and the electricity provided.'

5. The Letter of notification from the Homeowner to the Factor dated 12th July 2024 notifies the Factor that he believes the Factor has breached property factor duties. The letter is in the following terms:

'Failure to deal with promptly and completely with the issues raised by invoices in relation to the Balgray Court Fabric Fund, Charges for abortive site visits and common electricity charges.

Your written statement of services section D (c) states 'We will do our best to deal with concerns promptly. The fact that my concerns were first raised in August 2023 following receipt of the August invoice and remain unresolved by the time of the May 2024 invoice shows that you are making little attempt to resolve the issues around the matters raised.'

6. By Notice of Acceptance by James Bauld, Convener of the Tribunal, dated 19th August 2024 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 17th June 2024 and 12th July 2024) to a Tribunal.

7. Written Representations by the Property Factor

The Factor sent the Tribunal written representations on 10th February 2025 which responded to the Homeowner's three complaints as follows:

(i) *Fabric Fund.*

A copy of the Fabric Fund Account was provided in April 2024.

(ii) *Charges for abortive site visits.*

The contractor was correct to charge for the two abortive as this is his time and travel costs. The Associate Director has been liaising with the contractor to get the charges removed. They have managed to get one of the charges credited for the time one owner failed to attend an appointment. The other charge stands and is correctly due to the contractor.

(iii) *Common Electric Charges.*

All invoices the Factor had received and charged/ credited for were issued to the Homeowner. The Homeowner has stated that there is a missing invoice from the electricity supplier. We have advised the Homeowner on multiple occasions that the Factor has not received the alleged invoice from the supplier and they have neither processed it or charged it to customer accounts. The amount charged on the revised spreadsheet of £11018.25. There was a discrepancy in the amount of VAT totalling £0.16 over the amount of bills which was credited to the owners. There is no over charge of £290 which the Homeowner agrees with. The overall balance on the

spreadsheet and invoices supplied matches the amount charged to the owners for the period concerned and is detailed in our complaint response to the Homeowner.'

8. Written Representations by the Homeowner.

The Homeowner sent the Tribunal written representations on 24th February 2025 which responded to the Factor's written representations. A summary is as follows:

- (i) To settle the complaint the Factor must undertake to publish the fabric fund accounts annually.
- (ii) There is no dispute regarding the contractor charging for abortive call outs. What is in dispute is that they should have been addressed to the proprietor of the flat 1A who failed to provide access as arranged.
- (iii) The sum of SSE Hydro's invoices is £10,728.67 whereas the sum of the Factor's charges is £11018.32. There is a discrepancy of £289.65. The discrepancy may be accounted for by the missing invoice.

9. Additional Written Representations by the Homeowner.

The Homeowner sent the Tribunal additional written representations on 4th March 2025. He provided a spreadsheet detailing the electricity charges contained within the common charges accounts, the electricity charges detailed on SSE's invoices and showed a discrepancy of £289.58 which he stated was due to two sums being over charged. These charges are £204.35 and £85.23.

10. Case Management Discussion.

An oral conference call Case Management Discussion (CMD) took place in respect of the application on 4th March 2025.

The Homeowner attended.

The Factor was represented by Ms Catherine Flanagan, Customer Relations Manager.

The Tribunal members at the CMD were Ms H Forbes (Legal Member) and Ms S Brydon (Ordinary Member). They issued a CMD Note following the CMD. That note suggested that the parties may be able to resolve the dispute. It also stated that as the alleged breaches under OSP 11 and the Property Factor duties involved the matter of timeous response the Tribunal would not consider the same complaint under both the Code of Conduct and Property Factor duties and therefore the Tribunal would only consider this matter under the Code.

11. The Hearing.

An inperson hearing took place in the Glasgow Tribunal Centre, York Street, Glasgow, in respect of the application on 29th August 2025 at 10am.

Mr Baird, the Homeowner attended, together with his wife Lesley Baird.

The Factor was represented by Ms Catherine Flanagan, Customer Relations Manager and Miss McGirr, Associate Director and Property Manager.

11.1 The detail of the Homeowner's application and the parties' representations in relation to the detailed complaints are as follows:

OSP 11 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

The Homeowner's complaint:

Mr Baird explained that he made a complaint to the Factor on 20th August 2023 which has still not been resolved. He acknowledged that he had received a holding response from the Factor on 7th September 2023.

In addition, the Factor took until 17th April 2024 to reply to the Homeowner's complaint email dated 21st March 2024.

The Factor's response:

Mrs Flanagan accepted that some of the Factor's responses had not been as quick as they should have been. Section D(c) of the Factor's Written Statement of Services states:

'We will do our best to deal with your concerns promptly. We aim to respond to phone calls by the following working day, emails within five working days and letters within 21 days.'

The letter from the Factor to Mr Baird dated 19th June 2024 apologised for the delay in replying.

The Tribunal's Decision:

The Tribunal find that the Factor took 18 days to reply to the Homeowner's email dated 20th August 2023 and 27 days to reply to the Homeowner's email 21st March 2024.

The Tribunal find these response times to be unreasonable given the terms of the Factor's Written Statement of Services which states that the Factor will aim to respond to emails within five working days. The Tribunal determines that the Factor

has breached OSP 11 of the 2021 Code of Conduct in relation to the Homeowner's complaints.

Section 3.1 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): 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.

The Homeowner's complaint:

Mr Baird explained that there are three parts to this complaint:

- (i) The Factor did not provide annual accounts for the Fabric Fund until after he submitted his application to the Tribunal. The Fabric funds were used to pay for the communal Christmas tree.
- (ii) The owners were asked to pay for two charges from Stuart Eadie Plumbing Services Limited for two abortive call outs where they were unable to gain access that had been agreed. He feels that the owner who did not provide the access should pay for the charges. He does not know the exact amount of the charges but he believes that they amount to approximately £100/£200.
- (iii) The charges for the communal electricity bills included in the common charges accounts do not correspond with the invoices from SSE Hydro. The difference amounts to £289.58. He believes that there were two duplicate charges of £204.35 and £85.23. He originally thought that there was a missing invoice but he no longer believes that to be the case.

The Factor's response:

Mrs Flanagan explained that the Fabric Fund account is provided by the Factor for the AGM each year. After the AGM the Residents' Committee sends the Factor the AGM Minute and the Factor sends it to every owner together with a copy of the Fabric Fund account.

In connection with the charges made by Stuart Eadie Plumbing Services Limited for two abortive call outs Mrs Flanagan confirmed that the company have agreed to refund one of the charges. She raised the matter with the owner who did not provide access and they have not agreed to pay. The contractor had arranged the access direct and there is no legal basis on which the Factor could require the owner to pay the charge. She believes that each charge amounts to £104.

In connection with the electricity charges Mrs Flanagan advised that she does not agree with the figures produced by Mr Baird. She has not checked the table prepared by him and cannot explain why he had reached the conclusion that there has been an over payment of £289.58. She thought the matter was closed and she does not believe there is a discrepancy. The communal electricity bills are initially estimated accounts and debits and credits are paid when the correct accounts are issued on the basis of meter readings.

The Tribunal's Decision:

The Tribunal finds that the Factor has breached section 3.1 of the 2021 Code of Conduct in relation to the communal electricity charges. Mr Baird had provided a table which details and compares the communal electricity charges included within the common charges accounts and the electricity charges detailed in the invoices from the electricity supply company and the figures do not tie up. He has identified a discrepancy of £289.58 which the Factor has failed to explain. The Factor has not demonstrated to either the Homeowner or to the Tribunal that no improper charge has been made.

The Tribunal find that the Factor has not breached section 3.1 of the 2021 Code of Conduct in relation to :

- (i) The Homeowner's complaint in relation to the Fabric Fund accounts as the Factor now provides the accounts annually and
- (ii) Charging the owners for the charges made by Stuart Eadie Plumbing Services Limited for two abortive call outs as there is no legal basis on which the Factor can charge the owner who did not provide access.

Section 3.4 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): A property factor must provide to homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise), a detailed financial statement showing a breakdown of charges made and a detailed description of the activities and works carried out which are charged for.

The Homeowner's complaint:

Mr Baird advised that he believes that the fabric fund accounts should be provided to all owners and not just to those who attend the AGM as the AGM is attended by a minority of owners.

The Factor's response:

Mrs Flanagan explained that the fabric fund account is now issued to all owners after the AGM each year and the Factor sends a copy to the owners with the AGM Minute following the AGM. The fabric account is also available on the Factor's portal.

The Tribunal's Decision:

The Tribunal find that as the Fabric Fund account is provided to the owners each year the Factor has not breached section 3.4 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

Section 3.12 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account must be opened in the name of each separate group of homeowners. A property factor must only transfer funds from one such account to another in line with the arrangements in any agreement with homeowners to do so.

The Homeowner's complaint:

Mr Baird advised that the Fabric Fund was improperly used to pay for the communal Christmas tree. He is not aware of there being any written agreement regarding the purpose of the Fabric Fund. It was not established in terms of the Deed of Conditions and its use is on the basis of custom and practice. He suspects that the Residents' Committee would have instructed the Factor to use funds in the Fabric Funds to buy the Christmas tree. However, the Factor should have refused to do this. He wants the Factor to charge the owners for the cost of the communal Christmas tree and replace the funds taken from the Fabric Fund.

The Factor's response:

Mrs Flanagan explained that the Residents' Committee told the Factor to use funds from the Fabric Fund to buy the communal Christmas tree. They received the Fabric Fund from the previous factor. The owners each contribute £65 per quarter. These payments are detailed on the common charges invoices. There is no written agreement in place in connection with the use of the Fabric Fund and the Fabric Fund is not referred to in the written statement of services.

The Tribunal's Decision:

The Tribunal finds that as there is no agreement in place with the owners as to the use of funds in the Fabric Fund the Factor has not breached section 3.12 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

The Tribunal would suggest to the parties that it would be advisable to prepare an agreement specifying the use of the funds in the Fabric Fund to clarify what the funds can be used for but they acknowledge that this is not a requirement of the Code of Conduct.

12. Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with OSP 11 and section 3.1 of the 2021 Code of Conduct.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

‘The Factor must pay the homeowner £100 for the inconvenience he had 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’

13. 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, a party must seek permission to appeal within 30 days of the date the decision was sent to them.

SignedDate 30th August 2025

Chairperson