Housing and Property Chamber
First-tier Tribunal for Scotland

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

**Decision on homeowner's application: Property Factors (Scotland) Act 2011 Section 19(1)(a)**

**Chamber Refs: FTS/HPC/PF/24/2108**

**Various properties, Dundee ("the Property")**

**The Parties:**

**H & H Properties (UK) Ltd, 71 Blackness Road, Dundee ("the Applicant")**

**James Gibb, Residential Factors, 27 Chapel Street, Aberdeen ("the Respondent")**

**Tribunal Members:**

**Josephine Bonnar (Legal Member) and Liz Williams (Ordinary Member)**

## DECISION

**The Tribunal determined that the Respondent has failed to comply with OSP2, 3, 9 and 11, and Sections 2.7, 3.2 and 7.5 of the Property Factor Code of Conduct as required by Section 14(5) of the Act. The Respondent has also failed to carry out its property factor duties to a reasonable standard.**

**The decision of the Tribunal is unanimous.**

## Background

1. The Applicant lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application comprises documents received by the Tribunal between 9 May and 18 July 2024. The application form states that the Respondent has failed to comply with Overarching Standards of Practice (OSPs) 2, 3, 4, 9 and 11, and Sections 2.7, 3.1, 3.2, 4.8, 4.9, 4.11, 7.2, and 7.5 of the 2021 Code. The application also states that the Property Factor has failed to carry out its property factor duties. The application was accompanied by copies of letters to the Respondent in

relation to both the Code breaches and property factor duties.

**2.** On 2 August 2024, a Legal Member of the Tribunal with delegated powers of the President referred the matter to the Tribunal. The parties were notified that a case management discussion ("CMD") would take place on 19 December 2024 by telephone conference call. The Applicant lodged a large bundle of documents in advance of the CMD.

**3.** Prior to the CMD the Applicant requested a postponement as they were in discussions with the Respondent. The Respondent confirmed that they were agreeable to the postponement. The parties were notified that a CMD would take place by telephone conference call on 7 April 2025. Neither party lodged any further submissions or documents.

**4.** The CMD took place by telephone conference call on 7 April 2025. The Applicant was represented by Mr Godsman and Ms McIntosh. The Respondent was represented by Mr McKie, Ms Watson and Ms Cooper.

5. The Tribunal noted that the principal complaint related to the accuracy of outstanding invoices and the failure by the Respondent to issue final accounts. In the meantime, there are NOPLs in place which were preventing the sale of properties. Ms McIntosh said that they could not pay until the invoices were amended.

6. Mr McKie said that the Respondent has been unable to issue final invoices because they have not been able to finalise issues with the electricity supplier. However, he confirmed that they were willing to issue amended invoices without the final electricity charges to progress matters.

7. The Tribunal noted that although the Applicant had lodged a great many documents, some further clarification of their complaints was required. In addition, the Respondent had not provided a response to the application. Following discussion, the parties agreed that the application should proceed to hearing by video conference. However, this would not be scheduled until the parties have clarified their position in relation to the application. The Legal Member advised that a direction would be issued in relation to invoices and submissions.

8. The parties were notified that a video conference hearing would take place on 17 September 2025 at 10am. Prior to the hearing both parties provided responses to the direction. The Applicant's submission includes details of the complaints which are still outstanding

9. The Hearing took place on 17 September 2025. The Applicant was again represented by Mr Godsman and Ms McIntosh. The Respondent was represented by Ms Cooper and Ms Watson.

**The Hearing**

Preliminary matters

10. The Tribunal noted that the Applicants had confirmed in their direction response that corrected invoices have now been provided and that they are happy to withdraw this complaint, except for the issue of migrated balances which is still disputed.

11. The Tribunal noted the following to be the outstanding complaints which the Applicant wishes the Tribunal to consider at the hearing: -

(a) Migrated balances included in the invoices.

(b) The Respondents failure to pay a gardening invoice which the Applicant sent to the Respondent although two others were paid, and they had agreed to pay them. (McAlpine development)

(c) Sending invoices for the two retail units to Mr Al Safar and not to the tenants of the units although they had been told that the tenants were contractually liable for the factoring charges. (Milton Mill development).

(d) Failure to charge the homeowners and re-imburse the Applicant for electricity charges paid by the Applicant in error as it was communal electricity which should have been shared by all owners (Riverside development)

(e) Failure to respond to enquiries and complaints.

(f) Failure to remove the NOPLs

12. The Legal Member indicated that the Tribunal may not be able to consider complaint (c). This is because the affected homeowner is not the Applicant, but Mr Al Safar. Following discussion, the Applicant representatives stated that they would withdraw this complaint.

13. The Legal Member advised the parties that there are two potential issues in relation to complaints (b) and (d). The first is that they do not appear to be specified in the notification letter to the Respondent prior to the application being made. The second issue is that they may relate to disputes between the Applicant as developer rather than as homeowner.

14. Ms McIntosh told the Tribunal that she could provide evidence that these complaints had been notified. She referred to production numbers 31 to 33, 35, 77, 78 and 80. She also referred to production 60, an email to Ms Cooper, and three other members of the Respondent's staff and to the Tribunal administration dated 8 May 2024. The Tribunal noted that this email was sent with the application but was received by the Respondent before the application

was “made” in terms of Rule 5 of the Procedure Rules. The notification letters with the relevant sections of the Code and duties complaints were sent later, on 24 June 2024.

**Migrated Balances**

15. The Applicant representatives told the Tribunal that they still own properties in Riverside and Milton Mill. The last McAlpine property was sold in January or February 2025. The former factor for the developments – Jack Reavely – was never formally appointed. It was just automatic as he had factored previous developments. They did not know that James Gibb had purchased the portfolio until they sent an email to the Applicant in April 2022 and some meetings then took place on site. James Gibb gave notice to terminate the contract in early 2024 but did not cease being the Factor until June 2024. Ms Cooper stated that they were actually dismissed and ceased acting on 5 June 2024. Estate Property Management has taken over. The Applicant representatives said that there were issues with the invoices – the format, the migrated balances and the errors. For example, two years’ worth of invoices for Riverside were based on 89 shares instead of 90. They also contained credits before debits, which made no sense. The Milton Mill invoices contained water charges, which should not have been there. The invoices were hard to follow. The errors have now been fixed by Ms Watson. However, the Applicant has not yet paid the invoices because the migrated balances are still there and the NOPLs are still in place. All the invoices (except those for McAlpine) contain migrated balances. The sum of £369.88 is owned for McAlpine. The disputed gardening invoice also relates to this development.

16. Ms Cooper said that when the portfolio was purchased, the Respondent also purchased the debt. Each homeowner was issued with a welcome letter and given time to challenge the migrated balances, as this would need to be taken up with the former factor as the Respondent had not instructed those works and did not have the relevant records. Ms Cooper said that although they ceased to factor in June 2024, over £27000 is outstanding, a substantial sum. They have also been unable to issue final accounts because they may have to distribute the debt among the other homeowners if the Applicant does not pay. The Tribunal was told that the migrated balances make up £1565 of the Milton Mill debt and £5800 of the Riverside. Ms McIntosh said that she believes that the sum which is outstanding is £21000 and not £27000. She stated that they took issue with the migrated balances at the outsent and were told to contact Jack Reavely, but they did not respond. They therefore told the Respondent to remove the migrated balances from the invoices while the matter was unresolved. It took a year before they did so but then they put them back on. The sums which were added were inconsistent with previous invoices. Furthermore, the Respondent has never provided evidence that these sums are due. It is not accepted that they are accurate. Ms Cooper told the Tribunal that the Respondent can “look at” the migrated balances, but the other sums must be paid. She said that she could not confirm whether the NOPLs will be discharged if only the other invoiced sums are paid. She confirmed that it is accepted that the invoices contained errors and that these errors were only

recently rectified. Ms McIntosh said that the Applicant could not pay until the invoices were corrected and that this had only been addressed recently, as a result of the application to the Tribunal. Ms Cooper said that this is accepted but that they should now be paid.

**Electricity dispute**

17. The Tribunal was told that the electricity dispute relates to the communal stairwell in Block B, Riverside. In 2023, the Applicant discovered that they were still paying the whole communal electricity charge along with other electricity accounts. They notified the Respondent in July 2023 and pointed out that this had been overlooked. They told the Respondent that the charges would need to be re-charged to owners and that the Applicant should be re-imbursed for the other owners' shares. Although aware of the situation for a year before ceasing to act, the Respondent did not notify the other owners until they had ceased to act. After they had become aware, the Applicant contacted the electricity supplier on several occasions to ask for the name on the account to be changed to the Respondent, as the Respondent failed to do this. The company stated that they could not do so unless it was requested by the Respondent but eventually agreed. However, the Applicant paid for the electricity until January 2024. There was a partial re-imbursement of £5000 but this was applied as a credit to homeowner accounts in Block C where there are outstanding/disputed common charges although the electricity charges were nothing to do with Block C. They are owed a total of £11000.

18. Ms Cooper said that the Respondent only agreed to re-imburse the charges for the period that they were in post, not the period when the former factor was managing the development. She said that the other homeowners have been billed for the electricity from the date of their appointment but not for the previous period. The decision was taken to offset the re-imbursement against the sums due in relation to Block C because the Applicant owned the relevant properties and had not paid. She said that she was not in post when the Respondent took over the Applicant's developments, but the usual process is to have a handover meeting on site and check for lifts, communal electricity etc. As two Reavley employees had joined the Respondent following the purchase, it was reasonable for the Respondent to assume that they had all the relevant information. In response to questions from the Tribunal, Ms Cooper said that she is not sure why it took so long to change the name on the account, but it can sometimes take a few months. That is why they agreed to accept liability for the invoices which related to the time they were the factors.

19. Following the lunch break, the Tribunal asked the parties to address them on the issue of jurisdiction in relation to the electricity charges, as it appears to relate to the Applicant's role as developer rather than homeowner. Mr Godsman said that the Applicant owned 10 out of 23 properties and were therefore homeowners at the relevant time. The Respondent made the decision to credit their homeowner account in another block with the partial re-imbursement. Ms Cooper said that she disagreed. This is a developer issue. She said they had agreed to accept liability for the electricity from the date of their appointment.

The rest of the time is a dispute between the Applicant as developer and the Respondent. They could not re-charge homeowners for electricity used before their appointment. Ms McIntosh said that the Respondent had a duty to ensure that they had all relevant information when they took over and should have done so as two of the Reavley employees had joined their team. Ms Cooper said that Jacqueline Borthwick, who was the Executive Director, met with the Applicant representatives and requested evidence of the handover documentation but this was not provided. This should have included photographs of meter readings.

**Enquiries and complaints**

20. Ms McIntosh said that the Respondent failed to respond and/or issued delayed responses to their enquiries. She referred to a number of documents in support of this complaint - Productions 8, 17, 18, 23, 24, 32, 34 to 37, 39, 41, 42, 45, 46, 51, 53, 64 to 66, 91 to 93.

21. Ms McIntosh said that the invoices were not corrected until June 2025. Although lists of McAlpine sold properties were provided on two occasions, the invoices were not corrected. Ronald Dalley emailed to ask about the ground maintenance invoices although this had already been discussed on the phone. They asked about the migrated balances on numerous occasions. They asked on 4 December and did not get a reply until 31 January, although this did not answer the enquiry and it was not until March that they were told that the migrated balances would be separate. They received invoices for Old Glamis Road (OGM) although the last house had been sold in 2021, before the Respondent became the property factor. There was no reply to the enquiries, but the invoices suddenly stopped. There were several contradictory emails about Roanld – whether he had left or was still working there. They made enquiries about access to the Portal. Although they received responses, the issue was not resolved for some time. There was no response to an email from George on 14 February 2024. She sent emails about the spreadsheets which she provided, containing details of all sold properties and those which were still owned, but there was no response

22. Ms Cooper said that she cannot confirm or deny some of these complaints as she had not started to work for the Respondent at the time and does not know what was discussed during telephone calls involving other staff/former staff members. She has not asked IT to arrange a deep dive into emails. However, she said that she was prepared to concede that there were some shortcomings in relation to communication and there may have been times where no response was issued. Sometimes this was due to staff absence. Ms Cooper said that she does not think that the OGM complaint is relevant, as the complaints in the application only relate to the three developments previously specified. She accepted that there were service delivery issues but could not comment on specifics without further enquiry. However, it was clear from the documents lodged that there were ongoing communications and some responses to enquiries. In relation to the email of 14 February 2024, Ms Cooper said that there was a meeting at the Applicant's office on 21 February 2024 with

Jacqueline Borthwick. Jacqueline Borthwick said at the meeting that she would deal with the spreadsheet enquiries. They were working with the Applicant as the developer.

OSP 2

23. The Applicant representatives said that the issue is fairness. There were delayed responses, and many enquiries were ignored. Until they applied to the Tribunal, their complaints were not taken seriously. Invoices were overly complicated. Ms Cooper said that she disagreed. The Respondent has always been open and fair. The accounts show all relevant credits and debits. Everything is disclosed and the Portal has all relevant information and documents. Ms McIntosh said that they had wanted their properties to be linked on the Portal, to make things easier. The Respondent said that this was not possible, although their current factor has arranged this. The information held on the respondent's portal was not easily accessible.

OSP 3

24. Ms McIntosh said that invoices were sent sporadically and were often incorrect. They were hard to understand with a credit in the November invoice which related to a debit in the following invoice. Invoices were sometimes received all together. Ms Cooper said that the credit/debit issue usually related to the electricity charges with a credit being applied before the electricity charge was made. This was because they often paid by direct debit based on estimated bills. Meter readings are then taken every quarter. It could look confusing, and they have changed the way this do that now.

OSP 9

25. Ms McIntosh said that when invoices were received, some were often missing and others incorrect. They had no access to the portal and when they enquired the Respondent had no record of 31, 32 and 33 McAlpine. They could not find them and eventually charges were written off. Ms Cooper confirmed that charges were written off which mean that the Applicant did not require to pay. Ms Watson said that these properties were only added in August 2023. Ms McIntosh said that 31 was sold on 30 June 2023, 32 on 7 September 2023 and 33 on 21 July 2023. Ms Watson said that she could not explain what had happened with these properties.

Section 3.2

26. Ms McIntosh said that the breach of this section again relates to the incorrect invoices, missing invoices and the issues with the Portal. Invoices were supposed to be issued every three months but often arrived weeks after they were due and this was an issue because they had no access to the Portal. They

only managed to identify the missing invoices when Portal access was sorted out. However, they noted that some of the invoices on the portal were different from the ones they had received. Ms Watson said that she could not comment on that. The invoices should be the same as they would have had to create a new one for it to contain different charges. Tribunal was told that the complaint under this section also related to errors in invoices. On 30 July 2023, the Respondent said that they were not the factor for McAlpine, but they had started to receive deposits from April 2022. Ms Warson said that they started to receive floats in November 2022, before they began to manage the development

27. Ms Cooper said that the Respondent concedes that there has been a partial breach of this section in relation to the incorrect invoices. Ms McIntosh said that the issue with the portal was that the code is on the first invoice. But as they did not get all the invoices for all of the properties, they did not have the details. Ms Coope told them to use the "forgotten password" tool but that didn't work

Section 7.2

28. The Applicant's referred to production 49, an email to the Respondent dated 15 December 2023. This is headed "Queries/Complaint." This was not treated as a complaint nor were they directed to the complaints process. They did not attempt to make a formal complaint at a later stage as they had lost faith in the Respondent.

Section 7.5

29. This complaint again relates to the migrated balances. When a factor takes over from another, they should ensure that they have the evidence to back up the migrated balances. That didn't happen. Ms Cooper said that they could only work with the information they were given.

Final submissions

30. The Applicant representatives said that they want the NOPLs discharged, and the migrated balances removed from the invoices. They are also looking for the electricity charges to be re-imbursed. They said that they have been put to considerable inconvenience by the Respondent's failures. It has had a big impact on a small business.

31. The Respondent representatives stated that some of the issues in the application are developer and not homeowner issues. The Respondent's main concern is the unpaid invoices. The Respondent wants the dispute to be resolved, and they concede that there have been some issues. However, they need to issue final accounts and cannot do so until the Applicant has paid what is due. The cannot re-imburse the Applicant for electricity used before they were managing the property.

32. During the hearing complaints in terms of OSP 4, Sections 3.1, 4.8, 4.9 and 4.11 were withdrawn.

**Findings in Fact**

33. By letters dated 24 June 2024 and email dated 8 May 2024 the Applicant notified the Respondent of their complaints under the Code of conduct and in relation to property factor duties.

34. The Respondent was the property factor for the developments built by the Applicant known as McAlpine, Milton Mill and Riverside from April 2022 until June 2024.

35. Between April 2022 and June 2024, the Applicant owned properties in all three developments.

36. The Applicant appointed Jack Reavley to be the property factor for the developments. The Respondent purchased Jack Reavely's portfolio in April 2022 and started to manage the developments from that date.

37. Prior to January 2024 the Applicant paid the communal electricity charges for one of the stairwells in the Block B of the Riverside development.

38. In June 2023, the Applicant realised that they had been paying for the communal electricity and that the account for this stairwell was still in their name although properties had been sold and the development was under the management of the Respondent.

39. In July 2023, the Applicant told the Respondent that the account was in the name of the Applicant and asked them to notify the supplier that it should be changed.

40. The Respondent failed to contact the supplier to request the change.

41. The Applicant asked the supplier to change the account to the name of the Respondent. The provider initially refused to do so but agreed to do so in January 2024.

42. The Respondent agreed to re-imburse the Applicant for electricity charges due by other homeowners between April 2022 and January 2024. They did not make a payment to the Applicant but credited an unrelated homeowner account for a different property with the sum of £6000.

43. The Respondent refused to re-imburse the Applicant for electricity charges which pre-dated their management of the development.

44. During the period that they managed the Applicant's developments, the Respondent issued invoices to the Applicant for common charges due in respect of properties still in the Applicant's ownership. These invoices were not always issued on time, and some invoices were missing

45. The invoices issued by the Respondent were not accurate until June 2025. They contained a number of errors including the number of properties which were liable for the common charges in two developments.

46. The invoices issued to the Applicant initially contained balances due to the former property factor.

47. The Respondent's staff agreed to remove the migrated balances from the invoices so that these could be dealt with separately.

48. The Respondent later issued invoices which again included the migrated balances and refused to remove these from the accounts.

49. The Respondent has demanded payment of the invoices including the migrated balances.

50. The Respondent has refused to deal with enquiries and challenges which relate to the migrated balances as they did not manage the developments at the relevant time and do not hold any information about the services provided and the work that was carried out.

51. Although they were aware that the invoices which had been issued were disputed and inaccurate, the Respondent registered Notices of Potential Liability against the properties which remained within the Applicant's ownership.

52. The Applicant refused to pay the disputed invoices until they were corrected.

53. The Respondent has corrected the invoices in relation to the period of their management in June 2025 but the Applicant has refused to make payment of the sums they now accept are due.

54. On 12 August 2022, the Respondent requested an updated list of homeowners.

55. On 12 August 2023 the Applicant provided the updated list of homeowners.

56. On 16 November 2022, the Applicant referred to their email of 12 August and provided a further updated list of homeowners.

57. On 18 November 2022, Ronald Dalley asked the Applicant for the ground maintenance invoices and whether these had been settled with the contractor.

58. On 3 July 2023 the Respondent requested information about the addresses for Plot 20 of the McAlpine development. The Applicant responded on 12 July 2023 with an address list for Plot 20.

59. On 4 December 2022, the Applicant emailed Ronald Dalley about the migrated balances on invoices and how these were to be addressed. Ronald Dalley sent an email to the former property factor on 31 January 2023, asking if the migrated balances were to be amended and if they were to be settled directly

by the Applicant with the former factor. The Applicant was copied into this email.

60. On 10 March 2023, Ronald Dalley sent an email to the Applicant with invoices for some of the Riverside properties. The email stated that the invoices had been tidied up and the migrated balances had been removed. On 19 March 2023, Roger Bodden emailed the Applicant stating that he was sending individual emails with clean copies of the invoices covering the period from 1 April 2022 to the date of the email and that the migrated balances would be dealt with separately.

61. On 17 August 2023, the Applicant made enquiries about two Riverside properties, the electricity charges and invoices in relation to Old Glamis Road.

62. On 22 November 2023, the Respondent sent confirmation of a meeting between the parties which would be attended by Ronald Dalley.

63. On 24 November 2023, the Applicant sent an email to Roanld Dalley asking him to telephone as they had been unable to contact him.

64. On 24 November 2023, the Applicant sent an email to the Respondent asking about Ronald and a point of contact as they had been told by the Aberdeen office that Ronald Dalley had left the company.

65. On 24 November 2023, Linsey Christison responded with her contact details.

66. On 11 December 2023, Ronald Dalley sent a detailed response to the Applicant in relation to a number of their enquiries.

67. On 13 December 2023, the Applicant sent a further email to Ronald Dalley and received an automated response which stated that he no longer worked for the company.

68. On 13 December 2023, the Applicant sent an email to the Respondent in relation to a number of issues including access to the Portal. A response was received on the same date which answered the Portal enquiry.

69. On 14 February 2024, the Applicant sent an email with a number of enquiries to the Respondent.

70. On 21 February 2024, a meeting took place between representatives of both parties at the Applicant's office.

71. On 3 April 2024, the Applicant received an email from Linsey Christison with a list of invoices. The email states that she cannot access "JG+" in relation to plots 31 to 33 McAlpine.

72. On 9 May 2024, the Respondent issued a response to an email from the Applicant. The Applicant replied on the same date with comments/responses marked in red on the Respondent's email. Further emails were exchanged on

23 and 29 May 2024

## Reasons for decision

## The Tribunal's jurisdiction

**73.** There are two jurisdiction issues. Firstly, the Tribunal can only consider complaints which have been notified to the Respondent prior to the application being made. Secondly, the Tribunal can only consider complaints which are made by a homeowner about their property factor

Notification of complaints

**74.** Section 17(3) of the 2011 Act states, in relation to applications to the Tribunal, that " No such 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 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 concerns".

**75.** The Applicant submitted two letters dated 24 June 2024 and addressed to the Respondent. One of these relates to complaints under the Code of Conduct and the other to property factor duties. In the Code letter the relevant sections of the Code are specified. The Applicant also details the reasons why they believe that the Respondent has not complied with the Code. These reasons include - failure to resolve queries, issuing over-complicated and incorrect invoices, failure to deal with queries in a timely manner, failure to remove NOPLs despite admitting that the invoices were wrong and failure to respond to queries in relation to access to the Portal. The duties letter refers to errors in invoices - water pump charges which did not apply, the wrong number of properties, the lack of a direct point of contact, not dealing with enquiries in a timely manner. Neither letter mentions the dispute in relation to the gardening invoice nor the electricity charges. When asked to provide evidence of notification, the Applicant referred to production 60. This comprises email correspondence between the parties. There is an email to the Tribunal dated 8 May 2024 which was also sent to Ms Cooper and several other employees of the Respondent. This sets out the factual aspects of the complaints, although does not specifically mention the Code or property factor duties. This was acknowledged by Ms Cooper on 9 May 2024. The email provides full details of a number of complaints, including the electricity charges. In relation to the gardening invoice, on page 1, last paragraph, the Applicant says that they invoiced the Respondent for grass cutting "as was agreed". On page 4, penultimate paragraph, the Applicant states that the Respondent representative "disagreed they would have to pay us maintenance regarding McAlpine". The Tribunal also notes that a great deal of email correspondence was submitted with the application which clearly establishes that the Applicant's

concerns as set out in the email of 8 May 2024 had been raised on many occasions.

**76.** In terms of the Notice of Acceptance issued by the Tribunal, the application comprises documents received between 9 May and 18 July 2024. Although the email of 8 May 2024 had been sent to the Tribunal, the application form was not submitted until 9 May 2024, and the application was not registered until that date. In terms of Rule 5(3) of the Tribunal's Rules of Procedure 2017, an application is "held to be made on the date that the First Tier Tribunal receives the last of any outstanding documents necessary to meet the required manner for lodgement". That date was 18 July 2024. The Tribunal is satisfied that the letters of 24 June and the email of 8 May meet the requirements of Section 17(3) in terms of notification of the complaints. The Tribunal is also satisfied that as the email of 8 May makes specific reference to both the electricity and grass cutting disputes, these have been properly notified.

Homeowner or developer dispute – electricity charges and gardening invoice

77. The Respondent does not dispute that, at the relevant time, the Applicant was a homeowner in terms of the 2011 Act. As they had not sold all the properties in the developments, they were entitled to the protection of the 2011 Act and the Code of Conduct from the date that the Respondent became the property factor. However, that protection only extended to the provision of services by the Respondent to the Applicant, in their capacity as homeowner, and not to any disputes which relate to the relationship between the parties as developer and property factor. Those are outwith the scope of the legislation, and the Tribunal does not have jurisdiction to consider them.

78. There are various aspects to the electricity dispute. The Applicant states that the Respondent failed to ensure that they had all required information to factor the development properly when they took over and therefore overlooked the communal electricity for one of the stairwells, that they failed to act when the matter was brought to their attention, that the Applicant had to arrange for the electricity account to be transferred to the Respondent's name, that the Respondent has refused to re-imburse the Applicant for invoices paid by the Applicant before the Respondent took over and that they credited a homeowner account for a different property instead of re-imbursing the Applicant for the period where they were in post.

79. The Applicant told the Tribunal that they paid the communal electricity charges by mistake. As a developer, they have many utility accounts for various developments. They assumed that the former property factor had set up an account for this stairwell and had paid £11000 before the matter came to light. The Tribunal notes that the Applicant was wholly liable for the electricity charges until at least one of the properties in the stairwell had been sold. From that point onwards, the purchasers were liable for their share, and the Applicant was only liable for the flats which remained in their ownership. The dispute relates to the latter period, when the Applicant did not own all the properties, as the development was not managed or factored until that time. Although this suggests that the dispute might fall under the Tribunal's jurisdiction, the

electricity account was not set up by the Applicant as owner of one or more of the properties. They set it up because they owned the land and were building flats on the land. Having considered all the circumstances, it appears to be arguable that the dispute is partially a developer/property factor issue and partly a matter which falls within the Tribunal's remit. Furthermore, the fact that the Respondent chose to credit an account for a different property owned by the Applicant, instead of re-imbursing the Applicant, suggests that they did not consider the dispute to be a separate matter.

80. The dispute over the gardening invoice is somewhat different. It is alleged that the Respondent agreed to pay the Applicant for gardening work carried out at one of the developments, although the management of the development had been handed over. Although the Applicant still retained ownership of some of the properties, it appears that this arrangement (if it existed) was one between the Respondent and the Applicant as developer and not as a homeowner. The electricity issue appears to have resulted from oversight. It is not disputed that there were communal electricity charges which should have been apportioned. If an arrangement over garden maintenance was made, it was made between the developer who was building the properties and the property factor, as part of the appointment and handover arrangements. The Tribunal is therefore not persuaded that it has jurisdiction to adjudicate of this matter or that the Code of Conduct or the 2011 Act apply. However, if the Tribunal's interpretation is wrong, the evidence presented did not establish that the Respondent agreed to pay the Applicant for grounds maintenance work that they carried out.

81. The Tribunal is therefore satisfied that part of the electricity charges complaint can be considered but not the dispute in relation to the gardening invoice.

**The Applicant's complaints – migrated balances**

82. The complaint about the migrated balances is that these should not have been included in the invoices issued by the Respondent as they relate to a period before they started to manage the developments. In addition, the Applicant states that it was specifically agreed that they would not be included in the invoices.

83. The Respondent argues that they are entitled to seek payment of the migrated balances because they purchased the debt with the portfolio from the former property factor. However, they provided no evidence of this. Furthermore, they concede that they are unable to provide any evidence that these balances are accurate because they relate to a period where they were not involved in the management of the developments and the records were not transferred. The Applicant was told that although they were expected to make payment to the Respondent, any issues had to be raised with the former factor. This proved to be a highly unsatisfactory arrangement as the former property factor failed to respond to the enquiries which were made. This left the Applicant in a situation where they could not challenge the sums being claimed and had only two options – to pay or refuse to pay. It is significant that the Respondent has not raised court proceedings for recovery of the sums in question. If they had done so, the Applicant could have defended the proceedings, and the Respondent

would have had to provide evidence that the sums are due and that they are legally entitled to recover them. Based on the evidence before the Tribunal, they may not be in a position to do this. The Tribunal also notes that the Respondent's argument is at odds with their position in relation to the communal electricity. They claim that they are entitled to payment of factoring charges which relate to a period when they were not the factor but are not in position to charge homeowners for electricity used during the same period. It is also apparent from the correspondence lodged that the Respondent's employees initially agreed to keep the migrated balances separate from the main invoices.

84. The Tribunal is therefore of the view that the migrated balances have been improperly applied to the invoices and should be removed. If they can demonstrate to the Applicant that they are legally entitled to seek payment, the Respondent can issue separate invoices for the sums in question but should only do so if they can evidence that the sums in question are accurate and due. The Applicant is not responsible for the failure by the Respondent to get all necessary information and documents from the previous property factor.

**The Applicant's complaints – electricity charges**

85. The situation in relation to the electricity charges arose as a result of the Applicant's error. They state that the Respondent ought to have ensured that they had all required information when they took over the management of the development. However, the Applicant was responsible for the development until it was handed over and should have made sure that the former property factor had all necessary information. The Tribunal is not persuaded that the Respondent is at fault. Furthermore, since the error arose at the point of handover, it is arguable that this is a developer/property factor dispute.

86. On the other hand, the Tribunal is satisfied that the Respondent failed to act when the matter was brought to their attention. No proper explanation was given for the failure by the Respondent to contact the utility company and ask for the account details to be changed. Ms Cooper suggested that they may have done so and that the changeover can take some time, but she did not provide any evidence that the Respondent took steps to address the matter when it was brought to their attention.

87. There are two further aspects to the complaint – the Respondent has only accepted liability for the electricity consumed during their tenure and the sums which they agreed to re-imburse have been applied as a credit to an unrelated homeowner account instead of being paid to the Applicant.

88. As previously stated, the Tribunal has not been provided with any evidence that the Respondent is entitled to recover sums due to the former property factor. The Tribunal also not persuaded that the Respondent could (or should) have agreed to sort out the communal electricity charges which pre-date their management. The account for the relevant period could not have been in their name, and they could not have collected the homeowners' shares while Jack Reavely was the property factor. Furthermore, when the matter came to light,

the Applicant could have contacted the other owners in the development, explained what had occurred and sought payment from them. Ultimately, the situation arose because of their error, and they have a remedy. The Tribunal is therefore not persuaded that the complaint about the electricity account and charges which predate the Respondent's involvement can be upheld.

89. The Tribunal notes that the Applicant accepts that sums are due to the Respondent and that the invoices have all been corrected. It is usual for a creditor to offset sums due to a debtor and the decision to apply the refund due to the Applicant to another account is not unreasonable. However, for the reasons previously outlined, the credit should only relate to sums due to the Respondent and not to the migrated balances.

**The Applicant's complaints – NOPLs**

90. The Tribunal is satisfied that the NOPLs were improperly applied. At the time they were registered, the Applicant had not been issued with accurate invoices. Setting aside the dispute over the migrated balances, the Respondent accepts that the invoices were inaccurate in relation to the period that the Respondent was the property factor, and they knew this to be the case. The Applicant had told them on numerous occasions. In those circumstances it was entirely unreasonable for the Respondent to expect or demand payment. However, as the Applicant is now in receipt of accurate invoices (except for the migrated balances) and have chosen not to pay, they are in a weak position at the present time. Furthermore, they could have offered partial payment while the invoices were being corrected.

**The Applicant's complaints – enquiries and complaints**

**91.** The Applicant's evidence on this issue was difficult to follow. Although a great many documents had been lodged, their submissions did not set out in detail the specific details of this complaint – which enquiries did not receive a response, and which received an incomplete response. It was apparent at the start of the hearing that the Applicant representatives had not anticipated that they would be expected to do this. The Tribunal adjourned the hearing for a period to allow the parties to consider this and some other preliminary matters. Following the adjournment Ms McIntosh referred the Tribunal to a series of emails. These emails had been lodged by the Applicant in advance of the CMD so the Respondent had prior notice that they would be relied upon. However, the Applicant's submissions extended to hundreds of pages and the Respondent could not have anticipated which emails were to be discussed at the hearing. This made it difficult for them to respond. The Tribunal also notes that the Applicant appears to conflate two issues – the failure by the Respondent to respond to their enquiries and the failure by the Respondent to provide a response which was acceptable to the Applicant

(a) The first complaint appears to be that the Respondent continued to issue inaccurate invoices although they had been provided with a list of sold

properties in August and November 2023. The Respondent conceded that invoices were inaccurate and did not put forward any explanation or justification for this.

(b) The second example provided was an email from Ronald Dalley asking for information which had already been provided by telephone.

(c) Thirdly, the Respondent sent invoices for Old Glamis Road although all the properties had been sold before the Respondent became the factor. Enquiries made in relation to this were not answered, although the invoices eventually stopped arriving.

(d) The fourth complaint appears to be that they were given contradictory information about whether Ronald Dalley had left the company, and when.

(e) The next example is the failure by the Respondent to sort out access to the portal

(f) The sixth complaint was that no response had been received to an email of 14 February 2024. This was withdrawn when Ms Cooper said that there was a meeting at their offices following the email to discuss the issues raised.

(g) Lastly, the Applicant complains that enquiries made on 9 May were not responded to until 23 May 2024

**OSP 2 – You must be honest, open, transparent and fair in your dealings with homeowners**

92. The Tribunal is not persuaded that a general lack of openness and transparency has been established. However, the Applicants have established that the Respondent has not always been fair. The registration of NOPLs in circumstances where accurate invoices were not yet available is patently unfair. Furthermore, the correspondence clearly demonstrates that the Applicants were told that the migrated balances were to be treated separately by two different property managers. This arrangement was later withdrawn and the later invoices included those balances. Whether or not they were entitled to add these balances, the Respondent did not behave fairly toward the Applicant in relation to this issue. The Tribunal is not persuaded that the refusal or failure to link the properties on the Portal was unfair. There was no obligation on the Respondent to do this, just because the Applicant owned a number of properties. In any event, there is no evidence that this was a notified complaint. However, the delay in addressing the Applicant's difficulties with the Portal was certainly unfair since it interfered with the Applicant's ability to check invoices and access information, they needed to check that the invoices were accurate. A breach of this section has been established.

**OSP 3 – You must provide information in a clear and accessible way.**

**93.** There is no evidence that most invoices were generally unclear or overly complicated. However, the Respondent representatives appear to accept that the electricity charges on the invoices could be confusing, and they said that these are now dealt with in a different way. It therefore appears to be established that information on the invoices about the electricity charges was not clear. The Tribunal is also satisfied that the delay in assisting the Applicant to get access to the portal meant that for a period, information was not accessible. A breach of this section has been established.

**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.**

**94.** The Tribunal is satisfied that this breach has been established. The Respondent factored the developments for over two years from April 2022. They failed to issue accurate invoices until June 2025. The only conclusion that can be reached is that their records were incomplete and/or inaccurate. They did not claim that this was the Applicant's fault – they did not provide any explanation. However, there was clearly an issue with their record keeping which resulted in error and confusion.

**OSP 11 - You must respond to enquiries and complaints within reasonable timescales and in line with your complaint handling procedure**.

**Section 2.7 – A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and fully as possible and to keep the homeowners informed if they are not able to respond within the agreed timescale**

95. Following the previous numbering: -

(a) The Tribunal is not persuaded that this complaint is really about responding to complaints and enquiries. As the Respondent pointed out, the evidence demonstrates that there was communication between the parties. Invoices and responses to enquiries about the invoices were issued. The responses and invoices and/or responses may have contained inaccuracies but that is not necessarily a breach of this section of the Code.

(b) The fact that the Respondent asked for information which had previously been provided is not a failure to respond to enquiries.

(c) The Respondent took issue with the reference to the Old Glamis Road invoices as these were not mentioned in the notification letters or application. However, the Tribunal notes that there is specific reference to this issue in the email of 8 May 2025. On page 3 the Applicant states that they received invoices for this development, they queried the invoices and received no response. The

Tribunal is therefore satisfied that this complaint is part of the application and was notified. As the Respondent did not dispute the complaint, or provide evidence that responses were issued, the Tribunal is satisfied that a breach has been established.

(d) The Tribunal is satisfied that the Applicant appears to have received contradictory information about Ronald Dalley. They emailed him to request a call. When he did not call, they telephoned the Respondent and were put through to the Aberdeen office. They were told that he had left the company. When they emailed the Respondent to ask if this was the case, another staff member replied and provided her contact details but did not answer their enquiry. It appears that Mr Dalley was still in post as he emailed them a few weeks later. When they replied to his email, they received an automated message which confirmed that he had left the company. The Tribunal is satisfied that, as neither Ronald Dalley nor Linsey Christison answered the enquiry about whether he had left or was due to leave, the Respondent has failed to comply with these sections of the Code.

(e) The Tribunal is not persuaded that the delay in providing access to the Portal is a failure to respond to complaints and enquiries. The evidence produced suggests that the Respondent did respond to emails about this although the suggestions they made did not necessarily address the problem.

(f) This was withdrawn

(g) The Tribunal is not persuaded that a delay of two weeks – 9 to 23 May 2025 – is excessive.

**Section 3.2 - The overriding objectives of this section are to ensure property factors - provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor**

96. It was conceded that invoices were inaccurate until June 2025. It was not disputed that invoices were sometimes issued in batches rather than every three months or that some were missing. Invoicing is part of a property factor's accounting procedures. The issues with the invoices clearly resulted in a lack of clarity as to what was actually owed. The Tribunal is satisfied that a breach of this section has been established.

**Section 7.2 - When a property factor's in house complaints procedure has been exhausted without resolving the complaint the final decision should be confirmed in writing.**

97. The Applicant states that their complaint to the Respondent was not treated as a complaint and the complaints process was not followed. They referred to an email dated 15 December 2023. Having considered the terms of this email the Tribunal is not persuaded that it would have been clear that the Applicant was making a formal complaint. Aside from the heading – "Queries/complaint", the email refers to an attached excel document, states that there are errors in the invoices, asks the Respondent to check the invoices and address the queries

and mentions issues with the Portal. It is clear from the tone of the email that the Applicant is unhappy with the service, and it concludes with a request that the queries be dealt with by someone who is capable of resolving them. However, the Tribunal is not convinced that it was clear that the Applicant was making a formal complaint. In any event, this section of the Code is about the conclusion of the complaints process. In this case, the process did not start. No breach of this section is established.

**Section 7.5 – Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the previous property factor must cooperate with the current property factor (and vice versa) to ensure the exchange of all necessary and relevant information. This can include information about outstanding complaints. Where information about an unresolved issue that was the subject of has been shared with the new, formally appointed factor, they have the option, if they choose, to progress the complaint rather than starting a new one**

98. The Tribunal is satisfied that the Respondent has breached this section of the Code. The representatives conceded that they did not obtain the previous factors records in relation to the migrated balances. As a result, they could not deal with enquiries about, or challenges to, the sums being claimed. This demonstrates a lack of cooperation which has had consequences for the Applicant.

**Property Factor duties**

99. In terms of Section 17(4) of the 2011 Act – "References in this Act to a failure to carry out a property factor duties include references to a failure to carry them out to a reasonable standard. The Tribunal is satisfied that the Respondent has failed to carry out its property factor duties and or carry out those duties to a reasonable standard in relation to the following: -

(a) Issuing inaccurate invoices which did not take account of the number of properties in the developments and the correct apportionment of charges as set out in the Deeds of conditions.

(b) Registering Notices of Potential Liability in circumstances where they had issued inaccurate invoices, knew that invoices were inaccurate and had been told that they were inaccurate.

(c) Adding migrated balances to invoices in circumstances where they could not provide evidence that these balances were accurate or deal with enquiries in relation to them.

(d) Removing the migrated balances from invoices and confirming that these would be treated separately then reneging on this arrangement.

(e) Failing to contact the electricity supplier to arrange for the account for the stairwell in Block B, Riverside to be transferred to their name when the issue was brought to their attention.

**Proposed Property Factor Enforcement Order**

**100.** Although some of the breaches that were established were relatively minor, particularly in relation to responding to enquiries, the Tribunal is satisfied that the Applicant has been put to considerable inconvenience through the Respondent's failure to comply with the Code and carry out their property factor duties. In particular, the action taken by them in relation to the migrated balances, the failure to issue accurate invoices until June 2025 and the registration of the NOPLs. Had the Applicant paid the corrected invoices (minus the migrated balances) the Tribunal may have considered issuing a order which would require the discharge of the NOPLs. However, they have made the decision not to do so, although they accept that the relevant sums are due. However, the Tribunal is satisfied that an award of compensation is appropriate which should reflect the gravity of the breaches and failures.

The Tribunal therefore proposes to make a Property Factor Enforcement Order ("PFEO"). The terms of the proposed PFEO are set out in the attached Section 19(2) Notice.

**Appeals**

**A homeowner or property factor 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.**

Josephine Bonnar, Legal Member and Chair 16 October 2025