



Statement of Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in connection with an application under section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/24/3874

Re: Property at 37 Kings Gate, Aberdeen, AB15 4EL (“the Property”)

Parties:

Mr Michael Rennie, 37D King’s Gate, Aberdeen, AB15 4EL (“the Applicant and Homeowner”)

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

Tribunal Members:

Yvonne McKenna (Legal Member) and Robert Buchan (Ordinary/ Surveyor Member)

Decision

The Respondent has failed to carry out its property factor duties.

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to comply with the Section 14 duty in terms of the 2011 Act in respect of compliance with paragraphs OSP2, OSP3, OSP4, OSP6, OSP11 and sections 1.1, 2.1, 2.3, 2.4, 2.7, 6.6 and 6.9, of the 2021 Property Factor Code of Conduct (“the Code”) as required by section 14(5) of the Property Factors (Scotland) Act 2011 (“the 2011 Act”).

The decision is unanimous.

Background

1. In this Decision, the Property Factors (Scotland) Act 2011 is referred to as “the 2011 Act”; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as “the Code”; and the First-tier for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as “the Rules”.

2. By application to the Tribunal dated 22 August 2024 the Applicant made an application under section 17 (1) of the 2011 Act.

3. In terms of the application, the Applicant complained that the Respondent had;

A; Failed to comply with the Code –

He said that in relation to the Overarching Standards of Practice that the Respondent had breached the following required standards

- *You must be honest, open, transparent and fair in your dealings with homeowners.*
- *You must provide information in a clear and easily accessible way.*
- *You must not provide information that is deliberately or negligently misleading or false.*
- *You must apply your policies consistently and reasonably.*
- *You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.*
- *You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*
- *You must not communicate with homeowners in any way that is abusive, intimidating or threatening.*

Furthermore he specified that Paragraphs 1, 2, 6 and 7 of the Code had been breached.

B; Failed to carry out the Property Factor's duties;

The Applicant stated that the Respondent had regularly sent out unannounced/unidentified contractors direct to site, to execute high risk activities in live pedestrian zones. He argued that this practice had the very real potential to seriously injure, or even to kill, owners, residents and/or young children. He said that frequently these activities were not discussed with owners, and were coupled with a lack of proper safety related documents. He stated that this would have the likelihood, at some point, to result in life threatening consequences.

4. In support of the application, the Applicant submitted the following;

- E-mails to the Respondent dated 22 November 2024, being notification under section 17 (3) (a) of the 2011 Act.
- 13 e-mails from the Applicant to the Respondent dated 17 March 2023, 18 May 2023, 27 June 2023, 20 August 2023, 15 November 2023, 6 December 2023, 21 January 2024, 29 February 2024, 16 April 2024, 9 May 2024, 26 May 2024, 18 June 2024 and 4 August 2024.
- E-mail from the Respondent to the Applicant dated 30 May 2024
- Applicants Trust Pilot Review of the Respondent dated 9 June 2024
- The Respondent's written statement of services

- Email from Harper Macleod solicitors for the respondent, to the applicant dated 22 July 2024.

5. The Tribunal was also in receipt of the Title Sheet which confirmed the Applicant to be the registered owner of the property.

6. By Notice of Acceptance of application dated 12 December 2024, a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application.

7. The application was therefore referred to a Case Management Discussion ('CMD'). The CMD took place on 2 June 2025, by teleconference, at 10am. Notification of the Case Management Discussion was given to the parties in accordance with Rule 17(2) of the Rules.

The Case Management Discussion (2 June 2025)

11. The CMD took place by telephone conference on 2 June 2025. Both parties were present. The Respondent was represented by Ms Catherine Flanagan, Customer Services Manager. Both parties were content that the CMD proceeded by teleconference.

12. Mr Rennie said that his application to the Tribunal had been made reluctantly. He said that the main issue he had with the Respondent came down to one specific part of their Written Statement of Services, ('WSS'). He said that the Respondent was in breach of the same. He referred the Tribunal to section B (d) and paragraph two thereof;

'We may consult the contractors about the type of repair and the materials to be used, but will not say how they should get access to do the repair or insist on any other health and safety procedures (this will be up to you and the contractor). If necessary, and if you instruct us to, we will arrange for a professional consultation on notifiable projects (those that include significant repairs or improvements). We will charge an additional fee for notifiable projects-see section C (a).'

As stated above in section B (a), as the co-owners are a domestic client, you will be in contract with any contractor who you choose and who we (as your agent) may appoint on your behalf and that any contractor shall be responsible for discharging the duties of client, principal contractor (and if no principal designer has already been appointed, principal designer) under the Construction (Design and Management) Regulations 2015.'

13. Mr Rennie said that contractors were out of sight, and arrived out of the blue. He did not know who the contractor was until he saw a massive telehandler machine arriving at his Property. He felt that using this particular machine to clear gutters was not necessary and that the task should have been completed with a smaller machine. He said that the use of the telhandler was dangerous. He had requested public liability insurance details and had been denied this information. He reiterated

that he had no way of contacting contractors if he was not advised who the contractors were, and they simply turned up on site.

14. Ms Flanagan said that it had not been deemed as necessary by the Respondent to notify the Applicant regarding the appointed contractor. She maintained that the contractors were specialist hire companies and would have made sure they had "all their ducks in a row". She had been involved in property factoring for over 25 years and did not see there being any issue with the use of telehandler machines in public spaces. She had never before been asked for documentation. She said that their subcontractors appointed the telehandler use from a company they hired from.

15. Parties were asked if there was any potential here for them to have a 'round the table' meeting, in order to ascertain if there was any alternative way of settling their dispute, before the matter proceeded further. Both agreed that this may assist the progress of the case if there could be some open dialogue. The Applicant was reminded that it was up to the Respondent who they chose to bring to any such meeting and this was not a matter that he could direct. The Tribunal made it clear that a suitably qualified representative of the Respondent should attend this meeting. The specifics of that person are a matter for the Respondent.

16. A separate Direction was issued by the tribunal regarding the meeting. Parties agreed to meet within an appropriate period and to report back to the Tribunal after said meeting.

17. The Tribunal said that another CMD would be assigned in order to determine further procedure.

The Case Management Discussion (10 September 2025)

18. A CMD took place by teleconference on 10 September 2025. The Applicant Mr Rennie was present. Ms Flannigan was present for the Respondent.

19. In between the two CMDs, the Tribunal had received further paperwork from each side. The Applicant had lodged emails dated 5 September, 6 September, and 13 August 2025. The Respondent had lodged an email dated 15 August 2025. The Tribunal confirmed that the terms of the Tribunal's Direction of 2 June 2025 had been complied with.

20. In his e-mail of 8 August 2025, the Applicant had referred to certain productions that had not been listed by the Tribunal. The Tribunal acknowledged that the following documents had not been included in the initial CMD Note;

- Applicant emails of 28 March 2025, and 28 April 2025
- Respondent e-mail of 28 March 2025.

21. The Tribunal said that it is independent and impartial, and denied any bias in the conduct of this case.

Position of the Applicant (Summary)

22. Mr Rennie said that a joint meeting had taken place between himself and Ms Flannigan on 10 July 2025. He said that this had been a good meeting, and some things discussed had been quite positive. He did have a few residual issues remaining with the Respondent.

23. An agreement had been reached regarding how high risk activities would be dealt with at his property. What he is unsure about is if this new practice will be dealt with throughout all the group of properties managed by the Respondent. What has been agreed is that the Respondent will put a notification on the property portal regarding these high risk activities, and an e-mail will be sent out to him at the same time to notify him of this. What he doesn't know is whether this practice only applies to him, and whether he has been given a unique status, or whether this will be extended to all of the properties managed by the Respondent.

24. He said that the gutter clearing is a serious issue. He said that for example, if there was a leak in a roof then a larger plant may be required at a site as a one-off. For gutter clearing, the whole site is traversed, and the risk level increases massively. The risk is increased where a telehandler machine is used. He went on to say that the contractor used by the Respondent, Graeme Cheyne, is also being instructed by the Respondent at countless other locations. The Respondents manage 12,000 properties in the Aberdeen area, and 40,000 properties Scotland wide.

25. If the contractors used by the Respondent use similar high risk plants elsewhere, then the system he complains about is being replicated in other locations. This is a risk which does not need to occur. He referred to the photographs which he had lodged, and said that it doesn't require a safety expert to see that the use of the telehandlers is seriously concerning. If, on an annual basis, the Respondent manages 40,000 properties, with 10-20 people in each development, then a million people are affected by this.

26. He questioned why the Sky Vac gutter cleaning system was not being used. He said that this was a unique opportunity to potentially help a million people. What would help would be if the Respondent used contractors who had the sense to use the Sky Vac system at all of their managed properties. It is unbelievable that they are not doing so. He said that he could guarantee that the practices adopted by the Respondent's contractors would continue. He referred to various different ways that high risk activities could be conducted including the use of a cherry picker, mobile scaffolding, and ladders. Only one of these methods for gutter cleaning is an ultra safe way to proceed, and that is the use of the Sky Vac 85. It couldn't be simpler. Unless this risk level on site is reduced, then with 100 percent certainty, someone will be killed outright.

27. Mr Rennie said that he had spent a lot more time on this application than he had intended. He said that there had been colossal paperwork generated over a single item. The more that he has written, the more that he has realised that people's lives are at stake. Graeme Cheyne must have heard of the Sky Vac. Gutter cleaning requires to be carried out with the operator at ground level. Otherwise, with all other methods, the risk level increases dramatically. Lives will be lost he emphasised.

Using random different pieces of plant is insanity. Every sensible person uses the Sky Vac.

28. Mr Rennie referred to the 2 page list of things which need to be in place for the safe usage of a telehandler. He said that it is one of the most dangerous pieces of equipment. He has spent 40 plus years on sites. When he was responsible for the use of a telehandler on site, he paid an extra £600 to have a banksman follow the plant around all day long. There have been around 800 major incidents with telehandlers and people are sweeping all of this under the carpet. His philosophy is about saving lives. He is aware that most factors use the Sky Vac system.

29. He said that one matter which he did want the Tribunal to take careful note of was that there had been a definite breach of the Property Factors Code of Conduct when a contractor arrived on site with no notification to the home owners and no public liability insurance details had been provided.

Position of the Respondent (Summary)

30. Ms Flannigan said she left the joint meeting feeling very positive. She had a lovely chat with the Applicant. It had been agreed following parties' joint discussions, that any and all job lines will be put onto the portal, and each customer receives a link. As she had discussed with the Applicant at their joint meeting, she did not have the authority to approve what the Applicant required regarding the exclusive usage of a particular machine throughout all of their managed properties. She has referred this to the Respondent's compliance team and they are currently investigating this; and will ask Graham Cheyne if the contractors can purchase the equipment preferred by the Applicant. He is in their Aberdeen office every Wednesday. She would be having a discussion with him about this later that day.

31. She added that she is qualified in health and safety management.

Further Procedure

32. The Tribunal said that all that it could do was to determine this application; it was beyond its remit to determine what practice should be adopted by the Respondent throughout the country. The Applicant could of course raise his concerns with the Health and Safety Executive, his local M.S.P. and/or Property Managers Association Scotland.

33. The Tribunal asked the Applicant what he wished to happen regarding further procedure as he stated that it would be a waste of time attending a Hearing, and he had no witnesses to call. He was not however minded to withdraw his application.

34. In the circumstances in terms of paragraph 16 of the Rules, it was a matter for the Tribunal to determine further procedure after taking parties representations into account.

35. The Tribunal said to parties that the case would be continued to a Hearing. Both parties thereafter intimated in writing that they would attend a Hearing by teleconference.

The Hearing

36. The Hearing took place by teleconference on 16 December 2025. The Applicant Mr Rennie was present. The Respondent was represented by Ms Flannigan. Neither party wished to call any witnesses.

37. The Tribunal explained to parties the procedure which would be adopted.

OSP2 You must be honest, open, transparent and fair in your dealings with homeowners.

The Applicant's Position

38. Mr Rennie said that the Respondent was not upholding the clear guidance given within their WSS. He maintained that this was dishonest and unfair to the homeowners. He referred to section B (d) paragraph two of the WSS specified at paragraph 12 of our decision.

39. He argued that there was an onus on him, as a homeowner, to satisfy himself of something he had no notification of. He referred to an incident on 16 April 2024 where a telehandler arrived unannounced at his property development. Public liability insurance was not shown, and the worker in attendance was a subcontractor.

40. Despite the fact that an agreement has now been reached with the Respondent, following their meeting in June 2025, to notify him of any contractors instructed, he said that this should not apply only to him, but to all the other homeowners on the site, and indeed to all the other sites managed by the Respondent. He said that there were 40.000 sites in the Respondent's portfolio.

41. The gutter clearing, he said, is the most critical activity. The rest of the works relate to one-off activities. With gutter clearing this is different. There are 200 metres of perimeter to the building to traverse. A cherry picker would need to be relocated about 20 times. This he contended was seriously dangerous.

42. This is his main concern, this particular clause. He said that this needs to be resolved. The clause needs to be clarified.

The Respondent's Position

43. In their written response, the Respondent stated that they are not required to seek permission or advise when contractors are on site. This is as per the Deed of Conditions burden 12 which states;

'There shall be appointed a factor.....Who will be responsible for instructing and administering the common repairs and maintenance of the block of flats and the

whole common items of the development and for apportioning the cost thereof among the several proprietors.....'

and burden 13 of the Deed of Conditions which states;

'To delegate to the Factor appointed as aforesaid, full right, power and authority to take charge of all matters pertaining to the maintenance and preservation of the common property both internal and external, and the employment of labour theranenet, as if said right, power and authority could be exercised by a majority vote as such a meeting.'

44. The Respondent's position is that they have taken legal advice from industry specialists, and that it is the contractor who holds the responsibility for health and safety.

45. There is no requirement for the Respondent to advise owners when contractors are attending. The contractors are independent third parties and the Respondent does not have access to their scheduling. The contractor is provided with owners' details if access is required to the property owner's residence.

46. Ms Flannigan said that it would hamper the Respondent's authority to act if they required to write to the entire home owners regarding every specific work carried out. They would not be able to afford it. This applies to the Respondent's pre-approved work limits. They have authority to act subject to £75 per household. Anything in excess of that requires notification; quotes would be obtained with appropriate communication and possible meetings with homeowners, depending on the size of the works.

47. She said that the particular clause complained about by the Applicant in the WSS, is a standard clause in the Respondent's WSS. Where there is notified planned work the Respondent does communicate that. When it comes to major works, the Respondent needs the homeowners' approval. In addition, she said that following a meeting with the Applicant, an agreement was reached that the Respondent would advise the Applicant in advance of the work to be carried out and the details of the contractor. Notes have been placed on his account that this requires to be done.

48. She said that this would be put on the customer portal which all owners have access to. An alert would be sent out to every homeowner, and they would be told they had a news item to review.

49. Ms Flannigan said that all of their contractors have public liability insurance. The Respondent ensures that they have the requisite certificates relevant to the job. Within their authority to act, the Respondent attends to that.

50. Ms Flannigan did not accept that the WSS required to be re-written or revised. She said that health and safety issues related to the contractor. This is the contractor's responsibility. The Respondent collates all of the certificates. But, she went on to say that it is still the homeowners who are in contract. The Property Factor is only an agent. She said that she appreciated the concern that the Applicant

had raised that contractors could turn up at any time without prior notification. That is why she said the Respondent had come to the agreement regarding notification. She said that she had not had another complaint regarding this specific clause.

51. Ms Flannigan was referred to the letter sent by the Respondent's solicitors dated 22 July 2024 which stated;

'Our client is under no contractual or statutory obligation to notify homeowners of the commencement of those works or the identity of the proposed contractor.'

52. She was asked by the Tribunal how that could sit with the WSS or the Code of Conduct. She replied that the Respondent as Factor is appointed based on the WSS. She said that the Respondent is clear what works this applies to. It is pre-authorised works. Where homeowners would be told is where the cost of the work is over a certain amount of money.

53. She said that given the meeting which had taken place with the Applicant, an agreement had been reached with him. She had understood the issue to have been resolved. She said that insofar as making an amendment to the WSS is concerned, that this was not something she could agree to on behalf of the Respondent. It would need someone, 'higher up in the company' to agree to that. What she would be willing to do would be to take this suggestion to her superiors. She will provide them with an update on this after the case is concluded.

OSP3 You must provide information in a clear and easily accessible way.

The Applicant's Position

54. Mr Rennie said that despite the Respondent's WSS, that in terms of Section B(d) thereof, the homeowners, particularly Mr Rennie, had been wilfully obstructed from taking advantage of this, which he maintained clearly contravened OSP 3.

The Respondent's Position

55. The Respondent relied on their stated position to OSP2

OSP4 You must not provide information that is deliberately or negligently misleading or false.

The Applicant's Position

56. Mr Rennie said that since the homeowners have been wilfully obstructed from taking advantage of the clear guidance within the WSS, detailed in the quoted paragraph 12 of our decision, that it could only be concluded that the clause is misleading/false.

The Respondent's Position

57. The Respondent relied on their stated position to OSP2

OSP5 You must apply your policies consistently and reasonably.

The Applicant's Position

58. Mr Rennie said that since the homeowners have been wilfully obstructed from taking advantage of the clear guidance within the written statement of services detailed in the quoted paragraph 12 of our decision, that the clause is not being upheld consistently and reasonably.

The Respondent's Position

59. The Respondent relied on their stated position to OSP2

OSP6 You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.

The Applicant's Position

60. Mr Rennie said that the ongoing failure to uphold the paragraph of the WSS quoted in paragraph 12 of our decision, seems to be a combination of wilful obstruction by the Respondent, coupled with a lack of understanding of contractual protocol, deficient knowledge of basic construction related techniques, and a lack of safety awareness when dealing with high risk activities.

The Respondent's Position

61. The Respondent relied on their stated position to OSP2

OSP11 You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

The Applicant's Position

62. Mr Rennie said that bearing in mind that the same high risk activities have been dragging on since March 2023 that the Respondent has clearly failed to timeously uphold the spirit of OSP11.

The Respondent's Position

63. Ms Flannigan said the Respondent has managed the Property for a few years. There was one particular instance where works had been subcontracted by the contractor Graham Cheyne, at the time of a hire of cherry picker equipment. The Respondent had no knowledge of that. She said that she agreed good communication is preferable. She said the Respondent's WSS is clear. The Respondent has an approved spend per home. For anything over and above that there are multiple levels of communication. She said that she is happy to communicate with the Applicant. That is why following her meeting with him an agreement has been put in place regarding which contractors are involved and when they will be attending.

OSP 12 You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

The Applicant's Position

64. Mr Rennie said that as a direct result of his effort to improve the Respondent's handling of high risk activities, that the Respondent arranged for their solicitors to send him a letter which he classed as being threatening and designed to intimidate/persecute him.

The Respondent's Position

65. Ms Flannigan denied that OSP12 was breached by the Respondent.

Section1 Written Statement of Services

1.1 The property factor must provide each homeowner with a comprehensible WSS setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First-tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code.

The Applicant's Position

66. Mr Rennie said that despite many polite and reasonable requests from him that the Respondent has repeatedly failed to answer specific questions regarding high risk activities, particularly those involving major plant and has simply avoided answering. He referred to the WSS at Section B (a) Paragraph 2;

'For the avoidance of doubt, as the co-owners are a domestic client, you will be in contract with any contractor who we (as your agent) may appoint on your behalf and that contractor shall be responsible for discharging the duties of client, principal contractor (and if no principal designer has already been appointed, principal designer) under the Construction (Design and Management) Regulations 2015.'

And Section B (i)

'....It is your responsibility to make sure the property is safe for visitors or our employees.....'

The Respondent's Position

67. Ms Flannigan had nothing further to add.

Section2 Communications and Consultation

2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

The Applicant's Position

68. Mr Rennie maintained that information provided in the WSS is misleading and false.

The Respondent's Position

69. Ms Flannigan reiterated that where there is no authority to act, all homeowners are consulted. The authority to act gives the Respondent approval to authorise works for lesser amounts.

2.3 The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

The Applicant's Position

70. Mr Rennie said that although the Respondent has created an online portal, they have steadfastly refused to provide electronically, essential safety related documentation.

The Respondent has failed to provide him with;

- (i) Public liability insurance documents (via online portal) despite countless requests by him.
- (ii) Online portal evidence regarding safety checks before appointing certain contractors.

71. Mr Rennie referred to the WSS Section B (d) quoted above in paragraph 12 of our decision, which he said clearly states that the owners are responsible for discussing access requirements and health and safety procedures directly with the contractors which he said would include suitable Risk Assessment/ Method Statement ('RAMS') documents. He said that essentially he never receives any conclusive proof from the Respondent as to whether or not appointed contractors have any safety documentation at all.

The Respondent's Position

72. The Respondent's position is that public liability documentation is not the Respondent's property to provide to owners. This documentation belongs to the contractor. It is not appropriate to provide information to owners which are third party communications between the Respondent and a contractor. This may contain home addresses and private numbers. Ms Flannigan said that the Applicant could access information regarding the Respondent, rather than the contractors. She said that she personally would have no issue with redacted information being made available, but this was something she would need to take up with her superiors.

2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

The Applicant's Position

73. Mr Rennie repeated his position in relation to the breach of the Code 2.3 above.

The Respondent's Position

74. Ms Flannigan said that the Respondent was not obliged in terms of the Code to provide contractors details.

2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner.

The Applicant's Position

75. Mr Rennie said that the arbitrary decision by the Respondent to uplift the, 'agreed level of delegated authority cost criteria' was taken solely by the Respondent and the homeowners were never asked to formally confirm agreement of this. He said that the raising of the cost figure was to give the Respondent a convenient excuse for providing even less information than before.

The Respondent's Position

76. Ms Flannigan said that the homeowners would have been informed about this when the Respondent was appointed. The titles delegate authority. The Respondent has a procedure in place to seek consent if works required will be outwith a delegated amount.

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 as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

The Applicant's Position

77. Mr Rennie said that the spirit of this part of the Code had not been satisfactorily achieved as it had thus taken some 18 months, and the high risk activities issue has not been resolved. He raised a further issue of a cleaning contractor not having been paid. (The Tribunal said that this particular issue was not raised as part of the Applicant's case and was therefore outwith the scope of the Hearing).

The Respondent's Position

78. Ms Flannigan said that she considered that the Respondent had responded to the queries and complaints raised by the Applicant within requisite timescales. She appreciates that he is not happy with the result.

Section 6 Carrying out repairs and maintenance

6.3 A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention.

The Applicant's Position

79. Mr Rennie complained that there is no specific statement contained in the WSS clearly outlining how exactly the homeowners can formally initiate the process of notification or repairs, maintenance and matters requiring attention.

The Respondent's Position

80. Ms Flannigan said that there did not need to be anything further detailed in the WSS. There is further information available on the Respondent's website. The majority of customers either e-mail or call with issues.

6.4 Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

The Applicant's Position

81. Mr Rennie said that he required in terms of the Respondent's WSS to be timeously afforded the opportunity to discuss access requirements and health and safety procedures with the proposed contractors, particularly where high risk activities are involved.

The Respondent's Position

82. Ms Flannigan had nothing further to add. Where the Respondent has authority to act, the Respondent does not notify there and then. When major works are required these are all discussed with the homeowners. They are told of contractors, costs, meetings if required, and timescales. If, for example, there is a minor matter such as a loose tile, this is not necessary.

6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

The Applicant's Position

83. Again, Mr Rennie complained that the Respondent did appoint the contractor to utilise a large telehandler without any discussion with the homeowners.

The Respondent's Position

84. Ms Flannigan said that the Respondent can demonstrate how contractors are appointed. They have an approved contractors list and a compliance team. They also seek the input of professional advice. They do look at the cost of repairs. They have a process with no cost to the customer, including tendering if required.

6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.

The Applicant's Position

85. Mr Rennie complained that since the Respondent was appointed in December 2021, he had not seen any staff members on site.

The Respondent's Position

86. Ms Flannigan said that a programme was in place for there to be a visit at least once every year. The Respondent's site visit agent will visit once per year. Property managers attend as required.

6.8 A property factor must take reasonable steps to appoint contractors who have public liability insurance.

The Applicant's Position

87. Mr Rennie maintained that despite requests he had not been supplied with any public liability insurance for contractors. Given that the Respondent has set up an online portal system he suggested that it would be a very simple process to store Public Liability documentation there.

The Respondent's Position

88. Ms Flannigan said that no contractors have been employed without public liability insurance.

6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner.

The Applicant's Position

89. Mr Rennie states that he has sought documentation related to any tendering or selection process, particularly in the case of high risk activities. These requests have been ignored by the Respondent and nothing has ever been supplied.

The Respondent's Position

90. Ms Flannigan said that the Respondent has not done any active tendering for the development for the works carried out by the contractor Graeme Cheyne regarding the gutter clearing works. The Respondent relies on the professional judgement of contractors to determine the most appropriate method and does not instruct contractors on specific equipment usage.

Section 7 Complaints Resolution

The Applicant's Position

91. Mr Rennie referred to an e-mail he had received from the Respondent on 30 May 2024 at 17.10. His position was that he did attempt to discuss his complaint regarding high risk activities with the Respondent's 'hierarchy' but that the Respondent refused to provide contact details to allow this.

The Respondent's Position

92. Ms Flannigan said that the Respondent had not received a complaint as such. The Applicant had made a suggestion. Mr Littlejohn, (one of the Respondent's heads of property management), did not want to accept that suggestion, as he deemed it not to be appropriate.

Findings in Fact

93.

- (i) The Applicant/Homeowner is the heritable proprietor of the Property.
- (ii) The Respondent/Property Factor provides services to the development of which the Property forms part.
- (iii) The Respondent was appointed as Agent in December 2021.
- (iv) The Respondent has provided a WSS for the Property development.

Section B of the WSS sets out the services provided by the Respondent.

Section B (a) states;

'For the avoidance of doubt, as the co-owners are a domestic client, you will be in contract with any contractor who we (as your agent) may appoint on your behalf and that contractor shall be responsible for discharging the duties of client, principal contractor (and if no principal designer has already been appointed, principal designer) under the Construction (Design and Management) Regulations 2015.'

Section B (i) states;

'It is your responsibility to make sure the property is safe for visitors or our employees. ...'

Section B (d) states;

We may consult the contractors about the type of repair and the materials to be used, but will not say how they should get access to do the repair or insist on any other health and safety procedures (this will be up to you and the contractor). If necessary, and if you instruct us to, we will arrange for a professional consultation on notifiable projects (those that include significant repairs or improvements). We will charge an additional fee for notifiable projects-see section C (a).

As stated above in section B (a), as the co-owners are a domestic client, you will be in contract with any contractor who you choose and who we (as your agent) may appoint on your behalf and that any contractor shall be responsible for discharging the duties of client, principal contractor (and if no principal designer has already been appointed, principal designer) under the Construction (Design and Management) Regulations 2015.'

(v) Since 17 March 2023 the Applicant has sent 13 detailed e-mails to the Respondent setting out his concerns regarding large major plant coming to the site unannounced without prior discussion with homeowners at the development.

(vi) On one specific occasion on 14 April 2024, the hiring of the telehandler was managed by a subcontractor, not the Respondent's contractors. The Respondent was unaware of this.

(vii) The Applicant has set out his concerns regarding the wording of the WSS and specifying that if he is responsible for safety, that he requires to be made aware of

contractors attending, as well as safety documentation including public liability insurance. He attempted to discuss matters directly with the Respondent's Directors and sought contact details.

(viii) On 30 May 2024 the Respondent e-mailed the Applicant refusing to provide contacts details for the Respondent's Directors, and suggesting that the Applicant should refer his complaint to the Tribunal.

(vix) On 30 June 2024 the Applicant completed a 'Trust pilot' on-line review of the Respondent setting out his concerns regarding contractors attending to execute high risk activities in pedestrian zones at the development.

(x) On 22 July 2024 the Respondent instructed their solicitors to write to the Applicant. Said communication stated;

'..... Our client is under no contractual or statutory obligation to notify homeowners of the commencement of those works or the identity of the appointed contractor.

(xi) The Applicant has not been provided with information requested by him which is required in terms of the WSS.

(xii) A meeting took place between the parties on 10 July 2025. As a result of the meeting the Respondent agreed to post updates on the customer portal of upcoming works, including contractor details. The Respondent detailed in relation to the WSS,

'Mr Rennie raised continued dissatisfaction with a specific clause in the WSS. Catherine advised that the clause remains in place and is not subject to removal. However, she welcomed further discussion to reach a compromise that Mr Rennie would find acceptable.

Tribunal Decision and Reasons

OSP2

94. The Tribunal find that there has been a breach of the Code in this regard. This was the main crux of the Applicant's case. A large part of his complaints are duplication of the Applicant's position regarding this matter. It cannot be fair and transparent to state in the WSS to the homeowner they have the responsibility to make sure that health and safety procedures are complied with, and to state that this is up to the homeowner along with the contractor, and yet leave matters to the contractor to decide when they can attend. The Respondent will not state how the contractor will access the property to carry out a repair or maintenance. The Respondent specifically states in the WSS this is a matter between the homeowner and the contractor. How can they say that the homeowner can do so without knowing who the contractors are and when they are coming? It was clear from the evidence that even the Respondent was unaware on the date of 14 April 2024, that sub contractors had been involved.

95. The Respondent's position seems to be that the Applicant knew about the position as detailed in the WSS all along, and accepted this when they were appointed as factors. It is a serious point that is being made by the Applicant with a real possibility of affecting the lives of people involved in carrying out repairs and maintenance and/or visitors and residents at the property.

OSP3

96. The Tribunal find that there has been a breach of the Code in this regard. The Applicant has not been provided with information regarding who is coming to the property and what they will be doing. The position of the Respondent is not acceptable in relation to providing information (even in a redacted way) regarding public liability insurance. The Respondent has been given an opportunity to provide this information. They have not provided a proper response to a number of queries in this respect. This redacted information could easily be put on the property portal.

OSP4

97. The tribunal find that there has been a breach of the Code in this regard. It can only be concluded for the reasons we have detailed in our decision regarding OSP2, that the Respondent has provided deliberately misleading information. They do have an obligation to provide the information regarding details of contractors and when they are attending.

OSP5

98. The Tribunal find there is no breach of the Code in this regard. There is insufficient evidence to show that the Respondent has not applied their policies consistently and reasonably. The failings of the Respondent are better expressed against other parts of the Code.

OSP 6

99. The Tribunal find that there has been a breach of the Code in this regard. The Applicant has pointed out several occasions where the Respondent has not taken reasonable care to answer his queries, and the Respondent has demonstrated a lack of understanding of the basic documents which could easily be uploaded to the portal in a redacted fashion, to comply with the WSS.

OSP11

100. The Tribunal find that there has been a breach of the Code in this respect. The Applicant first drew the Respondent's attention to the issues in March 2023, and the Respondent has failed to uphold the spirit of the clause in the WSS, Section B (d), within a reasonable timescale. It took until June 2025 before a meeting was arranged with him, and only after these proceedings were live before the Tribunal. Up until that meeting, the Respondent adopted a line of resistance, which included sending the Applicant a solicitors' letter.

OSP12

101. The Tribunal does not find that there has been a breach of this part of the Code. There is no direct communication from the Respondent that the Applicant suggest has been intimidating, only a letter from their solicitors. If he is concerned regarding the content of the letter from the solicitors there are other complaints procedures /avenues available to him in that respect.

Section1.1

102. The Tribunal finds that there has been a breach of the Code. It is unclear to the Tribunal how the homeowners such as the Applicant can be said to have a duty to make sure that the property is safe, when they don't know when a contractor is attending. Quite clearly there is a problem. It is not conceivable to state to the Applicant that the Respondent won't say how a contractor should get access, then on the other hand to state that it is the Applicant's responsibility to make sure that the property is safe. The Applicant has asked the Respondent how he can possibly do this. The Respondent has not replied. There is a clear contradiction here. It is clear that the section of the WSS needs to be revised. It is directly contradictory. The Respondent should be able to resolve this, and to provide 24/48 hours notice as to when a contractor will be attending. To do so would be enhancing their effective management of the property.

Section 2.1

103. The Tribunal finds that there has been a breach of the Code. It is clear to us that the Applicant has not been provided with information requested by him, to be able to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.

The fact that the Respondent has said there is scope to do what the Applicant has requested is not good enough.

The WSS clearly states at section B (d) paragraph 2, as detailed above, that access to carry out the repair and insisting on health and safety procedures is up to the homeowner and the contractor. How can the Applicant possibly do so if he has no idea who the contractors are, especially when they are subcontracting?

Section 2.3

104. The Tribunal finds that there has been a breach of the Code. There is no reason why redacted public liability insurance documentation could not be provided. This was conceded by Ms Flannigan in the course of the Hearing. The Respondent has not done so despite requests made by the Applicant.

Section 2.4

105. The Tribunal finds that there has been a breach of the Code. If the WSS states that the owners are responsible for safety for visitors then safety related documentation must be made available.

Section 2.6

106. The Tribunal finds that there has been no breach of the Code. There is insufficient evidence to show that the Respondent has not consulted when required with homeowners. The Deed of Conditions gives the Respondent authority to raise the delegated authority cost criteria. There is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). The failings of the Respondent are better expressed against other parts of the Code.

Section 2.7

107. There has been a breach of the Code. The actions of the Respondent have not been carried out timeously. The Respondent has not responded to the Applicant's enquiries and concerns within an appropriate period as set out in their WSS. There has been no face to face dialogue until the meeting in June 2025.

Section 6.3

108. There has been no breach of the Code. The WSS does not specifically state how a homeowner should make a notification regarding repairs and maintenance but there is lots of information available about the procedures in place for this notification.

Section 6.4

109. There has been a breach of the Code in this respect. There is a dearth of information provided to the Applicant regarding inspections particularly surrounding gutter clearances as requested by him. The reasons for our decision in relation to OSP 2 are pertinent here also.

Section 6.6

110. There has been a breach of the Code in this respect. The Respondent has failed to answer the Applicant's concerns regarding a range of options and costs for gutter clearing at the Property taking account of his safety concerns.

Section 6.7

111. There has been no breach of the Code. There is insufficient evidence to persuade us that staff are insufficiently trained or qualified, or that there is no planned programme of cyclical maintenance. The failings of the Respondent are better expressed against other parts of the Code.

Section 6.8

112. There has been no breach of the Code. There is insufficient evidence to persuade us that the Respondent has not taken sufficient steps to ensure

contractors have public liability insurance in place. The failings of the Respondent are better expressed against other parts of the Code.

Section 6.9

113. There has been a breach of the Code in this respect. The Applicant has sought information related to tendering or selection process particularly in the case of high risk activities. These requests have been ignored and nothing has been supplied to him.

Section 7

114. There has been no breach of the Code. There is a written complaints handling procedure. The Respondent has met with the Applicant. It is just that they have not reached an agreement regarding the wording of the WSS. It is our view that the Applicant has failed to set out his specific complaint and set out clearly how there has been a breach of this part of the Code.

Observations

115. The Applicant sought a remedy from the Tribunal in relation to all sites operated by the Respondent not just in Scotland but throughout the UK.

116. This is not within the jurisdiction of the Tribunal. In relation to bringing an application before the Tribunal it is specifically stated in section 17 of the 2011 Act;

17 [Application to the First-tier Tribunal]

(1) A homeowner may apply to the [First-tier Tribunal] for determination of whether a property factor has failed—

(a) to carry out the property factor's duties,

(b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).

(2) An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.

(3) No such application may 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's 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 concern.

(4)References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard.

(5)In this Act, "property factor's duties" means, in relation to a homeowner—

(a) duties in relation to the management of the common parts of land owned by the homeowner, or

(b) duties in relation to the management or maintenance of land—

(i) adjoining or neighbouring residential property owned by the homeowner, and

(ii) available for use by the homeowner.

117. It is clear to us therefore that this Tribunal can only deal with the Applicant's concerns regarding his own property, and we cannot determine the position regarding other properties managed by the Respondent. It may well be the position that given the Tribunal's ruling at this site that the Respondent may wish to consider the revision of their WSS for other developments, but that is a matter for them.

Proposed Property Factor Enforcement Order (PFEO)

118. 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.

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

120. 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 original decision was sent to them.

Yvonne McKenna

16 December 2025

Legal Member

Date

