

# Housing and Property Chamber

## First-tier Tribunal for Scotland

---



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

**Chamber Ref:FTS/HPC/PF/24/4314**

**Kennedy Gardens, Kilwinning, KA13 7BF ('the Property')**

**Gary Crombie ('the Homeowner and Applicant')**

**Newton Property Management Ltd ('the Factor and Respondent')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and Donald Wooley (Ordinary Member).**

### **Background**

1. The Homeowner is heritable proprietor of the property ('the Property').
2. Newton Property Management are factors of the Property and are registered property factors.
3. The Homeowner submitted a C2 application to the Tribunal in respect of an alleged act or omission of the Factor after 16<sup>th</sup> August 2021.

The application sought determinations that the Factor had failed to comply with the Property Factor's duties and specified sections of the Property Factor Code of Conduct 2021.

4. The Homeowner submitted a copy of a letter of notification to the Property Factor in respect of alleged acts or omissions of the Factor on or after 16<sup>th</sup> August 2021.
5. By Notice of Acceptance by Martin McAllister, Convener of the Tribunal, dated 9<sup>th</sup> January 2025 he intimated that he had decided to refer the application (which application paperwork comprises documents received between 16<sup>th</sup> September 2024 and 25<sup>th</sup> November 2024) to a Tribunal.

### **6. The Factor's Written Representations**

The Factor lodged written representations which, in summary, state that the Factor does not believe that the complaints should be upheld.

## **7. The Case Management Discussion.**

A conference call Case Management Discussion (CMD) took place in respect of the application on 13<sup>th</sup> October 2025 at 10.00 am.

The Homeowner attended.

The Factor was represented by Ms Catherine Flanagan, the Factor's Customer Relationship Manager.

### **7.1. Outcome**

7.1.1 The Tribunal acknowledged:

7.1.1.1 The Homeowner had been emailing the Factor regarding his complaints since 2023 in terms of the emails produced by the Homeowner.

7.1.1.2 The Homeowner had not notified the Factor of his detailed complaints related to specific breaches of the 2021 Code of Conduct before he brought his application to the Tribunal.

7.1.1.3 The Homeowner had exhausted the Factor's complaints procedure.

7.1.1.4 The Homeowner had sent the Tribunal a copy of his letter of notification to the Factor detailing his specific complaints of breaches of the 2021 code of Conduct. That letter had been sent to the Tribunal on 22<sup>nd</sup> November 2024 and was sent by the Tribunal administration to the Factor on 13<sup>th</sup> June 2025, as part of the case file.

7.1.1.5 The Factor responded to the Homeowner's letter of notification in terms of their written representations received by the Tribunal on 2<sup>nd</sup> July 2025.

7.1.1.6 The Factor had received sufficient prior notification of the Homeowner's complaints in terms of section 17(3) of the Property Factor (Scotland) Act 2011.

7.2 The Case Management Discussion was adjourned to enable the parties to provide the following:

7.2.1 The Homeowner was required to provide the Tribunal with:

- (i) An updated form C2 specifying the alleged breaches of the 2021 Code of Conduct detailed in the letter of notification submitted to the Tribunal.
- (ii) A complete copy of the Land Certificate for his Property, including the tile plans.
- (iii) Detailed specifications of his complaints as explained above, with supporting evidence and correspondence where available, annexed and indexed for ease of reference, to the relevant complaint listed on form C2.

7.2.2 The Factor was required to provide the Tribunal with:

- (i) The date the last property in the development was sold by the developer.
- (ii) A copy of the inspection report by Metrorod at the time they provided a quotation for the cost of their maintenance charges.
- (iii) A copy of correspondence between the Factor, Metrorod and the developer regarding the handover of the maintenance obligation of the surface drainage system.
- (iv) A copy of the section of the Factor's website that specifies their emergency contact details.
- (v) Details of the number of dwellinghouses in the development.
- (vi) A copy of the Minute of the meeting of 24<sup>th</sup> November 2024.
- (vii) An explanation as to why some of the common charges were held for a period by the Factor before invoicing the owners. For example, the charge incurred on 31<sup>st</sup> August 2023 was included in the invoice dated 30<sup>th</sup> August 2024.

7.3 The case management discussion was adjourned to an in person hearing.

8. Following the CMD the Homeowner lodged an updated C2 dated 5<sup>th</sup> November 2025. Section 7A of the C2 stated that the Homeowner believed that the Factor had failed to comply with the following sections of the 2021 Code of Conduct: OSP2, OSP 3; OSP6: Sections 1.1, 2.1; 2.3; 2.4; 2.5; 2.7; 3.1; 6.1 and 6.5. Section 7B of the C2 stated that the Homeowner believed that the Factor had not complied with the property factor duties namely section B(h) of their Written Statement of Services.

9. The Homeowner lodged additional productions including a copy of the Land Certificate for his Property title number AYR129094.

10. The Factor lodged the following additional productions:

10.1 – A copy of the letter to owners with the timeline for handover.

10.2 – A copy of Metro Rod initial inspection of the unit and quote for services.

10. 3 – A copy of emails between Metro Rod and the Factor which were copied to the Developer.

10.4- Images of Newton Website showing emergency contact.

10.5 - Confirmation of no of units in development.

10.6 – A copy of the notes issued to the owners of the development following the meeting on 14<sup>th</sup> November 2024.

10.7 – A copy of emails to and from Developer.

- 10.8 – A copy of the letter to owners relating to delay in issuing invoices.
- 10.9 – A copy of the commissioning documents - Ferrier Pumps Ltd dated 2019.
- 10.10 - Further updates to owners.
- 10.11 Newton visit report phase 1 handover dated 2019.
- 10.12 Confirmation that the last property was sold on 2<sup>nd</sup> March 2022.

## **11. The Hearing.**

An inperson hearing took place in respect of the application at the Glasgow Tribunal Centre on 3<sup>rd</sup> December 2025 at 14.00.

The Homeowner attended on his own behalf.

The Factor was represented by Ms Catherine Flanagan, the Factor's Customer Relationship Manager.

11.1 Both parties confirmed the following facts at both the CMD and the hearing:

11.1.1 The Homeowner purchased the Property 24 Kennedy Gardens, Kilwinning in September 2021.

11.1.2 There are 34 dwelling houses in the development.

11.1.2 The Factor has acted as property factor for the development since 2020. The original Factor in term so the Deed of Conditions was Donald Ross. Newton took over that business in 2020.

11.1.3 The last dwellinghouse in the development was completed in March 2022.

11.1.4 There are two communal drainage systems in the development. The foul water drainage system, which the developer is responsible for maintaining until it is adopted, and the surface water drainage system.

11.1.5 The Homeowner's complaints relate to problems that occurred in relation to the development surface water drainage system. There were two major flooding incidents in late 2022 and 15<sup>th</sup> January 2023.

11.1.6 The original developer was K F Joiners Limited (Fitzsimmons).

11.1.7 The water drainage system will not be adopted.

11.1.8 The common parts of the development are defined in the preamble of the Deed of Conditions by KF Joiners Limited registered 23<sup>rd</sup> July 2020. Paragraph (d) of the section headed 'Common Parts' is relevant to this application. It is in the following terms:

*‘(d) the surface water pumping station and attenuation tank shown edged blue of the cadastral map together with the pipes leading thereto, the outflow and pipes leading therefrom and relative appurtenances.’*

11.1.9 There is no provision in the title deeds or the Factor’s Written Statement of Services that requires the Factor to certify the water drainage system as being in proper working order before the Factor agreed to take over the maintenance of the system on behalf of the owners. The only reference to this is at paragraph (i) of the letter from the Factor to the owners of the development dated 23<sup>rd</sup> August 2023 which is in the following terms:

*‘(i) Email reply the owner on 9<sup>th</sup> November 2022 to confirm that Newton had not accepted any handover of the equipment, details are as follows:*

*‘Secondly, one of my colleagues is still communicating with the Developer in connection with the remaining common equipment to be passed over. At the time of writing I can confirm that Newton have not formally accepted the water pumping station. As part of any handover we would expect the inspection reports to be provided, however having read your Deed of Conditions there is also a suggestion that the pumping station may be adopted by Scottish Water. We have raised this with the developer and await their reply. We will keep owners updated.’*

**11.2 The detail of the parties’ representations (oral and written) are as follows:**

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

**The Homeowner’s complaint:**

The Factor did not assess the condition of the pumping station before they took over the maintenance obligation from the developer. The Factor did not take care before taking over the maintenance obligation. No due diligence took place.

The owners had experienced problems with the surface water drainage system before the last house of the development had been completed. He wrote to the Factor advising them of his concerns. The letter from the Factor dated 23<sup>rd</sup> August 2023, paragraphs (b), (c) and (d) is evidence that the residents were experiencing problems with the surface water drainage system whilst the developer was still on site. Paragraph (i) is a statement by the Factor that on 9<sup>th</sup> November 2022 they had emailed the owner clarifying that the Factor had not accepted any handover of the equipment.

**The Factor’s response:**

The Factor is not qualified to assess the condition of the pumping station. The Factor had accepted the certificate of completion from Metro rod dated 2019 on 18<sup>th</sup> January 2023 and have provided a copy to the Tribunal. From that date the Factor

was happy to arrange the maintenance of the pumping station on behalf of the owners. The Factor asked Metrorod to inspect the pumping system and provide a price to maintain the system.

The Tribunal members queried the terms of the 2019 report by Ferrier Pumps Limited as it was headed 'Waste Water Treatment sewage pumping station commissioning manual' and describes in detail the sewage pumping station. However, the attenuation tank in question that is relevant to this application seemed to be the surface water tank and drainage system which is separate from the sewage pumping station. Ms Flanagan advised that the 2019 report was the only commissioning report that the Factor had received.

### **The Tribunal's Decision:**

The letter from the Factor to the owners of Kennedy Gardens dated 23<sup>rd</sup> August 2023 details a time line of events from 2022 to 2023.

As detailed above, paragraph (i) of that letter is in the following terms:

*'Email reply the owner on 9<sup>th</sup> November 2022 to confirm that Newton had not accepted any handover of the equipment, details are as follows:*

*'Secondly, one of my colleagues is still communicating with the Developer in connection with the remaining common equipment to be passed over. At the time of writing I can confirm that Newton have not formally accepted the water pumping station. As part of any handover we would expect the inspection reports to be provided, however having read your Deed of Conditions there is also a suggestion that the pumping station may be adopted by Scottish Water. We have raised this with the developer and await their reply. We will keep owners updated.'*

Paragraph (j) (e) of that letter is in the following terms:

*'(e) An email from my Business Development Team dated 18<sup>th</sup> January 2023 confirmed that Fitzsimmons were handing over the equipment and it would need to be maintained by owners as per the Deed of Conditions.'*

The timeline detailed in that letter confirms that the Factor was aware of the surface water drainage equipment was defective (2<sup>nd</sup> March 2022), that the Factor had stated to the owners on 9<sup>th</sup> November 2022 that the Factor had not accepted responsibility for the water drainage equipment, the Factor was aware of the flood on 15<sup>th</sup> January 2023 and accepted the handover of the water drainage equipment on 18<sup>th</sup> January 2023 on the basis on the 2019 commissioning report by Ferrier Pumps Limited that related to the sewage pumping station.

The Tribunal determine that the Factor has not been fair with the Homeowner in relation to the acceptance of liability for maintenance of the surface water drainage system on 18<sup>th</sup> January 2023 when they knew that the system was faulty and there had been an incident of flooding three days before. They accepted the 2019 commissioning report by Ferrier Pumps that did not relate to the surface water drainage system but related to the separate waste water and sewage pumping station. They did not insist that the Developer provide an updated commissioning report specifically in respect of the surface drainage system which would have been a fair and reasonable requirement in light of the flooding that had been experienced on 15<sup>th</sup> January 2023.

Consequently, the Tribunal determine that the Factor has breached OSP2 in relation to the Homeowner's complaint.

**OSP3. You must provide information in a clear and easily accessible way.  
The Homeowner's complaint:**

At the CMD Mr Crombie agreed to provide a detailed specification of his complaint. At the hearing he explained that his complaint referred to the email from the Factor dated 9<sup>th</sup> November 2022. The Factor had stated that the maintenance liability for the surface water system would not be handed over. This did not happen. He acknowledged that he had not provided the Tribunal with a complete copy of the email dated 9<sup>th</sup> November 2022 and he was referring to the extract set out in the latter from the Factor dated 23<sup>rd</sup> August 2023.

**The Factor's response:**

The email dated 9<sup>th</sup> November 2022 is not unclear.

**The Tribunal's Decision:**

The Tribunal are unable to make a determination as to whether the email from the Factor dated 9<sup>th</sup> November 2022 breaches the requirements of OSP 3 as a full copy of that email has not been produced.

**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 Homeowner 's complaint:**

The Factor did not have protocols in place in connection with the flooding of the development. The residents had to contact the emergency services.

**The Factor's response:**

The contact details for out of hours emergency repairs are on the Factor's website. The Tribunal had been provided with a copy on 26<sup>th</sup> November 2025.

**The Tribunal's Decision:**

The Tribunal acknowledge that the Factor's emergency contact details are published on the Factors website. The Tribunal determine that the Factor has not breached OSP 6 in relation to this complaint.

**Section 1.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): A 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 Homeowner's complaint:**

Mr Crombie acknowledged that he had received the Factor's written statement of services.

**The Factor's response:**

Ms Flanagan confirmed that Mr Crombie had been sent the Factor's Written Statement of Services with his welcome letter, a copy of which has been produced.

**The Tribunal's Decision:**

The Tribunal determine that the Factor has not breached section 1.1 of the 2021 Code of Conduct as the Factor had provided the Homeowner with a copy of their Written Statement of Services.

**Section 2.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): 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 Homeowner's complaint:**

At the CMD Mr Crombie agreed to provide a detailed specification of his complaint. At the hearing the Homeowner explained that the Factor had accepted that their communication could have been better in their Note that had been prepared following the meeting on 14<sup>th</sup> November 2025 as it states '*We recognise better communication over the past could have been sought and further documentation regarding the pump at the handover stage.*'

**The Factor's response:**

Ms Flanagan made no comment in relation to this complaint.

**The Tribunal's Decision:**

The Tribunal determine that the Homeowner has not provided sufficient specification of this complaint. He has not provided specific examples of poor communication by the Factor. The Tribunal are unable to make a finding based on the statement by the Factor that their communication could have been better.

**Section 2.3 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):** 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 Homeowner's complaint:**

Mr Crombie advised that he had the Factor's contact details but he did not receive any procedural advice as to who to contact in the event of an emergency, such as flooding.

**The Factor's response:**

Ms Flanagan advised that the Factor has an out of hours emergency contact telephone service. The details are on the Factor's website, as explained.

**The Tribunal's Decision:**

As already stated, the Factor's emergency contact details are published on the Factors website. The Tribunal determine that the Factor has not breached section 2.3 of the 2021 Code of Conduct in relation to this complaint.

**Section 2.5 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.**

**The Homeowner's complaint:**

Mr Crombie explained, as already stated, that he had the Factor's contact details but he did not receive any procedural advice as to who to contact in the event of an emergency, such as flooding.

**The Factor's response:**

Ms Flanagan advised, as already explained, the Factor has an out of hours emergency contact telephone service. The details are on the Factor's website.

**The Tribunal's Decision:**

As already stated, the Factor's emergency contact details are published on the Factors website. The Tribunal determine that the Factor has not breached Section 2.5 of the 2021 Code of Conduct in relation to this complaint.

**Section 2.7. of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): 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 Homeowner's complaint:**

At the CMD Mr Crombie agreed to provide a detailed specification of his complaint. At the hearing the Homeowner explained that he had never received a response to the email he had sent to Sam Stewart dated 22<sup>nd</sup> January 2024.

**The Factor's response:**

Ms Flanagan explained that there is no copy of the email dated 22<sup>nd</sup> January 2024 in the Factor's file in relation to this Property. She joined the company in March 2024. The email concerned had been sent to a former property manager, Sam Stewart.

**The Tribunal's Decision:**

The Homeowner had been advised that he needed to specify his complaint and the Factor had to be given an opportunity to respond. The Homeowner only specified his complaint at the hearing. Consequently, the Tribunal are unable to make a determination in relation to this complaint.

**Section 3.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters.**

**Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.**

**The Homeowner's complaint:**

The homeowners were not contacted prior to receiving the invoice dated 31<sup>st</sup> August 2023 which included over £5000 of additional charges. No explanation or consultation process was provided by the Factor.

**The Factor's response:**

Ms Flanagan explained that the charges were incurred over several months. For example, the charge incurred on 31<sup>st</sup> August 2023 was included in the invoice dated

30<sup>th</sup> August 2024. The Factor had sent a letter to the homeowners dated 21<sup>st</sup> October 2024 which explained the position. It was in the following terms:

*'We wish to be as transparent as possible and help provide context to help clarify the situation, we can advise that it was brought to our attention from owners that the beacon above the electrical box for the pump was flashing, along with various road flooding throughout the winter period. Contractors Metrorod were instructed to attend to the system in the best interests of the homeowners and was subsequently provided with repair recommendations to be actioned.'*

*Following completion of the work we received invoices from Metro Rod for the repairs and maintenance that had been undertaken to the system, these were held on our system to allow for the opportunity to present these to the homebuilder for possible reimbursement, however, following this approach we did not receive a response nor any indication that there would be any contribution towards the costing, despite several attempts.*

*At this point in order to ensure that the contractor had been paid for the repairs Newton Property Management front funded and settled these charges, however, the invoices were held without reimbursement until we had exhausted our options with the homebuilder, which unfortunately was to no avail.*

*Whilst we appreciate that the charges may have come as a surprise to some homeowners, please be advised that as per the title deeds for your property all homeowners are burdened to pay for the upkeep and maintenance of the system.'*

*We believe that we have acted in the best interests of the homeowners in order to find a resolve on the matter, however, we are at the mercy of the developers cooperation, that of which we have not received.'*

### **The Tribunal's Decision:**

The Tribunal determine that the Factor did not make an improper payment request. The Factor had delayed issuing the Metrorod invoices (totalling £5811.60) to the owners in the hope that the liability of the owners would be reduced in the event that the Developer agreed to pay the invoices. The Tribunal find that the Factor did not breach section 3.1 of the 2021 Code of Conduct in relation to the Homeowner's complaint.

**Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):** This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

**The Homeowner's complaint:**

If the Factor had properly investigated the root cause of the flooding before agreeing that maintenance of the surface water drainage system should transfer to the owners then the flooding within the owners' properties would not have happened. He clarified that his own property had not been flooded. Properties have not flooded since 2023 but he is not confident that the problem has been resolved. He believes that the problems are due to the drainage system for the neighbouring nursing home tapping into the surface draining system of the development and over loading the system. This problem would not have occurred if the Factor had verified that the drainage system was fit for purpose before the owners took over the maintenance obligation.

**The Factor's response:**

Ms Flanagan advised that she had attended the residents meeting that took place on 24<sup>th</sup> November 2024. At that meeting she was told by the residents that the developer had allowed the drainage system for the nursing home to be connected to the development's surface water drainage system. She had produced a copy of the note of that meeting that the Factor sent to the owners by email on 24<sup>th</sup> November 2024. That note explained that the Factor had obtained an estimate from Moir Environmental to inspect the two pumping stations. Their charges amounted to £900 plus VAT in respect of a site assessment fee plus a reporting fee of £550 plus VAT. The Factor had agreed to pay half the cost. The Note also stated that if the owners wanted to go ahead they should each pay the Factor £21.32 plus VAT and also pay, or set up a direct debit relating to the outstanding common charges balance of £5468.34, which included the cost of repairing the surface water pumping system that the Factor had incurred on behalf of the owners. The owners did not pay.

**The Tribunal's Decision:**

Section 6.1 of the 2021 Code of Conduct relates to the Factor making prompt repairs to a good standard. The Homeowners complaint that the Factor should have properly investigated the root cause of the flooding before agreeing that maintenance of the surface water drainage system should transfer to the owners is not a breach of section 6.1 of the Code of Conduct. The Factor had instructed the repair to the surface water pumping system. The Tribunal determine that the Factor has not breached section 6.1 of the Code of Conduct in relation to the Homeowners complaint.

**Section 6.5 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): If emergency arrangements are part of the service provided to homeowners, a property factor must have procedures in place for dealing with emergencies (including out-of-hours procedures where that is part of the service) and for providing contractors access to properties in order to carry out emergency repairs, wherever possible.**

**The Homeowner's complaint:**

There are no protocols or procedures in place for homeowners to report emergency repairs in the event of flooding despite the concerns raised relating to constant flooding. The homeowners contacted both the Factor and the developer during this time but both declined to accept accountability.

**The Factor's response:**

Ms Flanagan referred to her previous responses.

**The Tribunal's Decision:**

As already stated, the Factor's emergency contact details are published on the Factors website. The Tribunal determine that the Factor has not breached Section 6.5 of the 2021 Code of Conduct in relation to this complaint.

**Breach of Property Factor Duties.****The Homeowner's complaint:**

It is the Homeowner's position that the Factor had not complied with section B(h) of their Written Statement of Services. The flooding occurred within Kennedy Gardens due to the development storm drain system being connected to the drainage system of the neighbouring property which is a nursing home, and this created excess pressure in the development's surface water drainage system. The Factor did not approach the neighbouring owners of the nursing home to challenge or discuss this matter and request that they pay their share. Section B(h) of the Factor's Written Statement of Services is in the following terms:

*'If a repair also affects a property that adjoins yours, we will negotiate with the relevant homeowners or management agent and try to make sure that the work is completed satisfactorily and at a reasonable cost, and that the other homeowners pay their share. The work will not go ahead unless we have permission from the homeowners it affects.'*

**The Factor's response:**

The Factor was advised by the owners that the developer carried out some works in the area of the pumping station and after that time there had been more flooding. The Factor has not been in touch with the owner of the nursing home regarding the flooding.

**The Tribunal's Decision:**

The Tribunal determine that the Factor has not breached section B(h) of their Written Statement of Services by not asking the owners of the nursing home to pay a share of the repair costs. Section B(h) of the Factors Written Statement of Services applies to common repairs required to two adjoining properties not this situation where the Homeowner believes that the owner of the nursing home caused the damage to Kennedy Gardens by connecting their drainage system to the development's drainage system.

Separately, even if section B(h) of the Factor's Written Statement of Services did apply, the Homeowner has not provided any detailed and specific evidence that the owner of the nursing home was responsible for the flooding of Kennedy Gardens.

## **12. Remedy sought by the Homeowner.**

The Homeowner advised the Tribunal that he considered it reasonable for the Factor to pay his share of the cost of the repairs that were carried out to the surface water drainage system that amount to £200 and most importantly that they arrange for the drainage system to be assessed to give him the assurance that it is in proper working order and that there will be no further flooding.

## **13. Property Factor Enforcement Order.**

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with OSP 2 the 2021 Code of Conduct. Section 19(2) of the Property Factors (Scotland) Act 2011 requires the Tribunal to decide whether to make a Property Factor Enforcement Order.

The Tribunal determined to issue a Property Factor Enforcement Order. The Tribunal recognise that the Factor's email to the homeowners dated 9<sup>th</sup> November 2022 stated that Newton had not formally accepted the water pumping station and that they would expect an inspection report to be provided. It seems to the Tribunal from the documents produced to it and the parties representations that the Factor accepted the 2019 inspection report by Ferrier Pumps Limited and took over the maintenance of the system after that report had been exhibited to them. However, the Tribunal notes that the report related to the sewage pumping station and not the surface water system and it predated the flooding incidents by several years.

The Tribunal acknowledges that no contracts between the Developer and the Homeowner or the Developer and the Factor have been produced to the Tribunal in relation to the point at which the liability for the development's surface water drainage system passes to the owners.

The Tribunal also acknowledges that in terms of the Deed of Conditions the surface water system forms part of the defined 'service media' and in terms of Paragraph Seventh (b) the owners are jointly responsible for the cost of repairing the service media.



However, given the terms of the email from the Factor to the Homeowner dated 9<sup>th</sup> November 2022, had the Factor not accepted the report by Ferrier Pumps Limited it seems to the Tribunal likely that the responsibility for the repair to the surface water system would have remained with the Developer until the correct inspection report had been provided to the Factor.

Consequently, the Tribunal find that it is reasonable for the Factor to bear the Homeowner's share of the cost of the repairs that were carried out to surface water drainage system which amount to £200. In addition, it is reasonable for the Factor to make a contribution to the Homeowner for the inconvenience he has suffered of £150.

The Tribunal cannot require the Factor to obtain a report on the condition of the surface water system and pumping station in terms of a breach of OSP2 as this would require the consent of the owners of the development. The Tribunal notes however that in their letter to the home owner dated 20th November 2024, the factor confirmed that quotations from "Moir Environmental" in respect of further investigation of the drainage system had been obtained and offered to meet 50% of the cost. This was rejected by the home owners as it was also conditional upon their outstanding common charge balances being cleared or appropriate direct debits being in place.

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

The Tribunal proposes to make the following Order:

*'The Factor must pay the homeowner £350 from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order'.*

#### **14. Appeals**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That**

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

Signed .....Date 10<sup>th</sup> December 2025