

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/25/3277**

**Property: Flat 2/1, 2 Harwood Court, Campbell Street, Greenock PA16 8BY (“the Property”)**

**The Parties:-**

**Miss Claire Duncan, Flat 2/1, 2 Harwood Court, Campbell Street, Greenock PA16 8BY (“the homeowner”)**

**Newton Property Management Limited, registered in Scotland (SC224378) and having their registered office at 87 Port Dundas Road, Glasgow G4 0HF (“the property factors”)**

**Tribunal Members:**

**George Clark (Legal Member/Chairman) and Ahsan Khan (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland Housing and Property Chamber determined that the property factors have not failed to comply with Sections 1.5.B or 1.5.C of the Property Factors Code of Conduct effective from 16 August 2021 and have not failed to carry out the property factor’s duties.**

### **Background**

1. By application, dated 31 July 2025, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with Sections 1.5.B and 1.5.C of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code”) and failure to comply with the property factor’s duties.
2. The homeowner stated that the property factors had advised homeowners that they required them to increase the amount of their float from £100 to £350 per property. She stated that the Deed of Conditions provided for a float

of £100 and the title deeds had not been varied since then and that the property factors had not reviewed the float for 20 years.

3. The property factors did not make any written representations to the Tribunal.

### **Case Management Discussion**

4. A Case Management Discussion was held by means of a telephone conference call on the morning of 5 March 2026. The homeowner was present. The property factors were represented by Ms Catherine Flanagan.
5. The Tribunal explained to the Parties that it could either determine the application based on the written representations and the Parties' evidence at the Case Management Discussion, could continue the application to a further Case Management Discussion, or could fix a full evidential Hearing. Both Parties confirmed that they were content for the Tribunal to determine the application on the basis of the information and documentation before it.
6. Ms Flanagan told the Tribunal that the property factors cannot service the development with only £100 per property to cover one quarter's Invoices. Contractors' costs have increased by 300% since the COVID-19 pandemic and the Invoices per quarter for the development have been between £350 and £506. They review the floats across the developments they manage on a scheduled basis, but not annually for every development, as this would be a hugely costly exercise.
7. The homeowner said that nowhere did the communication from the property factors explain the method by which the float was calculated. With quarterly bills ranging from £350 to £506, a float of £100 should be sufficient. Ms Flanagan responded that the property factors bill in arrears and they had to avoid a situation in which there was no balance left when works were about to be instructed. The homeowner added that she was sure the property factors would have favourable credit terms with their suppliers. Ms Flanagan replied that the property factors pay all contractors' invoices every two weeks.
8. The homeowner asked for clarification and confirmation that the level of float would not be reviewed again for at least 5 years, as stated in their letter of 26 June 2025. Ms Flanagan said that they will adhere to what they said in their letter unless anything exceptional happens. She added that the property factors had been willing to allow owners to pay up the float increase over 3 months.

### **Findings of Fact**

- i. The homeowner is the proprietor of the Property, which is in a block of 5 flats, part of a Development of 89 properties.
- ii. The property factors, in the course of their business, manage the common parts of the block and Development of which the Property forms part. The property

- factors, therefore, fall within the definition of “property factor” set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 (“the Act”).
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
  - iv. The property factors are registered on The Scottish Property Factor Register.
  - v. The homeowner has notified the property factors in writing as to why she considers that the property factors have breached the Codes of Conduct under the Act.
  - vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 31 July 2025, under Section 17(1) of the Act.
  - vii. The Deed of Conditions affecting the development of which the Property forms part was registered on 29 October 2004 and provides that the proprietor of each dwellinghouse shall deposit with the Property Manager (the property factors) the sum of £100 to be held as a float to account of the maintenance costs.
  - viii. The property factors’ Written Statement of Services (“WSS”) provides that the property factors will “review the float from time to time to make sure there is enough money to meet the costs it has to cover.”

## Reasons for Decision

9. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all the information and documentation it required to enable it to decide the application without a Hearing.
10. The Tribunal considered carefully all the evidence before it, namely the written representations of both Parties and the oral evidence given at the Case Management Discussion. Not every document forming part of the written representations is referred to in the following statement of Reasons for Decision, but the Tribunal took all of them into account in arriving at its Decision.
11. **Section 1.5.B** of the Code requires that the property factor’s Written Statement of Services (“WSS”) must set out the core services that the property factor will provide to homeowners and the types of services and works which may be required in addition to the core service, and which may therefore incur additional fees and charges. The Tribunal noted that Section B of the WSS in the present case details core services, and Section C sets out how they charge for services. The Accordingly, the Tribunal **did not uphold** the complaint under Section 1.5.B of the Code.

12. **Section 1.5.C** of the Code states that the WSS should include the management fee charged by the property factor, including any fee structure and also the property factor's policy for reviewing and increasing or decreasing this management fee. Section C of the WSS sets out the management fees and states that they will increase each year in line with inflation as a minimum. Accordingly, the Tribunal **did not uphold** the complaint under Section 1.5.C of the Code.
13. The homeowner also complained that the property factors had failed to carry out the property factor's duties. The Tribunal understood that this referred to the fact that the property factors state in their WSS that they will review the float from time to time but had not done so for 20 years. The Tribunal noted that the WSS states that the property factors will review the float from time to time. The fact that this was the first increase in 20 years did not mean that the property factors had not previously reviewed the amount of the float. It merely indicated that this was the first time that, after review, they felt it had to increase. It is well known that the costs of labour and materials have increased significantly in the last few years, particularly after the COVID-19 pandemic and the view of the Tribunal was that it was reasonable to expect that a float set 20 years ago would no longer cover the costs of routine maintenance and repairs that it had to meet. It is designed to ensure that property factors do not have to request funding in advance every time such routine work is required. The title deeds cannot be regarded as limiting property factors to the float amount stated in a Deed of Conditions. The property factors' right to act on behalf of owners is set out in the contract they have with them, in this case the WSS, and it provides for periodical reviews of float amounts. The level of any increase they require is a commercial decision for the property factors to make and not a matter in which the Tribunal can interfere. Accordingly, the Tribunal **did not uphold** the complaint related to property factor's duties.
14. The Tribunal's Decision was unanimous.

### **Right of Appeal**

**In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

George Clark

15 March 2026

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**Legal Member**