

Housing and Property Chamber

First-tier Tribunal for Scotland



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/25/1436

Property: 22 Canavan Road, Falkirk FK2 9GB (“the Property”)

The Parties:-

Mr Colin Valentine, 22 Canavan Road, Falkirk FK (“the homeowner”)

Hacking & Paterson Property Management Services Limited, registered in Scotland (SCO73599) and having their registered office at 1 Newton Terrace, Glasgow G3 7PL (“the property factors”)

Tribunal Members:

George Clark (Legal Member/Chairman) and Jane Heppenstall (Ordinary Member)

Decision

The First-tier Tribunal for Scotland Housing and Property Chamber decided that the application could be determined without a Hearing and that the property factors have not failed to comply with Sections 2.1, 2.3, 6.6, 6.9, 6.10 or 6.11 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 7 April 2025, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. He alleged failures to comply with Sections 2.1, 2.3, 6.6, 6.9, 6.10 and 6.11 of the Property Factors Code of Conduct effective from 16 August 2021 (“the Code”) and a failure to comply with the property factor’s duties. The homeowner’s complaints were set out in full in his email to the property factors of 6 April 2025, which he attached to the application and, taking the two documents together, the following Paragraphs 2-7 summarise the complaint.

2. The property factors sent three estimates for the redecoration of the common staircase. One was dated 2024 and had been obtained almost a year before. When the homeowner challenged the property factors, they confirmed that the firm concerned had held their price. The communication had been unclear, as this was not mentioned when the estimates were sent out.
3. On 4 December 2024, the property factors posted a news item about the switch-off of RTS and suggested the residents collectively contact Indigo Swan but did not explain who that company were. The matter concerned the electrics in the common stairwell but the property factors were not treating it as “common” and instead said it was up to homeowners to deal with the change. The homeowner was unable to engage with six of the eight flats in the stair, as they are let out and he had no details of the landlords. The property factors would not provide the contact details of the landlord owners but offered to pass on any correspondence.
4. The homeowner stated that the bills from EDF, the electricity suppliers, are paid by the property factors and the owners pay their costs in their quarterly factoring bills. The property factors had told him that it was the owners’ decision to appoint EDF (the suppliers were formerly Scottish Power), but that was not correct.
5. The property factors did not explain the role of Indigo Swan. If they have a firm advising them on electricity prices, how was it the owners’ responsibility when it came to the RTS switch-off for the common stairwell?
6. The homeowner’s Member of Parliament’s office had confirmed to him that in conversation with the property factors, the factors were uncertain whether in fact the meter required any changes.
7. The title deeds supported this being a communal matter and there had been a complete lack of ownership by the property factors of this communal issue.
8. The homeowner provided a copy of the property factors’ communication of 4 December 2024. It stated - “To those properties that are served by a communal electricity meter, your supplier, EDF, would like to offer you and your neighbours the opportunity to upgrade your communal electricity meter to a Smart Meter before the Radio Teleswitch Service (RTS) ends its operational life on 30 June 2025”. They added that “HPM’s electricity broker, Indigo Swan will be happy to help you to arrange this” and pointed out that this project related to “you and your neighbours’ communal electricity supply, and not that within your private property”.
9. The homeowner also provided copies of the property factors’ Terms of Service and Delivery Standards issued on 22 August 2023, and of correspondence between him and the property factors. On 12 December 2024, they told him that, whilst their role was administrative, the initiative by EDF to upgrade communal meters to smart meters did not form part of their core factoring service and they did not have the authority to arrange the switch on behalf of homeowners. On 20 December 2024, they confirmed that they administer the

invoices for electricity but do not offer an electricity meter management service. That is a matter between homeowners and their electricity supplier. They offered assistance in communicating the homeowner's correspondence to the other owners.

10. On 15 January 2025, the property factors sent correspondence regarding internal redecoration of the communal stairwell and on the same day the homeowner replied, insisting that redecoration was not required. He also provided copies of correspondence with his MP, including an extract from his title deeds which stated that "All maintenance, repair, renewal, replacement et cetera of the Development Common Parts will be carried out by the Property Manager."
11. On 14 February 2025, in response to the property factors' Stage 1 response to his complaint, the homeowner contended that their response was full of contradictions and points raised by him had not been addressed, so the response failed to comply with Sections 2.1, 2.3 and OSPs 2, 4 and 5 of the Code. He had never heard of Indigo Swan before, or how much the property factors were paying them for their services. This was a failure to comply with Sections 6.10, 6.11 and OSPs 2, 3 and 4 of the Code. In relation to proposed redecoration of the common stairwell, the property factors should have confirmed when sending the three estimates that the one from April 2024 was still valid. In not doing so, they had failed to comply with Sections 2.1, 2.6, 6.6, 6.9 and OSP 4 of the Code.
12. The property factors' final Stage 2 response was dated 6 March 2025. They repeated that arranging for a smart meter to be installed does not form part of their core factoring services. They instruct Indigo Swan to source the best deal for their clients but thereafter the contract is placed on behalf of their clients and is the homeowners' responsibility. In relation to the stair redecoration, the contractors had confirmed that their original costs were still valid and the property factors did not regard it as necessary to amend any documentation that was issued. They had, in any event, only made a recommendation and unless a majority of homeowners agreed the work, the property factors would not be in a position to instruct the contractor. They enclosed copies of all estimates received. They repeated a sincere apology for any upset caused to the homeowner by the tone of any correspondence. In their Stage 1 response that had said that they always endeavour to communicate with their customers in a polite and professional manner and were naturally sorry for any upset caused.
13. On 17 November 2025, the homeowner added to his written representations the fact that he believed the property factors might have changed electricity supplier again without consulting the owners and that, after a delay of several months, it now appeared that the RTS switch-off would only affect the heating and hot water within the individual flats. The Tribunal did not consider the matter of any change of supplier as, if it happened, it post-dated the application.

Case Management Discussion

14. A Case Management Discussion was held by means of a telephone conference call on the morning of 14 January 2026. The homeowner was present. The property factors were represented by Mr Craig Cosgrove and Ms Annie Railley.
15. The property factors told the Tribunal that the installation of a smart meter was an upgrade. It was not a simple replacement of an old meter which the suppliers would have done free of charge. Upgrading of any meters is not within the core factoring services. Indigo Swan had told them that all RTS equipment would have to be replaced at some point. The property factors were working with the energy brokers to assist their customers, but it was an option for owners to decide whether to go ahead. EDF could not carry out the work without the owners' instructions.
16. The homeowner told the Tribunal that the property factors should have been much more helpful than they had been. The main issue was that the property factors had become hung up on insisting it was an upgrade, and not a replacement. The property factors dealt with the billing of electricity, and it was madness that the homeowner had to be the one to seek agreement from the owners of six of the flats. He was paying the property factors to look after the shared interests of the building and to him, the shared communal electricity is very much part of the core factoring service.
17. In relation to the redecoration, the issue for the homeowner was that one of the estimates was out of date and it was only when he queried it that he was told it was still valid. The property factors had also still sought the agreement of owners over an extended period even though the homeowner had told them the work was not necessary. They were pushing and pushing to get it over the line.
18. The property factors pointed out that the company that held their cost were still the most expensive, but, whilst they accepted that they could have closed down the matter a bit sooner, it remained the owners' decision on whether to proceed. In September 2024, they said they had been unable to obtain majority approval or funding, so the work would not go ahead.

Findings of Fact

- i. The homeowner is the proprietor of the Property.
- ii. The property factors, in the course of their business, manage the common parts of the block 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 he 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 7 April 2025, under Section 17(1) of the Act.
- vii. The title deeds provide that “All maintenance, repair, renewal, replacement et cetera of the Development Common Parts will be carried out by the Property Manager.”
- viii. The property factors’ Terms of Service and Delivery Standards issued on 22 August 2023 (“the WSS”) states that the property factors will be responsible for “Arranging and administering maintenance of common property by appointing contractors and service suppliers.”
- ix. In their communication of 4 December 2024, the property factors clearly stated that Indigo Swan were their electricity brokers.

Reasons for Decision

19. 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.
20. 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.
21. The view of the Tribunal was that the replacement of the existing communal electrical equipment for the common stair did not fall within the requirement set out in the title deeds that “All maintenance, repair, renewal, replacement et cetera of the Development Common Parts will be carried out by the Property Manager.” It also did not fall within the core services which the property factors

had contracted to provide. A simple replacement with more modern equipment would have been provided by the energy suppliers at no cost to their customers. This, though, was an upgrade to install a Smart Meter. It would have involved expense to the owners of the flats within the building and it, therefore, required their majority consent. The property factors had agreed that they (the brokers) would provide assistance to owners if the owners wished to take up the offer of carrying out an upgrade rather than a simple replacement and had canvassed owners to see if a majority would agree to have the work carried out, and the Tribunal could not find that the property factors had done anything wrong.

In relation to the property factors' suggestion to owners that they agree to the redecoration of the common stair, the view of the Tribunal was that they had proactively drawn to the owners' attention a matter that they considered required attention and obtained estimates for the work. The Tribunal did not consider that the fact that one of the estimates was a year old was a matter which the property factors were obliged to bring to the attention of the owners, when they had obtained confirmation that it remained valid. How long property factors give owners to agree to the carrying out of communal works is a matter largely for their discretion and the Tribunal did not find that the property factors had been over-zealous in their efforts to obtain majority consent, particularly when six of the flats in the stair are not owner-occupied.

22. The Tribunal then considered the written and oral evidence in relation to the alleged failure to comply with the various Sections of the Code. The application did not contain any complaints regarding the Overarching Standards of Practice of the Code ("OSPs") so, although there were references to OSPs 2, 3, 4 and 5 in the correspondence between the Parties, the Tribunal's deliberations were confined to Sections 2.1, 2.3, 6.6, 6.10 and 6.11 of the Code.
23. **Section 2.1** sets out that "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". The Tribunal found no evidence that the property factors had failed to consult appropriately and **did not uphold** the complaint.
24. **Section 2.3** provides that "the WSS must set out how homeowners can access information, documents and policies/procedures" and must provide a paper copy of documentation in response to any reasonable request by a homeowner. Section 5.9 of the WSS sets out clearly how homeowners can access information, documentation and policies/procedures, and there was no evidence that the property factors had failed to provide a paper copy of any documentation requested by the homeowner, so the Tribunal **did not uphold** the complaint.
25. **Section 6.6** of the Code of Conduct states that "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 homeowner's complaint under this Section was that the property factors should have confirmed that the old estimate for stair painting work remained valid. The view of the Tribunal was that the property factors had presented three estimates, and were not under an obligation to state that, whilst one of them was a year old, it remained valid. Accordingly, the Tribunal **did not uphold** the complaint.

26. **Section 6.9** states "If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner." Again, the complaint referred to the failure to confirm that the old estimate remained valid, so the Tribunal **did not uphold** the complaint.

27. **Section 6.10** states "A property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the contract." The complaint under this Section related to the appointment of Indigo Swan as brokers in relation to the communal electricity supply. The Tribunal noted that Section 6.2 of the WSS states "We do not receive any commission, fee, payment or any benefit from any contractor or service supplier appointed by us on behalf of homeowners; nor do we have any financial or other interests in any contractors appointed." Accordingly, the Tribunal **did not uphold** the complaint.

28. **Section 6.11** provides "A property factor must disclose to homeowners, in writing, any financial or other interest that the property factor has with any contractors appointed by them." The Tribunal **did not uphold** the complaint under this Section, for the reasons set out in the immediately preceding paragraph.

29. The homeowner had also complained about a failure to carry out the property factor's duties. The Tribunal noted that the homeowner had complained that the property factors had referred to their management charges as modest and that the homeowner had taken exception to this. The Tribunal also noted, however, that in both their Stage 1 and Stage 2 responses, the property factors had apologised for any upset caused by the tone of their communications and, accordingly, the Tribunal **did not uphold** the complaint. It did not appear from the evidence before the Tribunal that the property factors had otherwise not acted in accordance with their duties as set out in the Terms of Service and Delivery Standards document.

30. 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

Legal Member

19 February 2026