



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

Reference number: FTS/HPC/PF/25/1261

Re: Property at common land at Bucklerburn Development, Peterculter, Aberdeen (“the Property”)

The Parties:

Mr James Keith Robertson, Rubislaw, Newtonmore Road, Kingussie, Highland, PH21 1HD (“the Applicant”)

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

Tribunal Members: Ruth O’Hare, Legal Member and Ahsan Khan, Ordinary Member

Decision

The tribunal determined that the Respondent has failed to comply with their property factors duties in respect of their failure to levy charges in accordance with the Deed of Conditions for the development.

The tribunal further determined that the Respondent has failed to comply with the Overarching Standards of Practice (“OSP”) 2 and 11, and section 2.7 of the Property Factors Code of Conduct.

The tribunal therefore proposes to make a property factor enforcement order under section 19 of the Property Factors (Scotland) Act 2011.

Background

- 1 This is an application for a determination that the Respondent has failed to comply with the Property Factors Code of Conduct in terms of section 19 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”).
- 2 The application was referred to a case management discussion (“CMD”) which took place by teleconference on 8 December 2025. The Applicant joined the call. The Respondent was represented by Mr Derek McDonald. The tribunal agreed with the parties that it would proceed to a decision based on the submissions from the CMD and the written representations from the parties in

the absence of a hearing under Rule 18 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”).

- 3 The tribunal had the following documents before it:
 - (i) The application and supporting documents;
 - (ii) The Respondent’s written representations dated 17 November and 10 December 2025;
 - (iii) The Applicant’s written representations dated 30 October, 10 and 12 December 2025.

Findings in fact

- 4 The Applicant is the owner of the property at 3 Bucklerburn Park, Peterculter, Aberdeen.
- 5 On 1 October 2024 the Respondent became the property factor for the development of which the Applicant’s property forms part. The Respondent took over Aberdeen Property Leasing (“APL”) who were the appointed Factor for the development. APL were appointed by the development’s Owners Association in 2014.
- 6 Clause 14 of the Deed of Conditions pertaining to the development states *“there is reserved to the Superiors and the aforementioned Owners’ Association the right to appoint a Factor from time to time who shall be responsible for instructing and supervising the repair, maintenance and renewal of any estate common property and for any other functions delegated to him in terms of Clause (Fifteenth) hereof and for apportioning the cost among the feuars in accordance with the terms of these presents in relation to the feuing estate.....For the purpose of enabling the Factor (or the Superiors or the said Owners Association as aftermentioned) always to be in a position to carry out the said functions the feuar of each dwellinghouse shall pay annually in advance such sum or sums as the Superiors or the said Owners’ Association once formed may determine, commencing such payments at the First day of January in the year immediately succeeding the date of occupation of the relevant dwellinghouse; Such sums may be varied from time to time by the Superiors and the said Owners Association”*.
- 7 At its annual general meeting on 28 November 2024 the Owners Association agreed a draft budget. The budget fixed an annual charge for each property in the development at £200.
- 8 In October 2024 the Respondent wrote to the Applicant advising that they were now the property factor for the development.
- 9 On 19 November 2024 the Respondent wrote to the Applicant with information regarding their accounting practices, advising that invoices would be issued based on actual expenditure on a quarterly basis in arrears, with the exception of insurance premiums and management fee which would be invoiced in

advance. The Respondent provided the Applicant with login details for their customer service portal which included a link to their Written Statement of Services.

- 10 The Respondent proceeded to invoice the Applicant in accordance with their own charging structure which did not align with the budget set by the Owners Association.
- 11 On 28 January 2025 the Respondent wrote to the Applicant advising of discounted management fees for paying by e-billing or direct debit.
- 12 On 28 January 2025 the Applicant emailed the Respondent querying the discount scheme for management fees. The Respondent acknowledged the Applicant's email on 29 January 2025 and stated that a response would be provided within five working days. On 6 February 2025 the Applicant sent an email chasing the response. On 17 February 2025 the Respondent provided a response to the Applicant.
- 13 On 24 February 2025 the Applicant sent a complaint to the Respondent. The Respondent acknowledged the email on 25 February 2025. On 5 March 2025 the Applicant sent an email chasing the response which was acknowledged by the Respondent that same day. On 16 March 2025 the Applicant sent an email requesting a response within five working days which was acknowledged by the Respondent on 17 March 2025.
- 14 The Applicant submitted a second complaint to the Respondent. On 28 May 2025 the Respondent emailed the Applicant a response to the complaint.
- 15 The Respondent has a Written Statement of Services ("WSS").
- 16 The Respondent's complaints procedure is annexed to the Written Statement of Services. It is a three stage process. At stage 1, the Respondent's aim is to provide a response or resolution within 7 working days. At stage 2, the Respondent's aim is to provide a written response within 10 working days, and to advise if this timescale cannot be complied with.

Reasons for decision

- 17 The tribunal considered all of the documentary evidence submitted by the parties and the written and oral submissions in reaching a decision on the application.
- 18 Section 17(3) of the 2011 Act states that a homeowner cannot apply to the tribunal for a determination that a property factor has failed to carry out the property factor's duties, or comply with the Code unless they have notified the property factor in writing of their complaint and the property factor has refused to resolve or has unreasonably delayed in attempting to resolve the complaint. The tribunal had before it the notification letters sent by the Applicant to the Respondent and was satisfied that proper notification had been given in

accordance with the requirements of section 17(3).

19 Section 19 of the 2011 Act is in the following terms:-

“19 Determination by the First-tier Tribunal

(1) The First-tier Tribunal must, in relation to a homeowner’s application referred to it under section 18(1)(a), decide—

(a) whether 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) if so, whether to make a property factor enforcement order.

(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it .

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), 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, the First-tier Tribunal must make a property factor enforcement order.

(4) Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court or tribunal.”

20 The tribunal considered each aspect of the Applicant’s complaint.

The Respondent breached their property factor duties by failing to charge owners in line with Clause 14 of the Deed of Conditions

21 The Applicant’s primary complaint is that the Respondent is obliged to levy charges in accordance with Clause 14 of the Deed of Conditions for the development and failed to do so.

22 The Respondent states in their submissions that as factor they are not bound by the Deed of Conditions. The tribunal disagrees. The Deed of Conditions provides the basis upon which the property factor provides and charges owners for services at the development. The tribunal rejects the suggestion that the obligations contained within Clause 14 are incumbent on homeowners but not the property factor. The Respondent has provided no legal authority in support of their position. The Respondent appears to recognise the role of the Deed of Conditions in their Written Statement of Services, an example being Section C(o) which states that *“we calculate your share of costs in line with the deed of conditions, the Title Conditions (Scotland) Act 2003 or the Tenements (Scotland) Act 2004 and as summarised in your management schedule”*.

23 The tribunal agrees that the matter of interpretation of a Deed of Conditions is not within the jurisdiction of the First-tier Tribunal. However, this is not a case where the interpretation of Clause 14 is in dispute, as was the case in a decision of the First-tier Tribunal referenced by the Respondent (ref: *FTS/HPC/LM/22/1998*). The wording of the Clause is clear as to how the

property factor should recover their costs. The Respondent's argument is that they are not bound by the Deed of Conditions. They do not seek to argue that Clause 14 should be interpreted in any other way.

- 24 The tribunal therefore determined that in failing to administer charges in accordance with Clause 14 of the Deed of Conditions the Respondent failed to comply with their property factor duties. In taking over the development from APL, the Respondent should have proceeded to act in accordance with Clause 14, which had been followed by APL in the preceding years without issue. The Owners Association may have subsequently decided to change the financial arrangements and accept the Respondent's charging structure, but at the time the first invoice was issued to the Applicant no such decision had been taken. The Applicant was entitled to expect that the budget set by the Owners Association would be followed, until such time as the Owners Association decided to the contrary. For the avoidance of doubt, the tribunal cannot identify any issue with the Respondent offering incentives for certain payment methods, if that is something that is agreed with the Owners Association.
- 25 The tribunal went on to consider the various sections of the Code of Conduct that the Applicant states have been breached by the Respondent.

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

- 26 The Applicant's position is that the Respondent did not disclose details of the factoring charges until the first invoice was issued. The tribunal considered the correspondence sent by the Respondent to the Applicant after the Respondent took over the factoring for the development. Whilst the correspondence outlines the change in accounting practices, it does not disclose the proposed management fee. The tribunal considers it would have provided transparency to owners had this been communicated prior to the issuing of the first invoice, instead of latterly when the updated WSS was uploaded to the customer portal. It is not clear why there would have been any barrier to the Respondent providing this information at that time.

The tribunal therefore found the Respondent in breach of OSP2 in respect of the aforementioned correspondence.

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

- 27 The tribunal's interpretation of OSP3 is that it applies to information provided by the property factor, rather than a failure to provide information the Applicant may believe is required. The correspondence sent by the Respondent is generally clear in its terms, providing access to further information via an online portal.

The tribunal did not therefore find the Respondent in breach of OSP3.

OSP 4 – You must not provide information that is deliberately misleading or false

- 28 The Respondent clearly believed that they were entitled to implement their own charging structure upon the Applicant and the other owners in the development. This was not in the view of the tribunal a deliberate attempt to provide misleading or false information. The tribunal did not therefore find the Respondent in breach of OSP4.

OSP 5 – You must apply your policies consistently and reasonably

- 29 The Applicant believes that by offering incentives for e-billing and direct debit payments, the Respondent did not apply their policies reasonably. The tribunal does not agree. As previously noted, the Respondent was of the view that they could apply their existing policies to the development. They did not do so unreasonably, it was based on their belief that they were not bound by the Deed of Conditions. It was not unreasonable for them to have that belief, albeit it is one that the tribunal disagrees with. The tribunal did not therefore find the Respondent in breach of OSP5.

OSP 11 – You must respond to enquiries and complaints within reasonable timescales

- 30 Both the Applicant and Respondent lodged correspondence between the parties. The Applicant believes that the Respondent unreasonably delayed in responding to his enquiries. The Applicant refers to various emails in his notification to the Respondent, however not all emails have been produced. For the avoidance of doubt the tribunal has only made findings where evidenced.
- 31 The Respondent states that any delays in responding to the Applicant were due to ensuring accurate responses, as opposed to non-compliance with the Code. That does not however appear to have been communicated to the Applicant. It is therefore understandable that the Applicant would have been frustrated with what he perceived as a lack of response without any justification. The Respondent's reply to the Applicant's initial query of 28 January 2025 states that the delay was due to the property manager being on compassionate leave. However, there would appear no explanation as to why the Applicant's complaint of 24 February did not receive a timeous response, or at the very least an acknowledgement with an expected timescale. The tribunal therefore found the Respondent to be in breach of OSP11.

1.5 – The Written Statement of Services must make specific reference to any relevant legislation and must set out the following:-

A(2) where the property factor has purchased the assets of another property factor, a clear statement confirming whether the property factors has taken on the outstanding liabilities of the previous property factor, and any other implications of the takeover for homeowners;

C(6) 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

C(7) what proportion, expressed as a percentage or fraction, of the management fees and charges for common works and services that each homeowner is responsible for. This is likely to be set out in the title deeds for the property. If management fees are charged at a flat rate rather than as a proportion, then this should be clearly stated.

C(8) any arrangements relating to payment by homeowners towards a deposit float or floating fund, confirming the amount, payment process and repayment policy (at change of ownership or where the service is terminated by homeowners of the property factor)

C(11) how the property factor will collect payments, including timescales and methods (clearly stating the payment methods available to homeowners). Any charges relating to late payment must clearly state the period of time after which these charges would be applicable

- 32 The tribunal had before it the Respondent's WSS. The tribunal considered it contained sufficient information to comply with C(11) regarding the collection of payments and late payments. It is perhaps understandable why the information required by A(2), C(6), C(7) and C(8) is not included in the body of the document where a factor is responsible for various properties, as the detail will differ depending on the framework within which the property factor is appointed which will be specific to each development. The tribunal accepts that the information required under A(2), C(7) and C(8) was generally provided by the Respondent across their communications with the Applicant, albeit the Applicant did not agree with their position on charging. The tribunal considers this sufficient in terms of compliance with these sections of the Code. The tribunal was further satisfied that the updated WSS contains details of the management fee. The tribunal therefore found no breach of 1.5 of the Code.

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.

- 33 The tribunal interprets this section of the Code as requiring the Respondent to make available any information or documents which the Code explicitly requires the property factor to provide to a homeowner. The Applicant states that the Respondent failed to provide the invoice charged to the development common charges account for the management fee in the first invoice received. The Code does not explicitly require the Respondent to do so, albeit it may have assisted in providing greater transparency regarding the Respondent's charging structure. The tribunal therefore found no breach of section 2.4 of the Code.

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.

- 34 The tribunal found the Respondent in breach of section 2.7 for the reasons set out in paragraphs 30 to 31 of this decision.

2.10 Where a property factor has purchased the assets or otherwise been introduced by homeowners by the existing property factor, the letter of introduction should include a clear statement that homeowners are responsible for choosing and appointing their property factor and are not obliged to take up the offer of services.

- 35 The tribunal had before it the Respondent's letter of introduction to the Applicant which includes a statement regarding the homeowner's right to choose their own property factor. The tribunal therefore found no breach of section 2.10 of the Code.

3.1 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.

- 36 The tribunal notes the Applicant's reasons for relying upon section 3.1 are based on the Respondent's payment requests which were based on the Respondent's belief that they could implement their own charging structure. They understood at that time that they were able to do so, and the tribunal did not form the view that they were attempting to act improperly in the actions they had taken. The tribunal therefore found no breach of section 3.1 of the Code.

7.1 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints procedure on request.

The procedure must include:

- **The series of steps through which a complaint must pass and maximum timescales for the progression of the complaint through these steps. Good practice is to have a 2 stage complaints process.**
- **The complaints process must, at some point, require the homeowner to make their complaint in writing.**
- **Information on how a homeowner can make an application to the First-tier Tribunal if their complaint remains unresolved when the process**

has concluded.

- **How the property factor will manage complaints from homeowners against contractors or other third parties used by the property factor to deliver services on their behalf.**
- **Where the property factor provides access to alternative dispute resolution services, information on this.**

37 The tribunal did not have sufficient evidence to determine that the Respondent has failed to apply their complaints handling procedure in a consistent and reasonable manner. The Applicant did not provide a copy of the response to his stage 1 complaint, nor his stage 2 complaint therefore the tribunal cannot fully consider the communications that took place between the parties in order to determine the extent to which the Respondent followed the procedure outlined in the WSS.

38 The tribunal therefore determined that the Respondent has failed to comply with the Code for the above reasons. The tribunal went on to consider whether to make a property factor enforcement order under section 19(1) of the 2011 Act which is at the discretion of the tribunal.

Proposed Property Factor Enforcement Order

39 The Applicant seeks various actions by the Respondent in his complaint. He requests various documents be produced by the Respondent, that his invoice is adjusted to show a 1/70 share of the quarter's factoring fee actually charged, that the charge for a £100 float is cancelled, along with compensation.

40 The tribunal accepts that the Applicant has been inconvenienced as a result of the Respondent's actions, having been required to challenge the imposition of the new charging structure. However, the tribunal considers that any impact has been minimal and any compensation should therefore be at the lower end of the scale. The tribunal does however consider that there is a need for the Respondent to remedy the error with the invoices issued to the Applicant and remove the imposition of the float which was not subject to the formal consent of the Owners Association. The tribunal also considers that in the interests of transparency, a copy of the invoice debited to the estate account should be provided to the Applicant.

41 Section 19(2)(a) of the Property Factors (Scotland) Act 2011 requires the tribunal to give notice of any proposed Property Factor Enforcement Order to the Respondent and allow parties an opportunity to make representations to the tribunal.

42 The tribunal therefore proposes to make a property factor enforcement order in the following terms:-

“(1) In respect of the failures to carry out its property factor duties, its

breaches of the Code, and the inconvenience caused to the Applicant, the Respondent must pay to the Applicant the sum of £100 from its own funds into the Applicant's bank account within 28 days of intimation of the final PFEO.

(2) That the Respondent issues adjusted invoices to the Applicant for the year 2025 that align with the budget approved by the Owners Association on 28 November 2024.

(3) That the Respondent cancels the charge for the £100 float for the year 2025.

(4) That the Respondent provides the Applicant with copies of the invoices debited to the estate account.

43 The decision of the tribunal was unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

7 April 2026

_Ruth O'Hare_____

Legal Member

Date