

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) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in relation to eighteen applications under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Details of the Applications:

<p>Chamber Ref:FTS/HPC/PF/24/4135 and FTS/HPC/PF/24/4138</p> <p>Property: Flat 4/1, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Philip Mendelsohn</p>
<p>Chamber Ref:FTS/HPC/PF/24/4212 and FTS/HPC/PF/24/4214</p> <p>Property: Flat 3/2, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Gordon Brown</p> <p>Homeowner's Representative: Philip Mendelsohn.</p>
<p>Chamber Ref:FTS/HPC/PF/24/4218 and FTS/HPC/PF/24/4219</p> <p>Property: Flat 4/2, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Lesley Taylor</p> <p>Homeowner's Representative: Philip Mendelsohn.</p>
<p>Chamber Ref:FTS/HPC/PF/24/4276 and FTS/HPC/PF/24/4278</p> <p>Property: Flat 1/1, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Anne McFadden</p> <p>Homeowner's Representative: Philip Mendelsohn.</p>
<p>Chamber Ref:FTS/HPC/PF/24/4288 and FTS/HPC/PF/24/4294</p> <p>Property: Flat 5/1, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Peter England</p> <p>Homeowner's Representative: Philip Mendelsohn.</p>

<p>Chamber Ref:FTS/HPC/PF/24/4348 and FTS/HPC/PF/24/4349</p> <p>Property: Flat 5/2, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Elizabeth Irving</p> <p>Homeowner’s Representative: Philip Mendelsohn.</p>
<p>Chamber Ref:FTS/HPC/PF/24/4412 and FTS/HPC/PF/24/4414</p> <p>Property: 283 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Kathleen Trearty</p> <p>Homeowner’s Representative: Philip Mendelsohn.</p>
<p>Chamber Ref:FTS/HPC/PF/24/4428 and FTS/HPC/PF/24/4429</p> <p>Property: 291 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Sandra Phinn</p> <p>Homeowner’s Representative: Philip Mendelsohn.</p>
<p>Chamber Ref:FTS/HPC/PF/24/5047 and FTS/HPC/PF/24/5048</p> <p>Property: Flat 2/2, 287 Clarkston Road, Glasgow, G44 3DT</p> <p>The Homeowner and Applicant: Douglas Wray</p> <p>Homeowner’s Representative: Philip Mendelsohn.</p>

Hacking and Paterson, 1 Newton Terrace, Glasgow, G3 7PL (‘the Factor and Respondent’)

Tribunal members:

Jacqui Taylor (Chairperson) and Helen Barclay (Ordinary Member).

Background

1. The Homeowners are heritable proprietors of properties at Clarkston Road, Glasgow.
2. Hacking and Paterson had been factors of the Homeowners’ properties and are registered property factors.
3. The Homeowners each submitted two applications to the Tribunal. C1 Applications in respect of an alleged act or omission of the Factor before 16th August

2021 and C2 Applications in respect of an alleged act or omission of the Factor on or after 16th August 2021.

The applications sought determinations that the Factor had failed to comply with the specified sections of the Property Factor Code of Conduct 2012 and the Property Factor Code of Conduct 2021. In addition, the C2 applications sought determinations that the Factor had failed to comply with Property Factor's duties. The applications were in identical terms.

4. The First Case Management Discussion.

An inperson Case Management Discussion (CMD) took place in respect of the application on 18th August 2025 at 10am at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.

Philip Mendelsohn and Anne McFadden attended.

The Factor was represented by Gordon Buchanan, Director of Hacking and Paterson and Caitlin Haddow, Team Manager of Hacking and Paterson.

4.1 Both parties confirmed the following facts, which were accepted by the Tribunal:

4.1.1 The properties are all part of a single block of twelve flats which was built in approximately 2004.

4.1.2 The address of the block is 283, 287 and 291 Clarkston Road, Glasgow.

4.1.3 The properties 283 and 291 Clarkston Road, Glasgow are main door flats.

4.1.4 The flats at 287 Clarkston Road, Glasgow are accessed via a common close.

4.1.5 The Factor has acted as property factor for the Property since the development was constructed. They were appointed by the developer.

4.1.6 The Factor stopped factoring the development in June 2024.

4.1.7 The Applicants are all owners of flats within the development of twelve flats.

4.2 Mr Mendelsohn confirmed that the details of the two application types are as follows:

The C1 application is in relation to breaches of sections 5.2 and 5.8 of the 2012 Code of Conduct.

The C2 application is in relation to breaches of sections OSP3, 5.2, 5.3 and 5.8 of the 2021 Code of Conduct and also Property Factor duties.

4.3 Mr Buchanan advised that the Factor had not received correspondence from the Tribunal administration advising that written representations had to be lodged by a specified date.

4.4 Outcome of the CMD.

The CMD was adjourned to a hearing.

5. Written Representations and Productions lodged by the Factor.

5.1 The Factor lodged written representations dated 14th January 2026 in the following terms:

'It is our understanding that the Applicant believes we have breached the following sections of the Code.

The 2012 Code – 5.2 & 5.8

The 2021 Code – OSP3, 5.2, 5.3 & 5.8

We have detailed below the extract from the Code and why we believe we have fully complied with each section.

Form C1 – the 2012 Code of Conduct

“5.2 You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.”

We issue a detailed insurance Summary of Cover and Renewal Letter each year which includes the above information. Prior to the Insurance Reinstatement Valuation which took place in October 2023, the apartments within the block were insured on an individual basis within the block policy. This meant, the information displayed on the Summary of Cover pertained to that apartment only. Refer to Appendix A where the sum insured value is shown as £660,769.35 and the apportioned policy premium is noted below. This is further supported by the quarterly common charges invoices which detail the share as 1/1, see Appendix B. The Insurance Renewal Letter can be seen as Appendix C.

“5.8 You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance, and adjust this frequency if instructed by the appropriate majority of homeowners in the group.”

HPMS do not carry out or organise property revaluations on behalf of the co-proprietors as seen within Section 3.1 of our Terms of Service and Delivery Standards. An extract can be seen below; “Property valuations for building insurance are not undertaken by us. This service may be arranged with a third party valuation surveyor, upon the instruction of, or through consultation with, the group of homeowners. It is recommended by RICS for re-valuations to be undertaken at least every 5 years.” This is further supported by “It is the group of homeowners’ responsibility to ensure that the sum insured is adequate.” See Appendix D as evidence. Further information can also be located on the HPMS website.

Form C2 – the 2021 Code of Conduct

“5.2 Property factors may wish to make homeowners aware of their statutory duty to insure against prescribed risks, such as fire or flood (see section 18 of the Tenements (Scotland) Act 2004, and the Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 (SSI 2007/16)).”

See Section 3.1 of HPMS Terms of Service and Delivery Standards (Appendix D) where it provides this information.

“5.3 A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:

- The basis upon which their share of the insurance premium is calculated; • The sum insured;*
- The premium paid;*
- The main elements of insurance cover provided by the policy and any excesses which apply;*
- The name of the company providing insurance cover; and*
- Any other terms of the policy. This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner.”*

We issue a detailed insurance Summary of Cover and Renewal Letter each year which includes the above information. Prior to the Insurance Reinstatement Valuation which took place in October 2023, the apartments within the block were

insured on an individual basis within the block policy. This meant, the information displayed on the Summary of Cover pertained to that apartment only. Refer to Appendix A where the sum insured value is shown as £660,769.35 and the apportioned policy premium is noted below. This is further supported by the quarterly common charges invoices which detail the share as 1/1, see Appendix B. The Insurance Renewal Letter can be seen as Appendix C.

“5.8 On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.”

Within our Stage 1 Formal Complaint response, dated 28 March 2024, it states “...a rationale from our broker is available detailing why they recommend the policy is placed with the insurance company. As such, we are satisfied HPMS have not breached this section of The Code.” This can be seen in Appendix E. A copy of this rationale, otherwise known as Letter of Recommendation was presented to the homeowners present at a meeting which took place in October 2023. See Appendix F.

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

HPMS Stage 2 Formal Complaint response, dated 22 April 2024, explains “Hacking & Paterson Management Services liaise with our customers through a variety of different communication methods. Whilst we encourage our clients to utilise paperless invoicing and communication where possible, each homeowner does have the option to opt for letters via normal mail if they wish. We do, however, note that the homeowners have taken the decision to terminate our management services therefore such communications will cease following the termination date.” This can be seen in Appendix G.

Property Factor Duties HPMS Duties arise from HPMS Terms of Service and Delivery Standards which do not state HPMS will fulfil the homeowners Deed of Conditions obligations. This falls on to the co-proprietors. See Section 2.1 within Appendix D.

5.2 Productions lodged by the Factor.

5.2.1 Insurance Summary of cover (Appendix A).

5.2.2 Common charges invoice (Appendix B).

5.2.3 Insurance renewal letter (Appendix C).

5.2.4 Terms of Service and delivery standards (Appendix D).

5.2.5 Formal complaint, stage 1 complaint (Appendix E).

5.2.6 Aon letter of recommendation (Appendix F).

5.2.7 Formal complaint, stage 2 response (Appendix G).

6. The Hearing

An inperson Hearing took place in respect of the application on 12th February 2026 at 10am at the Glasgow Tribunal Centre, 20 York Street, Glasgow, G2 8GT.

Philip Mendelsohn and Gordon Brown attended. Philip Mendelsohn represented himself and the other Homeowners.

The Factor was represented by Ms Caitlin Haddow and Craig Cosgrove, they are both Associate Factoring Directors of Hacking and Paterson Management Services.

6.1 Amendment.

During the hearing Mr Mendelsohn acknowledged that at the CMD he had confirmed that his complaint under the 2021 Code of Conduct related to sections OSP3, 5.2, 5.3 and 5.8 of the Code of Conduct. He explained that unfortunately this was incorrect as his complaint under the 2021 Code of Conduct was in relation to OSP3, 5.2 and 5.10. He sought to amend the applications.

Ms Haddow advised that she was opposed to any such amendment being allowed at this late stage.

After a short adjournment Mrs Taylor explained that as:

(i) Procedure Rule 14 requires any amendments to be made 14 days before a hearing.

(ii) It is an over riding objective of the Tribunal to avoid delay.

(iii) The CMD Note dated 18th August 2025 clearly states that Mr Mendelsohn confirmed that the details of the two application types were as follows:

The C1 application is in relation to breaches of sections 5.2 and 5.8 of the 2012 Code of Conduct.

The C2 application is in relation to breaches of sections OSP3, 5.2, 5.3 and 5.8 of the 2021 Code of Conduct and also Property Factor duties and

(iv) Mr Mendelsohn had plenty of opportunity to amend the applications 14 days before the hearing.

The Tribunal refused Mr Mendelsohn's request to amend the applications.

6.2 The detail of the parties' oral representations (made at the Hearing), the parties' written representations and the Tribunal's decisions are as follows:

Section 5.2 of the 2012 Code of Conduct Application C1 (complaint up to 16th August 2021): You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.

The Homeowners' complaint:

There are five parts to the Homeowner's complaints:

(First) At no time have the owners been informed in writing or otherwise of the need for or frequency of building reinstatement valuations. No revaluation had been carried out for twenty years. A revaluation, undertaken by Allied Surveyors, was only commissioned when owners questioned the level of insurance premiums in 2023. The revaluation was not arranged because the Factor advised it should be done. The Factor paid for the cost of the revaluation. Mr Mendelsohn clarified that he has never disputed the fact that the Factor's Statement of Service Delivery states that the Factor does not arrange revaluations. However, he believes that as they are a provider of a professional service they should have advised owners of the need for a revaluation.

It should not have been necessary for the owners to lobby the Factor, their duty was to advise the owners. As revaluations had not been carried out before 2023 the insurance premiums have collectively been too high for all of the owners. General guidance on buildings insurance states that property values alone are not a good basis for establishing valuation for the purposes of buildings insurance. A full buildings insurance revaluation must be carried out.

(Second) The Factor arranged the common buildings insurance policy of the block. The insured value of each of the twelve flats was calculated by annually adjusting the sale prices. The Factor provided an annual summary and made more information available on request, this fails to meet the requirement: "to provide to each homeowner with clear information demonstrating....the basis upon which their share of the insurance premium is calculated". No information was provided to show the

rebuilding sum insured for the entire building, nor was information provided on how the total cost was apportioned. The Factor only provided the sum insured for each flat and no owner had sight of the rebuilding sum insured for the entire building. This does not meet the requirement to: requirement “to provide to each homeowner with clear information demonstrating.....the sum insured”. The Factor only advised each owner of a premium related to the valuation of their flat. Ms Hadow refers to the fact that the common charges account refers to the fact that the buildings insurance premium is a 1/1 charge however this is not sufficient. The Code of Conduct requires the Factor to provide details of the share homeowners are liable for. Details of a share cannot be provided without knowing the total sum insured and buildings insurance premium for the whole block.

The owners have clearly been paying insurance premiums significantly in excess of those which they should have paid, and such premiums have not been equally apportioned between owners.

There are twelve individual flats in the Block. There are six different style of flat. Two main door flats, two top floor flats which are small than the others, there are four middle floor flats (1/1-4/1) which are the same and a further four middle floor flats (1/2-4/2) which are also the same.

(Third) The buildings insurance premiums had been incorrectly apportioned. The total premium for the Block should have been apportioned equally between the twelve flats in terms of clause 2.2 of the Deed of Conditions by John Dickie Homes Limited (2004). The Factor accepted that the total buildings insurance premium should be divided equally by 12 after the revaluation was carried out in 2023. After that time the total premium was divided equally between the twelve flats.

(Fourth) The Factors were originally appointed by the developer in terms of the Deed of Conditions. The owners were not consulted about the original appointment of Hacking and Paterson as Factor of the development. As the Factor was appointed by the builder, as permitted in terms of the Deed of Conditions, Mr Mendelsohn explained that he expected the Factor to comply with the terms of the Deed of Conditions. The Factor only provided the owners with a contract when they issued their Service Level Agreement in 2012, after the Code of Conduct was introduced.

(Fifth) The Factor has a professional and responsible job to do as property factors. They should have reviewed the individual insurance policies and questioned whether the level of insurance in total was appropriate. They are required to carry out more

than a mechanical exercise they should be using their skill and experience to determine if the total sum insured value was reasonable.

The Factor's response:

Ms Haddow referred the Tribunal to the documents they have produced, as follows:

(i) A copy of a letter to Mr Mendelsohn dated 8th June 2023 headed 'Building Insurance Policy Renewal -May 2023. The details provide are :

- Insurance Company: Allianz Insurance Company.
- Insurance Broker: AON UK Limited
- Policy Number: xxxx
- Cover: Buildings
- Sum Insured:£xxx
- Apportioned Policy Premium:
- IPT:
- HPMS Commission: 26%

She acknowledged that the letter was dated 8th June 2023 but explained that similar letters had been issued to Homeowners on an annual basis.

(ii) A copy of a quarterly common charges account dated 1st March 2023 addressed to Mr Mendelsohn which includes the entry for the quarterly buildings insurance premium. The entry details the insurance company. The period the premium relates to, the amount of the premium and the fact that it is a 1/1 charge.

(iii) A copy of a letter dated 8th June 2023 addressed to Mr Mendelsohn confirming that the buildings insurance policy, on behalf of the collective homeowners had been renewed. The principal details of the policy were provided and a summary of cover was available on the Factor's website. In addition, reference was made to the Q and A section on the client support area of the Factor's website.

Ms Haddow explained that the reference to a 1/1 charge means that the whole of the charge is apportioned to that owner. She also advised that the apportionment of the

buildings insurance premium had not been challenged before the current complaints were raised.

(iv) Section 3 of their Terms of Service and Delivery Standards details the Services Provided. In connection with Insurance it states:

'Placing insurance cover through our appointed broker, where appropriate, for buildings, property owners' liability, lifts, employer's liability and so on.

- *It is your statutory duty to insure against prescribed risks, such as fire or flood ...*
- *It is the group of homeowners' responsibility to ensure that the sum insured is adequate.*
- *Property valuations for building insurance are not undertaken by us. This service may be arranged with a third party valuation surveyor, upon the instruction of, or through consultation with, the group of homeowners. It is recommended by RICS for revaluations to be undertaken at least every five years.'*

The matter of a revaluation of the Block was raised with the Factor in 2023. The Factor wrote to owners in June/ July 2023 asking if they agreed with the Factor arranging a revaluation. They obtained majority approval in October 2023. The Factor agreed to pay for the cost of the revaluation before the results of the revaluation were known.

They had to obtain the approval of the owners before arranging a revaluation as the buildings insurance premium could increase or decrease depending on the result of the revaluation survey.

The owners never instructed the Factor to arrange a revaluation of the Block before 2023. It is the owners responsibility to ensure that their individual properties are properly insured.

The Tribunal's Decision:

Considering the Homeowner's complaints:

(First) The Tribunal determine that section 5.2 of the 2012 Code of Conduct does not oblige the Factor to advise homeowners of the desired frequency of revaluations of the Property.

(Second) The Tribunal acknowledge that the Factor provides the owners with a letter which sets out the details of the buildings insurance policy each year. That letter contains the following details:

- Insurance Company:
- Insurance Broker:
- Policy Number: xxxx
- Cover: Buildings
- Sum Insured:£xxx
- Apportioned Policy Premium:
- IPT:
- HPMS Commission:

The Tribunal also acknowledge that the Factor sends quarterly common charges accounts to the owners. The accounts include various expenses incurred by the Factor on behalf of the owners and the various expenses are divided between the owners such that the owners either pay 1/10th, 1/12th or 1/1 (the whole share), as appropriate.

The entry on the quarterly common charges account that relates to the quarterly buildings insurance premium states that the owners pay the whole share (1/1). It is the Factor's position that this information is sufficient to comply with the requirement of section 5.2 of the Code of Conduct to provide clear information showing the basis upon which their share of the insurance premium is calculated.

However, the letter from the Factor to the owners with details of buildings insurance policy states that the premium payable is the 'apportioned policy premium.'

The policy premium for the whole block is apportioned either by the Factor or the insurance broker according to the proportion the value of the particular property bears to the value of the whole development/ block. This fact is not disclosed to the owners and is not apparent from the documents issued to the owners.

The Tribunal determine that the Factor has failed to comply with section 5.2 of the Code of Conduct by not providing the owners with the basis upon which their share of the whole insurance premium is calculated.

(Third) The Tribunal determine that an incorrect apportionment of the common buildings insurance premium is not a breach of section 5.2 of the Code of Conduct.

(Fourth) The Tribunal were not persuaded by Mr Mendelsohn's submission that the Factor was required to adhere to the terms of the title deeds by virtue of the fact that they had been appointed by the original developer. The Factor's contract with the homeowners is set out in the Factor's Terms of Service and Delivery Standards. The Tribunal determine that this matter does not fall within section 5.2 of the Code of Conduct.

(Fifth) The Tribunal determine that Mr Mendelsohn's claim that the Factor should have used their skill and experience to determine if the total sum insured value was reasonable does not fall within section 5.2 of the Code of Conduct.

Section 5.8 of the 2012 Code of Conduct Application C1 (complaint up to 16th August 2021): If your agreement with homeowners includes arranging buildings insurance:

You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance, and adjust this frequency if instructed by the appropriate majority of homeowners in the group.

The Homeowners' complaint:

At no time have the owners been informed in writing or otherwise of the need for or frequency of building reinstatement valuations.

The Factor should have specifically advised owners that revaluations should be carried out every five years.

The Factor's response:

Ms Haddow reiterated that the Factor's Service Level Agreement states that the Factor does not arrange Property revaluations and that it is recommended that they are carried out every five years.

The Tribunal's Decision:

The Tribunal acknowledge that the Factor's Service Level Agreement states that the Factor does not undertake property valuations and that it is the owners responsibility to ensure that the sum insured is adequate.

Section 5.8 of the Code of Conduct requires the Factor to inform homeowners of the frequency with which property revaluations will be undertaken. The Tribunal find that the Factor has complied with this requirement by stating that they do not undertake property valuations. The Tribunal determine that the Factor has not failed to comply with section 5.8 of the Code of Conduct in relation to this complaint.

OSP3 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): You must provide information in a clear and easily accessible way.

The Homeowners' Complaint:

The Factor communicates with the owner in many ways. The communication is not 'joined up'. They write letters, send emails and they post information on their client portal. Mr Mendelsohn, Mr Brown, Mr Buchanan and Ms Haddow attended a meeting on 18th September 2025 and at that meeting Mr Buchanan accepted that the communication with the owners had been poor.

The Factor's response:

Ms Haddow explained that the Factor communicates with the owners according to the owner's stated preferences. If a particular owner agrees to communication by email they will be sent emails otherwise they will be sent letters.

The Tribunal's Decision:

The Tribunal acknowledge that the Factor communicates with owners by email, by letter and via their portal depending on the particular homeowner's preferences. The Tribunal determine that the fact that the Factor communicates with the owners in different ways depending on the owner's preference does not of itself result in the Factor failing to provide information in a clear and easily accessible way. The Tribunal determine that the Factor has not failed to comply with OSP3 of the Code of Conduct in relation to this complaint.

Section 5.2 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): Property factors may wish to make homeowners aware of their

statutory duty to insure against prescribed risks, such as fire or flood (see section 18 of the Tenements (Scotland) Act 2004, and the Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 (SSI 2007/16)).

The Homeowners' complaint:

Mr Mendelson advised that he wished to withdraw this complaint.

Section 5.3 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): A property factor must provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) with clear information demonstrating:

- **the basis upon which their share of the insurance premium is calculated;**
- **the sum insured;**
- **the premium paid;**
- **the main elements of insurance cover provided by the policy and any excesses which apply;**
- **the name of the company providing insurance cover; and**
- **any other terms of the policy.**

This information may be supplied in the form of a summary of cover, but full details must be made available if requested by a homeowner.

The Homeowner's complaint:

Mr Mendelsohn referred to his earlier comments. For there to be a share there has to be a whole. The owners were not advised of the whole. By this he means that the owners were not advised of the sum insured for the whole building or the buildings insurance premium for the whole building. As a result, the Factor has not provided sufficient details of the basis upon which each owner's share of the insurance premium is calculated, as required by the Code of Conduct.

The Factor's response:

Ms Hadow restated that the required information is provided in the Buildings Insurance Policy Renewal letters, the common charges invoices and Buildings Insurance Policy Renewal letters, copies of which have been produced.

The Tribunal's Decision:

The Tribunal refers to their earlier decision in relation to section 5.2 of the 2012 Code of Conduct and determines that the Factor has failed to comply with section 5.3 of

the 2021 Code of Conduct by not providing the owners with the basis upon which their share of the insurance premium of the whole property is calculated.

Section 5.8 of the 2021 Code of Conduct Application C2 (complaint after 16th August 2021): On request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes.

The Homeowner's complaint:

Mr Mendelson advised that he wished to withdraw this complaint.

Property Factor Duties

The Homeowner's complaint:

Mr Mendelsohn explained that as the Factor was appointed by the original builder, as permitted in terms of the Deed of Conditions, he expected the Factor to comply with the terms of the Deed of Conditions. In particular it is a requirement of Schedules One and Two of the Deed of Conditions for there to be annual:

- Maintenance of safety anchors
- Cleaning of gutters and
- Checking and servicing of the smoke ventilation systems.

These activities have not been regularly carried out by the Factor. For example, there are no such charges in the period 1st March 2023 to 29th February 2024 which would be the case if there was a regular regime in place.

Schedule 1 of the Deeds sets out the full details of the gardening service to be provided. The service provided has not met these requirements.

It is also a requirement of the Deeds to 'check and service door entry system annually. This has not been done.

Mr Mendelsohn acknowledged that the Factor stopped acting as factor of the development on 19th June 2024.

He clarified that during the period of time that the Factor had acted as Factor of his Property he had not complained that they had failed to carry out these matters. This

only came to light after the owners meetings started, approximately three years ago. He acknowledged that if the Factor had carried out these additional tasks the owners would have been charged more. He explained that due to the failure of the Factor to do these tasks the communal gardens have been more over grown.

The Factor's response:

Ms Haddow emphasized that the Factor's Terms of Service and Delivery Standards do not state that the Factor will comply with the terms of the Deed of Conditions. There is no contractual requirement for the Factor to comply with the Deed of Conditions. The Deed of Conditions places obligations on the owners to comply with the title conditions.

She referred the Tribunal to the letter the Factor sent to the owners dated 28th March 2024, which has been produced.

That letter confirms:

'Paterson Safety Anchor Ltd had been instructed each year by the Factor dating back to 2014 to carry out gutter cleaning and roof anchor inspections.

Repairs were carried out by WSS Group in 2014 to the door entry system.

They aim to visit the development where possible twice a year. After reviewing their records three visits took place in 2024 and as at March 2024 one visit in 2024 had taken place.

An owner raised concerns about ground maintenance works carried out by Moidart Contracts in June 2023. As a consequence, an onsite meeting was arranged with the director of Moidart Contracts and following that a letter was issued to owners dated 18th March 2024 regarding changes to the ground maintenance contractor.'

The Tribunal's Decision:

As previously stated, the Tribunal were not persuaded by Mr Mendelsohn's submission that the Factor was required to adhere to the terms of the title deeds by virtue of the fact that they had been appointed by the original developer.

The Factor's contract with the homeowners is set out in the Factor's Terms of Service and Delivery Standards which does not oblige the Factor to comply with the maintenance schedule detailed in Schedules One and Two of the Deed of Conditions.

The Tribunal determine that the Factor has not failed to comply with the Property Factor duties detailed in the applications.

7. Remedy sought by the Homeowners.

Mr Mendelsohn referred the Tribunal to the applications submitted. The homeowners consider it reasonable for the Factor to pay £500 to each owner for failing to comply with the terms of the Deed of Conditions and the Code of Conduct.

In addition, he considers it reasonable for the owners to be reimbursed 35% of the buildings insurance premiums that they have paid over the last five years. When the building was revalued in 2024 it became clear that the building had been over insured by 35%. He referred the Tribunal to the letter from the Factor that has been produced dated 14th December 2023.

8. Decision

8.1 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 section 5.2 of the 2012 Code of Conduct, section 5.3 of the 2021 Code of Conduct.

8.2 The Tribunal determined to issue a Property Factor Enforcement Order.

8.3 The Tribunal acknowledge that Mr Mendelsohn had produced a table (page 41 of the case file) which shows how the sum insured and buildings insurance premiums for each individual flat both before and after the revaluation was carried out. They noted that (i) the proportions of the individual previous sums insured to the previous total sum insured and (ii) the proportions of the individual previous annual premium to the previous total annual premium were the same and that the proportions ranged from 6.9% to 9.9%. The Tribunal were not addressed on the effect of the Factors not providing this information to the homeowners given that the Factor's Terms of Service and Delivery Standards specifically state that it is the group of homeowners responsibility to ensure that the sum insured is adequate and that the Factor does

not undertake Property Valuations. The Tribunal do not find any basis on which they could require the Factor to reimburse owners 35% of the buildings insurance premiums that they have paid over the last five years

8.4 The Tribunal acknowledge that the homeowners will have suffered stress and inconvenience as a result of the failure by the Factor to comply with section 5.2 of the 2012 Code of Conduct and section 5.3 of the 2021 Code of Conduct. Whilst the Tribunal was not specifically addressed on the extent of that stress and inconvenience the Tribunal find that on a balance of probabilities a reasonable award amounts to £250 per homeowner and applicant (nine in total).

8.5 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 each applicant £250 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'.

9 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.

Jacqui Taylor

Date 5th February 2026