



**Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the PF Act”) and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Reference number:** FTS/HPC/PF/24/0313 and FTS/HPC/PF/24/0691, together referred to as "the Applications".

Re: 25 Birrell Gardens, Livingston, EH54 9LF (“the Property”)

**The Parties:**

Mr. Sepehr Tahiri, Executor Nominated of the late Mrs. Zarifeh Taheri, (“the Homeowner”) residing at the Property (“the Homeowner’s Executor”) per his representative, Ms Roya Taheri, (“the Homeowner’s Representative”)

Hacking & Paterson Management Services having a place of business at Verdant, North Reception, 2 Redheughs Rigg, South Gyle, Edinburgh, EH12 9DQL (“the Property Factor”)

**Tribunal Members**

Karen Moore (Chairperson) and Frances Wood (Ordinary Member)

## **Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that:

1. with regard to Application FTS/HPC/PF/24/0691 and breaches of the 2012 Code, the Property Factor did not fail to comply with Section 14 duty.
2. with regard to Application FTS/HPC/PF/24/0313 and breaches of the 2021 Code, the Property Factor did not fail to comply with Section 14 duty and
3. the Property Factor did not fail to comply with the Property Factor Duties.

## **Background**

1. The Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for determinations that the Property Factor had failed to comply with their duty in terms of Section 14 (5) of the PF Act to ensure compliance with the Property Factor Codes of Conduct for the time being in force.
2. Application FTS/HPC/PF/24/0313 comprises the following documents (i) First-tier Tribunal standard application form, Form “C2” (ii) copy statutory intimation letter to the Property Factor in respect of 2021 Code of Conduct for Property Factors (“the “2021 Code”), (iii) copy correspondence between the Parties, (iv) a copy of the Property Factor’s Written Statement of Services, (v) Copy Simple Procedure documentation and (vi) copy garden maintenance specification.
3. This Application complains of the following failures to comply with the 2021 Code:- OSP at OSP 2, 3, 6, and 12, Section 1 Written Statement of Services at 1.5.B.4, 1.5.C.6 and 11, Section 2, Communications and Consultation at 2.6, Section 3 Financial Obligations at 3.2, Section 4 Debt Recovery at 4.2, 4.3, 4.4 and 4.11, Section 6 Carrying out repairs and maintenance at 6.7 and Section 7 Complaints Resolution at 7.3.

4. Application FTS/HPC/PF/24/0691 comprises the following documents (i) First-tier Tribunal standard application form, Form "C1" (ii) copy correspondence between the Parties (iii) a copy of the Property Factor's Written Statement of Services (iv) Copy Simple Procedure documentation and (v) copy garden maintenance specification.
5. This Application complains of the following failures to comply with the 2012 Code of Conduct for Property Factors ("the "2012 Code"):- Section 1 Written Statement of Services at 1.1a-Bc, Section 2, Communications and Consultation at 2.2, Section 4 Debt Recovery at 4.2, 4.3 and 4.8, Section 6 Carrying out repairs and maintenance at 6.9 and Section 7 Complaints Resolution at 7.3.
6. The Applications also complained of failures to comply with the Property Factor Duties.

### **First CMD**

7. A Case Management Discussion (CMD) took place on 3 September 2024 at 10.00 by telephone conference call. The Homeowner was not present on the call and was represented by her daughter, Ms. R. Taheri. The Property Factor was represented by Ms. Caldwell and Ms. Epton. At that CMD, Ms. Caldwell offered a credit of £500.00 to the Homeowner's account to resolve matters. Ms Taheri advised that this was not acceptable and stated that the Homeowner wished the sum of £1,468.92 to be credited as this was the amount of the Simple Procedure Payment Decree made against the Homeowner at Livingston Sheriff Court and arrested from her sister's bank account. The Tribunal advised that it could not intervene in any respect in a Decree granted by a higher court and so could not order that the Property Factor repay this sum.
8. At the CMD, the Tribunal explained that the onus was on the Homeowner to evidence her case and that it was not the role of the Tribunal, as adjudicators, to co-relate the information lodged to the failures complained of in the Applications. The Tribunal adjourned to a further CMD and issued a Direction

requiring the Homeowner to specify the alleged acts or omissions of the Property Factor in respect of both Codes and the Property Factor Duties, and requiring the Property Factor to respond. The Parties complied with the Direction.

### **Second CMD.**

9. The second CMD took place on 31 January 2025 at 10.00 by telephone conference call. Shortly before the second CMD, Ms. R. Taheri lodged written submissions which the Tribunal did not admit to the proceedings, advising that Ms. Taheri could speak to the submissions at a Hearing of evidence. The Homeowner was represented by her daughter, Ms. R. Taheri, calling from outwith the United Kingdom. Part way through the CMD, it became apparent that the Homeowner was present on the call from her home in Edinburgh. The Property Factor was represented by Ms. E. Blair. As at that the previous CMD, the Tribunal explained that the CMD was not a decision-making forum and that the Homeowner would need to identify from the written submissions where the Property Factor had gone wrong. At this point, the Homeowner became distressed and left the call.

10. The Tribunal advised that a Hearing of evidence would be held to deal with the three matters in dispute which are:

*a) The standard of lawn maintenance carried out by the Property Factor's gardeners and the cost of this.*

The Tribunal advised Ms. Taheri that she would need to show why the lawn maintenance was sub-standard and why the cost was excessive. Ms. Blair stated that the co-owners in the development did not agree to additional work being carried out.

*b) The charges made by the Property Factor.*

The Tribunal advised Ms. Taheri that she would need to show why the charges were excessive or unreasonable.

*c) The way in which the Property Factor conducted itself in respect of two Sheriff Court debt actions and the actions taken to secure recovery of the debts.*

The Tribunal noted from both Ms. Taheri and Ms. Blair that there were two court actions for payment of common charges and Property Factor costs, both of which resulted in decrees in favour of the Property Factor. Ms. Taheri stated that the issue was that the Homeowner had not had prior notification, although this might have been a failing of the court. With reference to the first court action and the sum of £1,468.92 which had been “taken” from her bank account, Ms. Taheri accepted that this had been an arrestment following the enforcement of the decree. Regardless, she stated that the Homeowner sought an order from the Tribunal for repayment by the Property Factor of this sum. The Tribunal advised that it could not interfere in the decision of a higher court and could not interfere in a decree which had already been enforced and so the Tribunal would not make this award. With reference to the second court action and the sum of £2,336.22, Ms. Taheri stated that the complaint was that the Property Factor had acted fraudulently in contacting the Homeowner’s mortgage provider.

11. Ms. Blair confirmed that the Property Factor was still prepared to credit the Homeowner’s account with £500.00 in order to settle the matters. Ms. Taheri sought that the whole account be written off. Ms. Blair advised that, as the account is in excess of £1,300.00, this would be excessive. The offer of £500.00 was, again, rejected.

## **Hearing**

12. A Hearing of evidence took place on 12 August 2025 by Webex. The Homeowner was not present and was represented by her daughter, Ms. Roya Tahiri, with Mr. Sepehr Tahiri as supporter. The Property Factor was represented by Ms. Emma Blair, one of their senior employees.

13. The Tribunal heard from the Parties in respect of Application FTS/HPC/PF/24/0691 and in part in respect of Application FTS/HPC/PF/24/0313. It became clear to the Tribunal that Ms. Blair did not have full knowledge or instructions in respect of the circumstances surrounding the Homeowner’s complaint in respect of Application FTS/HPC/PF/24/0313. The Tribunal, therefore, adjourned the Hearing to 4

December 2025 and issued a Direction to the Property Factor to lodge full documentation and a timeline in respect of Simple Procedure case reference LIV-SG243-22 and a note or legal submissions as to the Property Factor's entitlement to payment from the Homeowner's mortgage lender. The Direction permitted the Homeowner to respond if she so wished.

14. The Parties complied with the Direction, albeit the Property Factor appeared to omit some entries in the timeline and provided legal opinion not requested or required.

15. The adjourned Hearing set down for 4 December 2025 was postponed and took place on 26 March 2026 by Webex. The Homeowner's Executor Nominated, Mr. Sepehr Tahiri, now the applicant in terms of the Tribunal Rules, was present and was represented by Ms. Roya Tahiri. The Property Factor was represented by Ms. Emma Blair, one of their senior employees.

#### **Evidence before the Tribunal.**

16. The Tribunal had before it the Applications with supporting documents and the various written submissions with supporting documents lodged by the Parties, which documents included *inter alia* (amongst other things) photographs of the lawn at the Property, copy garden maintenance specification, copies of the Property Factor's Written Statement of Services, their Terms of Service and Delivery Standards, their Debt Recovery Procedure, their Late Payment Charges, copy Property Factor correspondence with homeowners relating to the land management and the contractors, copy invoices, statements of accounts and correspondence relating to the Homeowner's debts, copy court proceedings, copy documents relating to interaction between the Property Factor and the Homeowner's mortgage lender, together referred to as the "Relevant Documents", all of which are relevant to the Applications.

17. At the Hearings, the Tribunal heard from the representatives of both Parties in respect of each complaint in each Application in turn, dealing with Application FTS/HPC/PF/24/0691 and the complaints in respect of the 2012 Code first,

Application FTS/HPC/PF/24/0313 and the complaints in respect of the 2021 Code next and the property factor duties last.

18. From the CMDs, the Tribunal was satisfied that the representatives of both Parties were aware of the scope of the evidence which was required.

### **Application FTS/HPC/PF/24/0691**

#### **Section 1 Written Statement of Services at 1.1a-Bc**

*1.1a For situations where the land is owned by the group of homeowners*

*The written statement should set out:*

*A. Authority to Act*

*a) a statement of the basis of any authority you have to act on behalf of all the homeowners in the group;*

*B. Services Provided*

*b) c. the core services that you will provide. This will include the target times for*

*c) taking action in response to requests for both routine and emergency*

#### **Homeowner's Evidence.**

19. Ms. Taheri explained that as, Homeowner, her mother's position was that the Written Statement of Services and Terms of Service & Delivery Standards did not reflect the way in which the Property Factor conducted their business. She stated that the Property Factor did not carry out inspections, did not arrange inspections with homeowners and had not amended their Service & Delivery Standards in this regard. Ms. Taheri stated that the Ground Maintenance Specifications as lodged by the Homeowner and agreed in 2003 included "lawn care" as part of the core duties. She stated that this is the core service for which there is a quarterly charge but the service is not adequate, regardless of it being explicitly detailed in the specifications and set out in the Terms of Service and Delivery Standards issued in 2019 and 2021. She explained that her mother was not satisfied with the quality and so did not pay the full quarterly charge but paid a lesser amount which her mother considered to be reasonable for the standard provided.

## **Property Factor's Evidence**

20. On behalf of the Property Factor, Ms. Blair drew the Tribunal's attention to the Written Statement of Services lodged by the Property Factor which complies fully with Section 1 of the 2012 Code. She explained that, following the PF Act coming into force, the Property Factor issued Written Statements of Service to all homeowners during 2012. She stated that updated Terms of Service and Delivery Standards have been issued and pointed out that, as the Act came into force in 2012, the Homeowner's complaint of breaches in 2003 predate the PF Act. Ms. Blair pointed out that the Terms of Service and Delivery Standards, together with the Written Statement of Services, confirm the core services carried out and confirms the Property Factor's response times, all in compliance with the PF Act and the 2012 Code.

## **Section 2 Communications and Consultation**

*2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).*

## **Homeowner's Evidence**

21. Ms. Taheri stated that false and misleading invoices had been issued by the Property Factor and that a letter and statement sent in 2023 by Mr. Oliver, an employee of the Property Factor, had failed to show that the Property Factor had received a payment of £1468.92 from her sister, Sepideh Taheri's account on 28th February 2023. Ms. Taheri maintained that there had been further false and fraudulent activity on 5th of December 2023 when an attempt was made by the Property Factor to take a further payment of £2,336.22 from the Homeowner's mortgage company without any court order. She stated that the Property Factor could not explain this and threatened court action and registering a Notice of Potential Liability with Registers of Scotland.

### **Property Factor's Evidence**

22. Ms. Blair stated that, until March 2023, there had been no contact from the Homeowner in respect of any of these matters and that the Property Factor had been unable to identify any instances of false or misleading information. With reference to the Property Factor's written submissions, she stated that the Homeowner has not provided any evidence of abusive or intimidating communications? and that all correspondence in respect of legal action has been proportionate and reasonable as evidenced by the various productions lodged. Ms. Blair referred to the Simple Procedure Decrees and the diligence carried out in accordance with these, all in accordance with due legal process.

### **Section 4 Debt Recovery**

*4.2 If a case relating to a disputed debt is accepted for investigation by the homeowner housing panel and referred to a homeowner housing committee, you must not apply any interest or late payment charges in respect of the disputed items during the period that the committee is considering the case*

### **Homeowner's Evidence.**

23. On behalf of her mother, Ms. Taheri accepted that that the Property Factor had not breached this part of the Code.

*4.3 Any charges that you impose relating to late payment must not be unreasonable or excessive.*

### **Homeowner's Evidence.**

24. Ms. Taheri explained that this complaint that a late payment fee of £18.00 in respect of a debt of £57.92 levied in 2014 is unreasonable. She asserted that the Property Factor ought to exercise a discretion and waive fees for exceptional situations, such as hospitalisation or travel, but accepted that the Property Factor was not bound to do this.

### **Property Factor's Evidence**

25. Ms. Blair stated that the late payment charges are set out in the Debt Recovery Procedure and are on the Property Factor's website. She stated

that these are in line with other similar service providers and are not excessive. Ms. Blair explained that the fee relates to the work carried out to recover debt and not to the amount of the debt. She stated that no contact had been made by the Homeowner to discuss the fee, nor any intimation of exceptional circumstances.

*4.8 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.*

#### **Homeowner's Evidence.**

26. Ms. Taheri explained that this complaint is? that the Property Factor took no steps to resolve matters before taking legal action, particularly as they were aware of her mother's dissatisfaction with the standard of the lawn from her mother's response to one of the court actions. She stated that the Property Factor did not attempt to resolve the issue, did not attempt to improve the condition of the lawn and only continued to add charges and take further legal actions.

#### **Property Factor's Evidence**

27. Ms. Blair's position was that there had been no contact from the Homeowner in respect of either the condition of the lawn or the accruing debt. Ms. Blair stated that the Homeowner did not advise the Property Factor that she had decided to pay a reduced charge or why and did not respond to the pre-action letters. Again, she stated that the first communication from was in March 2023 following several instances of legal enforcement action.

### **Section 6 Carrying out repairs and maintenance**

*6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.*

### **Homeowner's Evidence.**

28. Ms. Taheri explained that her mother's position was that in 2016 the garden maintenance contractor was changed because the homeowners had expressed their dissatisfaction. She explained that the present contractor is no better than the previous one and does not fulfil the services set in the original 2003 agreement. Ms. Taheri stated that the Property Factor has taken no action against the contractor and allows the situation to continue.

### **Property Factor's Evidence**

29. Ms. Blair explained that there had been dissatisfaction amongst the collective homeowners which prompted a consultation and a change of contractor. However, there was no appetite amongst homeowners to pay for an enhanced service. She repeated that the first notice of dissatisfaction which came from the Homeowner was in March 2023 and that prior to this point the Homeowner had not given any reason for non-payment. Ms. Blair's position was that the contractors were providing a service to a specification agreed by the collective homeowners and that the Property Factor has not been instructed to undertake additional work or improvements to the lawns. She stated that no additional charges have been rendered in respect of the maintenance contract. Ms. Blair advised that the Property Factor did not consider it appropriate to pursue the contractors for works or services for carrying out the works per their instruction.

### **Section 7 Complaints Resolution**

*7.3 Unless explicitly provided for in the property titles or contractual documentation, you must not charge for handling complaints.*

### **Homeowner's Evidence.**

30. Ms. Taheri stated that the Property Factor's charging system is confusing in the letters and invoices but accepted that the Property Factor does not charge for handling complaints.

### **Property Factor's Evidence**

31. Ms. Blair confirmed that no charges have been rendered in respect of handling complaints.

### **Application FTS/HPC/PF/24/0313**

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

### **Homeowner's Evidence.**

32. Ms. Taheri stated that the issue with this part of the Code is that the Property Factor was not honest, open, transparent and fair in contacting her mother's mortgage lender regarding an unpaid debt which had, in fact, been paid. Ms. Taheri stated that the sum had been taken from her sister's bank account but had not been credited to her mother's account with the Property Factor. Therefore, the Property Factor had been pursuing a debt which had been paid. Ms. Taheri stated further that, in dealing with the mortgage lender, the Property Factor had been misleading as they were not clear which of the court actions had resulted in the bank arrestment and had not made it clear to the mortgage lender that the account, and so, the court action was in dispute. Ms. Taheri stated that the Property Factor did not make it clear that the sum sought by them included court costs and so was higher than the debt sued for. She maintained that seeking a further amount of £2,336.22 was fraudulent, false and not honest as no court order had been issued for this amount. Ms. Taheri accepted that her sister is a joint owner of the Property, a joint mortgagee and a joint defender in the Simple Procedure actions.

### **Property Factor's Evidence**

33. Ms. Blair accepted that the mortgage lender had been approached without the knowledge of the Homeowner and accepted that the debt had been satisfied by a bank arrestment. She explained that the sum arrested did not match the sum sued for and, as the Property Factor had been unable to reconcile and allocate the sum, the arrested sum had been held in a suspense account. It happens from time to time that income is received without detailed vouching

to identify what it is for, and the Department which deals with incoming payments had to carry out detective work over a period of time. Ms. Blair explained that it was not until contact was made with the mortgage lender who in turn contacted the Homeowner, prompting the Homeowner to contact the Property Factor, that matters became clear. Ms. Blair accepted that the Property Factor's Debt Recovery Procedure did not explicitly state that the mortgage lender would be approached, and she accepted that the Homeowner had not been given prior warning of this approach. Her position on the discrepancy in the sum sought from the mortgage lender was an accounting issue which has since been resolved. Ms. Blair's firm position is that this was a matter not caused directly by the Property Factor but was a matter which arose as a result of the way in which diligence is carried out by the Property Factor's legal agents and the Sheriff Officers instructed by them. Ms. Blair's refuted that diligence had been carried out without a court order and stated that the Property Factor had been unable to identify any instance where they had not been open honest or transparent

**OSP 3** *You must provide information in a clear and easily accessible way.*

### **Homeowner's Evidence**

34. Ms. Taheri, with reference to invoices and account statements lodged, explained that her mother's position is that it is not clear why the quarterly charge fluctuates between invoices, ranging from around £75.00 to £105.00 to £137.00 back to £89.00, up again to £140.00 and then to £153.00.

### **Property Factor's Evidence**

35. Ms. Blair's position is that there is a difference between the invoice which shows the amount to be paid and which varies in respect of costs incurred and the statement of account which is a summary. She stated that the Homeowner has never queried the invoices nor advised the Property Factor of any confusion or sought assistance in respect of the layout or content. Ms. Blair advised that the invoices and accounts are issued by post and can be viewed on the Property Factor's portal.

**OSP 6** *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.*

**Homeowner's Evidence**

36. With reference to photographs lodged, Ms. Taheri stated that it appears that neither the Property Factor's staff nor the contractors are sufficiently skilled to carry out ground maintenance.

**Property Factor's Evidence**

37. Ms. Blair's position is that the Property Factor's staff are provided with ongoing professional training. She stated that the Homeowner has not identified any particular failings.

**OSP 12** *You must not communicate with homeowners in any way that is abusive, intimidating or threatening.*

**Homeowner's Evidence.**

38. Ms. Taheri stated that this part of the complaint relates to the letters sent by the Property Factor threatening legal action. She stated that her mother was elderly and frail and so found the letters frightening and confusing.

**Property Factor's Evidence**

39. Ms. Blair again stated that, until March 2023, there was no contact from the Homeowner in respect of any of these matters and that the Property Factor had been unable to identify any instances of false or misleading information. She stated that the Homeowner has not provided any evidence of abusive or intimidating communications and that all correspondence in respect of legal action has been proportionate and reasonable as evidenced by the various productions lodged.

**Section 1 Written Statement of Services**

*1.5. The WSS must make specific reference to any relevant legislation and must set out the following: 1.5.B (4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to*

*requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service)*

**Homeowner's Evidence.**

40. Ms. Taheri stated that the Property Factor has never attended at the Property in terms of their core services and has never contacted her mother or her family to ask about the condition of the Property, contrary to the statement in the Written Statement of Services that they "attend the property periodically (these visits can be arranged to suit homeowners)"

**Property Factor's Evidence**

41. Ms. Blair, and with reference to that document, again, stated that the Written Statement of Services complied with the Code and set out the core services. She stated that site visits were a walk-around inspection and did not necessarily involve the homeowners.

*1.5.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.*

**Homeowner's Evidence.**

42. Ms. Taheri stated that it is not clear how the management fee is arrived at and stated that the fee increase is arbitrary and fluctuating. Her position was that, although the policy may be laid out in the Written Statement of Services, it is not clear what the fee structure is. She advised that there had been no consultation on the fee review.

**Property Factor's Evidence**

43. Ms. Blair, with reference to that document, again, stated that the Written Statement of Services complied with the Code and set out the fee structure and policy for review. Ms. Blair explained that the fee review was an internal process and did not necessarily involve consultation with homeowners.

*1.5C.(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 (see Section 4 of the Code: Debt Recovery);*

#### **Homeowner's Evidence.**

44. Ms. Taheri's position was that, when a late fee was charged in 2014, the Property Factor did not have a structure in place and that they still do not have a structure in place to waive a late fee for exceptional circumstances, such as health emergency, or travel.

#### **Property Factor's Evidence**

45. Ms. Blair's position was as set out in her response to the same complaint raised in respect of the 2012 Code complaint: that the late payment charges are set out in the Debt Recovery Procedure and are on the Property Factor's website, that these are in line with other similar service providers, are not excessive and relate to the work carried out to recover debt and not to the amount of the debt. She stated, again, that no contact had been made by the Homeowner to discuss the fee. Ms. Blair pointed out that payment terms are set out on the reverse of all invoices.

### **Section 2 Communications and Consultation**

*2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made a work available if requested by a homeowner.*

#### **Homeowner's Evidence.**

46. Ms. Taheri's position was that there is no consultation with Homeowners in respect of the lawn maintenance contract.

## **Property Factor's Evidence**

47. Ms. Blair's position was that this part of the 2021 Code applies to services outwith the core services, and, as the land management services are the core services, this part of the Code does not apply. She confirmed that no services other than those identified in the Written Statement of Services and Terms of Service and Delivery Standards have been undertaken or charged for, and so, there has been no need to obtain approval from the collective homeowners.

## **Section 3 Financial Obligations**

*The overriding objectives of this section are to ensure property factors: protect homeowners' funds; provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor; make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.*

## **Homeowner's Evidence.**

48. Ms. Taheri, with reference to relevant letters, stated that the issue with this part of the Code is that, in February 2022, her mother received a letter showing £1,311.71 due, in July of the same year a Final Notice stated that £149.79 was owed, and, in January 2023, another Final Notice stated that the sum due was £557.47. Ms. Taheri stated that none of these amounts is shown on the statement of account. Her position is that this is confusing.

## **Property Factor's Evidence**

49. With reference to the invoices lodged, Ms. Blair's position was that the common charges invoices are clear and provide detail of the sums due at each particular time. She explained the format and content of the invoice. She pointed out, again, that this had not been raised as an issue by the Homeowner who had not asked for assistance.

## **Section 4 Debt Recovery**

*4.2 It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners*

**Homeowner's Evidence.**

50. Ms. Taheri repeated her evidence as given for the same complaint raised in respect of paragraph 4.3 of the 2012 Code and restated that she considered the late payment costs to be excessive.

**Property Factor's Evidence**

51. Ms. Blair restated that the late payment charges are set out in the Debt Recovery Procedure at paragraphs 4.12 and 4.14 and are on the Property Factor's website.

*4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.*

**Homeowner's Evidence.**

52. Ms. Taheri repeated her evidence as given for the same complaint raised in respect of paragraph 4.3 of the 2012 Code and restated that she considered the late payment costs to be excessive. She referred again to the charge of £18.00 in respect of a debt of £57.92 which had been levied in 2014. Ms. Taheri noted that in some correspondence and procedures the Property Factor used the term "late payment" and sometimes used the term "default notice" and suggested that the Property Factor should distinguish between invoices paid late and invoices which were not paid at all.

**Property Factor's Evidence**

53. Ms. Blair restated that the late payment charges as set out in the Debt Recovery Procedure are in line with other similar service providers and are not excessive.

4.4 *A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.*

#### **Homeowner's Evidence.**

54. Ms. Taheri 's position was the similar to that raised in respect of paragraph 4.8 of the 2012 Code. She stated that the Property Factor gave no warning that the debt was to be arrested and taken from her sister's account and that there should at least have been a telephone call ahead of this happening. Ms. Taheri stated again that there had been no effort on the part of the Property Factor to resolve matters before the funds were arrested.

#### **Property Factor's Evidence**

55. Ms. Blair pointed out that there had been no contact from the Homeowner until after the arrestment was made and so the Property Factor was not aware that a matter required to be resolved. She also pointed out that the Property Factor had not been given a contact telephone number for the Homeowner, nor had they been asked to communicate in this way.

4.11 *A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).*

#### **Homeowner's Evidence.**

56. Ms. Taheri 's position was the same as that given for her complaint in respect of paragraph 4.8 of the 2012 Code: that the Property Factor took no steps to resolve matters before taking legal action. Again, she stated that the Property Factor ought to have been aware of her mother's dissatisfaction with the standard of the lawn from the response to the Glasgow Sheriff Court action which had been paused.

## **Property Factor's Evidence**

57. Ms. Blair again noted that there had been no contact from the Homeowner and so the Property Factor was not aware that a matter required to be resolved. She confirmed that the Property Factor had followed their Debt Recovery Procedures.

## **Section 6 Carrying out repairs and maintenance**

*6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.*

## **Homeowner's Evidence.**

58. Ms. Taheri position was the same as that given for her complaint in respect of paragraph 6.9 of the 2012 Code: that the Property Factor has taken no action against the contractor and allows the lawn maintenance to deteriorate. Her view is that the lawn should be improved at no extra cost and at no additional quarterly charge.

## **Property Factor's Evidence**

59. Ms. Blair explained again there was no appetite amongst homeowners to pay for an enhanced service. She pointed out that the current contractor has been in place for around 8 years and is carrying out the work as instructed. Ms. Blair confirmed that the Homeowner had not replied to the consultation exercise carried out by the Property Factor in 2021.

## **Section 7 Complaints Resolution**

*7.3 Unless explicitly provided for in the property titles or contractual documentation, you must not charge for handling complaints.*

60. Ms. Taheri withdrew this part of the complaint.

## **Property Factor Duties**

### **Homeowner's Evidence**

61. The position for the Homeowner as set out by Ms. Taheri was the way in which the Property Factor has conducted itself throughout. Ms. Taheri submitted that the Property Factor has not sought to resolve matters but had chosen to fight with her late mother as Homeowner and now with her late mother's representatives. She stated that the Property Factor has had no consideration for her mother in respect of her age and ill-health.

Ms. Taheri submitted that the Property Factor has provided a poor service in all respects and has charged excessive fees.

Ms. Taheri drew the Tribunal's attention to the lack of communication in respect of the involvement of the mortgage lender. Ms. Taheri explained that she had become aware that the Property Factor had contacted the mortgage lender, by chance, on seeing a letter from the mortgage lender during a visit to her mother. She explained that she lived abroad and visited her mother twice yearly. Ms. Taheri stressed that the Property Factor could not account for the arrested funds for around 11 months and pointed out that incorrect information on her mother's indebtedness had been given to the mortgage lender, which had been damaging to her mother.

### **Property Factor's Evidence**

62. Ms. Blair accepted that the arrested funds had been held in a suspense account but pointed out that, when the matter was drawn to the Property Factor's attention, swift action was taken to resolve the matter. She explained that the issue with non-allocation of the funds had arisen because of a combination of court costs being added to the sum sued for, bank charges being deducted and the funds being banked via the legal agents. Ms. Blair pointed out that compensation of £500.00 had been offered but rejected. With regard to the mortgage lender, Ms. Blair accepted that this approach was not referred to explicitly in the Debt Recovery Procedure but stated that it was within a range of debt recovery diligence open to the Property Factor as

creditor. Ms. Blair confirmed that when the Homeowner contacted the Property Factor regarding the arrested funds, the Property Factor had advised the mortgage lender to close the case.

Ms. Blair restated that there had been no direct contact from the Homeowner prior to March 2023 when the mortgage lender became involved and that the Homeowner did not explain why she had decided to pay a reduced quarterly charge. She explained that, by that time, two successful court actions had been raised.

With regard to communication, Ms. Blair referred the Tribunal to the numerous invoices and reminder letters issued all of which were compliant with the Codes. With regard to the court actions, Ms. Blair stated that the Property Factor has a responsibility to the development as whole to recover debt.

With regard to the condition of the lawn, Ms. Blair referred the Tribunal to the lack of interest from the development as a whole to improve the lawn areas and restated that no complaint had been received from the Homeowner until the tribunal process began. She stated that the Property Factor had not been aware of the response to the Glasgow Sheriff Court action.

### **Findings in Fact.**

63. The Tribunal found the following facts established on the balance of probability:
1. The Parties are as set out in the Applications
  2. The Property Factor issued Written Statements of Services compliant with both the 2012 Code and the 2021 Code;
  3. The Property Factor has a Debt Recovery Procedure compliant with both the 2012 Code and the 2021 Code;
  4. The Property Factor issued Terms of Service and Delivery Standards compliant with both the 2012 Code and the 2021 Code;
  5. The Property Factor has a scheme of Late Payment Charges which is available on their website;
  6. The late Homeowner was dissatisfied with the standard of lawn care provided by the Property Factor;
  7. The late Homeowner did not make the Property Factor aware of this dissatisfaction;

8. The late Homeowner of her own volition and without contact with the Property Factor decided to pay a reduced quarterly charge to the Property Factor;
9. The late Homeowner of her own volition and without contact with the Property Factor decided not to pay common charges invoiced by the Property Factor;
10. The late Homeowner accrued debt in respect of common charges;
11. The Property Factor applied their Debt Recovery Procedure and Late Payment Charges;
12. The Property Factor obtained two decrees against the late Homeowner and her co-owner;
13. The Property Factor enforced one of these decrees and arrested funds from the co-owner's bank;
14. Matters outwith the Property Factor's control resulted in the arrested funds not being allocated to the late Homeowner's account for a period of around 11 months;
15. On being made aware of the arrested funds, the Property Factor took steps to trace the funds and allocate the funds to the late Homeowner's account.

## **Decision of the Tribunal and Reasons for the Decision**

### **Application FTS/HPC/PF/24/0691**

#### **2012 Code**

#### **Section 1 Written Statement of Services at 1.1a-Bc**

*1.1a For situations where the land is owned by the group of homeowners*

*The written statement should set out:*

*A. Authority to Act*

*d) a statement of the basis of any authority you have to act on behalf of all the homeowners in the group;*

*B. Services Provided*

*e) c. the core services that you will provide. This will include the target times for*

*f) taking action in response to requests for both routine and emergency*

64. The Tribunal, having made a Finding in Fact that the Property Factor's Written Statement of Services complied with the 2012 Code, determined that the Property Factor did not fail to comply with this part of the 2012 Code. The Tribunal agreed with the Property Factor that part of the complaint predates the PF Act and noted that the remainder of the complaint post-dates the 2012 Code. Whilst the Tribunal acknowledges the late Homeowner's dissatisfaction with the lawn care, the Tribunal is of the view that the services provided by the Property Factor is that which is set out in their Written Statement of Services and Terms of Service & Delivery Standards.

## **Section 2 Communications and Consultation**

*2.2 You must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).*

65. The Tribunal had no evidence of communication by the Property Factor other than their standard letters in accordance with their Debt Recovery Procedure. The Tribunal's view is that these communications sent by the Property Factor are proportionate, factual and wholly in line with standard debt recovery letters. In any event, the matter complained of by the late Homeowner post-dates the 2012 Code ended. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2012 Code.

## **Section 4 Debt Recovery**

*4.2 If a case relating to a disputed debt is accepted for investigation by the homeowner housing panel and referred to a homeowner housing committee, you must not apply any interest or late payment charges in respect of the disputed items during the period that the committee is considering the case*

66. As Ms. Taheri accepted that that the Property Factor had not breached this part of the Code, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2012 Code.

*4.3 Any charges that you impose relating to late payment must not be unreasonable or excessive.*

67. The Tribunal's view is that the charges set by the Property Factor are proportionate and reflects the work involved in pursuing the debt regardless of the amount of the debt. The Tribunal had no evidence that the Property Factor was obliged to exercise a discretion and waive fees for exceptional situations. The Tribunal noted that the late Homeowner and her representatives did not make the Property Factor aware of any vulnerabilities or exceptional circumstances affecting the late Homeowner until March 2023, after the court proceedings had taken place. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2012 Code.

*4.8 You must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice of your intention.*

68. The Tribunal's view is that the Property Factor gave the late Homeowner fair notice of their intentions in respect of the legal action which they were entitled to take. As stated above, the late Homeowner and her representatives did not make the Property Factor aware of any dissatisfaction or exceptional circumstances affecting the late Homeowner until March 2023, after the court proceedings had taken place. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2012 Code.

## **Section 6 Carrying out repairs and maintenance**

*6.9 You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. If appropriate, you should obtain a collateral warranty from the contractor.*

69. Tribunal accepted the Property Factor's position that the contractor had been carrying out work as instructed and that, as there had been no instructions from the collective homeowners to undertake additional work or improvements to the lawns, there was no reason for the Property Factor to pursue the

contractors. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2012 Code.

## **Section 7 Complaints Resolution**

*7.3 Unless explicitly provided for in the property titles or contractual documentation, you must not charge for handling complaints.*

70. As Ms. Taheri accepted that that the Property Factor had not breached this part of the Code, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2012 Code.

## **Application FTS/HPC/PF/24/0313**

### **2021 Code**

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

71. The Tribunal accepted the Property Factor's position that the matter with the bank arrestment and the mortgage lender occurred due to circumstances outwith the Property Factor's immediate control. The Tribunal noted that the Property Factor took prompt action when alerted to the error, traced the funds and offered compensation. The Tribunal's view is that this was a genuine slip-up and not an attempt to deceive or to be unfair to the late Homeowner and her co-owner. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

**OSP 3** *You must provide information in a clear and easily accessible way.*

72. The Tribunal accepted the Property Factor's position that there is a difference between the invoice which shows the amount to be paid and which varies in respect of costs incurred and the statement of account which is a summary. The Tribunal's view is that invoices are clear and provide a description of the work, an apportionment of the cost and guidance on how to pay. The Tribunal noted that the late Homeowner and her representatives did not raise any issues with the Property Factor prior to the tribunal process. Accordingly, the

Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

**OSP 6** *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.*

73. The Tribunal had no evidence of a failure in respect of this part of the 2021 Code and so the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

**OSP 12** *You must not communicate with homeowners in any way that is abusive, intimidating or threatening.*

74. As noted above at paragraph 2.2 of the 2012 Code, the Tribunal had no evidence of communication by the Property Factor other than their standard letters in accordance with their Debt Recovery Procedure. As before, the Tribunal's view is that the communications sent by the Property Factor are proportionate, factual and wholly in line with standard debt recovery letters. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

## **Section 1 Written Statement of Services**

*1.5. The WSS must make specific reference to any relevant legislation and must set out the following: 1.5.B (4) the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service)*

75. The Tribunal, having found in fact that the Property Factor's Written Statement of Services complied with the 2021 Code, determined that the Property Factor did not fail to comply with this part of the 2021 Code.

*1.5.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.*

76. The Tribunal, having found in fact that the Property Factor's Written Statement of Services complied with the 2021 Code, determined that the Property Factor did not fail to comply with this part of the 2021 Code. In any event, the Tribunal had no evidence that the Property Factor was obliged to consult with homeowners and failed to do so.

*1.5C.(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 (see Section 4 of the Code: Debt Recovery);*

77. The Tribunal, having found in fact that the Property Factor's Written Statement of Services complied with the 2021 Code, determined that the Property Factor did not fail to comply with this part of the 2021 Code. In any event, as set at paragraph 4.3 of the 2012 Code, the Tribunal had no evidence that the Property Factor was obliged to exercise a discretion and waive fees for exceptional situations.

## **Section 2 Communications and Consultation**

*2.6 A property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without*

*seeking further approval in certain situations (such as in emergencies). This written procedure must be made a work available if requested by a homeowner.*

78. The Tribunal accepted the Property Factor's position that this part of the 2021 Code applies to services outwith the core services, and, as the land management services are the core services this part of the Code does not apply. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code

### **Section 3 Financial Obligations**

*The overriding objectives of this section are to ensure property factors: protect homeowners' funds; provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor; make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.*

79. As set out at OSP 3 above, the Tribunal accepted the Property Factor's position that the common charges invoices are clear and provide detail and noted that the late Homeowner and her representatives did not raise any issues with the Property Factor prior to the tribunal process. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

### **Section 4 Debt Recovery**

*4.2 It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners*

80. The Tribunal, having found in fact that the Property Factor's debt procedures complied with the 2021 Code, determined that the Property Factor did not fail to comply with this part of the 2021 Code.

*4.3 Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.*

81. As set out at paragraph 4.3 of the 2012 Code, the Tribunal's view is that the charges set by the Property Factor are proportionate and reflects the work involved in pursuing the debt regardless of the amount of the debt.

Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

*4.4 A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.*

82. The Tribunal, having found in fact that the Property Factor's debt procedures complied with the 2021 Code, determined that the Property Factor did not fail to comply with this part of the 2021 Code.

*4.11 A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).*

83. The Tribunal accepted the Property Factor's position that that there had been no contact from the Homeowner and so the Property Factor was not aware that a matter required to be resolved. The Tribunal, having found in fact that the Property Factor's debt procedures complied with the 2021 Code, determined that the Property Factor did not fail to comply with this part of the 2021 Code.

## **Section 6 Carrying out repairs and maintenance**

*6.7 It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical*

*maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.*

84. As set out at paragraph 6.9 of the 2012 Code, position that the contractor has been carrying out work as instructed and that, as there has been no instructions from the collective homeowners to undertake additional work or improvements to the lawns, there was no reason for the Property Factor to pursue the contractors. Accordingly, the Tribunal determined that the Property Factor did not fail to comply with this part of the 2021 Code.

### **Property Factor Duties**

85. The Property Factor Duties complaint focused on the way in which the Property Factor conducted itself in respect of both the 2012 Code and the 2021 Code.

The Tribunal acknowledged that the late Homeowner had been dissatisfied with the Property Factor's quality of service and with standard of the lawn maintenance. However, the Tribunal noted that no steps were taken by her or by her family and representatives, including the co-owner, to convey this dissatisfaction to the Property Factor, nor were any steps taken to convey to the Property Factor that the late Homeowner was frail or vulnerable to any extent. The Property Factor had neither reason nor cause to be aware that there might be service delivery issues to be addressed.

With regard to the debt recovery action taken by the Property Factor, again there was no communication from the late Homeowner or her family and representatives, including the co-owner, to explain why the late Homeowner decided to pay a reduced quarterly charge and decided not to make payment of some of the common charges. Again, the Property Factor had neither reason nor cause to be aware that there was an issue to be addressed.

The Tribunal noted that, when eventually corresponding with the Property Factor, and, in the early stages of the tribunal process, the late Homeowner's representatives communicated in her name and did not disclose that they were writing on her behalf. This approach belied the fact that the late

Homeowner lacked an element of capacity and so did not assist in alerting the Property Factor to a potential vulnerability issue.

With regard to the matter concerning the mortgage lender, as set out at OSP 2 above, the Tribunal accepted the Property Factor's position that the matter with the bank arrestment and the mortgage lender occurred due to circumstances outwith the Property Factor's immediate control. The Property Factor took prompt action when alerted to the error, traced the funds and offered compensation. The Tribunal's view is that this was an appropriate response to the incident.

For these reasons, the Tribunal determined that there had been no failure to comply with the Property Factor Duties.

86. Although the Tribunal determined no failure to comply with the Property Factor Duties, the Tribunal observes that the Property Factor, when next reviewing their Debt Recovery Procedure, might include specific reference to the full range of diligence open to them. Further, when instructing legal agents who in turn instruct Sheriff Officers, the Property Factor might review their standard operating procedures to include requiring the agents to report back with full details of successful diligence.

### **Unanimous Decision**

87. This decision is 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.**

Karen Moore

**Chairperson of the Tribunal**

**24 April 2026**