Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 ("the 2011 Act")

Chamber Ref: FTS/HPC/PF/24/5739

2C Siwalik Hill, Forres, Moray, IV36 2PH ("the Property")

Parties:

Mr Derek Hallas ("the Applicant/Homeowner")

Screenautumn Ltd (now Aigen Capital Ltd) ("the Respondent/Property Factor")

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with paragraphs 20 and 21 of Section 1(G), 2.4 and 7.6 of the Property Factor Code of Conduct 2021 ("the Code") and compliance with the Property Factor Duties, but decided not to make a Property Factor Enforcement Order.

Background

1. By application received on 16 December 2024, the Applicant (the Homeowner) applied to the Tribunal for a determination on whether the Respondent (the Property Factor) had failed to comply with several paragraphs of the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors ("the Code") in terms of section 14(5) of the 2011 Act. The paragraphs of the Code specified in the application were 1.5(2) under Section 1 (Written Statement of Services); 16,19,20 and 21 under Section 2 (Communication and Consultation); and all paragraphs under Section 7 (Complaints resolution). The Applicant also alleged a failure by the Respondent in carrying out their Property Factor Duties. Supporting documentation was lodged with the application, including:-

- a copy of the Development Management Scheme ("DMS") by Springfield Properties Ltd (the Developer) relating to the development 'Phase 4, Knockomie Braes, Forres' which formed part of the Applicant's title deeds;
- a copy of a letter to the Applicant from Taylor Martin Ltd (the new property factor) dated 17 October 2024; and
- a copy letter from the Applicant to Aigen Capital Limited (formerly Screenautumn Ltd) dated 14 November 2024.

2. The background to the complaint was that the Applicant alleged that the Respondent had failed to inform or consult with the homeowners in the development prior to the changeover in property factor around 2 July 2024 from the Respondent to Taylor Martin Ltd ("TM") following the acquisition by TM of the Respondent's property factoring business. The Applicant regards TM as being an 'unappointed property factor'. The Applicant alleged that this was contrary to the terms of the DMS and that various other breaches of the Code arose from this. He tried several times to obtain information and clarification regarding this from the Respondent but they simply referred him on to TM, as per the letter to him dated 17 October 2024 which he has lodged. The Applicant stated that he had followed this up with his letter of 14 November 2024 to the Respondent (by which time they had changed their name to "Aegen Capital Ltd" but had retained the same company number). The Applicant had lodged this letter with his application as his 'prior notification' of his intended complaint to the Tribunal if the matter was not resolved. In it he laid out the basis of his complaint and the information/response required in order to resolve his complaint, including the issuing of the past four years' of accounts which he stated had not been issued, the final accounts prior to the transfer to TM, information regarding outstanding balances owed, evidence of the transfer of the homeowner 'floats' to TM and confirmation as to why no consent had been sought for the transfer of personal data by the Respondent to TM and to the appointment of TM. The Applicant referred in this letter to the Code several times and to there having been 11 breaches of the Code by the Respondent, although he did not state the specific paragraphs of the Code. He had given a time limit for response, failing which he intended to apply to the Tribunal. The Applicant had not received any response and had proceeded to lodge his application with the Tribunal on 16 December 2024. The Applicant stated in his application that the Respondent was still on the Property Factor Register. He stated that these matters were causing considerable concern to himself and a number of the other homeowners who had been affected.

3. On 27 January 2025, a Legal Member on behalf of the Chamber President considered and accepted the application and referred it to a Tribunal for a Case Management Discussion ("CMD"). Both parties were subsequently notified of the details of same.

4. On 24 April 2025, written representations were received on behalf of the Respondent (now Aegen Capital Ltd) from Miss Grant, Legal Counsel for Springfield Properties Ltd, explaining the background of the transfer of the Respondent's property factoring business to TM on 2 July 2024,

Screenautumn's change of company name and raising some preliminary issues regarding the application. It was stated that it appeared from the application that the Applicant was seeking a remedy on behalf of a number of homeowners and that the Tribunal does not therefore have jurisdiction. It was also stated that the Applicant had failed to properly notify the Respondent, as an individual homeowner, in terms of Section 17(3) of the 2011 Act, of the specific breaches of the Code he was alleging. It was also stated that the subsequent application was lacking in specification as it did specify the alleged code breaches in sufficient detail and also listed some paragraphs of the Code which do not exist. The Respondent requested that the application be dismissed on this basis. However, if it was not dismissed, the Respondent asked for further specification from the Applicant in order that they had an opportunity to respond in full. The Respondent lodged a copy of an undated template-type letter which was signed by Miss Grant on behalf of Screenautumn/Aegen which they stated had been issued to the homeowners regarding the transfer.

5. On 13 and 14 May 2025, the Applicant lodged further representations in response to the Respondent's representations dated 24 April 2025. He stated that he did not receive the template letter attached to the Respondent's representations and requested proof as to how and when this was sent. He also raised a number of other issues regarding the Respondent's representations.

6. The Applicant in this application was also involved in a separate homeowner's application against TM, in which the Applicant was acting as that homeowner's representative. That application had involved additional procedure in the early stages of the application and was not accepted until 26 March 2025. The Tribunal had understood both applications to essentially involve the same Property Factor, given that TM had acquired the business of Screenautumn. Accordingly, the decision was made to conjoin the two applications and the other application was initially scheduled to call for CMD together with this application. Representations were subsequently received from the Respondents in both applications, essentially objecting to this, and explaining that different parties were involved in each and the applications also related to different developments. Representations were also received from the Applicant. The Tribunal considered the matter and determined that, although there may some overlap in the subject matter in respect of both applications, given the other factors, it was not appropriate for the applications to remain conjoined nor to call together for CMD. The other application was accordingly postponed to take place at a later date. The Applicant complained about this and the further delays in the Tribunal process, to which the Tribunal had responded. There were a number of further communications received during May and June 2025 in advance of the CMD, mostly from the Applicant, but these concerned the administrative matters narrated in this paragraph, rather than the substantive subject-matter of the application.

Case Management Discussion

7. The CMD took place by telephone conference call on 17 June 2025, commencing at 2pm. The Applicant, Mr Hallas was in attendance as was Miss Grant on behalf of the Respondent.

8. Following introductions and introductory remarks by the Legal Member, the procedural background and the conjoining and then un-conjoining of this application and the other application mentioned above, was explained. The purpose of the CMD was also explained. Reference was made to the application and supporting documentation lodged by the Applicant and the Respondent's representations and supporting documentation. There followed a very detailed discussion concerning the various issues involved and both Mr Hallas and Miss Grant were asked a number of questions by the Tribunal Members.

9. Miss Grant clarified her role in these proceedings. She stated that she was employed by Springfield but that, due to an historical link with the Respondent, she was representing them today. Springfield have nothing to do with this application and she reiterated what was stated in their written representations, that Screenautumn has not operated as a property factor since July 2024, their property factoring business having been acquired by TM. Screenautumn changed their company name to Aegen but Aegen is not involved in property factoring. She stated that there is, however, no money in the company and it is essentially now a 'shell' company. She stated that Aegen does not have the same Directors as Screenautumn, although this was contested by Mr Hallas. Miss Grant clarified that the particular Director had resigned. Miss Grant stated that the transfer of Screenautumn's property factoring business to TM had been a commercial deal and that once the business was transferred, everything to do with this development was handled by TM. She confirmed that three Screenautumn staff members were TUPE'd over to TM but that this did not include Mr Josh Alexander, although Mr Hallas stated that Mr Alexander continued to deal with matters following the transfer to TM including holding an online meeting with homeowners at which Mr Hallas took the minutes. He could not recall the date the meeting took place but estimated it was within a few months of the transfer. It was noted by the Tribunal that Miss Grant's undated letter which she stated had been sent to all the homeowners stated that a Mr Stephen Martin would hold a meeting with homeowners following the transfer.

10. Mr Hallas reiterated the basis of his application against the Respondent. In response to Miss Grant's comments about the Respondent now being a shell company and no longer involved in factoring the development, Mr Hallas stated that the company was still in existence, albeit with a different company name, and this application is to do with failings of the Respondent, not TM. He is seeking clarity about what happened in connection with the transfer of the business, given the impacts for homeowners, including himself. His questions were not answered by the Respondent and nor by TM after the transfer had taken place. He maintained that he wishes the requested information produced and clarity/explanations as to what took place with the accounts/finances, etc,

as well as the appointment of TM without permission of the homeowners contrary to the terms of the DMS, the transfer of data to TM and the lack of clear communication with the homeowners prior to, and after, the transfer.

11. Miss Grant was asked a number of questions regarding the transfer but did not consider that she was in a position to answer these, until Mr Hallas's claim had been better specified. When pushed as to the Respondent's general position regarding Mr Hallas's claim, she maintained that the Respondent had complied with the DMS, the letter to homeowners had been issued concerning the transfer to TM and a meeting with homeowners was subsequently held. Although her signature was on the template letter provided and the letter was said to be on behalf of the Respondent, Miss Grant stated that the administrative matters around issuing the letter to the homeowners had been handled by TM. This would suggest that the letter was therefore issued after the transfer to TM but further clarification on the issue from Miss Grant was not forthcoming.

12. There was discussion regarding the preliminary points raised in the Respondent's written representations which Miss Grant reiterated. Mr Hallas clarified that, although he was the chairperson of the homeowners' association and has been discussing and consulting with other concerned homeowners regarding these matters, this application is his own individual application. The remedy he seeks is the same as for other homeowners who are in the same position. He confirmed that he was representing one other homeowner in the separate application against TM. He is unaware whether any other individual homeowners are taking action. The Legal Member indicated that she did not follow Miss Grant's 'jurisdiction' point in her representations, given that Mr Hallas is a homeowner in the relevant development and has made this application to the Tribunal in his own name. It was also considered by the Tribunal that it is quite clear from Mr Hallas's letter of 14 November 2024 what his complaints are as regards the Respondent's actions and that they merited a proper response. If there had been a breach of the DMS, that would fall under the category of a breach of property factor duties, which was included in the application. Similarly, if there had been a breach of the Respondent's Written Statement of Services, although it was noted that this had not yet been lodged by either party and would accordingly be required.

13. However, the Tribunal was of the same view as the Respondent in that there was an insufficient link specified in the application between the alleged failings of the Respondent and the particular paragraphs of the Code included in the application, as well as confusion regarding some of the parts of the Code stated by Mr Hallas in his application which do not appear to tie-up with the numbered paragraphs in the Code (in particular the application states paragraphs 16, 19 20 and 21 of Section 2 of the Code and "all" paragraphs of Section 7). Mr Hallas was asked about this but was not able to offer further clarification.

14. The Tribunal Members were in agreement that the application would require to be adjourned for further specification of the application by Mr Hallas, to be followed by further response from the Respondent, including whether they were

still maintaining their preliminary points regarding lack of specification in the prior notification and the application itself. There was discussion regarding the mechanics and timescale for this and parties' forthcoming holiday dates were noted. It was explained that once the issues in this application had been better focused and the Respondent's more detailed position known, the Tribunal would determine further appropriate procedure. It was confirmed that a formal Direction would be issued with timescales for compliance by both parties, following the CMD. Parties were thanked for their attendance and the CMD concluded.

15. Following the CMD, the application was adjourned for further submissions and documentation to be lodged by parties. Further procedure would thereafter be decided. The Tribunal issued a CMD Note detailing the discussions which had taken place, together with a Direction to parties, both dated 17 June 2025 and issued to parties on 25 June 2025.

Direction 1

16. The Direction directed the parties as follows:-

"1. The Applicant is required:-

(a) To clarify the Property Factor Code paragraph numbers stated in part 7A of the application form C2, particularly those in Section 2 under the heading 'Communication and Consultation' and to ensure that these paragraph numbers correspond with Code paragraphs; and to confirm if all paragraphs of Section 7 of the Code 'Complaints Resolution' (7.1 -7.6) are intended to be included; and

(b) To lodge written submissions in response to the Respondent's representations dated 24 April 2025 with regard to the 'preliminary issues' raised by the Respondent regarding (i) the sufficiency of his 'prior notification' to the Property Factor required in terms of Section 17(3) of the Property Factors (Scotland) Act 2011 and (ii) the lack of specification in his application as to how he alleges the Respondent's actions/failings were in breach of Property Factor duties or the particular paragraphs of the Code; to include reference to any relevant legislation, caselaw or other legal authorities.

The above documentation should be lodged with the Chamber no later than 14 days from the date of issue of this Direction to the parties (not the date of the Direction/CMD).

2. The Respondent is required:-

(a) To lodge their Written Statement of Services which was in place when they were factoring this development;

(b) To lodge their Written Complaints Process which was in place when they were factoring this development;

(c) To lodge their written submissions in response to the written submissions lodged by the Applicant in respect of paragraph 1 above; to include reference to any relevant legislation, caselaw or other legal authorities; and

(d) To lodge any further written representations/supporting documentation/clarification in support of their position in respect of this application.

The above documentation should be lodged with the Chamber no later than 31 July 2025."

Further Procedure

17. Following the CMD but prior to the CMD Note and Direction being issued to parties, the Applicant lodged written representations on 18 June 2025, clarifying the Code sections he claimed had been breached. These were:-
    - paragraphs 1.5(2) under Section 1 (Written Statement of Services – Authority to Act);
    - paragraphs 20 and 21 under Section 1 (Written Statement of Services – How to end an arrangement)
    - paragraph 2.4 under Section 2 (Communication and Consultation); and
    - paragraph 7.6 (Complaints resolution)

    The Applicant also sought to bring in some addition Code sections which had not formed part of his original application, namely paragraph 1.5(1) and 2.10, together with alleged breaches of some of the Overarching Standards of Practice.

18. On 8 July 2025, the Applicant emailed the Tribunal pressing for progress and noting that the Respondent had not responded in terms of the Direction. On 11 July 2025, the Applicant lodged further written representations in response to the Direction and discussions which had taken place at the CMD.

19. On 30 July 2025, the Respondent's representative emailed the Tribunal requesting a two week extension to lodge their written representations, due to annual leave and to give them further time to consider the Applicant's further recent representations.

20. On 3 August 2025, the Applicant emailed the Tribunal seeking progress and again on 5 August 2025 complaining about the Respondent's request for an extension.

21. The Tribunal considered and granted the Respondent's extension request and advised parties of this on 6 August 2026. The Applicant responded to this, complaining about the further delay and pressing for progress.

22. On 14 August 2025, the Respondent's representative lodged their response to the Direction, including their further written representations to the effect that they wished to raise a preliminary issue regarding the competency of this

application, on the basis that they argued that the Applicant did not meet the definition of a "homeowner" within Section 10(5) of the 2011 Act. In support, they lodged a copy of the Applicant's title deeds and made reference to them. They argued that the Tribunal did not therefore have jurisdiction to consider this application and requested that it be dismissed. It was further explained that, although they had originally stated that the Applicant would have received a copy of their "Screenautumn Client Notification" letter, this was not the case and he was not regarded as having been a customer of the Respondent. They also attached a copy of documentation from Companies House confirming that a Mr Adam was the sole Director of the Respondent company, as from 21 October 2024, and that Mrs Adam was no longer a Director from that same date, contrary to the Applicant's assertions at the CMD.

23. On 22 August 2025, the Applicant submitted further written representations in response to the Respondent's representations. On 1 September 2025, he emailed again, pushing for progress.

24. On 9 September 2025, the Tribunal emailed parties, referring to the competency point raised by the Respondent and seeking further clarification of their position as to why the Applicant had been advised that the Respondent was his Property Factor and why he had been required to pay a factoring float to them when he purchased the Property. On 10 September 2025, the Tribunal followed this up with a further formal Direction to both parties, in the undernoted terms.

Direction 2

25. *"1. The Respondent is required to lodge further written representations and supporting documentation further clarifying their stated position:-*

    (a) that they did not provide any property factoring services to the Applicant at any time;

    (b) that they were not the appointed property factor in respect of the area shown coloured blue (which includes the Applicant's property) on Map 1 to the title deeds at any time; and

    (c) that they did not issue any invoices to the Applicant in respect of common charges or management fees at any time or request/receive a factoring 'float' from the Applicant at any time or otherwise correspond with him in respect of factoring arrangements in respect of his Property at any time.

    2. The Applicant is required to lodge any documentation supporting his position that the Respondent did provide him with property factoring services, such as any correspondence issued by, or on behalf of, the Respondent to the Applicant/his purchasing solicitor confirming this and/or any invoices/requests for payment in respect of common charges, management fees or a factoring 'float' from the Applicant at any time prior to 2 July 2024.

    The above documentation should be lodged with the Chamber no later than 22 September 2025."

Further Procedure

26. On 10 September 2025, the Applicant responded to the Direction with further written representations.

27. On 22 September 2025, the Respondent's representative responded to the Direction with further written representations and attached an email from the new Property Factors (TM) of the same date, confirming that no homeowners within Phase 4 of the Development (including Mr Hallas) were ever invoiced by the Respondent for factoring services. The Respondent further explained the position with regard to the 'factoring float' paid by the Applicant.

28. On 23 September, the Applicant emailed the Tribunal pressing for progress. On 24 September 2025, the Applicant emailed the Tribunal with further representations in response to those of the Respondent and again pressed for progress. He also submitted proof of his factoring float being transferred from the Respondent to TM.

29. On 8 October 2025, the Applicant further emailed the Tribunal requesting progress. The Tribunal Administration responded to confirm that they were seeking to ascertain a date for a further hearing to take place as soon as possible.

30. On 24 October 2025, the Applicant lodged a document stated to be regarding the Scottish law on an Asset Purchase Agreement between Factors.

31. On 29 October 2025, the Tribunal issued a further Direction to the Respondent in the undernoted terms, together with an explanation for same and an update on the current procedural position with regard to the scheduling of a further hearing.

Direction 3

32. ***"****The Respondent is required to lodge:-*

    (a) Their Written Statement of Services which was in place when the Applicant purchased his property on 18 November 2022;

    (b) Their Written Complaints Process which was in place when the Applicant purchased his property on 18 November 2022; and

    (c) Written confirmation from the Developer as to who was maintaining any common parts/landscaped areas of Phase 4 of the development at Knockomie Braes between 18 November 2022 and 24 July 2024.

    The above documentation should be lodged with the Chamber no later than 7 November 2025."

Further Procedure

33. On 5 November 2025, the Applicant lodged a copy of his title deeds.

34. On 9 November 2025, the Applicant emailed the Tribunal and requested confirmation as to whether the Respondent had replied to the Direction by 7 November 2025, failing which he would wish the Tribunal to make a decision as soon as possible.

35. On 13 November 2025, the Applicant lodged further written representations with the Tribunal, attaching information with which he was issued with at the time of his purchase regarding the Respondent Property Factor and the payment due from him in respect of the factoring float.

36. On 19 November 2025, the Tribunal emailed the Applicant to advise that no response had been received from the Respondent to the Tribunal's third Direction but that this was not delaying the case, which was already with the Scheduling Team for a hearing to be fixed.

37. On 19 November 2025, the Applicant emailed the Tribunal pressing for a conclusion to matters by the end of November 2025.

38. On 21 November 2025, the Respondent's representative emailed the Tribunal, apologising for their late response and requesting clarification of the Tribunal's requirements in terms of the Direction.

39. The Tribunal responded by email dated 26 November 2025, clarifying what was required and seeking a response within 7 days.

40. On 26 November 2025, the Applicant emailed the Tribunal complaining about the Respondent's delays in the matter and seeking progress.

41. On 27 November 2025, the Tribunal responded to the Applicant, explaining the current position, the requirement for the Tribunal to comply with their Procedure Rules and to decide disputes issues at a hearing and recommending that the Applicant seeks legal advice in respect of his application and the remedies he is seeking, given the circumstances of the Respondent Property Factor.

42. On 28 November 2025, the Applicant responded, requesting legal advice from the Tribunal. On 2 December 2025, the Tribunal responded to explain that it could not provide legal advice to a party, being an impartial judicial body. The Applicant further responded on the same date to clarify that he was not seeking legal advice.

43. On 28 November 2025, the Respondent's representative lodged written representations in response to the Direction, including a copy of their Written Statement of Services which were stated only to relate to the previous phases

of the Development which were being actively factored by the Respondent at the relevant time.

44. On 2 December 2025, parties were notified of the details of the Evidential Hearing scheduled to take place on 2 March 2026 at 10am by telephone conference call.

45. On 2 December 2025, the Respondent's representative emailed the tribunal with an email from an employee of the Respondent (and now an employee of TM) explaining that the Written Statement of services produced would not have been issued to residents in Phase 4 of the Development.

46. On 3 December 2025, the Applicant responded with further written submissions, stating that he was attaching proof of the written statement of services and estimated costs of same with which he was issued. Attached was a document titled "Factoring Information" issued by the Respondent to residents of Phase 4.

47. On 17 December 2025, the Applicant had emailed the Tribunal with an expedition request to bring the date of the Evidential Hearing forward. This was considered on behalf of the President's Office by a different Legal Member of the Tribunal and was refused by email dated 31 December 2025, with an explanation being given. The Applicant responded on the same date asking for this decision to be reconsidered. The Applicant's request was again refused by email dated 16 December 2025.

48. On 18 December 2025, the Tribunal emailed the Respondent requesting a response to part (c) of its Direction dated 22 October 2025, by 31 December 2025.

49. On 19 December 2025, the Applicant submitted further representations, attaching a letter issued to another homeowner in the Development stated to detail an acquisition between the developer and TM, rather than a factor-to-factor transfer from the Respondent to TM.

50. On 8 January 2026, the Applicant emailed the Tribunal with further written representations.

51. On 28 January 2026, the Respondent's representative emailed the Tribunal advising that the Respondent company is in the process of being struck off.

52. On 28 January 2026, the Applicant responded and pressed for progress.

53. On 11 February 2026, the Tribunal emailed parties requesting an update from the Respondent's representative regarding the 'striking off' prior to the Evidential Hearing, explaining the requirement for the Evidential Hearing to the Applicant and requesting that any further documentation and details of

proposed witnesses be intimated to the Tribunal at least 14 days prior to the hearing.

54. No further communications were received from either party prior to the Evidential Hearing.

Evidential Hearing

55. The Evidential Hearing took place by telephone conference call on 2 March 2026, commencing at 10am. The Applicant, Mr Derek Hallas was in attendance at 10am but there was no-one in attendance on behalf of the Respondent. The Clerk contacted the Respondent's representative by telephone and Ms Erin Grant then joined the call. She apologised for joining late and explained that she had thought the hearing was the following day.

56. Following introductions and introductory remarks, it was ascertained that neither party had any witnesses.

57. Miss Grant referred to the 'striking-off' process which was currently underway in respect of the Respondent company, Aigen Capital Limited. She stated that the process was due to be completed in mid-March 2026, although, as she had stated previously, the company had ceased trading in 2024 and there was no money in the company. She had nothing further that she wished to add in respect of the application. The Respondent was providing no further evidence or submissions on the matter.

58. The Legal Member stated that from her reading of the information from Companies House, the Voluntary Strike Off would occur not less than two months from the date of the relevant notice (27 January 2026), namely after 27 March 2026. Mr Hallas was asked for his views on this matter, given that there was potentially not going to be a Respondent against whom any order could be enforced in respect of this application, even if he were to be successful. He stated that there was still a live issue, concerning the transfer from the Respondent to the new Property Factor, Taylor & Martin (TM) and that there was no guarantee at the present time that the Respondent was no longer going to be a limited company. Mr Hallas stated that he had lodged an objection in respect of the 'striking off' process and that this may prevent the process automatically going through. He therefore wished to continue with his application to the Tribunal.

59. The Legal Member referred to the detailed discussions which had taken place at the CMD in respect of this matter and the extensive written representations and submissions, together with supporting documentary evidence which had been lodged by both parties. In the circumstances, the Tribunal accordingly proposed to hear from Mr Hallas in brief regarding his application and to ask him any questions or seek any clarifications necessary. The Tribunal will then

conclude the Evidential Hearing and thereafter adjourn to consider the matter and reach its decision.

60. Reference was made to the new competency point raised by the Respondent after the CMD, that the Applicant cannot make such an application to the Tribunal as he is not a "homeowner" in terms of the 2011 Act. The definition of "homeowner" contained in Section 10(5) of the Act referred to by the Respondent is *"(a) an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor".* The Respondent's argument was that, although the Respondent was managing other phases of the Development at Knockomie Braes, Moray as property factor, they were not managing Phase 4, in which the Applicant's home was situated, at the relevant time (October 2024), because Phase 4 was not completed until February 2025.

61. Mr Hallas agreed that Phase 4 was not completed until February 2025 and that he had not received any factoring bills from the Respondent as such, but had been told when he purchased his property in November 2022 that they were his property factors. He had required to pay a factoring float to them at that time and had been issued with 'factoring information' documentation. Mr Hallas regarded the Respondent as his property factor throughout the period from November 2022 and spoke of his annoyance and concern when he discovered that the Respondent had transferred their property factoring business to TM, without any prior notification or consultation with the homeowners. He alleged that this transfer was not done in terms of the procedures in the title deeds or in accordance with the Code. The Respondent did not provide any information to homeowners and simply referred him on to TM when the Applicant made enquiries about what had happened. He has found this whole process very frustrating as it has been ongoing since October 2024. This was the reason for him making his application to the Tribunal in December 2024. Mr Hallas stated that he does not accept that TM have been properly appointed as property factor for the development. They have started issuing factoring invoices since August 2025 which he has not paid in the circumstances. Mr Hallas confirmed that there had been no formal Residents Association in place, either for Phase 4 or in respect of the earlier phases of the Development. He and other homeowners who were confused about what was happening had had discussions together. Mr Hallas had been told by his own conveyancer that it would be a good idea to set up a Residents Association so they decided to do so. He confirmed that he had written to the Respondent in October 2024, describing himself as "acting chairperson". However, at meetings with TM they tried to discredit what Mr Hallas and some of the other homeowners were trying to do and said that they had not set up the Residents Association legally. Mr Hallas stated that TM were trying to arrange an AGM to get themselves properly appointed as property factor. Mr Hallas and the other homeowners had hoped to appoint a new property altogether. The AGM eventually took place took place at the end of 2025.

62. Apart from wishing to be consulted and having the opportunity to choose a different property factor, Mr Hallas explained his main concerns were regarding

the factoring floats and his personal data being shared without his consent or knowledge. He stated that noone knew what had happened to the floats, which totalled £47,500 across the whole Development. It took months to find out that the floats had been transferred to TM. Mr Hallas's personal data was transferred without his permission to TM, with whom he had no relationship. Mr Hallas has been in contact with the ICO and the Scottish Government regarding this as he considers the Respondent to have committed a Data Protection breach.

63. Ms Grant was asked if she wished to say anything in response to anything Mr Hallas had said but she declined. Parties were thereafter thanked for their written representations throughout and attendance at the Evidential Hearing. They were informed that the Tribunal would now deliberate and that they would be issued with a written decision in due course. The hearing concluded.

64. The Tribunal subsequently deliberated and reached their decision.

65. On 25 March 2026, an email was sent to parties advising that the Legal member had unexpectedly required to take time off and that this would delay the issuing of the decision paperwork, for which she apologised.

66. On 5 May 2026, the Respondent's representative emailed the Tribunal advising that the Respondent company had now been dissolved. Attached was the Final Gazette Notice confirming the strike off date of the company as 7 April 2026 and the dissolution date 14 April 2026. This had no bearing on the decision which had already been reached by the Tribunal.

Findings-in-fact

1. The Applicant (Homeowner) is the joint proprietor of 2C Siwalik Hill, Forres, Moray, IV36 2PH ("the Property").

2. The Applicant purchased the Property on 18 November 2022 and his title is registered in the Land Register under title number MOR 22133 on 25 November 2022.

3. The Property is situated within Phase 4 of the Development known as Knockomie Braes, Moray.

4. The Developer of the Development was Springfield Properties PLC.

5. Phase 4 of the Development was completed in February 2025, Phases 1, 2 and 3 of the Development having been completed earlier.

6. The Respondent (Property Factor) was the property factor in respect of Phases 1,2 and 3 of the Development.

7. The Respondent was the appointed property factor in respect of the Property, in terms of the Applicant's title deeds, when the Applicant purchased the Property.

8. The Respondent was the appointed property factor ("Manager") of Phase 4 of the Development in terms of a Development Management Schedule ("DMS") registered by Springfield Properties PLC on 14 October 2022, being Burden Writ 7 of the Applicant's title MOR 22133.

9. The Respondent was appointed in terms of the DMS above to act as property factor until the first AGM to be held after the expiry of a period of five years from the date of registration of the DMS (14 October 2022).

10. In terms of the DMS, the Manager is stated to be an agent of the "Association" (Owner's Association).

11. In terms of the DMS, the Association may replace the Manager at the first AGM to be held after the expiry of a period of five years from the date of registration of the DMS (14 October 2022) or where the Manager's period of office expires or a vacancy occurs, at any subsequent General Meeting.

12. There was nothing in the DMS stating that the Manager could unilaterally assign or transfer their office and duties under the DMS to another property factor, nor that the Developer could, at their option, simply nominate a different property factor.

13. On purchase of the Property, the Applicant was issued with a copy of the DMS and a document produced by the Respondent (Screenautumn Ltd) entitled "Knockomie Braes (Phase 4), Forres Houses Factoring Information".

14. On purchase of the Property, the Applicant required to pay a factoring float of £150 as part of the purchase price payable to Springfield Properties PLC.

15. The Respondent had a Property Factor Registration numbered PF000144.

16. The Applicant was not issued with any invoices in respect of property factoring charges by the Respondent.

17. On 2 July 2024, the Respondent transferred their property factoring business to another property factor, Taylor & Martin.

18. The nature and terms of the transfer of the property factoring business between the Respondent and Taylor & Martin is unknown to the Tribunal as the relevant agreement has not been produced by the Respondent to the Applicant or to the Tribunal.

19. On 24 July 2024, the Respondent changed their company name from Screenautumn Ltd to Aigen Capital Ltd.

20. The Respondent no longer operates as a property factor and their Property Factor registration has lapsed.

21. The Respondent company applied for Voluntary Strike Off, was struck off on 7 April 2026 and was dissolved on 14 April 2026.

22. The Respondent did not notify the Applicant or other homeowners within Phase 4 of the Development, nor seek their prior permission or authority in respect of the transfer of their property factoring business to Taylor & Martin on 2 July 2024.

23. The Respondent did not convene an AGM, General Meeting or other homeowner's meeting in respect of their proposed transfer of their property factoring business prior to the transfer taking place.

24. The Respondent's transfer of their property factoring business was not carried out in accordance with the procedures set out in the DMS/title deeds.

25. The Applicant's factoring float was transferred to Taylor & Martin without his knowledge or consent.

26. The Applicant's personal details were transferred to Taylor & Martin without his knowledge or consent.

27. The Applicant sought clarification from the Respondent as to the transfer of their property factoring business on 17 October 2024 but was directed by the Respondent, by response dated 24 October 2024, to Taylor & Martin.

28. The Applicant formally complained to the Respondent by letter dated 14 November 2024 and sought a direct response by 22 November 2024, failing which he stated that he would refer the matter to the Tribunal.

29. The Applicant did not receive a direct response from the Respondent.

30. The Applicant's application was lodged with the Tribunal on 15 December 2024, alleging a breach of the Respondent's property factor duties and several breaches of the Code by the Respondent.

31. The Respondent opposed the Applicant's application.

32. The Respondent was in breach of their property factor duties and the terms of the Property Factor Code.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and supporting documentation; the further written representations and supporting documentation from the Applicant; the initial and further written representations, together with supporting documentation, from the Respondent; the oral submissions at the CMD by the Applicant and on behalf of the Respondent; and the Applicant's further oral evidence and submissions at the Evidential Hearing.

2. The Tribunal considered that both parties had, for the most part, complied with the Tribunal's Directions, although the Respondent did not produce everything that had been requested and did not always comply with the time limits set by the Tribunal. The Tribunal considered that the Applicant's position had been consistent throughout, whereas the Respondent had changed their position in respect of the application following the CMD. It was conceded by the Respondent that some of the information they had provided prior to, and at the CMD, had been erroneous. The Respondent had also introduced a new competency issue following the CMD.

3. In respect of preliminary issues raised by the Respondent, the Tribunal considered the following sections of the 2011 Act:-

> *17 Application to the First-tier Tribunal]*
> *(1)A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—*
> *(a)to carry out the property factor's duties,*
> *(b)to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty").*
> *(2)An application under subsection (1) must set out the homeowner's reasons for considering that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty.*
>
> *"10(5)In this Act, "homeowner" means—*
> *(a)an owner of land used to any extent for residential purposes the common parts of which are managed by a property factor, or*
> *(b)an owner of residential property adjoining or neighbouring land which is—*
> *(i)managed or maintained by a property factor, and*
> *(ii)available for use by the owner."*
>
> *"2 Meaning of "property factor"*
> *(1)In this Act, "property factor" means—*
> *(a)a person who, in the course of that person's business, manages the common parts of land owned by two or more other persons and used to any extent for residential purposes,…"*

4. The Tribunal considered the terms of Section 10(5) and the Respondent's competency argument raised after the CMD. It was submitted that the Applicant was not a "homeowner" in terms of Section 10(5)(a) in that he was not *"an owner of land ……the common parts of which are managed by a property factor"* and thus could not competently apply to the Tribunal as a *"homeowner"* in terms of Section 17(1) of the 2011 Act. The Respondent accordingly argued that the application against them should be dismissed. This was on the basis that, although the Applicant had purchased his property in November 2022, Phase 4 of the development had not been fully completed until February 2025. They argued that the Respondent had not been managing the common parts or providing property factoring services to the Applicant, prior to the transfer of the Respondent's property factoring business to Taylor & Martin in July 2024. It was conceded by the Applicant that he had not been issued with any property factoring invoices in respect of management fees or common charges by the Respondent. However, he made reference to the terms of his title deeds, the property factoring documentation with which he was issued at the time of his purchase and the fact that he had also required to pay a factoring float to the Respondent at that time.

5. In considering this issue, the Tribunal had regard to the terms of the Applicant's title deeds. The relevant DMS, applicable to Phase 4 of the Development, came into effect on the date it was registered, namely 14 October 2022, prior to the Applicant's purchase of the property. This was also the date the Residents Association in respect of Phase 4 was established and the date the Respondent was appointed as the property factor ("First manager") of Phase 4. In terms of Rule 7.1(a) of the 'Definitions & Interpretations' section of the DMS, the Respondent:-

   "acts as Manager until the first annual General Meeting to be held after the expiry of a period of 5 years from the date of registration of this Development Management Scheme in the Land Register of Scotland;"

   Thus, the Respondent was appointed until the first AGM taking place after 14 October 2027. Although the Residents Association were given the power to replace the first manager, this was only after the 5 year period referred to above. There was nothing in the DMS giving the Developer the option of replacing the manager, either during the initial 5 year period, or indeed beyond that. This power was reserved to the Residents Association. There was provision in the DMS (Rule 16) for a Deed of Variation to the DMS in respect of the appointment, replacement and duties of the manager, but only with the authority of the Residents Association. The Tribunal is unaware of any such Deed of Variation to the DMS. There was also nothing in the DMS delaying the appointment of the Respondent until after the completion of Phase 4. The Tribunal's interpretation of the Applicant's title deeds is accordingly that the Respondent's management of Phase 4 of the Development began when they were appointed as such on 14 October 2022. The Tribunal considers that they were therefore managing the development in terms of Section 10(5) when the Applicant

purchased his property in November 2022 until they transferred their property factoring business to Taylor & Martin in July 2024. The Tribunal considered this position to be reinforced by the documentation issued to the Applicant at the time of his purchase and the requirement for him to pay the Respondent's factoring float at that time. The Tribunal did not consider it relevant that the Respondent had not issued any other invoices for factoring charges to the Applicant during that period as the 2011 Act does not require this, only that they manage *"in the course of [their] business"*. It was not disputed that the Respondent was in business as a property factor and had a Property Factor Registration during the relevant period. The Respondent was given the opportunity to provide caselaw or other authorities in support of their position but did not do so. They relied entirely on their interpretation of section 10(5) of the 2011 Act. The Tribunal determines that the Applicant was a *"homeowner"* in the context of the 2011 Act from the time of his purchase and was therefore entitled to bring this application against the Respondent.

6. There were some other preliminary issues raised by the Respondent which were discussed at the CMD. These preliminary issues are outlined in paragraph 4 under the heading "Background" above and were considered at the CMD. The Tribunal rejected the issue raised concerning the Applicant's status in bringing this application as it considered the Applicant to have clarified his position in this regard at the CMD (paragraph 12 above). However, the Tribunal thought there may be some merit to the other preliminary issues raised regarding lack of specification and clarity in the prior intimation to the Respondent and the application itself. The Tribunal sought representations and clarification from the Applicant in this regard in terms of their Direction issued following the CMD. The Applicant duly responded and the Tribunal considered him to have clarified his position to its satisfaction. The Tribunal considered that the Applicant had been quite clear in his prior correspondence to the Respondent, which he had produced, what his complaints were. He also clarified that the breaches of the Code alleged were paragraphs 1.5(2) under Section 1 (Written Statement of Services – Authority to Act); paragraphs 20 and 21 under Section 1 (Written Statement of Services – How to end an arrangement); paragraph 2.4 under Section 2 (Communication and Consultation); and paragraph 7.6 (Complaints resolution). In terms of the same Direction, the Respondent was given the opportunity to comment further on their preliminary points, in response to the Applicant's response to the Direction. They did not do so. The Tribunal accordingly determined that the above alleged Code breaches should be considered as forming part of the application. However, the Applicant also sought to bring in some addition Code sections which had not formed part of his original application, namely paragraph 1.5(1) and 2.10, together with alleged breaches of some of the Overarching Standards of Practice. The Tribunal declined to consider these additional alleged breaches as part of the application.

7. <u>Breaches of the Code</u>

   The Tribunal considered the Applicant's arguments as to the various breaches of the Code he alleged in his application. The Respondent had chosen not to

lead evidence or make any further submissions at the Evidential Hearing, preferring to rely solely on their competency point in respect of the Applicant's application.

Section 1 (Written Statement of Services – A. Authority to Act)
1.5(2) where the property factor has purchased the assets of another property factor, a clear statement confirming whether the property factor has taken on the outstanding liabilities of the previous property factor, and any other implications of the takeover for homeowners

The Tribunal determined that this paragraph only applies to a new property factor in a transfer situation, not the original property factor. Accordingly, the Tribunal did not find this alleged breach established against the Respondent.

Section 1 (Written Statement of Services – G. How to end an arrangement)
20 clear information that homeowners may (by collective or majority agreement or as set out in their title deeds) terminate or change the service arrangement including signposting to any relevant legislation, for example the Title Conditions (Scotland) Act 2003 and the Tenements (Scotland) Act 2004. This information should include any "cooling off" period or period of notice;

21 a clear statement confirming the property factors procedure for how it will co-operate with another property factor to assist with a smooth transition process in circumstances where another property factor is due to or has taken over the management of property and land owned by homeowners; including the information that the property factor may share with the new, formally appointed, property factor (subject to data protection legislation) and any other implications for homeowners. This could include any requirement for the provision of a letter of authority, or similar, from the majority of homeowners to confirm their instructions on the information they wish to be shared.

G(20) and (21) do not apply to situations where homeowners do not own factored land.

The Tribunal determined that the Respondent had breached these paragraphs of the Code as they had not provided the Applicant with a Written Statement of Services containing the above information.

Section 2 (Communication and Consultation)
2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is good reason not to.

Section 7 (Complaints resolution)
7.6 Complaints that have arisen in connection with issues that arose during the appointment of a previous property factor should be dealt with by that property factor. Any unresolved issues that require to be addressed can be raised with the new, formally appointed property factor if the continuing failure is present

after their appointment. This will be dealt with as a new complaint in accordance with their complaints handling procedure.

The Tribunal determined that the Respondent had breached both of the above paragraphs of the Code as they declined to answer the Applicant's requests for information/documentation regarding the transfer of their property factoring business to the new property factor, instead referring him to the new property factor. They did not point the Applicant to the procedures in his title deeds relating to replacement of the property factor in respect of Phase 4 of the Development, nor to any legislation which they had relied upon in this respect. They did not produce any authority to the Applicant for their sharing of his information with the new property factor, the implications of the transfer or how they would ensure a smooth transition to the new property factor. The Applicant had escalated his enquiries to a formal complaint when they were not answered by the Respondent. In the Tribunal's view, in terms of paragraph 7(6), the issue (the transfer) had arisen during the Respondent's appointment as property factor and the Respondent should therefore have dealt with, and responded to, his complaint, rather than, again, leaving this to the new property factor. For the avoidance of doubt, whilst the Tribunal understood the Applicant's request for sight of the actual business transfer agreement between the two property factors, the Tribunal did not consider that he was entitled to that particular document in terms of the Code.

In summary, the Tribunal accordingly determined that the Respondent had failed to comply with Section 1, paragraphs 20 and 21; Section 2(4); and section 7(6) of the Code.

8. The Tribunal also considered the Applicant's claim that the Respondent had failed to comply with their Property Factor Duties. With reference to its findings-in-fact and paragraph 5 above under the heading "Reasons for Decision", the Tribunal did not consider that the Respondent had complied with the provisions contained in the Applicant's title deeds, which had appointed them as property factor in respect of Phase 4 and which gave them their authority to act. In terms of the title deeds, they had a duty to act as the agent of the Residents Association and to either follow the procedures laid out in the DMS for their replacement as property factor or to ensure that the terms of the DMS were formally varied by Deed of Variation, with the authority of the Association. Instead, the Respondent appeared to have unilaterally, or, in conjunction with the Developer, decided to transfer their property factoring business to the new property factor without any reference to, or prior consultation with, the Applicant and other homeowners in Phase 4. The Tribunal considered that this amounted to a clear breach of the Respondent's Property Factor Duties, which was compounded by the failure to communicate with, or respond to, the concerns raised by the Applicant following the transfer taking place.

9. The Tribunal then considered the terms of Section 19(1) of the 2011 Act which states as follows:-

"19. Determination by the First-tier Tribunal

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

(a) whether the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and

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

The Tribunal considered the representations of the Applicant as to the remedies he was seeking in this application, as outlined in paragraph 2 above under the heading "Background". The Tribunal had explained to the Applicant at the CMD, at several points thereafter during written communications and again, at the Evidential Hearing, that, even if the Tribunal found that the Respondent had breached their duties or parts of the Code, there would be limited options available to the Tribunal in terms of enforcement of any order, given that the Respondent was no longer the Applicant's property factor, or, indeed a property factor at all. The Applicant had not sought compensation or other financial remedies and, in any event, the Respondent company was in the process of being struck-off the Register of Companies at the time of the Evidential Hearing and when this decision was reached [and is now struck-off and dissolved]. The Applicant maintained that he wished to proceed with the application nonetheless, in the hope that the Tribunal would at least make formal findings against the Respondent. The Tribunal required to consider whether the making of a Property Factor Enforcement Order ("PFEO") was appropriate or necessary in order to remedy the breaches it had found established. In the circumstances, the Tribunal decided not to make a PFEO.

5. The Tribunal's 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.

Legal Member/Chair
28 May 2026