



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) Property Factors (Scotland) Act 2011 Section 19(1)(a)**

**Chamber Ref: FTS/HPC/LM/24/2967**

**1 Delamere Drive, Glenboig (“the Property”)**

**Parties:**

**Mrs Mary Ricketts, 1 Delamere Drive, Glenboig (“the Applicant”)**

**Newton Property Management, 87 Port Dundas Road, Glasgow (“the Respondent”)**

**Tribunal Members:**

**Josephine Bonnar (Legal Member)  
Ahsan Khan (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent has failed to carry out its property factor duties to a reasonable standard by failing to keep the Applicant fully informed of development debt and failing to take reasonable steps to manage and recover the debt.**

**Background**

- 1. The Applicant lodged an application in terms of Rule 43 of the Tribunal Procedure Rules 2017 and Section 17 of the 2011 Act. The application comprises documents received by the Tribunal between 28 June and 9 September 2024 and stated that the Respondent failed to comply with Section 1.5 (G) of the 2021 Code of Conduct (“the Code”). The application also stated that the Respondent failed to carry out its property factor duties. Documents were lodged in support of the application including a copy of the Property Factor’s written statement of services (WSS), the Applicant’s title deeds and correspondence.**
- 2. A Legal Member of the Tribunal with delegated powers of the President referred the application to the Tribunal. The parties were notified that a case management discussion (“CMD”) would take place on 15 May 2025 by**

telephone conference call. Prior to the CMD, the Respondent lodged submissions and a bundle of documents.

3. The CMD took place on 15 May 2025. The Applicant participated. The Respondent was represented by Ms Flanigan.
4. The Tribunal noted that the only Code complaint was under Section 1.5(G). Section 1.5 sets out the information which must be included in a WSS. Section G stipulates information which must be provided in relation to termination of the factoring contract. However, the complaint set out in the application did not appear to relate to the content of the WSS, but rather a failure by the Respondent to follow its own procedures in relation to termination. Mrs Ricketts said that she had misunderstood what the section of the Code was about. The Tribunal advised that the application would be considered in relation to property factor duties only.
5. The Tribunal was told that there are 222 properties in the development, all houses. Mrs Ricketts purchased her property from the developer in 2010. She is not aware of any homeowner meetings taking place until October 2022 when a meeting was arranged by a group of residents. She attended the meeting. She heard about it via the Glenboig and Greenfinch Facebook page and word of mouth. At the meeting, she and some of the other residents put their names forward to be part of a steering group. The meeting had been called because many residents were unhappy with the service being provided by the Respondent. A vote was taken and a decision made to terminate the contract. Following the meeting, a letter was issued to the Respondent and to the other homeowners to advise them of the outcome of the meeting. In response to questions from the Tribunal, Mrs Ricketts said that there was only one meeting in October 2022. There was also a meeting in October 2024. She confirmed that she had not been one of the residents who called the first meeting. She had been told that a letter was delivered to every property to advise them about the meeting, but she did not receive the letter and found out from Facebook. Voting forms were also issued. Some people were represented by mandatories at the meeting. The meeting in October 2024 was arranged because the Respondent had continued to refuse to accept the termination. The steering group then arranged a meeting with representatives of the Respondent. The group was given information about the development debt, and she was shocked. They were told that the Respondent would not agree to handover to a different factor until the debt was under £4000. At that point it was over £19000 and 49% of properties had NOPLs registered.
6. Ms Flanigan told the Tribunal that the debt had increased to £18000 and involved 67 owners. There are a number of people who have never paid anything. The highest individual sum owed was £3000. Court proceedings have been taken but Ms Flanigan has no information on the number of cases or the outcomes. As far as she was aware, the current property manager had received no recent complaints about the quality of the service. The Respondent is not prepared to handover the development until the debt is paid. That is the usual arrangement, based on her 25 years of experience.

7. The Tribunal asked Ms Flanigan about the statement in the written response that there are two developments involved with separate deeds of conditions (DOCs). The Respondent had stated that two separate, quorate meetings were required to terminate the contract. The Tribunal noted that the Applicant's title deeds, and one of the redacted title sheets lodged by the Respondent, indicate that some of the properties are subject to both DOCs. Furthermore, the DOCs were granted by the same developer and appear to be in identical terms. Mrs Ricketts said that it is the Respondent who has treated the two phases of the development as separate. This is because it is easier for it to administer. There was a letter issued in 2020 by the Respondent, which stated that the two phases were separate for billing purposes only. This was denied by Ms Flanigan. The Tribunal raised some other issues with the Respondent's submission; -
  - (a) Although there is no provision in the title deeds for a committee or steering group, this is not prohibited by the DOCs so there appears to be no grounds for the Respondent to object to its existence.
  - (b) It appeared that the Residents Association may exist, although no meeting was called, as the DOCs state that each homeowner is a member of the association.
  - (c) The Respondent's response does not comment on whether the meeting in October 2022 had been properly convened
  - (d) There are contradictory statements about whether the meeting was quorate. The response appears to accept that only 20 votes are required to terminate the contract.
  - (e) Although there is provision in the title deeds that all debt must be paid before transfer to a new agent, this appears only to relate to the termination/new appointment after the third anniversary of the last sale.
8. Ms Flanigan said that the response had been drafted based on the information available at the time, and some of the events at issue occurred before she was in post. She said that the requirement that the debt be paid does apply. She also said that she could not comment on whether most homeowners want a different factor and stated that they received phone calls from owners who had been unaware of the October 2022 meeting and were concerned. Ms Flanigan accepted that quorate meetings of both developments would be sufficient to terminate the factoring arrangement. She provided a breakdown of the 21 attendees at the meeting of October 2022 by development phase (11 and 10, respectively) but confirmed that she did not have a breakdown of the total 62 votes cast, including proxy votes. She stated that this information could be made available.
9. The parties were advised that the Tribunal would consider the application at the conclusion of the CMD and would notify them of the next step. It was noted that the following preliminary matters required to be addressed

- (a) Whether the meeting called in October 2022 was properly convened.
- (b) If it was properly convened, whether it was quorate.
- 10.** The Tribunal concluded that the preliminary matters required to be addressed before the Tribunal could consider the complaints made by the Applicant. The Tribunal determined that a direction should be issued for the provision of additional information and evidence on these matters. Once received, the Tribunal would consider the position and determine further procedure.
- 11.** On 31 May 2025, the Applicant lodged further submissions and documents. These included a statement from a homeowner who said that she had hand delivered a letter to all properties in the development inviting them to a meeting. A copy of the letter was provided together with a copy of the letter issued to the Respondent following the meeting which stated that the contract was terminated and provided details of the votes from both proxies and attendees. On 2 June 2025, the Respondent lodged its response to the application.
- 12.** The parties were notified that a video conference hearing would take place on 5 November 2025. Prior to the hearing the Respondent's representative lodged further documents. On the morning of the Hearing, the Respondent's representative contacted the Tribunal by telephone and email to advise that she was unwell and unable to participate. She requested a postponement which was granted. The Tribunal proposed a date later in November 2025, but the Applicant advised that she could not take any further time off work until the New Year. The parties were notified that a video conference hearing would take place on 23 February 2026. A few days before the hearing they were sent the details for joining the video conference. Neither party responded and no further submissions were lodged.
- 13.** The Hearing took place on 23 February 2026. The Applicant participated, accompanied by a supporter. The Respondent's representative did not join the conference call. The Tribunal clerk called the Respondent's office. They said that a member of staff was participating in another case. They appeared to be unaware of the hearing, did not request a postponement or arrange for a member of staff to join the video conference.

## **The Hearing**

- 14.** The Legal Member advised the Applicant that the Respondent's representative had not joined the video conference, had not contacted the Tribunal to say that she could not attend and had not requested a postponement. Mrs Ricketts was also told that the Respondent had been contacted by the clerk and advised that the hearing was due to start. In the circumstances, the Tribunal proposed to proceed with the Hearing in their absence. Mrs Ricketts confirmed that she wished to proceed.
- 15.** The Legal Member discussed the following preliminary matters.

- (a) The Tribunal had considered the evidence lodged about the calling of the meeting in October 2022. The evidence submitted appeared to establish that the meeting had been properly convened. There was no evidence to contradict this claim. Ms Flanigan had said at the CMD that some homeowners had not been aware of the meeting, but she had not submitted any evidence to support the statement.
- (b) In her submissions, the Applicant had raised a new complaint. This related to the appointment of the Respondent as property factor. The Legal Member explained that this could not be considered as it had not been notified and was not part of the application.
- 16.** The Tribunal noted that there do not appear to be any significant factual matters in dispute. The only issues before the Tribunal relate to the interpretation of the DOC in relation to the calling of the meeting, whether the meeting was quorate, whether there should have been two meetings for two separate developments, and whether the homeowners were entitled to terminate the factoring contract when the Respondent is owed a large sum in unpaid common charges and whether the Respondent had failed to manage the development debt. The Legal Member also noted that the Applicant's position is clearly set out in the application and submissions.
- 17.** In response to questions from the Tribunal, Mrs Ricketts said that the numbers handwritten on the letter to the Respondent identify whether the property address is in phase 1 or phase 2 of the development. She said that Greenfinch had been the original developer. They went into liquidation and only built about 12 of the houses. Redrow took over. In relation to the meeting in October 2022, 48 homeowners attended and the rest of the votes were proxy votes. The Ordinary Member noted that the information provided by the Respondent contained different numbers. Mrs Ricketts said that the Respondent had not been invited and was not represented at the meeting.
- 18.** Mrs Ricketts said that the Respondent recently wrote to the homeowners. They said that there had been a site visit, and the site was found to be in good order. She disputed this. There are still a number of outstanding issues from the meeting in October 2024. The homeowners were also told that the current debt is £24,890. However, this was the figure immediately after a quarterly invoice had been issued so took into account sums which had only just been invoiced. They were given a breakdown which included people paying by direct debit. 22 people owe between £300 and £3,000 (75%), 8 owe between £100 and £200, 23 between £50 and £100 and 101 between £1 and £50. 68 have a zero balance. 30 owners account for 80% of the debt. The Respondent did not provide any information about any court action taken. They have also not taken any steps to spread the debt among the other homeowners, although they indicated a while ago that they might do so.
- 19.** In response to further questions from the Tribunal, Mrs Ricketts said that the homeowners had a new Property Factor – Aquila – lined up in 2022. However, time has passed and they are not sure whether this company would still be

willing to take on the contract. Aquila said that they were willing to take on the debt and to manage it.

## **Findings in Fact**

20. The Applicant is the owner of the property. She purchased it from the developer in 2010.
21. Although there were two developers at the start of the development, there is one development with two phases which comprises 222 houses
22. The Respondent is the property factor for the development. The Respondent was appointed by one of the developers in 2006.
23. On 3 October 2022, a group of homeowners called a meeting of all homeowners. They did this by delivering a letter to all the properties in the development. In the letter they provided information about how to appoint a proxy and forms for completion by owners who wished to do this.
24. The residents' meeting took place on 26 October 2022. A steering group was set up, and a vote was taken on whether to terminate the Respondent's appointment. Sixty two homeowners voted in favour of dismissal, one voted against.
25. A letter was issued by the steering Group to the Respondent purporting to terminate its appointment with details of the meeting and the vote.
26. The Respondent rejected the termination of the contract by letter issued to the homeowners in January 2023.
27. The Respondent failed to provide the Applicant with full details of the development debt and the impact that this could have on her prior to 2024.
28. The Respondent has failed to take reasonable steps to pursue development debt. It has registered notices of potential liability but has failed to raise court action to recover the sums due.

## **Reasons for Decision**

29. The sole complaint before the Tribunal is whether the Respondent has failed to carry out its property factor duties by refusing to accept the decision of homeowners to terminate their contract, continuing to factor the development despite that termination, using debt levels as an excuse to prevent the transfer to a new factor, failing to provide full details of the debt and poor management of the debt. The following documents are relevant to the dispute; -

- (a) The Respondent's written statement of services.

- (b) The Deeds of Conditions within the Applicant's title deeds.
  - (c) The Title Conditions (Scotland) Act 2003. (Although the Respondent refers to the Tenements (Scotland) Act this is not applicable as there are no flats in the development)
  - (d) Documents and submissions lodged by the parties.
30. The WSS sets out the Respondent's position in relation to termination of the contract. Section G, paragraph B states that the Respondent can be dismissed if it is done in accordance with the deed of conditions, the Title Conditions (Scotland) Act or the Tenements (Scotland) Act by giving the Respondent at least three months' notice in writing. The clause then refers to the burdens section of the title deeds, stating that this "may set out how to dismiss us. If it doesn't, a majority of homeowners can dismiss (or appoint) a manager in line with relevant legislation.....or in certain situations the Title Conditions (Scotland) Act 2003 part 5 gives homeowners the power to appoint and dismiss managers, as long as two thirds or more of all homeowners in the development vote to do so." Paragraph C states that the Respondent would require written evidence of the decision to see that it has been properly made. If they are satisfied, they will cooperate with the new property factor. The section concludes by stating that they will not share information with the new factor about ownership, as this could break data protection regulations and that they may charge an administration fee for termination of £90 plus VAT. The WSS does not state that the contract can only be terminated upon settlement of all outstanding sums to the Respondent.
31. The Applicant provided a copy of her title sheet. She purchased the property in 2010. Section A states that the property is subject to the DOCs in entries 4 and 5 of the Burdens Section. One of these DOCs was registered on 24 May 2005. The other on 4 June 2007. The first was granted by Redrow Homes (Scotland) Ltd and Greenfinch Homes (Glenboig) Ltd. The second was granted by Redrow Homes (Scotland) Ltd only. The DOCs are in almost identical terms. The relevant provisions are as follows:-
- (a) The DOC by Redrow and Greenfinch. Clause First – definitions. The developers are defined as Redrow and Greenfinch and the development as the Redrow and the Greenfinch subjects. The property manager is the property manager appointed in terms of Clause 14 and the residents association is the residents association to be formed in terms of clause 14.
  - (b) The DOC by Redrow registered 4 June 2007. Clause First – definitions. The developers are defined as Redrow and the development as the subjects. The property manager is the property manager appointed in terms of Clause 14 and the residents association is the residents association to be formed in terms of clause 14.
  - (c) Clause 14 (in both DOCs) states "Within such reasonable time after the completion of the last dwellinghouse within the development, or earlier, if the Developers so require, the Developers shall convene a meeting of proprietors

within the development; such meeting to be held after reasonable written notice for the purposes of forming a residents association which shall adopt a constitution as may be agreed at such meeting and which constitution shall make such rules and regulations as may be necessary or desirable for the maintenance of the development open areas subject always to such rules and regulations not being inconsistent with the provisions of these presents. The decision of the meeting shall be binding on all proprietors of the dwellinghouses in the development. All proprietors of the dwellinghouses shall be members of the residents association. Upon the expiry of the third anniversary of the date of completion of the sale of the last dwellinghouse within the development, the Residents Association shall be obliged to either re-appoint the property manager appointed by the developers or appoint a new party as the property manager....The Property Manager to be appointed by the developers shall be such party as the developers may determine as they in their sole discretion shall decide, the said appointment of the property manager continuing until the third anniversary of the completion of the sale of the last dwellinghouse in the development, DECLARING that should the Residents Association decide in terms hereof to appoint a new party as the property manager then such right shall only be exercisable by the Residents Association provided that full payment of all sums due at that date has been made to the Property Manager appointed by the Developers.”.

- (d) Clause 16 states “The Property Manager or any five proprietors shall be entitled at any time to call a meeting of the Residents Association. At any such meeting and the meeting referred to in clause Fourteenth hereof any proprietor who is entitled to attend may be represented by any other person as mandatory appointed by written mandate to attend, vote and act on behalf of the proprietor giving the mandate. Each proprietor entitled to attend and attending such meeting, or such proprietor mandatory present at such meeting shall be entitled to one vote for each dwellinghouse owned by such proprietor. Each such meeting and the meeting referred to in clause fourteenth hereof shall be held at such reasonably convenient time and place as the convenor of the meeting may determine of which time and place of meeting not less than 7 days’ notice in writing shall be given by or on behalf of the convenor of such meeting to each proprietor entitled to attend same. The quorum of a meeting of the residents association shall be twenty or more proprietors or mandatories aforesaid. It shall be competent at any meeting of the residents association by a majority of those present.... - - to order maintenance and repair, to make regulations and to delegate to the property manager the whole rights and powers exercisable by a majority vote of any meeting of the residents association.
- (e) Clause 21 gives the developers the right to alter or depart from any of the burdens set out in the DOC
- (f) Clause 18 deals with maintenance costs and stipulates that these are to be shared equally and that the Property Manager is entitled to collect these and charge a fee for their services. The clause also stipulates that the unpaid common charges will incur interest from the date of the demand until payment and that the manager can raise court proceedings in their own name to recover the costs, interest and the expenses of the court action. The clause goes on to

state “ provided also that it shall be in the option of the property manager before or after taking any action to call a meeting of the residents association to decide if and to what extent such action should be pursued and always providing further that in the event of failure to recover such proportion and/or the expenses of any action the remaining proprietors shall be bound joint and severally to pay the property manager such proportions together with such expenses.

32. The relevant provisions of the Title Conditions (Scotland) Act are as follows; -

- (a) Section 10A – this provision allows a property factor to register a Notice of Potential Liability (NOPL) against a property where common charges are unpaid. The practical effect of this power is that the property can only be sold upon payment of all outstanding sums and the discharge of the NOPL, or the new owner will become liable.
- (b) Section 28 – a simple majority of homeowners in a community may appoint or dismiss a manager.
- (c) Section 63 - Manager burdens. This allows a developer to appoint a manager and makes provision for the initial appointment to end after a fixed period of time.
- (d) Section 64 makes provision for a majority of homeowners to dismiss a manager and appoint a new one where the manager appointed in term of Section 63 – usually after 5 years.

33. The Applicant submitted various documents including the letter issued to homeowners in 2022 by the group of homeowners who had decided to call a meeting, a statement from one of the owners confirming that the letter was delivered to all properties and the letter issued to the Respondent notifying them of the outcome of the meeting and votes cast.

34. The Respondent lodged various documents and submissions. These state the following; -

- (a) There are two separate developments and two deeds of conditions. As a result, there must be a separate meeting/process for the dismissal of the property factor for each development.
- (b) The steering group set up at the meeting in October 2022 has no standing and was not properly elected. There is no elected committee or constitution.
- (c) Payment of all outstanding common charge invoices is a condition set out in the title deeds before a new factor can be appointed. The Respondent has used all measures available to them to recover the debt. They have followed the procedure in their WSS and, as a last resort, taken court action. They have registered NOPLs.

- (d) Some residents have expressed concern about the transfer to another factor.
- (e) If the Title Conditions (Scotland) Act 2003 applies, then a majority in favour of dismissal is required.
- (f) The last property in the development to be sold was in 2016.
- (g) The first meeting of residents was in October 2022.

35. There is no evidence to support the Respondent's argument that there are two distinct developments and that a separate vote is required for each phase. The Applicant's title deeds contain two DOCs in almost identical terms. The Respondent provided a copy of one letter of appointment. Whatever the circumstances, the development appears to have started as a joint venture by two developers. By the time it finished, there was only one. There may have been two phases but that does not mean that separate processes are required.

36. The Tribunal notes that both parties rely on the terms of the DOCs. However, both seek to promote clauses and provisions which support their arguments, and to dismiss the clauses which do not. The Applicant relies on the provisions which state that 20 homeowners is a quorum. However, she rejects the provision which states that development debt must be paid before a transfer to a new factor. The Respondent's arguments are somewhat contradictory. It relies heavily on the provision which requires the debt to be paid but also argues that there is no residents association because a meeting was not convened and the meeting in October 2022 did not comply with the DOC. However, if the DOCs are to be followed, all the relevant provisions must be applied. The parties cannot pick and choose. There are a number of issues in relation to the enforceability of the title deeds in relation to the issue of termination of the Respondent's appointment; -

- (a) The developer failed to convene a meeting to set up the residents association. Clause 14 required them to do so within a reasonable time following completion of the last house – sometime in 2015 or 2016. The association was not set up and no constitution was agreed. It is arguable that all provisions in the DOCs which directly follow from that stipulation cannot be applied.
- (b) It is also arguable that, even without a meeting, the appointment of a committee or a constitution, the residents association still exists because the clause goes on to state that all proprietors are members. Although the Respondent claims that there must be an elected committee, there is no requirement for this in the DOC. Similarly, there is no prohibition against a steering committee or elections. As all the relevant provisions relate to the residents association and their powers, it appears to follow that this must exist if the DOCs are to apply.
- (c) Clause 14 also stipulates that upon the expiry of the third anniversary of the last sale the residents association must re-appoint the Respondent or appoint a new factor. No meeting took place in 2019 and no vote was taken. The first meeting took place in 2022, and a vote was taken to dismiss and appoint a new factor. Although the Respondent claims this meeting was not quorate, that is

not supported by the DOCs, and the available evidence supports the conclusion that the meeting was properly convened. It is arguable that this meeting is the one referred to in the DOCs, although it took place more than 3 years after the last sale.

- (d) It is also noted that clause 16 (which generally deals with the calling of residents meetings) sets out what it is “competent” for such a meeting to do. This does not include the appointment of and dismissal of the factor. That suggests that the only time that this can be carried out in terms of the DOC is the first time, after the expiry of the three year period after the last sale.
- (e) If the meeting in October 2022 was the one specified in the DOC, and if the vote taken at that meeting was valid, then the Respondent is entitled to rely on the provision which allows them to insist on payment of the outstanding debt. There is no other possible interpretation

37. The Tribunal is therefore satisfied that, if the terms of the DOCs can be applied, the vote held at the October 2022 meeting to dismiss the Respondent was a valid and enforceable decision. However, as the Respondent cannot be dismissed until the debt is cleared, the Respondent is entitled to continue to act as factor. This is an unsatisfactory position for the Applicant and the other homeowners who are not in debt to the Respondent, as it appears that the Respondent is using this provision to prevent a transfer to a new factor, while failing to take all reasonable measures to secure the recovery of the sums owed to them.

38. If the provisions of the DOCs do not apply, because there was no meeting called by the developer and a residents association was never formed, then the Title Conditions (Scotland) Act comes into play to fill the gap. There are two consequences of this for the parties; -

- (a) The vote to dismiss may not be valid as a majority of homeowners did not vote in favour of it
- (b) If the homeowners convene another meeting, and obtain a majority in favour of dismissal, the Respondent cannot insist on payment of the debt before transfer, because there is no provision in the legislation which allows them to do so.

39. Although there are issues with the DOCs, the developers clearly intended to make provision for the appointment and dismissal of property factors. They wanted this to be a straightforward process, without the need for a majority of homeowners in the development to agree. At the same time, they clearly wanted to ensure that the factor appointed by them was not prejudiced by the change and left with debt that they could no longer pursue. It is arguable that the DOCs can and should be applied and that if the debt is cleared, or reduced to a level accepted by the Respondent, then the homeowners should be able to appoint a new factor. Given the passage of time, a further meeting and vote might be required.

40. The Tribunal rejects the Respondent's very late argument that there is a jurisdiction issue in relation to this application. The Tribunal does not have jurisdiction to adjudicate on contractual disputes or payment disputes involving the parties. However, the Code of Conduct contains provisions relating to the termination of the factoring contract, as does the Respondent's WSS. The Tribunal is entitled to consider the Respondent's actions in relation to a purported termination and to determine whether they have acted in accordance with the legislation, the DOCs and the WSS. The performance of their duties includes their actions and failure to act in relation to this issue.
41. In relation to the refusal to accept the termination of its appointment, the Tribunal concludes that the Respondent has not failed to carry out their duties. If the relevant provisions of the DOCs are enforceable, the debt must be paid before transfer takes place. If not, a majority in favour of dismissal must be obtained.
42. The second complaint in the application is about the Respondent's management of the debt. The Tribunal notes the following: -
- (a) The Respondent appears to be using the development debt to remain in post and prevent their dismissal.
  - (b) The available evidence indicates that the Respondent has failed to keep the homeowners informed about the level of debt and the action taken by them to secure payment. There are specific provisions in the Code and the Respondent's WSS on this issue. Mrs Ricketts told the Tribunal that prior to the meeting in October 2024, she had no idea that so much money was owed. The Respondent lodged some correspondence. The earliest letter is dated January 2022 and provides very limited information about some of the development debt. However, the Respondent's representative stated that some homeowners have never paid their common charges and there is no evidence that information as to the full extent of the debt was ever provided before 2024 or 2025.
  - (c) The available evidence also indicates that the Respondent has failed to take appropriate action to recover the debt. In response to a question from the Tribunal about court proceedings, Ms Flanigan said that she thought that there have been court cases, but she failed to provide any details or evidence. The Respondent has registered NOPLs against a number of properties. However, although these may eventually result in payment, when the properties are sold, it is a process which mainly benefits the property factor. It is straightforward and relatively inexpensive. However, it does not give the homeowner the opportunity to challenge the unpaid charges. In the letter of 9 January 2023 sent to the Applicant, the Respondent acknowledged that there are homeowners who dispute some of the charges which have been applied. If this is the case, it can only be resolved through court action. The January 2022 letter refers to the possibility of the debt being distributed among other owners, although they state that they did not intend to proceed on that basis. However, in terms of the DOCs the property factor is only entitled to do this where they have failed to recover the debt and exhausted all available remedies, including

court action.

43. The Tribunal is therefore satisfied that the Respondent has failed to carry out its property factor duties to a reasonable standard in the management of the development debt. It has not kept the Applicant informed and has not taken appropriate and reasonable steps to secure payment. In relation to homeowners who have never paid, and who have large outstanding balances, the appropriate course of action is to raise court proceedings. This could result in a significant reduction in the outstanding balance and make it possible for the homeowners to appoint a new factor in accordance with the DOCs.

## **Decision**

44. The Tribunal therefore determines that the Respondent has failed to carry out its duties to a reasonable standard.

## **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.**

**Josephine Bonnar, Legal Member**

**10 May 2026**