

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 (1) of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/LM/24/3018

Re: Property at Balgello Heights Development, Linlathen Road, Broughty Ferry, Dundee, DD5 3GL (“the Property”)

The Parties:

Mr Ross Hunter, 7 Ben Attow Lane, Broughty Ferry, Dundee, DD5 3FS (“the Applicant”)

James Gibb Residential Factors, Suite 1B, 26-28 Merchant Exchange, Exchange Street, Aberdeen, AB11 6PH (“the Respondent”)

Tribunal Members

Legal Member: Mr A. McLaughlin

Ordinary Member: Ms H. Barclay

Background

[1] The Applicant seeks a determination that the Respondent has breached their duties under *The Property Factors (Scotland) Act 2011: Code of Conduct for Property Factors*. The paragraphs of the Code alleged to have been breached are:

“Overarching Standards of Practice”: Sections 2, 3, 4, 5, 6 and 11. The Application also alleges a breach of the Property Factor’s Duties within the meaning of Section 17 (5) of the Act.

Prior Procedure

[2] The Application called for a Hearing conducted as a Case Management Discussion (“CMD”) by conference call at 10 am on 5 November 2025. The Applicant was personally present. There was no appearance by or on behalf of the Respondent. The

Respondent's own Mrs Jo Cooper was present at a previous CMD on 3 February 2025 and explained that her colleague who had been dealing with this was now absent from work. Ms Cooper explained that she was now taking personal ownership of this matter and that she would contact the Applicant with a view to resolving matters. The Tribunal however also ordered the Respondent to set out their formal written response to the Application in advance of the next calling of the case. A Direction was made to this effect. However, nothing further was heard from the Respondent and the Direction went uncompiled with.

[3] The Tribunal decided to continue the Application to a Hearing in person for evidence to be heard and a final decision to be made.

The Hearing

[4] The Application then called as a Hearing at George House, George Street, Edinburgh at 10 am on 19 March 2026. The Applicant was personally present. The Respondent's Gavin Baird, who introduced himself as a senior associate director, was present on behalf of the Respondent. He began by apologising for not having complied with the Direction made and for failing to submit any written representations setting out the Respondent's position. The reasons for this were never made clear and Mr Baird's approach was to offer his apologies on behalf of the Respondent.

[5] The Tribunal began hearing evidence from the Applicant and Mr Baird. After each party gave evidence, the other had the right to cross-examine. At the conclusion of evidence, each party had the opportunity to make closing submissions. The Tribunal asked questions throughout to ensure the Tribunal could understand the allegations made and responses given as far as possible.

[6] The Tribunal comments on the evidence heard as follows.

Mr Ross Hunter

[7] Mr Hunter's principal concern was that he had been sent invoices from the Respondent which included charges for ground maintenance which increased without explanation.

[8] The development that Mr Hunter resides in was built in 5 phases and comprises more than 250 homes. The Applicant moved in at the start of phase 4. There were areas of land which were handed over by the developer to the Respondent after the developer had considered them to be complete. The Applicant's position was that it was unclear when and how this was happening. He explained that the sums invoiced for ground maintenance increased without warning or any transparency as to why. There was substantial correspondence in the papers demonstrating the Applicant seeking

explanations from the Respondent but there was very little which showed that these concerns were addressed in a reasonable way.

[9] The Applicant pointed to examples of his invoices which demonstrated his concerns. The Application also raised a concern about the actual maintenance which was supposed to be applied to the various areas of land. The Respondent had made accessible a contract between themselves and a company known as Greenleaf Landscape. This contract was for a period of services between late 2022 and late 2024. The contract was however unsigned. The Respondent also pointed out that the contract did not appear to ever then be updated or renewed after its expiry period. The Applicant pointed out that this was opaque and added to the whole picture of confusion regarding the whole business of the ground maintenance.

[10] The Applicant also explained that when he phoned the Respondent to challenge aspects of his invoices, he was told that certain charges had indeed been incorrectly billed, yet he was asked on the phone just to pay them anyway. The Applicant referred to being invoiced in February 2024 for the costs of replacing two trees. After these sums were paid, no trees were ever actually then planted.

[11] The Applicant also explained that he submitted a written complaint about all these issues which wasn't dealt with or responded to within the timescales set out in the Respondent's written statement of services.

[12] The Applicant pointed out that the Respondent had continued this pattern of behaviour during this Tribunal process. They had asked the Tribunal for an extension in the deadline to allow them to submit a formal response to the Application, then when this was granted, failed to submit anything at all setting out their position.

[13] The Applicant explained that what he wanted was twofold: information about how changes to the land and ground maintenance costs were calculated and up-to-date copies of contracts with grounds maintenance contractors showing the ongoing liability for costs and services provided. He also pointed out that he considered that an award of compensation would be reasonable.

[14] The Applicant also spoke to certain sections of the Respondent's Written Statement of Services which he alleged had been breached. These related to disputed items, distribution of debt and an allegation of an attempted vat fraud. The Applicant suggested that it was improper for the Respondent to provide that if a resident failed to settle their account, then the debt would be held as due by the entire estate. The allegation of vat fraud appeared restricted to one incident. The Applicant noted that the Respondent had erroneously attempted to add vat to an outlay that already included a vat element.

[15] The Applicant drew this to the attention of the Respondent who then appeared to immediately acknowledge the error and amend the invoice accordingly. The Applicant

however remained unsatisfied and explained that he had contacted HMRC and reported this incident as an attempted vat fraud. There was nothing to suggest that this had been taken further by HMRC. The Applicant also referred to the Respondent's debt recovery policy being ignored in their dealings with him. He said they were threatening to sue him unfairly for unpaid charges when he had raised a genuine dispute as to why he shouldn't pay.

[16] The Tribunal found that the Applicant's concerns here were somewhat harder to accept- there was very little to suggest that the Respondent had attempted to carry out a vat fraud, and it seemed more likely than not that the most likely explanation was that the Respondent made a simple error. Similarly, the Tribunal could not agree that the Applicant's concerns about the distribution of debt were well founded. The Respondent had also not raised debt recovery proceedings against the Applicant and appeared to have delayed consideration of such matters until after the conclusion of these proceedings.

Mr Gavin Baird

[17] Mr Gavin Baird began by apologising to the Applicant and by explaining that he had not been personally involved in the past. Mr Baird referred to having sent the Applicant a copy of the development plan in June 2024 although he acknowledged this did not fully address the Applicant's concerns. The Tribunal did not have any formal response from the Respondent as there had been no compliance with the Direction made. The Tribunal therefore asked Mr Baird if there was any actual difficulty with the Applicant's suggested outcomes regarding the information he wished. Mr Baird appeared to accept that there was not and that these requests were reasonable.

[18] Mr Baird did however explain that it is a regular part of the Respondent's business that they meet developers and have site meetings and are told that areas of land will no longer be maintained by the developer and that they are to be handed over to the Respondent to factor on behalf of the residents. The Tribunal asked Mr Baird if it would be routine thereafter to inform the residents about these developments. The Tribunal was surprised to hear that it would not be routine for the Respondent to inform the residents about this at all. The Tribunal asked why that might be as it seemed common sense to imagine that the residents would be informed about changes to their common ownership of land and ongoing costs for land maintenance. Mr Baird also clearly acknowledged that many of the Applicant's allegations were well founded, and he explained that the "*James Gibb process then is not the James Gibb process now*". Mr Baird explained that there had been discussions between the parties during which the Respondent had offered to return certain of the Applicant's management fees although a precise negotiation had not been reached. The Respondent's management fee charged to the Applicant is currently £19.48 a quarter.

Comment on the evidence

[19] The Tribunal was grateful for Mr Baird's evidence however noted that it principally amounted to an apology and an acceptance of the short comings set out in the Application. The Tribunal accepted the Applicant's evidence as credible and reliable. It was supported by the written materials and made sense.

Having heard from parties, the Tribunal made the following findings in fact.

1. *The Applicant is the proprietor of the property known as 7 Ben Attow Lane, Broughty Ferry, Dundee, DD5 3FS ("the Property")*
2. *The Respondent is the relevant Property Factor for the development in which the Property is situated.*
3. *The development was built in 5 phases and comprises more than 250 homes. The Applicant moved into his home at the start of phase 4. There were areas of land which were handed over by the developer to the factor after the developer had considered them to be complete. The Respondent did not notify the residents, including the Applicant, when various areas of land were handed over by the developer to the Respondent to manage on behalf of the residents.*
4. *The Applicant and other residents would therefore receive no notification of when and why their invoices would increase on account of the changes in the ground maintenance required for the additional areas factored by the Respondent.*
5. *The Applicant complained to the Respondent about these issues but never received a satisfactory response*
6. *The Respondent had made accessible a contract for land maintenance between themselves, and a company known as Greenleaf Landscape. This contract was provided for a period of between late 2022 and late 2024. The contract was however unsigned and after its expiry did not appear ever to be updated or renewed.*
7. *The Applicant had occasion to telephone the Respondent to challenge aspects of his invoices. On one occasion he was told that certain charges had indeed been incorrectly billed, yet he was asked on the phone just to pay them anyway. The Applicant referred to being invoiced in February 2024 for the costs of replacing two trees. After these sums were paid, no trees were ever actually then planted by the Respondent.*
8. *The Applicant submitted a written complaint about all these issues which wasn't dealt with or responded to within the timescales set out in the Respondent's written statement of services.*

[20] Having made the above findings in fact, the Tribunal thereafter considered the paragraphs of the Code alleged to have been breached.

"OSP2. You must be honest, open, transparent and fair in your dealings with homeowners."

[21] The Tribunal concludes that this standard has been breached. The Respondent has not been open or transparent about the arrangements in respect of the land management charges and the relevant contract arrangements with Greenleaf Landscape.

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

[22] For the same reasons the Tribunal finds that this standard has been breached.

“OSP4. You must not provide information that is deliberately or negligently misleading or false.”

[23] The Tribunal notes the Applicant’s concerns but does not conclude that this standard has been breached. The concerns established are better expressed against other paragraphs of the Code.

“OSP5. You must apply your policies consistently and reasonably”

[24] The Tribunal does not conclude that the Respondent’s failings represent a breach of this standard.

“OSP6. You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective.”

[25] The Tribunal does not conclude that the Respondent’s failings represent a breach of this standard.

“OSP11. You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure”

[26] The Tribunal finds that the Respondent has not complied with this standard of the Code.

[27] The Tribunal does not consider that it is appropriate to conclude that the Respondent has breached their property factor’s duties in the manner suggested by the Applicant for the reasons provided above. The alleged breaches of the duties were described in the Application as being:

Written Statement of Services Article.

4.8.2-Contract Review

5.8.6 Disputed Items

5.11.3 Distribution of debt

5.12.2- Mark up/ Commission

[28] It is clear that the Respondent has fallen short of meeting their obligations but these failings are best expressed against the paragraphs of the Code alleged to have been breached. There is no obvious breach in the above sections of the Written Statement of Services.

Disposal

[29] The Tribunal considers that a reasonable outcome is for the Respondent to apologise to the Applicant and make a payment of compensation for the inconvenience and poor service provided to the Applicant arising from the Respondent's breaches. The Tribunal considered that the sum awarded should not be minimal, but neither should it be excessive.

[30] The Tribunal concluded that a figure of £500.00 seemed a common-sense amount in the circumstances. The Respondent should also provide the Applicant with the information he is looking for- information about how changes to the land and ground maintenance costs were calculated and up-to-date copies of contracts with grounds maintenance contractors showing the ongoing liability for costs and services provided.

[31] The Tribunal will make therefore make a Proposed Property Factor Enforcement Order in the following terms in terms of section 19 (2) (a) of the Act.

The Respondent is to take the following action:

- 1. The Respondent should write to the Applicant and apologise for breaching their obligations under the Code.**
- 2. The Respondent should make a monetary payment of £500.00 to the Applicant as compensation for his monetary losses and inconvenience. The payment should be by way of a direct payment to the Applicant rather than by way of a credit to the Applicant's account.**
- 3. The Respondent should also provide the Applicant with the information he is looking for- information about how changes to the land and ground maintenance costs were calculated and up-to-date copies of contracts with grounds maintenance contractors showing the ongoing liability for costs and services provided.**

This should be complied with within 30 days of the date of this decision.

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

11 May 2026
Date