First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') issued under section 26 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017

Property Factors (Scotland) Act 2011 ("The Act")

2021 Code of Conduct for Property Factors ("The 2021 Code")

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("The Regulations")

Reference number: FTS/HPC/PF/25/1182

Re: Property at Flat 1/1 524 Paisley Road West ("the Property")

The Parties:

Mrs Elizabeth Black residing at flat 1/1, 524, Paisley Road West, Glasgow, G51 1RN ("the Applicant")

James Gibb Residential Factors ("the Respondent")

Tribunal Members:

S Gibb (Legal Member) and Ms S Brydon (Ordinary Member)

Background

1. A Hearing was held on 11th June 2026. A CMD was held on 25th November 2025.

2. Mrs Black, the Applicant, is the homeowner. The Applicant represented herself at the Hearing.

3. The Respondent was contracted as Factor of the Property. The Respondent was not represented at the Hearing but had lodged a further submission

addressing the heads of complaint.

4. The circumstance giving rise to the complaints are laid out in the CMD Note and there is no need to repeat them here as they are not challenged materially by either party. Both parties had largely complied with the Directions arising from the CMD.

5. The Hearing

5.1. The Tribunal Hearing started with an introduction and Mrs Black confirmed that she had received and read the final submission from the Factors. At the outset, the Appellant indicated that her ideal outcome would be to be refunded any premium she had paid for the new buildings insurance policy and to be refunded court charges allocated to her for the recovery of debt.

5.2 The Tribunal found the Appellant to be a credible witness.

5.3 The Tribunal elected to proceed by addressing each area of complaint in turn as helpfully laid out in the CMD Note. There was a degree of overlap in the evidence in relation to the alleged breaches of the 2021 Code given that the various heads of complaint arose largely from only two issues; the very large increase in insurance premium (approximately a 400% increase following the revaluation of the building) and the issue of common charges debt within the Tenement and the cost of recovery of the same.

5.4 The 2021 Code requires the Factor to "be honest, open, transparent and fair in your dealings with homeowners" (OSP 2). The Homeowner's complaint was that the Factor did not provide owners with sufficient information on charges and commission prior to instructing a service. At the CMD Mrs Black clarified that this complaint relates to the renewal of the annual communal buildings insurance in May 2024.Mrs Black told the Tribunal that she had previously a very good relationship with the Factors and had been a "go between" for the Factors in dealing with other occupiers for whom English was not their first language. She accepted that they were honest and open but felt that they could have done better by advising the owners in clearer terms about the significant increase in premium before instructing the policy. She accepted that there had been correspondence about the new policy, specifically the May 2024 newsletter, but she felt that the increase was so substantial as to merit a double check that the owners were comfortable with that increase and understood fully the situation before instructing the new policy. The Factor advised that all information was available through the Portal and no information had deliberately been withheld or concealed. Whilst accepting the Appellant's suggestion that a further check with the owners would have been ideal, the Tribunal concluded that the Code did not require the Factor to take that additional step and concluded that there had been no breach of OSP 2.

5.5 The 2021 Code at OSC11 requires the Factor (in summary) to respond to correspondence and complaints within a reasonable timescale and in line with their procedures. The Appellant's letters of complaint found at pages 69 and 78 of the bundle had been emailed to the Factor albeit it to two different email addresses. The Appellant said that she had been in email and phone correspondence with the Factor for several months before and after sending in her formal complaints and that the email address had been suggested by the property manager, Rebecca, as she said this was an accounts matter. There had been lodged with the Tribunal copy emails from the Appellant to the Factor sent in July and August 2024. The Factors had responded to the email correspondence. The Factor's position was that they had searched their electronic system and could find no trace of the complaints. The Tribunal found both parties to be credible in respect of this matter. The Tribunal accepted that formal complaints had been lodged and accepted that the Factor could not trace them. However, the two complaints lodged were part of a wider background of dialogue regarding the Appellant's complaints and there had been no material prejudice to the Appellant. Taking account of the whole circumstances the Tribunal concluded that there had been no breach of OSC11.

5.6 Clause 2.6 of the Code says that a property factor must have a procedure to consult with all homeowners and seek homeowners' consent, in accordance with the provisions of the deed of condition or provisions of the agreed contract service, before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where there is an agreed level of delegated authority, in writing with homeowners, to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as in emergencies). This written procedure must be made available if requested by a homeowner. The Homeowner's complaint was that there was no consultation on a significant change in premium but in the course of the Hearing she acknowledged that there was a procedure in place and that documentation had been available on the Portal but she thought that the procedure was inadequate in the particular circumstances of the renewal of the policy. The Factor's response was that arranging Insurance and debt recovery were core services. Mrs Knox explained that the Factor had arranged for the Property to be revalued and the report advised that the Property was substantially undervalued. Details were uploaded to the Factor's client portal in May 2024. The Factor arranged the communal buildings insurance policy for 2024-2025 through a third party provider. Mrs Black had asked for communications from the Factor to be sent to her by post but unfortunately the third party provider had not done this and the Factor apologised for this lapse. Mrs Black explained that the Factor's contract had subsequently been terminated and that each proprietor now arranged their own buildings insurance based on the revaluation. The Tribunal noted that there is no Deed of Conditions in the Title. The Title Sheet provides for a Factor to be appointed. It also (unusually) states that the owners have the right to specify the sum insured. The Factors said that they had delegated authority to arrange the communal buildings insurance policy. The Tribunal was aware also of the statutory obligation on individual proprietors to maintain buildings insurance for the reinstatement value of the property. As mentioned above, the Appellant acknowledged that there was a procedure in place and that documentation had been available on the Portal and, as the Tribunal agreed with the Appellant's concession, the Tribunal found that there had been no breach of Clause 2.6 of the Code.

5.7 Clauses 4.9, 4.10 and 4.11 of the Code deal with the authority and obligation on the Factor to recover outstanding debts. A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation (Clause 4.9 of the Code). Although, initially, Mrs Black's position was that the first she knew of debt was when the common charges statement showed a fee due to BTO solicitors but in discussion with the Tribunal Mrs Black accepted that details of the total debt due in respect of the building were available on the portal and that for reasons of GDPR the debt due by individual proprietors was not specified. It was apparent that her concern were the legal costs incurred in pursuing the debt and not the debt itself. She felt that the Proprietors should have been made aware of the total debt for the building so that they could meet and try and resolve the matter without recourse to solicitors. The Code requires the Factors to take reasonable steps to recover common charges (Clause 4.10) and the Factor's position was they were entitled to do so without consultation. Mrs Black accepted that this was the case but maintained that the matter could have been approached differently. She withdrew her complaint that Clause 4.10 of the Code had been breached. At the CMD she had withdrawn her complaint that Clause 4.11 had been breached. In light of the foregoing the Tribunal concluded that there had been no breaches of Clauses 4.9, 4.10 and 4.11 of the Code.

5.8 Section 5.4 of the Code states that Homeowners must be notified of any substantial change to the cover provided by the policy. Mrs Black's position was that the Factor did not provide any communication on the cost of the premium or commission paid for the new common building insurance policy until August 2024, three months after renewal of the common policy for the Property. The Factor's advised that documents relating to the insurance for the Property were uploaded to the portal for review by all owners. Per the CMD Note, these were the 12th February 2024 Insurance Valuation Letter, 12th July 2024 Insurance Reinstatement Valuation. 21st August 2024 Buildings Insurance Certificate 2024/25 and the 26th August 2024 Insurance Renewal pack. The Factor's newsletter (24th May 2024) included information regarding the recent buildings insurance renewal terms stating 'Please bear in mind that, if your building has had an insurance reinstatement valuation since last renewal that varied your sum insured, this variation will have a corresponding impact on your premium, in addition to the increase in insurance rate." In discussion at the Tribunal, Mrs Black acknowledged that she had seen the Newsletter and had understood it. She acknowledged also that she did not look at the Portal very often and usually only if a matter had been brought to her attention. Nevertheless, she felt that a meeting of the owners should have been called before instructing the new policy. The Factors acknowledged and apologised that the owners within the building who had selected to receive communication by post only had not received the insurance documentation issued by the external source dealing with the new policy. This was corrected and the documents issued on 26th August 2024.Having considered all the evidence, the Tribunal concluded that there had been no breach of Section 5.4 whilst accepting that a further meeting with the affected proprietors would have been ideal.

5.9 The Code at Section 5.5 states that a property factor must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit that is paid to them or anyone in control of the business or anyone connected with the factor or a person in control of the business, in connection with the policy. They should also disclose any financial or other interest that they have with the insurance provider or any intermediary. A property factor must also disclose any other charge they make or apply for arranging such insurance. Mrs Black's original complaint was that she had not received details of any commission or administration fees relating to the Factor arranging the buildings insurance policy. In their submission, the Factor explained that details of the commission received by the Factor is explained in the Factor's written statement of services and is also published on the Factor's website. In discussion at the Tribunal, Mrs Black accepted that the information was available in the written terms of service and on the portal. The Tribunal concluded that no breach of the Code had occurred.

5.10 A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably as laid out on Clause 7.1 of the Code. Mrs Black accepted that such a process existed and withdrew her complaint in this regard.

5.11 The Tribunal concluded that there had been no breach of Section 7.2 of the Code. Mrs Black advised that she thought that there had been a breach of Section 7.2 of the Code as she believed that the Factor did not advise her that she could make an application to the Tribunal. The Factor's letter to the Homeowner dated 6th June 2025 makes it clear that the Appellant could apply to the Tribunal and Mrs Black acknowledged that was the case. Consequently, the Tribunal decided that there had been no breach of Section 7.2.

Outcome

1. The Tribunal concluded that there had been no breach of the Code by the Factor.

This decision takes effect from 11th June 2026

Review

The Appellant may seek a review of this decision within 14 days from today's date in terms of Rule 39 of the Housing and Property Chamber Rules of Procedure 2017. The process for doing so is detailed in Rule 39 (2).

Appeals

In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must

seek permission to appeal within 30 days of the date the decision was sent to them.

NOTE: This document is not confidential and will be made available to other First-tier Tribunal for Scotland (Housing and Property Chamber) staff, as well as issued to tribunal members in relation to any future proceedings on unresolved issues.

Chairperson of the tribunal; S Gibb

Dated: 6th July 2026