Housing and Property Chamber
First-tier Tribunal for Scotland

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

In an Application under section 17 of the Property Factors (Scotland) Act 2011

by

Mr Lester Gibbons, Flat 13, 3 Heron Place, Edinburgh, EH5 1GG ("the Applicant")

James Gibb Property Management Ltd, Red Tree Magenta (3rd Floor), 270 Glasgow Road, Rutherglen, G73 1UZ ("the Respondent")

Re: Property at Flat 13, 3 Heron Place, Edinburgh, EH5 1GG ("the Property")

Chamber Ref: FTS/HPC/PF/25/1680 & FTS/HPC/PF/25/1681

Tribunal Members:

John McHugh (Legal Member) and Andrew Taylor (Ordinary Member)

DECISION

The Respondent has not failed to comply with its property factor's duties.

The decision is unanimous.

We make the following findings in fact:

1 The Applicant is the owner of Flat 13, 3 Heron Place, Edinburgh EH5 1GG ("the Property").
2 The Property is located within a residential development of flats and associated common areas known as The Anchor ("the Development").
3 The Development was built in around 2007 by a developer, Gregor Shore Ltd ("the Developer").
4 The Development consists of six residential blocks plus associated common areas.
5 Three blocks are on Heron Place and three on Hesperus Crossway.
6 The Developer became insolvent some years ago.
7 The Property is located within the common stair known *a*s 3 Heron Place which consists of 22 flats and common areas.
8 Each block has its own electricity meter and there are two additional meters which serve common parts of the whole Development.
9 All UK electricity meters have an MPAN number which is unique to that meter.
10 The meter with an MPAN ending in 430 is located in the basement of the Development. It serves the common lighting of the courtyard and pumps.
11 The Respondent was at all relevant times the property factor responsible for the management of common areas within the Development.
12 The Respondent has since March 2015 provided factoring services in respect of the common areas.
13 The Respondent provided a Written Statement of Services setting out the services which it provides to homeowners such as the Applicant.
14 A Deed of Conditions by Gregor Shore Ltd dated 25 November 2005 applies to the Development. It allocates responsibility for the payment of maintenance costs by apportioning some costs across all homeowners in the whole Development. Others are apportioned by stair. This includes electricity supplies and infrastructure.
15 The electricity supplied to the meter 430 and the remining common meters is charged to the Applicant and his fellow owners by the Respondent in its invoices.
16 The Respondent maintains the account with the relevant electricity supplier and pays the supplier directly.
17 On 7 June 2022 the Respondent issued an invoice which related to electricity supplied during the period 24 August 2021 to 28 February 2022 in the sum of £11,421.44; on 07 September 2022 the Respondent issued an invoice for electricity supplied for the period 1 March 2022 to 30 April 2022 for £6,973.45 and on 6 December 2022 it issued an invoice for electricity supplied for the period 1 May to 30 August 2022 for £18,036.10.

18 The Applicant was concerned that there had been a delay by the supplier in charging for the electricity supplied.

19 The Applicant believed that the supplier might not be entitled to pursue the practice of "back billing" ie pursuing old charges.

20 The Applicant asked the Respondent to investigate and explain.

21 During the course of this process, the Applicant became aware that third party equipment had been attached to one of the meters. The third parties concerned were BT Openreach and Hyperoptic. The owners appeared to be being charged for the electricity being used by those suppliers.

22 The third party connections had taken place in 2018.

23 No payments have been received by the Respondent for allowing those connections.

24 The BT Openreach and Hyperoptic equipment draws a very small amount of electricity from the meter supply.

25 In 2023, the Respondent conducted a review across all development which it manages to ensure that it was billing appropriately. This process identified some older electricity charges which had not been billed previously.

26 The Applicant was concerned that the electricity charges were high and that the supply contracts obtained and the meter types used might not have been appropriate.

27 The Respondent uses the services of an energy broker to find appropriate supply contracts for the developments which it manages including the Development.

28 The Respondent originally used the services of Utility Aid. Since 2021, it has used the services of Indigo Swan.

29 Electricity supply contracts are placed in bulk ie the Respondent often pools multiple developments to create more valuable contracts in order to obtain better terms from suppliers

30 The Applicant has, by his correspondence, including by his email of 17 January 2025, informed the Respondent of the reasons why he considers the Respondent has failed to carry out its property factor's duties.

31 The Respondent has not unreasonably delayed in attempting to resolve the concerns raised by the Applicant.

<u>Hearing</u>

A Hearing took place at the Edinburgh Tribunals Centre on 17 August 2026.

The Applicant was present. The Respondent was represented by its Mark Smith and by Andrew Kindleysides of Indigo Swan.

A Case Management Discussion had previously taken place on 7 November 2025 at which it was clarified that the Applicant's application focused on the following:

1. Past overcharging including the practice of back billing and whether such a practice is forbidden by OFGEM rules. This includes the question of whether

the supplies in question should be treated as domestic or commercial. This also includes whether old bills were properly payable by the Applicant and fellow owners or by the now defunct developer, Gregor Shore.

2. Whether the current electricity contract is on appropriate terms and represents value for money.

3. That third party internet service providers are using the electricity supply paid for by the Applicant and his fellow owners and whether this arrangement is appropriate.

The Tribunal made certain directions regarding the preparations for the Hearing and the production of information by the Respondent in advance of the Hearing.

Introduction

In this decision, we refer to the Property Factors (Scotland) Act 2011 as "the 2011 Act"; the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors as "the Code"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as "the 2017 Regulations".

The Respondent is a Registered Property Factor and has a duty under section 14(5) of the 2011 Act to comply with the Code.

The Tribunal had available to it, and gave consideration to, the documents lodged on behalf of the Applicant and the Respondent.

Although there are two applications, they cover the same subject matter. Because that subject matter spans a period of time during which the Code became revised on 16 August 2021, there are two application numbers.

REASONS FOR DECISION

The Legal Basis of the Complaints

Property Factor's Duties

The Applicant complains of failure to carry out the property factor's duties. He does so by making reference to the Respondent's failure to observe general consumer law which he considers to have occurred by the Respondent treating the relevant supplies as commercial, as opposed to domestic, with the resulting loss of certain consumer protections.

The Code

The Applicant complains of failure to comply with the Code. *He complains of breaches of the following (original) Code Sections:*

"2.1 You must not provide information which is misleading or false…

… 3.2 If a homeowner decides to terminate their arrangement with you after following the procedures laid down in the title deeds or in legislation, or a property changes ownership, you must make available to the homeowner all financial information that relates to their account. This information should be provided within three months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services). Unless the title deeds specify otherwise, you must return any funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill following change of ownership or property factor…
… 5.3 You must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing the insurance."

The Applicant had referred to Section 5.5.3 which the Tribunal has taken to be a reference the Section 5.3 above. He had also referred to Section 1.5 which does not match with any Section in the original Code.

He complains by reference to the following Revised Code Sections:

"OSP1. *You must conduct your business in a way that complies with all relevant legislation.*

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

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

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

OSP5. *You must apply your policies consistently and reasonably.*

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….*

…OSP8. *You must ensure all staff and any sub-contracting agents are aware of relevant provisions in the Code and your legal requirements in connection with your maintenance of land or in your business with homeowners in connection with the management of common property…*

…1.1 A property factor must provide each homeowner with a comprehensible written statement of services setting out, in a simple, structured way, the terms and service delivery standards of the arrangement in place between them and the homeowner. If a homeowner makes an application under section 17 of the 2011 Act to the First-tier Tribunal for a determination, the First-tier Tribunal will expect the property factor to be able to demonstrate how their actions compare with their WSS as part of their compliance with the requirements of this Code…

… 2.1 Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations…

… 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…

… 3.3 All property factors should be aware of the threat of money laundering and must comply with all relevant legislation and guidance to minimise the risk that they and their business will be used to launder the proceeds of crime…

…4.5 When dealing with customers in default or in arrears difficulties, a property

factor should treat its customers fairly, with forbearance and due consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial debt advice, support and information on debt solutions is available from not-for-profit debt advice bodies…

… 6.3 A property factor must have in place procedures to allow homeowners to notify them of matters requiring repair, maintenance or attention…

… 6.6 A property factor must have arrangements in place to ensure that a range of options on repair are considered and, where appropriate, recommending the input of professional advice. The cost of the repair or maintenance must be balanced with other factors such as likely quality and longevity and the property factor must be able to demonstrate how and why they appointed contractors, including cases where they have decided not to carry out a competitive tendering exercise or use in-house staff. This information must be made available if requested by a homeowner.

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

…6.9 If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) must be made available if requested by a homeowner."

The Matters in Dispute

The Applicant complains in relation to the following matters:

1. Past overcharging including the practice of back billing and whether such a practice is forbidden by OFGEM rules. This includes the question of whether the supplies in question should be treated as domestic or commercial. This also includes whether old bills were properly payable by the Applicant and fellow owners or by the now defunct Developer.

2. Whether the current electricity contract is on appropriate terms and represents value for money.

3. That third party internet service providers are using the electricity supply paid for by the Applicant and his fellow owners and whether this arrangement is appropriate.

Background

The Applicant is the owner of the Property. The Property is a flat within the Development. The Development was constructed in around 2007 by Gregor Shore. It consists of two blocks with three stairs in each.

The first property factor appointed was Charles White Ltd. On 13 March 2015, the Respondent was appointed as the new factor of the Development. The Respondent is responsible for maintaining the common parts. This includes maintaining electricity supplies to the common parts of the Development including for lighting and the operation of pumps. The Respondent is responsible for procuring supply contracts from electricity suppliers, for arranging payment of those suppliers and for then, in turn, billing homeowners on the Development for a share of the electricity costs.

<u>Back Billling</u>

On 1 February 2022, the Respondent included in the bills of the Applicant and his fellow owners of properties within the Development a charge for electricity relating to the period 24 August 2021 to 28 February 2022 in the sum of £11,421.44. On 1 June 2022, the Respondent issued an invoice for electricity supplied for the period 1 March 2022 to 30 April 2022 for £6,973.45 and on 7 September 2022 it issued an invoice for electricity supplied for the period 1 May to 30 August 2022 for £18,036.10.

These charges were said to relate to supply by Scottish Power of electricity for water pumps and courtyard lights.

OFGEM have a "back billing rule", Supply Licence Condition Clause 21BA as follows:

"*Condition 21BA. Backbilling Part A: application to Domestic Customers Prohibition*

21BA.1
Subject to paragraph 21BA.2, where the licensee or any Representative Issues a Bill to a Domestic Customer or otherwise seeks to recover (including via a Prepayment Meter) Charges for the Supply of Electricity from that customer (hereafter a "charge recovery action"), they must only do so in respect of: (a) units of electricity which could reasonably be considered to have been consumed within the 12 months preceding the date the charge recovery action was taken; and (b) where applicable, amounts in respect of a Standing Charge or any other type of supply charge accrued within the 12 months preceding the date the charge recovery action was taken.

Exceptions to prohibition 21BA.2
Paragraph 21BA.1 does not apply in the following circumstances: (a) where any charge recovery action was taken prior to the date this condition took effect; (b) the licensee or any Representative, has taken a charge recovery action following the date this condition took effect in a manner which complied with paragraph 21BA.1 and, due to non-payment are continuing to take steps to obtain payment for the same units of electricity and, where applicable, the same amounts in respect of a Standing Charge or other type of supply charge; (c) the licensee has been unable to take a charge recovery action for the correct amount of electricity consumed due to obstructive or manifestly unreasonable behaviour of the Domestic Customer; (d) any other circumstances, which following consultation, the Authority may specify by publishing a statement in writing."

Essentially, the rule prevents suppliers from attempting to recover for electricity supplied to consumers more than 12 months previously.

The Applicant refers to an email dated 27 August 2021 from Scottish Power to the Respondent's Steve Patterson. It advised that there were arrears in relation to the meter 430, that bills had been sent to Lomond House in Glasgow and no payment received. Lomond House was the address of the Developer. The Applicant has inferred from that that the bills which began around the same time from Scottish Power must be the Developer's debt taken on by James Gibb by agreement with Scottish Power.

The Respondent explains that it has not taken on any debt from Gregor Shore nor anyone else as that would be inappropriate. Similarly, Mr KIndleysides notes that the account number on the Scottish Power email is different from that on the invoices charged by Scottish Power to the Respondent, so it would appear to be different debt. He considers that as a matter of practice a supplier would never transfer or attempt to transfer one customer's debt to another.

The Applicant also observed that the bills for the same meter are now much lower than those from 2021/22 leading him to believe that the 2021/22 bills must contain electricity from an earlier period. Mr Kindleysides discussed the market spike in energy prices in 2022 which resulted in the unit charge increasing from 22p to £1. Rates are now back down again to around 22p. He performed a rough analysis which showed that the difference between the 2022 charges and the current rates is consistent with the explanation of the change in wholesale electricity market pricing.

It appears that Scottish Power had never billed for meter 430 before August 2021 when it became aware that James Gibb was involved. It then began billing for that meter's usage. There was no specific contract, so general default rates were employed. They were variable and increased in accordance with the market rate. Once the new high rates became apparent, the Respondent asked Indigo Swan to find a cheaper contract and this was done with effect from July 2022.

The charges in question relate to supplies within the preceding year and there was no element of back billing or of the Respondent taking on any third party's debts. The Respondent appears to have dealt with the issue appropriately and we identify no breach of property factor's duties or of the Code in this respect.

The Applicant complains of further back billing in 2023. It appears that at that time the Respondent carried out a company-wide review of all of the developments which it manages to ensure that all bills were being charged appropriately to owners. It seems that some bills relating to 3 Heron Place were involved. One of the neighbouring stairs had a different supplier, Pozitive Energy. The Applicant accepts that the back dated charging was less of an issue for 3 Heron Place than for neighbouring stairs. However, he was concerned that he might have had to pay charges which were more than a year old and had not benefited from the OFGEM one year rule because of the way the contract had been set up.

Mr Kindleysides advised that power suppliers will treat the factor (as opposed to the individual homeowners) as the bill payer. The alternative would be for the owners to self-factor and one owner to take on the responsibility of being the customer for the common supply which he thought would be unattractive to most individuals. Mr Kindleysides advises that the OFGEM back billing prohibition only applies to individual consumers and to micro-businesses. As the Respondent was neither (it has more than the maximum limit of ten employees required to constitute a micro business), the OFGEM rule did not apply. The Applicant raised a concern that an alternative explanation for late bills might be that the Respondent had been inefficient in passing on bills in breach of its Code duties. However, no evidence of this was presented. Mr Smith advises that the Respondent pays supplier bills upon receipt and so has every incentive to pursue recovery from its individual customers. Its practice is to bill every quarter and reviews are carried out by its Accounts staff to ensure that charges are not missed. He could not rule out the odd exception to the rule when eg a change of development manager took place, but he believed the practice was followed in almost every case. The Applicant had identified no particular invoice of concern. We find no evidence of delay by the Respondent in passing on electricity bills to the Respondent.

We accept Mr Kindlysides' evidence that that the supplies to the common parts are treated as commercial contracts and that, as a result, the OFGEM back billing rule does not apply.

We identify no breach of property factor's duties or of the Code in this respect.

<u>Value for Money of Contract</u>

The Applicant has identified that different suppliers and rates seem to have applied to different meters serving the Development. He is concerned that the rates obtained may not have represented reasonable value for money. He is concerned that the meter types used may be inappropriate and lead to more expensive rates of charge. The meter 430 is a half hourly meter and has a meter profile of 00. Half hourly meters take readings every half hour and tend to be employed in high demand situations. The charges relating to such meters are generally higher than typical domestic meters.

The Applicant considers that in August 2021 the Respondent ought to have identified the meter as being incorrectly classified and looked into changing it. Mr Kindlelysides indicates that he does not consider the meter to be profile to be incorrect. There may be reasons why a profile 00 half hourly meter was specified originally. The meter might for example be, or have been planned to be, used as a back up supply for plant such as lifts and so would have to have sufficient capacity for that role. Such meters are sometimes encountered in residential developments so there was no "red flag" for him or the Respondent to identify the likely existence of an inappropriate meter profile. He had identified that the meter had always been a half hourly one since the Development was constructed. Mr Kindleysides advises that changing the meter to a non-half hourly kind would be a complicated and potentially expensive exercise. It involves changing the cabling serving the meter. Any saving which might result may not justify the expense of the change.

The Respondent employs the services of energy brokers to attempt to obtain supply contracts on favourable terms. It proceeds on the advice of those brokers to obtain and renew fixed term contracts with different suppliers. This involves picking the most suitable supplier and contract available at the relevant time of expiry of each existing contract.

We do not find that there has been any breach of property factor's duties or of the Code in relation to the Respondent's treatment of the half hourly 00 profile of the meter 430 nor in relation to its placing of supply contracts.

Third Party Connection

During the course of his enquiries in relation to the common electricity supplies at the Development, the Applicant became aware that there is connected to one of the common meters equipment belonging to Hyperoptic and BT Openreach, apparently to facilitate the provision of broadband to residents of the Development. He is concerned that he and other owners are paying for the electricity used by the third party's equipment. He complains that the Respondent has allowed the equipment to be attached to the meter supply. He suspects that the Respondent may have received wayleave payments from the companies involved in return for being allowed to make the connection.

Mr Smith confirmed that the usual practice was that communication providers would ask for permission to connect and would often agree to pay a wayleave fee. If that had happened, then the Respondent would have asked the owners to agree and the owners would have benefited from any wayleave fee agreed. In this instance, he confirmed that no payment had been received in return for the connections. Mr Kindleysides advised that the typical electrical usage for equipment of the kind kin question was minimal – perhaps around 40p per year.

Mr Smith had no records explaining how the connections had come about.

The Applicant expressed the view that this was a relatively minor matter for him which had only come up in the course of his other enquiries. He had wanted to establish that there were no payments being received by the Respondent

It is therefore not apparent that there has been any of any breach by the Respondent of its property factor's duties or of the Code in relation to this issue.

PROPERTY FACTOR ENFORCEMENT ORDER

As no relevant breach has been identified, no property factor enforcement order will be made.

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.

JOHN M MCHUGH

CHAIRMAN

DATE: 20 August 2026