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 of the Property Factors (Scotland) Act 2011 ("the Act")

Reference number:
FTS/HPC/PF/25/0299

Re: 93b/7 Albert Street, Edinburgh, EH7 5LY ("the Property")

The Parties:
Ms. Kira Mourao, 11 Craigs Bank, Edinburgh, EH12 8HD

("the Homeowner")

and

Newton Property Management Limited, 87 Port Dundas Road, Glasgow, G4 0HF

("the Property Factor")

Tribunal Members

Nicola Irvine (Chairperson) and Frances Wood (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Overarching Standards of Practice ("OSP") 2, 3, 4, 6, and 11 and sections 2.7, 3.1, 3.2, 7.1 and 7.2, of the Property Factor Code of Conduct 2021 ("the Code") The Tribunal made a Proposed Property Factor Enforcement Order, which should be read with this decision.

Background

1. The Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Property Factor had failed to comply with the 2021 Code of Conduct for Property Factors ("the Code").
2. The Property Factor submitted written representations on 30 July 2025. On the same date, the Homeowner submitted written representations along with an inventory of productions.

3. A case management discussion ("CMD") took place on 19 August 2025. The Tribunal issued a note summarising the discussion, along with a notice of direction, requiring the Homeowner to lodge certain documentation by 30 September 2025 and the Property Factor to lodge documentation by 14 October 2025.

4. On 30 September 2025, the Homeowner submitted a note setting out the sections of the Code said to have been breached, along with an indexed inventory of documents. On 14 October 2025, the Homeowner submitted a paginated bundle of documents. On 11 November 2025, the Property Factor submitted a document setting out its position regarding the sections of the Code said to have been breached, along with an inventory of productions.

5. The Tribunal sent an email to the parties on 17 December 2025, advising them of the date and time of the hearing, which was to take place by telephone conference call.

Hearing: 24 February 2026

6. The hearing took place on 24 February 2026 at 10.00am by telephone conference call. The Homeowner was present on the call and represented herself. The Property Factor was not represented on the call and the hearing proceeded in its absence. The Tribunal heard evidence from the Homeowner. Throughout her evidence she referred to pages of her inventory of productions ("IOP"). The evidence given by the Homeowner is summarised below. The summary is not a verbatim account of what was said at the hearing but rather an outline of the matters relevant to the Tribunal's consideration of this application. Any reference to page numbers relate to the page of the Homeowner's IOP unless otherwise specified. At the conclusion of the evidence, the Tribunal adjourned the hearing to enable the members to consider the evidence given. The Homeowner was advised that a written decision with a statement of reasons would be issued to the parties in due course.

The Homeowners' position

7. The Property Factor breached the following sections of the Code:-

8. **Sections 7.1 & 7.2**

The Property Factor failed to comply with its own procedure. The Property Factor sets out its procedure for handling complaints in the Written Statement of Services (page 25-33 of IOP) The Homeowner made 3 complaints. She followed the procedure as set out on page 33. The first complaint was made on 16 November 2024 by email (page 86 of IOP). The email is headed “Complaint regarding lack of response to multiple emails”. She received an email from the Property Factor on 18 November 2024, but it did not address the lack of response to multiple emails. The email of 18 November 2024 headed “electricity invoicing” was sent by the Property Factor in response to an earlier email she sent on 9 November 2024. The second complaint was made on 23 November 2024 headed “incorrect billing and failure to refund account”. The Property Factor sent emails of 25 November and 27 November 2024 headed electricity invoicing”. These emails were in response to earlier emails. She did not receive a response to her email of 23 November 2024. The third complaint was made using a template she found on the Tribunal’s website and it set out sections of the Code she believed had been breached. It was uploaded to the Property Factor’s portal and also sent by email on 4 December 2024 (page 99 of IOP). She received an automated response on the same day (page 101 of IOP). She has never received a substantive response to her complaint. The Property Factor’s written submission in this case states that it responded to her complaint on 27 November 2024.That cannot be correct because she did not make her third complaint until 4 December 2024. The Written Statement of Services (Page 25-33 of IOP) states that once a response is received, it will be managed by an Associate Director. She has never been told that her formal complaints are being managed by an Associate Director and to date, she has not received a substantive response to her complaints. The complaint about these sections of the Code is that the Property Factor has failed to apply its own complaints procedure consistently and reasonably. On the basis that she has never received a substantive response to her complaints the Property Factor has failed to issue a final decision in writing. Therefore sections 7.1 and 7.2 of the Code have been breached.

9. **Overarching Standard of Practice (“OSP”) 11 & Section 2.7**

In terms of the Property Factor’s Written Statement of Services (page 29 of IOP) the Property Factor aims to respond to complaints within 5 working days. The Code provides that complaints should be responded to within a reasonable timescale and in line with the complaints handling procedure. No response was received in relation to the three complaints made. On this basis, the Property Factor has breached OSP 11 and section 2.7.

10. **Section 3.1**

The Property Factor set up an online portal in 2024. She was able to gain access to contractors' and suppliers' invoices through the portal. There are two problems in relation to financial obligations. The first is that the apportionment of charges is not consistent, so the Property Factor has made an error in apportionment. Examples of this can be found in the invoices issued by the Property Factor. Page 40 and 41 of IOP show that electricity charges are apportioned by 1/16. Page 42 and 44 of IOP show that electricity charges are apportioned by 1/8. The Property Factor's response in relation to this section of the Code is that the apportionment has been rectified. She does not accept that. The second issue in relation to financial obligations is that the Property Factor paid the wrong sum to Scottish Power in relation to electricity charges. Page 108 of IOP is a final bill from Scottish Power. The sum due in terms of that bill is £53.90 The Property Factor paid £392.82 and charged that sum to all of the proprietors. There was therefore an overpayment of £338.92. There does not appear to be any system for the Property Factor to check that correct sums are being paid to suppliers. She advised the Property Factor that the wrong sum had been paid and sought a refund. She was told that she would have to wait until the Property Factor had received sums back from Scottish Power before a refund could be issued. The Property Factor did not issue the credit when it said it would and she had to chase the Property Factor for a credit. It took almost a year for the credit to be applied to her account and the sum credited was wrong. When she examined the Scottish Power bill, she observed that late payment charges had been applied. These late payment charges were passed onto the proprietors at the development. The late payment charges were incurred because the Property Factor is not fulfilling its obligations. The late payment charges were not itemised on the invoices issued by the Property Factor and these only came to light after she examined the Scottish Power invoices. She can only see the supplier invoices on the portal from 2024 onwards, so she has no way of determining whether she and other proprietors at the development have been improperly charged late payment charges. She has no confidence that the Property Factor is calculating charges corrected. The Property Factor has made multiple improper payment requests over many invoices. She has been charged for lift and car park maintenance, but her block has no responsibility for these charges.

11. **Section 3.2**

She received an email from the Property Factor on 27 November 2024 (page 96 of IOP) advising that a credit is due to the owners in the sum of £300.92 and that it would be refunded in the February 2025 invoice. There was no credit in the February 2025 invoice. Having contacted the Property Factor about that, she received an email on 27 March 2025 (page 161 of IOP) apologising that the credit was not included in the February invoice and advising that it would be included in the May 2025 invoice. The credit did not appear on the May 2025 invoice. On 4 July 2025, she sent an email to the Property Factor (page 170 of IOP) pointing out numerous errors in the invoice issued to her. Having contacted the Property Factor again, she received an email on 26 July 2025 apologising for ongoing invoice errors and advising that the credit would be included in the August 2025 invoice. By failing to rectify its error within a reasonable period of time and by having no apparent system for checking that the correct sums have been charged, the Property Factor has failed to protect homeowners' funds and has not provided clarity and transparency in their accounting procedures.

12. **OSP 1**

Since February 2023, every invoice issued to her by the Property Factor contains errors. The Property Factor is not exercising the appropriate level of skill and care. She has been told by the Property Factor that a roof assessment has to be carried out annually. The Property Factor's compliance team deal with this. She was charged for a share of a roof safety check in 2024. The only way to access the roof is through her Property. She contacted the Property Factor to find out how the assessment had been carried out. She was told that no assessment had in fact been carried out. She does not know if the roof safety check is a statutory requirement, but this example demonstrates that the Property Factor failed to carry out its duties with reasonable skill and care.

13. **OSP 2**

The Property Factor has failed to own up to its mistakes. That is apparent from the Property Factor's response to this application. It does not accept that it has breached the Code. The many errors in invoicing have not been identified by the Property Factor but instead, have only come to light because she has checked them and notified the Property Factor. The Property Factor is not being fair in its dealings with homeowners because it has no apparent system for checking that work is being instructed and charged for correctly.

14. **OSP 3**

Some quarterly invoices issued by the Property Factor have no charges for electricity supply and other quarterly invoices contain multiple entries. This makes it difficult to check whether she is being charged correctly. In its response to this application, the Property Factor stated that a credit of £347.92 should be returned to owners in relation to electricity charges (page 207 of IOP). This was based on a table which contained a figure which was incorrect, so the calculation was incorrect. The Property Factor stated that "the owners are getting back £404.20 on the August invoice". In fact, the credit given to the proprietors in the August 2025 invoice was £300.92. The way in which the Property Factor charges proprietors for electricity costs is not transparent. They often amalgamate two Scottish Power charges and those figures therefore do not correlate to what is contained in the Scottish Power bills. Page 48 of IOP is part of an invoice issued by the Property Factor. Under the heading "Administration fee" a charge has been levied for Scottish Power electricity supply. There is a separate section in the invoice for electricity supply, so the way in which the Property Factor sets out its invoice is not clear.

15. **OSP 4**

She believes that the information provided is deliberately or negligently misleading. She has been charged for electricity supply and there is no information provided on the Property Factor's invoice to alert her that late payment charge have been levied. She is not responsible for the late payment charges and the fact that the Property Factor did not disclose these to her was either deliberately or negligently misleading.

16. **OSP 6**

Given the number or errors over an extended period of time, she believes that the staff of the Property Factor have not been properly trained. Whilst she accepts that human errors can occur, the repeated human errors are not acceptable. The Property Manager responsible for her development should have sufficient information so that repeated errors do not occur. In the time that she has owned the Property, there have been 2 Property Managers and she has experienced the same issues during the tenure of both of those Property Managers. The Property Factor does not exercise reasonable skill and care and in a timely manner.

The Property Factor's position

17. In the Property Factor's response of 24 July 2024, there was an acknowledgement that there were some invoicing errors but there is no acceptance that any section of the Code has been breached. In relation to sections 7.1, 7.2 and OPS 11, it states that complaints have been responded to and that all historic invoicing issues have been resolved. Reference is made to the emails which the Homeowner commented on during her evidence. It states that matters raised were complex and required coordination with third party contractors. In relation to section 2.7 of the Code, it does not accept that this has been breached. It states that there is no contractual obligation to

respond to complaints within 5 working days. It makes reference to its Written Statement of Services and states that the approach was applied consistently to the Homeowner's enquiries. In relation to section 3.1, it acknowledges that invoice errors occurred historically but that these were not intentional and were addressed when identified. It states that all historic invoice discrepancies have been reviewed and that robust measures are in place to prevent recurrence. It does not accept that there was a breach of section 3.2 of the Code. Processes and procedure for identifying and managing invoice errors were in place at the time and were communicated to the Homeowner. It does not accept a breach of OSP1. Whilst processing errors were acknowledged, it does not accept a failure to conduct business in compliance with relevant legislation. It denies a breach of OSP 2, stating invoicing errors were not deliberate and were addressed promptly when identified. A breach of OSP 3 is denied and an explanation was provided about complex billing from Scottish Power and advising that corrective measures had been taken. A breach of OSP 4 was denied under explanation that invoicing errors were not deliberate and do not amount to providing negligently misleading or false information. In relation to OSP6, a breach was denied on the basis that errors were not attributable to a lack of training, but rather operational challenges, manual processing limitations and supplier billing complexities.

18. After conclusion of the evidence, the Tribunal received an email from a Customer Relationship Manager of the Property Factor dated 7 April 2026 to advise that she had not received emails from the Tribunal intimating the hearing date. The Tribunal administration team confirmed that intimation of the hearing on 24 February 2026 was sent to the registered email for the Customer Relationship Manager on 17 December 2025.

Findings in fact

19. The Homeowner is the proprietor of 93b/7 Albert Street, Edinburgh, EH7 5LY.

20. The Property Factor is the properly appointed Factor in respect of the Property.

21. The Property Factor failed to respond to enquiries and complaints from the Homeowner within reasonable timescales and in line with its complaints handling procedure as set out in the Written Statement of Services.

22. The Property Factor failed to apply its own complaints handling procedure consistently and reasonably.

23. Having failed to apply its own complaints handling procedure, the Property Factor failed to issue a final decision in writing.

24. The Property Factor failed to provide transparency financial records and included improper payment requests on invoices issued to the Homeowner.

25. The Property Factor failed to provide clarity and transparency in all accounting procedures.

26. The Property Factor has not been open, transparent and fair in its dealings with the Homeowner.

27. The Property Factor failed to provide the Homeowner with information in a clear manner.

28. The Property Factor provided information that was deliberately or negligently misleading.

29. The Property Factor failed to provide services to the Homeowner using reasonable skill and care in a timely manner.

Tribunal's observations in relation to the sections of the Codes at issue

<u>Section 7.1 and 7.2 and OSP 5</u>

30. The Tribunal agrees with the Homeowner that the Property Factor failed to comply with its own procedure. The procedure is set out in the Written Statement of Services. The Homeowner followed the procedure. She made formal complaints on 16 November, 23 November and 4 December 2024. Although she received emails from the Property Factor on 18 November, 25 November and 27 November 2024, these emails were in response to earlier emails. On the basis of the documentary productions provided, there is no evidence to demonstrate that the Property Factor responded to the formal complaints made. Its complaints procedure indicates that once a complaint is received, the response will be managed by an Associate Director. There is no evidence that any of the formal complaints made were managed by an Associate Director or any other member of staff. The documentary evidence does not support the Property Factor's contention that it complied with its own procedure. The Tribunal found that the Property Factor did not respond to the Homeowner's formal complaints and therefore did not apply its own complaints procedure consistently and reasonably. It follows that since no response was issued to the Homeowner in respect of her complaints, the Property Factor has failed to issue a final decision in writing. The Tribunal concluded that sections 7.1 and 7.2 of the Code have been breached.

OSP 11 and Section 2.7

31. As referred to in the preceding paragraph, the Property Factor failed to respond to the Homeowner's complaints. The Code provides that complaints should be responded to within a reasonable timescale and in line with the complaints handling procedure. The Tribunal concluded that the Property Factor has breached OSP 11 and section 2.7.

Section 3.1 and OSP 6

32. Whilst there is often a basis for different apportionment of common charges for different types of work carried out, there is no apparent reason why a different apportionment has been applied to electricity charges in different invoices. This point has not been answered by the Property Factor in its written representations. The Property Factor set up an online portal in 2024. The Homeowner gained access to contractors' and suppliers' invoices through the portal. The apportionment of charges is not consistent, and in the absence of an explanation from the Property Factor, it appears that the Property Factor has made an error in apportioning charges. The Property Factor's response in relation to this section of the Code is that the apportionment has been rectified. However, it does not explain why different charges for the same items, such as electricity charges have been apportioned differently in different invoices. The Property Factor paid the wrong sum to Scottish Power in relation to electricity charges. Having made that error, the Property Factor did not try to resolve that error within a reasonable time and still does not appear to have resolved it properly. The Property Factor did not issue the credit when it said it would and she had to chase the Property Factor for a credit. It took almost a year for the credit to be applied to her account and the sum credited was wrong. The Scottish Power invoices disclose that late payment fees were charged, and these were passed onto Homeowners. This was not made clear to Homeowners and was only discovered by the Homeowner when she examined the invoices. The Tribunal concluded that the Property Factor was not transparent in relation to financial obligations and has not used skill and care to calculate the sums properly due by the Homeowner.

Section 3.2

33. As already referred to, the Property Factor paid the wrong sum to Scottish Power and passed that wrong charge onto the Homeowner. She was told on 27 November 2024 that a credit of £300.92 would be refunded in the February 2025 invoice. That was not done. The Homeowner received an email on 27 March 2025 advising that it would be included in the May 2025 invoice. That

was not done. On 26 July 2025 the Homeowner received an email advising that the credit would be included in the August 2025 invoice. The Tribunal concluded that the Property Factor failed to protect the Homeowner's funds by failing to rectify its error within a reasonable time.

OSP 1

34. The Homeowner did not refer to any legislation in support of the breach of OSP 1. There was no evidence before the Tribunal to support a breach of this OSP and the Tribunal concluded that the Property Factor did not breach this OSP.

OSP 2 & OSP 4

35. The Scottish Power invoices already referred to contained late payment charges. There was no transparency for the Homeowner to indicate that late payment charges had been levied and were being passed on to Homeowners. The Tribunal concluded that the Property Factor has not been honest, open and transparent and either deliberately or negligently provided false information in the invoices issued to the Homeowner in respect that the invoices issued to the Homeowner included charges for electricity supply and made no mention of late payment fees.

OSP 3

36. The information set out in some invoices is not clear, particularly in relation to the apportionment of charges. Although the Property Factor has advised that the errors have been rectified, no explanation has been provided to make it clear why different proportions have been charged. The Tribunal concluded that some of the information provided is not given in a clear and easily accessible way.

Reasons

37. The Homeowner was very thorough in providing documentation to support her position that the Property Factor breached the Code in a number of respects. The Tribunal found the Homeowner to be credible and reliable. Although the Property Factor provided a response in relation to the sections of the Code said to have been breached, the documentation provided by the Property Factor and the Homeowner did not support its position. On the basis of the Homeowner's

evidence and from the documentation submitted by both parties, the Tribunal found that the various errors accepted by the Property Factor would not have come to light had the Homeowner not notified the Property Factor. There is an abject failure on the part of the Property Factor to accept that it breached any part of the Code. The Homeowner has sought assurances from the Property Factor that a system would be put in place to prevent errors occurring again. Although the Property Factor's response to this application indicates that processes have been put in place, there is no evidence of how these processes operate and how a recurrence might be prevented. Most of the complaints made by the Homeowner do not relate to core services of the Property Factor but rather its ability to accurately manage supplier contracts and meet its financial obligations to the Homeowner. The Property Factor apportioned the same common charges (electricity) differently on different invoices without explanation. It overpaid the electricity supplier and that was discovered by the Homeowner. There was nothing complex about the bill for common electricity which was overpaid. The supplier set out the charges in the period, deducted payments already made and indicated the total sum due. The Property Factor failed to note the correct sum due. The overpayment was charged to the Homeowner and when she raised the issue with the Property Factor, it took almost a year for the Property Factor to issue a credit to the Homeowner. Even after the credit was issued, it appears to the Tribunal that the sum calculated by the Property Factor was incorrect. The Property Factor was not transparent with the Homeowner about late payment charges levied by the electricity supplier. The Homeowner was charged for a proportion of electricity in her common charges account. It was only on examination of the supplier invoices that the Homeowner discovered the sum charged included late payment charges. The Property Factor has the responsibility of managing supplier contracts and knew or ought to have known that sums were due to the supplier. If the Property Factor believed that it was not at fault in incurring late payment charges, it could have challenged the late payment fees but at the least should have made this clear to the Homeowner.

38. Turning to the proposed order, the Tribunal took into account the inconvenience the Homeowner has had in pursuing matters. She has sent numerous emails. She followed the Property Factor's complaints procedure. There has been no response to her formal complaints, albeit some of her enquiries were ultimately answered. Some of the failings of the Property Factor continue to this day. The Homeowner wants the Property Factor to be proactive in managing its financial obligations properly. The Homeowner is hopeful that by concluding this procedure, the Property Factor might recognise the failings and rectify those failings by instituting a procedure to ensure that common charges are calculated correctly and supplier contracts are managed properly. In light of all the foregoing it is proposed that the Property Factor is ordered to undertake a review of its procedures for calculating the Homeowner's common charges

correctly or clearly explain why they are not in a position to do so, all with 28 days of the issue of the Order. Section 20 1(b) gives a tribunal power to order a Property Factor to make such payment to the Homeowner as the Tribunal considers reasonable. This is generally seen, in cases such as this, as “compensation” for inconvenience, time and effort expended in cases where a Property Factor has been found to have breached the code. Fixing a suitable sum involves consideration of mitigating and aggravating factors and recognising that this can never be an exact science. Tribunals have wide discretion in this area.

39. In this case there was no evidence presented by the Property Factor of mitigating factors despite there being an opportunity to present this at a hearing, which was not taken. The Homeowner’s evidence was unchallenged. In respect of aggravating factors there is the time which has elapsed since this matter was first raised with the Property Factor and the Property Factor’s absolute failure to accept any breach of the Code.

40. The Tribunal has decided that a global sum of £600 to reflect the time and effort spent by the Homeowner and the inconvenience to her was fair, proportionate and just in all of the circumstances. The Homeowner wished all management fees refunded in relation to quarters when accounting errors were made. The Tribunal decided to aware a global sum rather than ordering payment in relation to certain invoices. Although accounting errors were made, the Tribunal considered that it is not reasonable for full management fees to be refunded, because many other services were provided without any issue being taken by the Homeowner.

41. The Tribunal noted that the Homeowner wished the Tribunal to order an independent audit of the Property Factor’s records. The Tribunal considered that this is not reasonable, but has decided to order the Property Factor to undertake a review of the Homeowner’s account and correct errors.

Property Factor Enforcement Order (PFEO)

42. Section 19 of the Act states: -

> (2) In any case where the First-tier Tribunal proposes to make a Property Factor enforcement order, it must before doing so (a)give notice of the proposal to the Property Factor, and (b)allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the Property Factor has failed to carry out the Property Factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a Property Factor enforcement order.

43. The intimation of the First-tier Tribunal's Decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the First-tier Tribunal by no later than 14 days after the date that the Decision and this proposed PFEO is sent to them by the First-tier Tribunal. If no representations are received within that timescale, then the First-tier Tribunal is likely to proceed to make a property factor enforcement order without seeking further representations from the parties. Failure to comply with a PFEO may have serious consequences and may constitute an offence.

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.

Nicola Irvine

Chairperson of the Tribunal

Dated: 27 July 2026