



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

DECISION

The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 Schedule 1 Section 16

The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016

Reference number: FTS/HPC/25/3673

Re: 5 Hillpark Grove, Edinburgh, EH4 7AP (“the Property”)

The Parties:

Mr Aylmer Millen, 5 Hillpark Grove, Edinburgh, EH4 7AP

(“the Homeowner”)

and

Myreside Management, 3 Dalkeith Road Mews, Edinburgh, EH15 5GA

(“the Property Factor”)

Tribunal Members

Fiona Cook (Chairperson) and Frances Wood (Ordinary Member)

Hearing

1. A hearing took place in Edinburgh on 1st July 2026. The Respondents were represented by Mr Keith Hunter and Mr Rhys Williams. The Homeowner was not in attendance and had emailed the Tribunal in advance to advise that he would not be attending and was content that his application be dealt with in his absence and on the basis of the papers that he had submitted.

Background

2. The Homeowner made an application to the Tribunal which was given the reference PF/25/3673.
3. A case management discussion took place by teleconference on 4th March 2026. Mr Millen, the Homeowner attended the hearing and Mr Walker and Mr Williams attended for the Property Factor.
4. In the application, the Homeowner asked the Tribunal to decide that the Respondent had failed to comply with Overarching Standards of Practice 11 and Paragraphs 3.1 and 7.1 of the Code of Conduct.
5. It was noted that the Homeowners application arose in relation to the Property Factors apportionment of maintenance fees for an area of communal ground referred to as "Area C". Both homeowners in housing developments called Hillpark Brae and Hillpark Green made payments towards the maintenance of Area C although the Property Factors are only factors for the 156 properties in the Hillpark Brae development. There are 23 properties in Hillpark Green.
6. Prior to the current Property factor taking over the management of the Hillpark Brae Development in March 2024 and becoming the Homeowner's factors, the costs for the maintenance of Area C had been divided between 179 properties. This included the 156 properties in Hillpark View and the 23 which form the Hillpark Green development. The new Property Factors (Myreside) took a different approach and issued invoices apportioning the Homeowner's share of land management charges on the basis of paying a 1/156 share (albeit that also covered services provided other than for the maintenance of Area C). Following discussions at the CMD the Tribunal decided that it was not going to be possible to resolve matters at the CMD and that a hearing was going to be required.
7. Following the case management discussion the Tribunal issued a Directions Notice and requested additional information to be made available prior to the evidential hearing to assist the Tribunal in making their decision.
8. The Directions Notice also requested that the Property Factor set out their response to the alleged breaches of OSP 11 and paragraph 7.1 of the Code of Conduct as these were not included in their written representations for the case management discussion.

9. While the issue in dispute was a narrow one the Tribunal requested clarification from the Property Factor as to how they are invoicing the two developments who have an obligation to maintain Area C and how this differs from the approach taken by the previous Property Factors.
10. Additional information was sent to the Tribunal by both parties prior to the evidential hearing and the Homeowner explained that he would not be attending the hearing and was content for the Tribunal to decide the application on the basis of the papers he had submitted.

Findings in Fact

11. The Property Factors are the Homeowner's factors. They factor the development in which the Homeowner's property is situated which is known as Hillpark Brae. There are 153 properties in the development.
12. Myreside Management have been the factors since on or about March 2024 having replaced Charles White Ltd. as the factors.
13. The Factors are responsible for maintain the common parts of Hillpark Brae. This includes an area of landscaped ground known as "Area C".
14. "Area C" can also be accessed by the residents of the neighbouring development Hillpark Green. There are 26 properties in that development who share a right in common with the residents of Hillpark Brae to "Area C".
15. Myreside Management are not the factors of Hillpark Green. That development has a separate factor and has a residents association, Hillpark Green Resident's Association.
16. The previous factors had issued invoices to 179 properties for the maintenance charges for "Area C".
17. Following their appointment Myreside Management undertook the maintenance of "Area C" and this was undertaken by their inhouse gardening and maintenance team.
18. Myreside Management's representatives gave evidence to the Tribunal that they had not understood at the time of their appointment appreciated that the 26 properties at Hillside Green had an obligation to contribute to the maintenance of "Area C". the Tribunal allowed a short recess for the representatives to check the position from historical records but following the

recess accepted that in all likelihood they had not understood this fully at the time of their appointment and therefore calculated the costs of the maintenance for “Area C” on the basis that only the 153 residents of Hillpark Brae were to contribute.

19. When they realised that the residents of Hillpark Green also had an obligation to contribute to the costs of the maintenance they took a different approach from their predecessors and charged the Residents Association of Hillpark Green (RAHG) a charge that in their view was similar to the charge those residents had paid to the previous factor.
20. The current contribution by RAHG is £65 per quarter or £260 per annum.
21. Myreside Management accepted that they had not considered how in future they might review and/or increase or decrease those charges.
22. Myreside Management had not considered how the payments made by RAHG might be offset against the payments made by the Homeowner and his neighbours and accepted that the costs paid by the Homeowner and his neighbours had not been adjusted to reflect the contributions made by the Hillpark Green owners.

Decision

23. The Tribunal accepted that the arrangements for factoring “Area C” were somewhat unusual as there were two separate developments involved and they were only the factors for one of those developments. It was also appreciated that the work was not contracted out but was being undertaken by their own inhouse gardeners. It was also appreciated that the factors had not initially realised when they had become the factors for Hillpark Brae that the properties in Hillpark Green were also obliged to maintain “Area C”.
24. It was helpful that the Property Factors were represented at the hearing and were able to confirm that there may be an element of “double charging” which should be investigated by them and with a view to the annual contribution of £260 per annum from the owners at Hillpark Green being deducted from the costs to be shared by the Homeowners and his neighbours.
25. The Tribunal accepted that the Homeowner had been correct to seek clarification about the invoicing for the work to maintain “Area C” and accepted the Property Factor was now committed to resolving the matter. They also indicated to the Tribunal that they should be able to resolve the matter within a relatively short time frame and that they would attempt to resolve matters prior to the next invoicing period.

Reasons for Decision

26. In his application, the Homeowner asked the Tribunal to decide that the Respondent had failed to comply with Overarching Standards of Practice 11 and Paragraphs 3.1 and 7.1 of the Code of Conduct.

Overarching Standards of Practice 11

27. This Overarching Standard of Practice (OSP) states “You must respond to enquiries and complaints within reasonable timescales and in line with your complaints procedure”. The Tribunal considered that there was some overlap between this OSP and the breach that they were being asked to consider in terms of paragraph 7.1. The Tribunal took a similar approach to both sections and decided that there was no breach of this part of the code as the Property Factors have largely adhered to the timeframes within their complaints and communication procedures and any delays were not considered excessive or unreasonable. Having said that, the Tribunal ultimately took the view that it was regrettable that the concerns raised by the Homeowner had not been resolved prior to his having to refer the matter to the Tribunal.

Paragraph 3.1

28. This part of the code relates to financial obligations and considers transparency in terms of the services provided by a property factor. There is specific reference to “Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills.” The Homeowner did query the payments he was making and how they had been calculated and apportioned and he was entitled to do so. By their own admissions the Property Factors had not fully understood how many households were to contribute to the maintenance of “Area C” when they tendered for the contract and now accept that they need to take the contributions made by the owners in Hillpark Green into consideration when billing the Homeowner. The Tribunal therefore decided that this part of the code had been breached.

Paragraph 7.1

29. This paragraph of the code considers the Property Factors complaints handling procedures. The Property factor does have a written complaints handling procedure and they do have a two stage complaints process. While the Tribunal ultimately decided that there was no breach of this part of the code there was discussion at the hearing about the merit in the Property Factor doing everything possible to have the second stage of any complaint considered by a different staff member as opposed to the same staff member. The Tribunal noted that in smaller firms that might not always be possible and the code refers to what might be considered as good practice. The Property Factor agreed to take this into consideration and to try, when possible, to have complaints passed to a separate staff member at the second stage. They advised the Tribunal that they would review their complaints procedure prior to the end of 2026 and it would be helpful if they could attend to this. While there was a minor delay in complying with the complaint timescales the Tribunal, on balance decided this was not sufficient to merit a breach of this part of the code.
30. The Tribunal then decided whether a Property Factor Enforcement Order (PFEO) was required in this case. While the Tribunal decided that there had been a breach of the property factor's duties as set out in paragraph 18 above, Section 19 (1) (b) allows the Tribunal to decide "whether to make a property factor enforcement order". It seemed to the Tribunal that a PFEO was not required in this case. The Homeowner was entitled to seek clarification as to how the ground maintenance costs were calculated and that was clarified at the hearing. Thereafter the Property Factors provided an undertaking (albeit in the absence of the Homeowner) that they would undertake to clarify the calculation with the Homeowner and with a view to offsetting the contribution from Hillpark Green from the payments made by the Hillpark Brae residents including calculating whether any repayments should be made.
31. A PFEO is not required for this to be achieved, and the Tribunal would therefore hope that the parties can communicate directly in future to resolve matters to their mutual satisfaction with the Tribunal being available to the Homeowner in future if that is not the case.

Chairperson of the Tribunal
Dated: 4th September 2026