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) in terms of Section 19 of the Property Factors (Scotland) Act 2011 ("the Act") in respect of an application under Section 17 of the Act and Rule 24 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Chamber Ref: FTS/HPC/LM /24/5852
Re: Property at 8 St Leonards Court, Bath Street, Stonehaven, Aberdeen AB39 2FQ ("the Property")

Parties: Dr Henry George Deans, 8 St Leonards Court, Bath Street, Stonehaven, Aberdeen AB39 2FQ ("the Applicant")

Atholls Ltd in Liquidation, 16 North Silver Street Aberdeen, AB10 6RL per ("the Respondent") per Mr Michael Reid, MHA,12, Carden Place,,Aberdeen,AB10 1UR ("the Respondent's Liquidator")

Karen Moore (Chairperson) and Ahsan Khan (Surveyor and 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 Code at OSPs 2,4,10 and 12 and has failed to comply with the Property Factor Duties.

The Tribunal proposed to make a Property Factor Enforcement Order and gave intimation of this under separate notice.

Background

1. By application received on 23 December 2024 (“the Application”), the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for determinations that the Property Factor had failed to comply with the Code of Conduct for Property Factors which came into force on 16 August 2021 (“the Code”) and failed to comply with property factor duties.

2. The Application comprises the following documents (i) First-tier Tribunal standard application form, Form “C2” (ii) copy statutory intimation letter to the Property Factor in respect of the 2021 Code, (iii) copy correspondence between the Parties in respect of the Homeowner’s complaints and (iv) a copy of the Property Factor’s Written Statement of Services.

3. In particular, the Application complains of the following breaches of the 2021 Code:- in relation to overarching standards of practice (OSP) 2,4,10 and 12 and Sections 2.2, 2.7 and 3.7 of the Code. The Application also complains of a breach of property factor duties in respect of the way in which the Property Factor acted.

4. The Application was accepted by the tribunal chamber and a Case Management Discussion (CMD) was held on 7 August 2025 at 10.00 by telephone conference call.

5. Prior to the CMD, both Parties submitted written submissions with supporting documents. The outcome of the CMD was that the CMD was adjourned to a Hearing and a Direction was issued setting out evidence required for the Hearing.

6. Prior to the Hearing, the Property Factor was subject to voluntary liquidation proceedings and Mr. Michael Reid of MHA,12, Carden Place, Aberdeen,AB10 1UR was appointed Liquidator.

7. Also, prior to the Hearing and in response to the Direction, the Homeowner, Dr. Deans restricted his complaint to OSPs 2,4,10 and to a breach of property factor duties.

Hearing

8. The CMD took place on 13 July 2026 at 14.00 by telephone conference call. The Homeowner, Dr. Deans, was present on the call and was not represented. The Property Factor was not present on the call and was not represented. The Tribunal was satisfied that the Hearing date had been intimated to Mr. Reid as liquidator. As Mr. Reid advised that he would not attend, the Tribunal proceeded in the absence of the Property Factor.

Homeowner's Oral Submissions.

9. The Tribunal heard from Dr. Deans, the Homeowner, in respect of the Application. Dr. Deans gave an overview of his complaint and explained that the Property Factor took over the management of the development of which the Property forms part in 2020. Although their handling of the management was initially satisfactory, problems began to occur in late 2022, which issues are categorised as:

I. The installation of an external light bollard which did not match the other bollards and which was at a cost in excess of the Property Factor's delegated authority;

II. The Property Factor's failure to take reasonable steps to recover debts prior to issuing final invoices and failing to provide accurate financial information of these debts;

III. The Property Factor's failure to provide accurate information in respect of t the block insurance cover;

IV. The issue of a misleading letter by the Property Factor "recalling" the notice of termination of factoring services;

V. The Property Factor's failure to provide an explanation for their delay in issuing final invoices and

VI. The content of a letter which Dr. Deans found to be offensive and insulting and which applied the Property Factor’s unreasonable behaviour policy in an unfair and discriminatory manner.

10. Dr. Deans position was that these issues, individually and collectively, evidence the Code breaches and the property factor duty failings set out in the Application.

Issue 1 – Bollard and delegated authority level in the Written Statement of Services (WSS)

Breaches of OSP 2 and 4 and Property Factor Duties.

11. With reference to his written submissions and productions, Dr. Deans explained that, in December 2023, the Property Factors instructed the installation of a light bollard at a cost of £505.06, which cost exceeded their delegated authority of £500.00. The Property Factor’s explanation was that the delegated authority level excluded VAT and accepted that the WSS ought to have set this out, under explanation that it was a misprint. as stated in the relevant WSS. Dr. Deans position was that the Property Factor ought to have followed the consultation process set out in the WSS, however, the Property Factor’s solution was to reduce the cost by £5.07 to £499.99.

12. Again, with reference to his written submissions and productions, Dr. Deans explained that the bollard which was installed did not match the bollards already in situ. His position was that by failing to follow the consultation process, the owners were not given an opportunity to purchase a matching bollard. Dr. Deans pointed out that a matching bollard was readily available at a lower cost. His position was that the Property Factor was not open and transparent when asked to explain the instruction given to the electrical contractor on the choice of bollard or the pricing.

Issue 2 – Debt Recovery and Final Accounts

Breaches of OSP 2 and 4 and Property Factor Duties.

13. With reference to his written submissions and productions, Dr. Deans explained that, following their resignation, the Property Factor issued final invoices to all owners, which invoices included a dispersal of alleged "Aged/Irrecoverable Debt" of £2861.27. Dr. Deans' position was that not only was the amount incorrect, it belied that fact that the Property Factor had not followed their WSS and debt recovery procedures. It appeared to Dr. Deans that the Property Factor had made no attempt to recover debts from defaulting owners.

14. With further reference to his written submissions and productions, Dr. Deans pointed out financial anomalies and irregularities and stated that questions on these have still to be answered and an explanation given.

Issue 3 – Insurance
Breaches of OSP 2 and 4 and Property Factor Duties.

15. Dr. Deans complaint in this regard related to the Property Factor's handling of the block buildings insurance following their notice of resignation. With reference to his written submissions and productions, Dr. Deans explained that the Property Factor was deliberately evasive, misleading in responding to Dr. Deans enquires in respect the insurance cover during the notice period and deliberately gave false and deceptive replies in respect the action taken by them and the brokers. In particular, the Property Factor had advised that cover was arranged to 18 July 2024, when it ceased on 4th June 2024. Dr. Deans stated that it was not until he contacted the insurance broker on 3rd June that he learned that the Property Factor instructed cover to 4 June 2024 as longer cover would have impacted on the Property Factor's attempts to sell their business.

Issue 4 – Recall of Termination Notice
Breaches of OSP 2 and 4 and Property Factor Duties

16. With reference to his written submissions and productions, Dr. Deans, complaint in this regard related to the Property Factor's issue of their termination notice on 27 May 2024 and in respect of which the Property Factor attempted to withdraw, explaining that it had been issued in error. the subsequent withdrawal of that notice With reference to his productions being various letters from the Property Factor in or around April 2024 to Dr. Deans and other owners, Dr. Deans' position was that not credible that conflicting letters could have been "sent out in error" and that the "error" claim was a deliberate disingenuous and misleading attempt to deceive as the Property Factor had no genuine intention to ensure that the development should not be left without a new factor, but had an ulterior business reason.

Issue 5 – Delay in Final Invoices
Breach of OSP 2

17. With reference to his written submissions and productions, Dr. Deans, complaint in this regard related to the lengthy time it took the Property Factor to issue of their final invoices. He pointed out that Section 3.5 of the Code, oblige property factors to issue final accounts within 3 months of the termination of their contract unless they have good reason. In this case, the final invoices should have been issued by 18th October 2024 but were not issued until 1 November 2024, with the reason for late issues given as difficulties in obtaining final invoices from some contractors and service providers. Dr. Deans stated that his investigations with the service providers showed that there had been no delays. His position was that the Property Factor failed to give details of the other contractors and later changed the reason to staffing levels after the sale of the business.

Issue 6 – Dalley Letter

Beach of OSP 2 and 12

18. Dr. Deans complaint in this regard related to a letter sent by the Property on 31 May 2024 contained, in Dr. Deans' view, unfounded, insulting and offensive allegations regarding his correspondence and formal complaints, which was compounded by the Property Factor failing to evidence their reasons for issuing the letter. to try to justify his allegations. Dr. Deans' view was that the Property Factor used these allegations as a pretext to apply their "Unreasonable Behaviour Policy" and so curtail Dr. Deans' ability to correspond and ask questions. Dr. Deans regarded this approach as impugning his character and integrity without foundation. Dr. Deans was clear that his contact with the Property Factor was fully within his rights and entitlement as a homeowner and that the Property Factor's assertion that he had acted "in a ploy" and in a "vexatious" manner was wholly without foundation.

Outcome

19. With regard to an outcome, Dr. Deans fully understood that, as the Property Factor is in liquidation, the Tribunal was limited as to the extent of a PFEO it could make.

Property Factor's evidence

20. The Tribunal had regard to the written submissions lodged by the Property Factor earlier in the process.

Tribunal's assessment of the evidence.

21. The Tribunal found that there were few discrepancies between the evidence. The Tribunal found the Homeowner, Dr. Deans, to be straightforward and measured in his evidence at the Hearing but were in no doubt from his written submissions that he had been extremely frustrated by the conduct of the Property Factor to the point of despair. The Tribunal found the Property Factor's written submissions to be evasive and their actions to be attempts at covering up failings or omissions and could well understand Dr. Deans' position.

Findings in Fact

22. The Tribunal found the following facts established on the balance of probability:

i) The Parties are as set out in the Application;

ii) The Property Factor failed to follow their WSS in dealing with the installation of the bollard;

iii) The Property Factor failed to ensure that a suitable bollard was installed;

iv) The Property Factor failed to disperse the common debt appropriately or accurately;

v) The Property Factor appeared not to have followed their debt recovery policy;

vi) The Property Factor failed to issue final accounts timeously;

vii) The Property Factor acted in a way which was misleading and false in relation to the block buildings insuranace;

viii) The Property Factor failed to reply to the Homeowner's reasonable requests and enquiries truthfully and accurately;

ix) The Property Factor acted in a deceptive manner in their communications with the Homeowner;

x) The Property Factor, with regard to the Homeowner, applied their "Unreasonable Behaviour Policy" unreasonably and disproportionately;

xi) The Property Factor's letter of 31 May 2024 to the Homeowner was without foundation and designed to cause offence.

Decision and reasons for the decision

Breaches of Code

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

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

OSP12. You must not communicate with homeowners in any way that is abusive, intimidating or threatening.

23. From their assessment of the evidence and the Findings in Fact, the Tribunal had no hesitation that the Property Factor failed to comply with these parts of the Code.

Property Factor Duties.

24. Dr. Deans' complaint in this respect relates to the overall conduct of the Property Factor in complying with the Code and so, having found that the Property Factor failed to comply with the Code, the Tribunal found that the Property Factor failed in this respect.

Property Factor Enforcement Order (PFEO)

25. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has failed to comply with the Section 14 duty and has failed to carry out the property factor's duties, the Tribunal then proceeded to consider Section 19(1) (b) of the Act which states *"(1)The First-tier Tribunal must, in relation to a homeowner's application referred to it … decide … whether to make a property factor enforcement order."*

26. The Tribunal's view is that the Property Factor's breaches of the Code and property factor duties have caused the Homeowner, Dr. Deans, extreme frustration and took the view that a PFEO should made.

27. As the Property Factor terminated their contract at the development and as they are in liquidation, there is no point in the Tribunal ordering any actions to be taken. However, the Tribunal considers that Dr. Deans should be compensated for time, effort and frustration and considers that £500.00 is a reasonable sum, albeit it is understood that any ward will be subject to the provisions and funds available in the liquidation.

28. Section 19(2)(a) of the Act states that before making a PFEO, the Tribunal must give Notice to the Parties and must give the Parties an opportunity to make representations. Therefore, in accordance with Section 19(2)(a) of the Act, the Tribunal issues separate Notice to the Parties in this regard.

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.

______________________________	30 July 2026
Legal Member/Chair	Date