



**Decision and Statement of Reasons of the First-tier Tribunal for Scotland
(Housing and Property Chamber) under Section 19(1) of the Property Factors
(Scotland) Act 2011 (“the 2011 Act”)**

Reference number: FTS/HPC/PF/25/2536

Re: Property at 22/3 Minto Street, Edinburgh, EH9 1RQ (“the Property”)

The Parties:

Dr Stephen Thomson, 22/3 Minto Street, Edinburgh, EH9 1RQ (“the Homeowner”)

**James Gibb Property Management Ltd, Red Tree Magenta, 3rd Floor, 270
Glasgow Road, Glasgow, G73 1UZ (“the Property Factor”)**

Tribunal Members: Ruth O’Hare, Legal Member and Sara Hesp, 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 OSP2, OSP3, OSP4, OSP6, OSP9, OSP11, 2.1, 2.7, 3.1, 3.2, 4.6, 4.11, 6.1, 6.4, 6.6, 6.12 and 7.1 of the Code. The Tribunal further found the Property Factor to have breached the Written Statement of Services (“WSS”) Proposed Work 07 and Communication 02.

The Tribunal therefore 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 in response to the application on 24 December 2025. On 15 and 17 January 2026 the Tribunal received further written representations from the Homeowner.
- 3 A case management discussion (“CMD”) took place on 19 January 2026. Having heard from the parties the Tribunal determined to fix an evidential

hearing. A Direction was issued to parties requiring them to submit any further documents and details of witnesses at least fourteen days prior to the hearing.

- 4 On 2 July 2026 the Tribunal received further documents from the Homeowner.

The hearing

- 5 The hearing took place on 15 July 2026 by videoconference. The Homeowner was in attendance. The Property Factor was represented by Mr Mark Smith.
- 6 The Tribunal heard evidence from the parties on the Homeowner's complaint. Both parties referred to the documents submitted in their evidence. The following is a summary of the key elements of the evidence and is not a verbatim account.

Roof repairs

- 7 The Homeowner's position is that the Factor failed to provide him with information regarding proposed roof repairs when he purchased the property on 29 November 2022. The Homeowner referred to the documents submitted which showed that the Property Factor was aware of the issue at the time. The Property Factor continued to chase the Homeowner for his share of the works despite the fact his share had been paid by another homeowner. The Homeowner spoke to the delays in the Property Factor instructing the works which had led to increased costs and the delays in communication on the issue. The Homeowner also spoke to the lack of transparency around the instruction of the works and uncertainty regarding the use of the sinking fund. The Property Factor had proceeded with a meeting to discuss the repairs but had not informed the Homeowner and had failed to provide the Homeowner with the meeting minutes and agenda upon request. The Homeowner along with other owners specifically requested the sinking fund be closed down but this had not been actioned by the Property Factor.
- 8 Mr Smith referred to the Property Factor's written submission. The Property Factor is not obliged to disclose any water ingress unless the work proposed would affect the incoming owner. However, during cross-examination, Mr Smith conceded that the Property Factor could have provided the Homeowner with the information albeit they did not have accurate costs at that time. Mr Smith acknowledged there were delays in completing the roof repairs which appear unreasonable but explained that the repairs were complex and at one point the works had to be cancelled due to a lack of funding. Mr Smith apologised for any communication issues, noting that the property manager involved had now left the company. There had been an overlap when that individual was still named as the property manager on the Property Factor's website despite having left the company. However, the property manager's emails were being diverted and Mr Smith recalled communicating with the Homeowner at that time. Mr Smith also apologised for not responding to the Homeowner's email in March 2026 and confirmed that the Property Factor would not be pursuing the Homeowner for the roof repairs. Mr Smith could not explain why it had taken 8 months for

the repairs to be instructed. He agreed that was unreasonable. He would require to review the position regarding the sinking fund.

Window cleaning

- 9 The Homeowner's position is that he was charged for window cleaning which was not carried out by the contractor. He disputed this with the Property Factor on 16 May 2024. The Property Factor initially refused to accept that the window cleaning applied to both private and communal windows. They then apologised to the Homeowner but reverted to their original position when he made a formal complaint. The Property Factor gave the Homeowner the window cleaner's phone number and told him to sort it out. The window cleaner was dishonest and would park in the Homeowner's private parking space.
- 10 Mr Smith acknowledged that the property manager should have resolved this matter. The Property Factor is no longer involved with the cleaning of private windows. The Property Factor is unwilling to refund the costs dating back to the Homeowner's purchase of the property but has offered to refund the sum of £84.45. The Property Factor cannot be responsible for the window cleaner's parking. Mr Smith could see why the property manager offered the Homeowner the opportunity to discuss this directly with the window cleaner but conceded that the Property Factor could have done more in terms of communicating directly with the contractor. Mr Smith cannot account for the actions taken by the property manager at that time but does not believe the Property Factor has breached the Code.

Gardening payments

- 11 The Homeowner's position is that he was paying for gardening services for private areas in the development which were not in common ownership. He raised this with the property manager who wasn't interested in a discussion. The Homeowner then made a formal complaint to the Property Factor. In March 2025 the Property Factor stated they would consult the owners about changing the arrangements but this was not done and the situation persisted until the Property Factor ceased to factor the development in October 2025. The Homeowner asked the Property Factor to reapportion the gardening costs and provide him with a refund but this was not addressed. The Homeowner pointed out that the gardening contractor had changed in 2023 which would have been an opportunity for the Property Factor to review the arrangements at that time.
- 12 Mr Smith accepted there had been an issue with the apportionment of the gardening costs. It was a difficult issue for the Property Factor to deal with. Backdating charges would have a significant impact on owners in the process of selling properties as well as those who had recently purchased properties. As such the Property Factor would not backdate the charges to 2007. It would however be reasonable to reapportion the charges going forward. Mr Smith noted that the gardening arrangements had been put in place in 2007 when the Property Factor took over the development. There had been no issues for around 18 years. Mr Smith acknowledged that the Property Factor had an

obligation to reapportion the costs when the Homeowner informed them of the issue and he was surprised that had not been done.

Failure to refer a matter to a supervisor

- 13 The Homeowner's position is that he asked the property manager to refer his complaint to a supervisor, but this hadn't happened. He raised this in his formal complaint to the Property Factor.
- 14 Mr Smith explained there was a theme emerging of the property manager at that time taking actions that were questionable and not as prompt as they should have been. He apologised to the Homeowner for any undue stress caused.

Failure to inform the Homeowner of a change of development manager

- 15 The Homeowner's position is that he was not advised that the property manager for the development had left the company. He had sent several emails requesting an insurance schedule, some marked urgent, but received no reply. There was a period of around four to six months during which the Homeowner did not know that the property manager was no longer in post. The Property Factor continued to state that the property manager was responsible for the development even though he had not worked there for a long period of time.
- 16 Mr Smith believes that the property manager left the company at the beginning of March. Mr Smith started with the Property Factor on 17 February 2025. Mr Smith and a colleague were overseeing the development on a temporary basis. A new property manager joined the company in May 2025, and a letter was sent to owners on 21 June 2025. Mr Smith acknowledged there had been a short period of time during which the Homeowner was corresponding with the Property Factor and not receiving any response. That was unacceptable however Mr Smith does not believe it amounts to a breach of the Code.

False misleading communications and failure to address queries

- 17 The Homeowner's position is that he disputed various charges with the Property Factor but in their response to his formal complaint the Property Factor had stated the account was not in dispute and the debt recovery procedure would continue. He referred to an email from the Property Factor which accused the Homeowner of emailing various addresses which made it difficult for the disputes to be traced. The Homeowner pointed out that he was simply responding to the email address from which the email was sent. The Property Factor could have traced his emails disputing the charges.
- 18 Mr Smith acknowledged that the Homeowner's formal complaint should have been investigated thoroughly which should have involved looking at emails. He explained that the Property Factor has various different emails, some of which are client facing. The main point of contact is the property manager but from

time-to-time homeowners may have received emails from other departments. The Property Factor has now removed that function. Mr Smith acknowledged that the Property Factor replying from different email addresses may have caused difficulties, but he did not believe this to be a breach of the Code.

Refusal to treat complaint as a complaint

- 19 The Homeowner's position is that he made a formal complaint to the Property Factor on 21 January 2025 and received a response over two months later, on 28 March 2025. During that time further issues arose, and the Homeowner made a further formal complaint on 12 March 2025. The Property Factor advised the Homeowner that his complaint would be treated as a query. The complaint was about the property manager. The Property Factor sent the complaint to the property manager to deal with which was entirely inappropriate.
- 20 Mr Smith explained that the Property Factor would generally pass complaints to the property manager to deal with. However, if the complaint related to the property manager, that was not a reasonable course of action. Mr Smith does not believe this amounts to a breach of the Code but it tied in with the Property Factor's failure to deliver services to the Homeowner in line with their processes. Mr Smith advised that the Property Factor would consider refunding the Homeowner for the management fees paid over the period the property manager was in post.

Repeated delays in communication

- 21 The Homeowner referred to the documents submitted which evidenced delays in communication on the roof repairs, window cleaning and gardening payments. The Homeowner had lost count of the number of times emails and voicemails had gone unanswered.
- 22 Mr Smith conceded there had been communication issues with the property manager at the time who had taken decisions that Mr Smith would not agree with. Mr Smith confirmed that the Property Factor now has a more robust team structure in place. Mr Smith apologised to the Homeowner for the delays in communications.

Failure to respond to complaints within timeframes

- 23 The Homeowner's position is that the Property Factor delayed in responding to his stage 2 complaint. The Written Statement of Services states that the Property Factor will resolve complaints within 28 days or may ask for additional time. The Property Factor had exceeded the deadline by 20 days with no explanation given.
- 24 Mr Smith does not believe there has been a breach of the Code. The delays were communicated to the Homeowner and were reasonable given the extent of the information in the case. Mr Smith did concede that it may appear that the

stage 2 complaint was not robust which may have brought the delays into question. However, a stage 2 complaint will not always mean a fuller response.

Failure to promptly investigate disputed items, failure to prepare suitable itemised invoices, wrongfully passing onus on to Homeowner

- 25 The Homeowner's position is that there is a lack of clarity from the Property Factor on what his alleged debt comprises of. The Homeowner has not been provided with any breakdown. Each invoice collates existing sums and rolls them into the general balance which is then carried forward. The Property Factor has responded to some of the Homeowner's disputed claims but not others. It is not clear which have been addressed and which haven't. The Homeowner is content to pay the outstanding sum once he knows what it's for. When the Homeowner asks the Property Factor for an explanation, the Property Factor passes the onus back to the Homeowner. The situation was incredibly stressful for the Homeowner. He had received threatening letters from solicitors instructed by the Property Factor. The Property Factor has refused to engage with the Homeowner directly.
- 26 Mr Smith explained that, whilst there may have been areas where clearer information could have been provided to the Homeowner, he did not think it was unreasonable to ask the Homeowner to set out what items are in dispute. The Property Factor's obligation is to provide an account in line with the Deed of Conditions or internal procedures. The Property Factor provides quarterly invoices which are itemised and can be linked to supplier invoices. The Property Factor is not obliged to relay those invoices by email. Mr Smith conceded that the Property Factor could perhaps have taken a different approach with the Homeowner to try and resolve the disputes.

Failure to address the substance of complaints at stage 2, failure to comply with complaints procedure

- 27 The Homeowner referred to his earlier evidence regarding his stage 2 complaint. The Property Factor refused to address the substance of the complaint which led to the Tribunal application.
- 28 Mr Smith referred to his earlier evidence. He believes the Homeowner's complaint was addressed at both stage 1 and 2 of the complaints process in accordance with the Property Factor's obligations under the complaints procedure and the Code.
- 29 Both parties were given the opportunity to make closing submissions before the hearing concluded. The Tribunal advised that it would issue its decision in writing.

Findings in Fact

- 30 The Homeowner is the proprietor of 22/3 Minto Street, Edinburgh, EH9 1RQ.
- 31 The Property Factor was the appointed property factor for the development of which the Homeowner's property forms part until October 2025.
- 32 The Property Factor's WSS, under the heading Communication, states "*If you write to us, or email us, we aim to respond within 7 business days from receipt. If we are unable to fully respond to your communication within this timescale we will confirm our anticipated response time.*"
- 33 The Property Factor's WSS, under the heading Proposed Work and Funding, states "*Where proposed work is funded by the Homeowners and instructed by us, we will provide details of the contractor's indicative timescales for communication.*"
- 34 The Property Factor's WSS, under the heading Complaints, states that where a complaint is received "*We will reply within 7 days confirming a timescale for resolution. We will investigate the complaint and endeavour to resolve it within 28 days. We may ask you for additional information to assist us in the delivery of a response which could affect timescales for final response.*"
- 35 The Property Factor ceased to factor the development on 23 October 2025.
- 36 The Homeowner purchased the property on 29 November 2022.
- 37 Prior to the Homeowner's purchase of the property, the Property Factor wrote to the Homeowner's solicitor on 14 November 2022. The Property Factor stating that "*there are no building defects, common repairs, maintenance issues or pending matters of which we are aware*".
- 38 The Property Factor was aware when sending the letter of 14 November 2022 that there were issues with the roof of the building to which the Homeowner's property forms part. The Property Factor confirmed this in an email to the Homeowner.
- 39 On 14 December 2022 the Property Factor wrote to the Homeowner notifying him of the roof repairs and advising that a quote for the repairs had been provided in the sum of £10,500. The Property Factor advised that a condition survey would be carried out.
- 40 On 25 April 2023, 28 June 2023, 18 July 2023, and 21 August 2023, the Homeowner emailed the Property Factor seeking clarity on the roof repairs. The Homeowner did not receive any substantive response from the Property Factor.

- 41 On 25 August 2023 the Property Factor wrote to the Homeowner advising that there had been delays in the completion of the condition survey due to "*issues with access*". No evidence of access issues had been provided by the Property Factor.
- 42 The condition survey report was provided to the Homeowner by the Property Factor on 9 October 2023.
- 43 The Property Factor managed a sinking fund on behalf of the building. On 1 October 2023 the Property Factor wrote to the Homeowner stating that the sinking fund would not be used for roof repairs.
- 44 On 16 October 2024 the Homeowner emailed the Property Factor requesting a ballot be organised on the discontinuation of the sinking fund. On 17 October 2024 the Property Factor wrote to the Homeowner confirming that they would proceed with a ballot. On 14 November 2024 the Homeowner wrote again to the Property Factor requesting an update on the ballot. The Property Factor did not respond. The Property Factor did not organise the ballot.
- 45 On 12 March 2025 the Property Factor wrote to the Homeowner advising that, following a meeting with owners, it was agreed that the sinking fund would be used to offset the costs of the repairs, after which the fund would be closed down.
- 46 The Homeowner advised the Property Factor that he could not attend the said owners meeting. The Property Factor did not respond. The Homeowner was not properly consulted on the roof repairs. The Homeowner was not provided with the minutes or action points arising from the meeting.
- 47 The Homeowner's share of the roof repairs was paid by another owner in the development. The Property Factor continued to pursue the Homeowner for the cost of the repairs despite the sum having been paid.
- 48 The Property Factor arranged for window cleaning at the development. On 16 May 2024 the Homeowner emailed the Property Factor to notify them that the contractor was not cleaning all of his windows. The Property Factor repeatedly stated that the contractor was only contracted to clean communal windows. The Property Factor did not properly investigate the issue raised by the Homeowner. On 1 July 2024, after extensive communication between the parties, the Property Factor conceded that the contractor was contracted to clean both private and communal windows. The Property Factor directed the Homeowner to the window cleaner for further discussion on the issue.
- 49 On 24 March 2025 the Homeowner emailed the Property Factor raising concerns regarding the window cleaner. The Property Factor did not provide a substantive response.
- 50 Between 16 May 2024 and 23 October 2025, the Property Factor continued to bill the Homeowner for window cleaning. The Property Factor failed to

acknowledge the disputed window cleaning charges and failed to take action to resolve the dispute. The Property Factor's response dated 28 March 2025 to the Homeowner's stage 1 complaint reverted to the position that the contractor was only contracted to clean the communal windows.

- 51 The Property Factor arranged for gardening services at the development. The Homeowner emailed the Property Factor on 15 January 2025 to advise that the gardeners were carrying out maintenance to areas of the development in private ownership. The Property Factor failed to respond.
- 52 The Homeowner raised the gardening provision as part of a stage 2 complaint to the Property Factor. On 3 June 2025 the Property Factor responded to the Homeowner stating that a "*correction would be made for future services*".
- 53 The Property Factor did make any correction to the gardening provision prior to ceasing its factoring of the development.
- 54 Between 15 January 2025 and 23 October 2025, the Property Factor continued to bill the Homeowner for gardening services.
- 55 The Property Factor continued to pursue the Homeowner for the disputed charges relating to the roof, gardening and window cleaning, including sending demands and instructing solicitors to send debt action letters to the Homeowner following the raising of this application. The Property Factor ought to have been aware that the charges were in dispute. The Property Factor failed to take sufficient action to resolve the disputes and has failed to provide the Homeowner with clear information on the outstanding sums.
- 56 On 15 January 2025 the Homeowner emailed the then property manager for the development asking him to refer an issue to a supervisor. The property manager did not do so.
- 57 On 21 January 2025 the Homeowner made a stage 1 complaint to the Property Factor.
- 58 On 12 March 2025 the Homeowner submitted a complaint against the property manager to a supervisor and asked for this to be added to his pending stage 1 complaint. The supervisor refused to treat the complaint as a formal complaint. The supervisor referred the complaint to the property manager to deal with. The property manager responded to the Homeowner on 18 March 2025.
- 59 The said property manager left the Property Factor at the beginning of March 2025. The Homeowner emailed the property manager on 31 March 2025 and 10 April 2025 and received no response. The Property Factor formally notified the Homeowner of the change of property manager on 21 June 2025.
- 60 On 16 April 2025 the Homeowner submitted a stage 2 complaint to the Property Factor. On 17 April 2025 the Property Factor responded to confirm that the Homeowner would receive a response within 28 days. On 15 May 2025 the

Property Factor emailed the Homeowner advising that it would aim to respond by 30 May 2025. On 27 May 2025 the Property Factor emailed the Homeowner advising that it would aim to respond by 6 June 2025.

- 61 The Property Factor provided the Homeowner with the stage 2 response on 3 June 2025.
- 62 The Property Factor did not properly investigate the Homeowner's stage 2 complaint. The Property Factor did not apply its complaints procedure reasonably.
- 63 The Homeowner notified the Property Factor of his complaints prior to making this application to the Tribunal.

Reasons for Decision

- 64 The Tribunal considered carefully all evidence and documentation before it in reaching its decision, whether referenced or not in this decision. The documents are incorporated herein and referred to in the Tribunal's findings in fact.
- 65 Section 2 of the 2011 Act defines "property factor" for the purposes of the 2011 Act and the Code. The Tribunal was satisfied that the Property Factor meets the definition of a property factor, having confirmed that they are a registered property factor. The Property Factor did not dispute this.
- 66 Section 17(2) of the 2011 requires a homeowner to notify the property factor in writing as to why the homeowner considers that the property factor has failed to comply with the Code prior to making an application to the Tribunal. The Tribunal determined based on the correspondence produced by the Homeowner that he had notified the Property Factor of his complaint prior to making this application. Again, the Property Factor did not seek to dispute this.
- 67 The Homeowner presented extensive written submissions supported by documentary evidence in support of his position that the Property Factor breached the Code and their property factor's duties. The Tribunal found the Homeowner's oral and documentary evidence to be credible and reliable. It appeared that, in terms of the timeline of events, there was little dispute between the parties. Mr Smith conceded during the hearing that he was unable to account for what had transpired at key points as he was not employed by the Property Factor at that time. What was however in dispute between the parties was whether the Property Factor's conduct amounts to a breach of any sections of the Code or the Written Statement of Services.
- 68 The Tribunal considered the sections of the Code and property factor's duties that the Homeowner had listed in the application.

Code of Conduct

OSP1 – You must conduct your business in a way that complies with all relevant legislation

- 69 The Homeowner has not specified any legislation within his submissions that the Property Factor is alleged to have breached, other than reference to the 2011 Act and the law of personal bar. Regarding the breach of the Property Factor's section 14 duty, the Tribunal considers that as this type of application is made in terms of the 2011 Act, "relevant legislation" in this context means any other legislation. The Tribunal therefore found no breach of OSP1.

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

- 70 The Tribunal agreed with the Homeowner that the Property Factor was not open and transparent with the Homeowner in respect of several matters. Primarily, information regarding the pending roof repairs is information that the Tribunal considers should have been intimated to the Homeowner at the time of his purchase of the property, even if the works had not yet been fully investigated and costed. It was clear from the emails submitted by the Homeowner that the Property Factor had knowledge of issues with the roof when they wrote to the Homeowner's solicitor. They were therefore aware that repairs were required that would impact the property the Homeowner was purchasing. The Tribunal therefore found the Property Factor in breach of OSP2.

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

- 71 The Tribunal agreed that the Property Factor did not on occasion provide clear information to the Homeowner, an example being the inconsistencies surrounding the use of the sinking fund and the changing position regarding the window cleaning. The Tribunal therefore found the Property Factor in breach of OSP3.

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

- 72 The Tribunal considered that the Property Factor had been negligent in their dealings with the Homeowner. The Tribunal took particular account of the circumstances surrounding the window cleaning, in which the Property Factor had repeatedly asserted their position without seemingly having carried out any proper investigation into the issues raised. As a result, the Homeowner was provided with false information regarding the extent of the window cleaning contract. The Tribunal therefore found the Property Factor to be in breach of OSP4.

OSP5 – You must apply your policies consistently and reasonably

- 73 It is not clear from the Homeowner's submissions which policies, other than the Factor's Written Statement of Services which is dealt with elsewhere in this decision, have been applied by the Property Factor. The Tribunal therefore found there to be insufficient evidence to establish a breach of OSP5.

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

- 74 There appears to be a degree of acceptance on the part of the Property Factor that the property manager appointed for the development who has since left the organisation did not apply reasonable care and skill in their dealings with the Homeowner, nor did they respond to issues raised in a timely way. That much is clear from the evidence from the Homeowner, as reflected in the Tribunal's findings in fact. The Tribunal therefore concluded that the Property Factor has breached OSP6.

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.

- 75 There was insufficient evidence before the Tribunal to establish what knowledge the Property Factor's staff or sub-contracting agents had regarding the Code or any other legal requirements. Whilst they may have engaged in conduct amounting to a breach of the Code, that was not in itself enough to demonstrate what awareness they may or may not have had at the time. The Tribunal therefore found no breach of OSP8.

OSP9 – You must maintain appropriate records of your dealings with homeowners. This is particularly important if you need to demonstrate how you have met the Code's requirements.

- 76 The Tribunal was satisfied that the Property Factor had failed to keep appropriate records of the charges disputed by the Homeowner, as evidenced by the communications produced. The Tribunal noted that the Property Factor was at times unable to identify the source of the Homeowner's complaints. On several occasions, the Homeowner had again been asked to clarify the nature of the disputed charges by staff in the organisation, which would no doubt have caused him significant frustration. The Tribunal therefore found a breach of OSP9.

OSP11 – You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.

- 77 The Tribunal accepted that the Property Factor had not dealt with many of the Homeowner's enquiries within reasonable timescales and on occasion had failed to provide any response at all as reflected in the Tribunal's findings in fact. The Tribunal therefore concluded that the Property Factor had breached OSP11.

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

- 78 The Tribunal accepts that the Homeowner would have experienced significant anxiety and stress because of the Property Factor's communications, particularly those that were pursuing him for a debt that he disputes. However, the Tribunal could not identify anything in the Property Factor's correspondence that could be considered abusive, intimidating or threatening. The Tribunal considers that the test for such behaviour is a high bar to meet and the implementation of the Property Factor's debt recovery procedure, whilst upsetting for the Homeowner, does not, in the view of the Tribunal, amount to threatening behaviour that would establish a breach of OSP12, nor does any of the other communications from the Property Factor to the Homeowner.

Section 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.

- 79 As reflected in the findings in fact, the Tribunal found the Property Factor to have demonstrated repeated failures in its communication with the Homeowner, such as the failure to respond to queries on repeated occasions, and failure to timeously notify the Homeowner that the property manager for the development had left the organisation. The Tribunal agreed with Mr Smith that many of the issues that form the basis of this application could have been resolved at an earlier stage had the Property Factor engaged with the Homeowner in a constructive and transparent manner. The Tribunal therefore found the Property Factor to be in breach of section 2.1 of the Code.

Section 2.3 – The WSS must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example on a website, a web portal, app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

- 80 The Tribunal had regard to the Property Factor's WSS which sets out the arrangements for accessing information. The Tribunal considers this section of the Code applies to situations where information is not provided in an accessible format, as opposed to where information is not provided at all. The latter would be conduct that would fall under Section 2.7 of the Code. The Tribunal therefore found no breach of Section 2.3 of the Code.

Section 2.5 - A property factor must provide a homeowner with their contact details, including full postal address with post code, telephone number, contact

e-mail address (if they have an e-mail address) and any other relevant mechanism for reporting issues or making enquiries. If it is part of the service agreed with homeowners, a property factor must also provide details of arrangements for dealing with out-of-hours emergencies including how a homeowner can contact out-of-hours contractors.

- 81 The Tribunal accepted that the Homeowner had relevant contact information for the Property Factor by virtue of the emails produced. The issue in this case was the fact that the Homeowner was not advised of the change of property manager in a timely manner. That has been addressed elsewhere in this decision. The Tribunal therefore found no breach of Section 2.5 of the Code.

Section 2.6 – 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.

- 82 The WSS contains a procedure for consulting homeowners. The Homeowner’s complaint is that the procedure was not followed regarding the roof repairs. Such matters are dealt with elsewhere in the Code. Section 2.6 simply requires the Property Factor to have a procedure in place. There is no evidence that they do not, nor that the Homeowner has requested a copy. The Tribunal therefore found no breach of Section 2.6.

Section 2.7 - A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their WSS. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

- 83 The Tribunal was satisfied that the Property Factor had failed to respond to the Homeowner’s queries in line with the timescales contained within the WSS. There are numerous examples in the Tribunal’s findings in fact. The Tribunal therefore found a clear breach of Section 2.7

Section 3.1 – While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. 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. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

Section 3.2 – The overriding objectives of this section are to ensure property factors: protect homeowners’ funds; provide clarity and transparency for

homeowners in all accounting procedures undertaken by the property factor; make a clear distinction between homeowners' funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor's own funds and fee income.

- 84 The Tribunal was not satisfied that the Property Factor had been transparent in financial matters nor had provided clarity and transparency to the Homeowner in all accounting procedures undertaken by them, an example being the issues with the sinking fund. Furthermore, the Homeowner has repeatedly requested clarity from the Property Factor on what charges make up the outstanding balance on his account which they are pursuing him for. The Property Factor has put the onus on the Homeowner to work this out. The Tribunal does not consider that to be a reasonable stance. If the Property Factor had properly dealt with the Homeowner's disputes, the Homeowner would not be in this position. The Property Factor continued to bill the Homeowner for costs without properly investigating the nature of his complaints, and in circumstances where the Homeowner was being charged for work he did not benefit from, such as the gardening maintenance for areas in private ownership. There has been a lack of clarity and transparency on the part of the Property Factor regarding the charges levied against the Homeowner. The Tribunal therefore found a breach of Sections 3.1 and 3.2.

Section 4.1 – Non-payment by some homeowners may affect provision of services to others or may result in other homeowners in the group being liable to meet the non-paying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason, it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating.

- 85 The Homeowner primarily relies upon the Property Factor's failure to take account of the disputed charges and provide him with the details of the outstanding balance in support of a breach of section 4.1, whilst also referencing the threats of debt recovery. The Tribunal does not consider such matters to fall under the scope of section 4.1 which requires the Property Factor to have a debt recovery procedure in place, and to make homeowners aware of the implications of late payments. The Tribunal therefore found no breach of Section 4.1.

Section 4.2 – It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners.

Section 4.3 – Any charges that a property factor imposes in relation to late payment by a homeowner must not be unreasonable or excessive and must be clearly identified on any relevant bill and financial statement issued to that homeowner.

- 86 The Homeowner's submissions in which he references the above do not directly address why he believes there has been a breach of these specific sections of the Code. There is no reference in the submissions to any late payments. The Tribunal was therefore unable to establish a breach of sections 4.2 and 4.3 of the Code.

Section 4.6 – A property factor must have systems in place to ensure the monitoring of payments due from homeowners and that payment information held on these systems is updated and maintained on a regular basis. A property factor must also issue timely written reminders to inform a homeowner of any amounts they owe.

- 87 By not adequately addressing the charges disputed by the Homeowner, the Tribunal considered that there had been a failure on the part of the Property Factor to ensure that accurate information was maintained regarding what payments were due from the Homeowner, and what still required resolution. The Tribunal therefore found a breach of section 4.6.

Section 4.9 – 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.

- 88 The Tribunal considered that this section imposes a duty on property factors to keep homeowners informed of any development debts that they may become liable for, or if any debt recovery action could have implications for other homeowners. The Homeowner's complaint is focused on the Property Factor's handling of his own charges. The Tribunal did not therefore find a breach of section 4.9.

Section 4.11 - A property factor must not take legal action against a homeowner without taking reasonable steps to resolve the matter and without giving notice to the homeowner of its intention to raise legal action (see also section 4.7).

- 89 The Tribunal considered that the property factor had not taken reasonable steps to resolve the Homeowner's disputes prior to commencing debt recovery action. Where disputes were raised, these appear to have been left to drift with no proper resolution. The Property Factor has continued to pursue the Homeowner for the disputed charges after he made this application. The Tribunal considers that wholly unreasonable. The Tribunal therefore found a breach of section 4.11.

Section 6.1 – This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.

- 90 The Tribunal was satisfied that the Property Factor had not progressed the roof repairs in a timely manner. It had taken around 8 months to progress the condition survey, and no reasonable explanation had been provided for the delay. The Tribunal therefore found a breach of section 6.1.

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

- 91 Whilst the Homeowner has outlined the various failings by the Property Factor in their management of the roof repairs, there is no evidence that the Property Factor did not have procedures in place as required by this section. The Tribunal therefore found no breach of Section 6.3.

Section 6.4 – Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.

- 92 With reference to its findings in fact, the Tribunal was satisfied that the Property Factor had not carried out the roof repairs in a reasonable timescale, nor had the Homeowner received timely updates on progress with the works or timescales for completion. The Tribunal therefore found a breach of Section 6.4.

Section 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.

- 93 The Tribunal was satisfied that the Property Factor had failed to demonstrate to the Homeowner how they had appointed contractors, an example being the scope of the window cleaning contract and the uncertainty as to whether the contract covered both private and communal windows. The Tribunal therefore found a breach of section 6.6.

Section 6.8 – A property factor must take reasonable steps to appoint contractors who have public liability insurance.

- 94 The Homeowner states in his written submissions that he does not believe the window cleaner has public liability insurance. There is however no evidence in support of this position, nor any evidence to suggest that the Property Factor

did not take reasonable steps to appoint a contractor with public liability insurance. The Tribunal therefore found no breach of Section 6.8.

Section 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.

- 95 The Homeowner has not evidenced any explicit request for documents relating to the tendering or selection process in respect of any contract managed by the Property Factor. His reasons for inclusion of this section of the Code relate to the Property Factor's handling of his complaint against the window cleaner, particularly their failure to rectify the issues with the window cleaner directly. The Tribunal therefore found no breach of the Section 6.9.

Section 6.12 – If requested by homeowners, a property factor must continue to liaise with third parties i.e. contractors, within the limits of their 'authority to act' (see section 1.5A or 1.6A) in order to remedy the defects in any inadequate work or service that they have organised on behalf of homeowners. If appropriate to the works concerned, the property factor must advise the property owners if a collateral warranty is available from any third party agent or contractor, which can be instructed by the property factor on behalf of homeowners if they agree to this. A copy of the warranty must be made available if requested by a homeowner.

- 96 The Tribunal was satisfied that there had been a failure on the part of the Property Factor to remedy the defects in service identified by the Homeowner regarding the window cleaning and garden maintenance. The Property Factor appears to have taken no action to apportion the garden maintenance costs to properly reflect the division of communal and private ownership prior to ceasing their factoring of the development. Regarding the window cleaning, the Tribunal considers that asking the Homeowner to liaise with the contractor directly was entirely inappropriate. The Property Factor should have addressed the issues with the contractor directly. The Tribunal therefore found a breach of Section 6.12 of the Code.

Section 7.1 - A property factor must have a written complaints handling procedure. The procedure should be applied consistently and reasonably. It is a requirement of section 1 of the Code: WSS that the property factor must provide homeowners with a copy of its complaints handling procedure on request.

- 97 The Tribunal considered that the Property Factor had not applied the complaints handling procedure reasonably in respect of the Homeowner's stage 2 complaint. The content of the response suggests a lack of proper investigation into the issues the Homeowner had complained of. If the complaint had been properly handled, the Homeowner may not have had recourse to apply to the Tribunal. The Tribunal therefore found a breach of section 7.1.

Written Statement of Services

- 98 The Homeowner has referred to various sections of the WSS that he believes have been breached by the Property Factor.
- 99 WSS Core Management Service sets out the core management services that the Property Factor aims to provide and is aspirational in nature. It does not impose any specific duties on the Property Factor. The Tribunal did not therefore find a breach of WSS Core Management Service 4 and 10.
- 100 WSS Fees 01 states "*A management fee for the core management services described will be billed on each common charge or service charge invoice. Fees will be reviewed annually in line with the CPI index and will not be notified in advance unless the increase exceeds CPI*". There is no evidence that management fees were not billed or reviewed in accordance with WSS Fees 01. The Tribunal found no breach of this section of the WSS.
- 101 WSS Contractors Repairs 03 states "*We may use contractors recommended by Homeowners, but only where they are Bonafide and possess the necessary liability insurance*". The Homeowner believes that the window cleaner has no public liability insurance but the Tribunal has no evidence of this, nor that the window cleaner was recommended by a homeowner. The Tribunal therefore found no breach of this section of the WSS.
- 102 WSS Proposed Work 07 states "*Where proposed work is funded by the Homeowners and instructed by us, we will provide details of the contractor's indicative timescales for commencement*". The Tribunal was satisfied that the Property Factor had not provided the Homeowner with this information in respect of the roof repairs as explained more fully elsewhere in this decision. The Tribunal therefore found a breach of this section of the WSS.
- 103 WSS Communication 02 states "*If you write to us, or email us, we aim to respond within 7 business days from receipt. If we are unable to fully respond to your communication within this timescale we will confirm our anticipated response time*". The Tribunal was satisfied that the Property Factor had not complied with these timescales in their communications with the Homeowner as reflected in the Tribunal's findings in fact. The Tribunal therefore found a breach of this section of the WSS.
- 104 WSS Complaints states "*We will reply within 7 working days confirming a timescale for resolution. We will investigate the complaint and endeavour to resolve it within 28 days. We may ask you for additional information to assist us in the delivery of a response which could affect timescales for final response.*" The Property Factor acknowledged the Homeowner's stage 2 complaint and notified him of the extended timescale for a response. The 28 day timescale is not absolute as worded in the WSS. It leaves room for a response to be provided beyond that deadline. The Tribunal therefore found no breach of this section of the WSS.

Title Deeds

- 105 The Homeowner also alleges that the Property Factor breached the title deeds for his property by not addressing the conduct of the window cleaner in utilising the Homeowner's parking space. The title deeds do not place any duty on the Property Factor to manage the behaviour of third parties. There is therefore no legal basis to this aspect of the Homeowner's complaint.

Summary

- 106 The Tribunal therefore found the Property Factor to have breached OSP2, OSP3, OSP4, OSP6, OSP9, OSP11, 2.1, 2.7, 3.1, 3.2, 4.6, 4.11, 6.1, 6.4, 6.6, 6.12 and 7.1 of the Code. The Tribunal further found the Property Factor to have breached WSS Proposed Work 07 and WSS Communication 02.

Proposed Property Factor Enforcement Order ("PFE0")

- 107 Section 19(1) of the 2011 states "*The First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a), decide—*
(a) whether 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, and
(b) if so, whether to make a property factor enforcement order."
- 108 Accordingly, having concluded that the Property Factor had failed to carry out the property factor's duties, and comply with the section 14 duty, the Tribunal had to consider whether to make a PFE0, which is at the discretion of the Tribunal. Whilst the Tribunal notes that the Property Factor has made organisational changes to address some of the defects in service provision the Homeowner experienced in this case, the Tribunal has determined that a PFE0 would be appropriate given the extent and nature of the breaches by the Property Factor.
- 109 Section 20(1) of the 2011 Act states "*A property factor enforcement order is an order requiring the property factor to (a) execute such action as the First-tier Tribunal considers necessary, (b) where appropriate, make such payment to the homeowner as the First-tier Tribunal considers reasonable.*"
- 110 The Homeowner has requested refund of management charges and fees paid to the Property Factor. It is not, however, within the jurisdiction of the Tribunal to determine liability for factoring charges. That remains within the jurisdiction of the sheriff court.
- 111 The Tribunal can however require the Property Factor to make such payment to the homeowner as the Tribunal considers reasonable. The Tribunal considers that the Homeowner has been put to considerable stress and inconvenience because of the Property Factor's actions. He spent significant time trying to communicate his issues with the service provision, only to have those issues ignored or remain unresolved. He has then spent time dealing with this Tribunal

application and only now, with the involvement of Mr Smith, does it appear that the Property Factor is willing to properly investigate his complaints. The Homeowner has in the meantime been subject to debt recovery action for charges that he does not believe are due and that have not been fully investigated by the Property Factor prior to commencing such action. The Tribunal considers that given the nature and extent of the breaches in this case, it would be reasonable for the Property Factor to make a payment to the Homeowner at the higher end of the scale.

- 112 Given that the Property Factor is no longer the appointed factor for the development the Tribunal's options in terms of a PFEO are more limited. The Tribunal therefore proposes to make a PFEO requiring the Property Factor to make a payment to the Homeowner, provide a formal apology, and provide a breakdown of his outstanding charges. The terms of the proposed PFEO are set out in the attached notice under Section 19(2)(a) of the 2011 Act.

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.

Ruth O'Hare - Legal Member
11 September 2026

Housing and Property Chamber
First-tier Tribunal for Scotland



Notice of Proposal of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19(2)(a) of the Property Factors (Scotland) Act 2011 (“the 2011 Act”)

Reference number: FTS/HPC/PF/25/2536

Re: Property at 22/3 Minto Street, Edinburgh, EH9 1RQ (“the Property”)

The Parties:

Dr Stephen Thomson, 22/3 Minto Street, Edinburgh, EH9 1RQ (“the Homeowner”)

James Gibb Property Management Ltd, Red Tree Magenta, 3rd Floor, 270 Glasgow Road, Glasgow, G73 1UZ (“the Property Factor”)

Tribunal Members: Ruth O’Hare, Legal Member, and Sara Hesp, Ordinary Member

NOTICE TO THE PARTIES

This document should be read in conjunction with the First-tier Tribunal’s decision of the same date.

The First-tier Tribunal proposes to make the following Property Factor Enforcement Order (“PFEO”):

“(1) That the Property Factor provide the Homeowner with a formal written apology for the breaches of the Code and WSS.

(2) In respect of its breaches of the Code and WSS, and the stress and inconvenience caused to the Homeowner, the Property Factor must pay to the Homeowner the sum of £1000 from its own funds into the Homeowner's bank account within 28 days of intimation of the final PFEO. For the avoidance of doubt, the sum should be paid in full to the Homeowner and not offset against any outstanding factoring charges

(2) That the Property Factor provide the Homeowner with a full breakdown of any outstanding charges within 28 days of intimation of the final PFEO.

Section 19 of the 2011 Act provides as follows:

"(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."

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 constitute an offence.

Ruth O'Hare – Legal Member
11 September 2026