

Housing and Property Chamber

First-tier Tribunal for Scotland



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

**Decision on Home Owners Application Property Factors (Scotland)
Act 2011 Section 19(1)(a)**

Chamber Ref: FTS/HPC/PF/25/2650 and FTS/HPC/LM/25/3386

**Property address: 3, Canal Court, Threemiletown, Linlithgow, EH49 6LZ
("the Property")**

The Parties

**Ms Diane Ridgebridger, 3, Canal Court, Threemiletown, Linlithgow, EH49 6LZ
("the Applicant and Homeowner")**

**James Gibb Property Management Limited, 23 Alva Street, Edinburgh, EH2
4PS ("the Respondent and Property Factor")**

Personally Present:

Ms B Black (Legal Member)

Mr A Khan (Ordinary Member)

Introduction

In this decision the Property Factor (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factor (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the 2011 code", the Property Factor (Scotland) Act 2021 Code of Conduct for Property Factors is referred to as "the 2021 code" and the First-Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulation 2016 is referred to as "the rules".

Decision

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

determined that Respondent has failed to comply with the duty under Section 14(5) of the Property Factor (Scotland) Act 2011 (the 2011 Act) and has failed to comply with Sections 4.9 and 4.10 of the 2021 Code and OSP 6.

Background

1. The Homeowner made an application to the First-tier Tribunal on 7th August 2025 by way of C1 application and on 16th June 2025 by way of C2 application.
2. A Case Management Discussion ("CMD") took place by telephone conference on 23rd March 2026 at 10am. The applicant was not present on the call. The alleged breaches of the Code were not accepted by the Respondent, and it was agreed following direction from the Tribunal and confirmation from the Applicant, that the Tribunal would determine the application based on the case file and evidence available.
3. The Homeowner asked the Tribunal to decide that the Respondent had failed to comply with the Code and has failed in their Property Factor duties. Based on the information provided by the applicant, these relate to the respondent's invoicing and maintenance of the septic tank in relation to the property and an adjoining farmhouse, failure to reply to complaints, failure to apply their debt recovery process correctly and redistribution and recovery of all debts, issues with the septic tank and failure to carry out property inspections and regular maintenance, as well as the increase in proposed fees.
4. By way of written submission, the Homeowner alleges breaches under the Property Factor Code of Conduct 2021 Sections 2.1, 2.4, 2.7, 4.3, 4.4,4.9, 4.10,6.1, 6.4, 6.7,6.12, and 7.1 and OSP 2, 6, and 11 and under Sections 1.1 (a, b and c), 2.5,3.2,3.3,4.1,4.4,4.5,4.6,4.7,5.1,6.1,6.4 of the 2012 Code.

Finding in Fact

5. The Applicant is the Homeowner of the property known as 3 Canal Court,

Threemiletown, Linlithgow, EH49 6LZ.

6. In July 2024, the Property Factor gave notice to the development and the Homeowners that they were ceasing to factor the development as at 16th October 2024.
7. At the time of giving notice, there was an outstanding debt from the other homeowners within the development. Upon the point of termination this debt was re-allocated amongst the remaining homeowners, including the Applicant.
8. The Property Factor took advice from BTO Solicitors LLP in relation to the debt.
9. The Property Factor put in place Notices of Potential Liability and registered these against the title of the properties belonging to those homeowners that had accrued debt in terms of factoring charges.
10. The development's sewage waste is managed via a septic tank.
11. The Applicant has complained to the Property Factor over several years and has disputed charges and raised concerns in relation to factoring issues in the development.
12. During the period of the applicant's ownership of the property, there have been a variety of employees of the Respondent that have been responsible for the development.
13. The relevant Written Statement of Services is version 15.

(a)Development Debt

The Applicant's Position

14. The Applicant's position is that the Respondent failed to act transparently in the financial management of the development. She submits that significant

development debt was allowed to accrue and was then allocated to homeowners at termination without adequate explanation.

15. Final financial information and accounting was not provided within the required timescale and that the delay created uncertainty regarding liability and the final sum due.
16. The final account issued in April 2025 applied the float against development debt and other charges.
17. The Applicant's position is that the development debt accumulated over a prolonged period and was ultimately redistributed among homeowners, indicating that the Respondent failed to act promptly to prevent escalation.
18. The Applicant contends that she was not kept adequately informed of the extent of development debt or her potential liability for it until a late stage.

The Factor's Position

19. The Respondent relies on its termination correspondence of July 2024, which set out the level of development debt and the potential for redistribution. It also refers to information made available through the client portal and account statements, and to what it describes as earlier instances of "spread debt". All homeowners had access to account balances via the client portal, including the applicant.
20. The Respondent accepts the delay and relies on the fact there were ongoing recovery steps and this led to changes in the balances, resulting in a need to have ongoing account reconciliation and recalculation of redistributed debts. They maintain this constitutes a "good reason".
21. The float was offset against outstanding debts in accordance with the Written Statement of Services. They say that Paragraph 3.6 of their written statement of services, expressly permits deduction of "outstanding debts".

22. The Respondent submits that it operated a structured recovery process in line with its policy which is provided, and that some of the arrears arose after it gave notice to terminate factoring services.

23. The Respondent says that its Written Statement of Services included details of late payment charges and its debt recovery procedure. The income recovery guide was available and provided on request and is published online. Homeowners were informed of late payment consequences through reminders and billing documentation.

(b) Issues with the Septic Tank and Billing

Applicant's Position

24. There were difficulties in arranging emptying of the septic tank, including access constraints and the need for an alternative contractor, and that more than one visit was required to complete the work. The Applicant maintains that the works were inefficient or avoidable. She also raises concerns regarding electricity monitoring and the effectiveness of maintenance arrangements associated with the septic tank. It appears that a neighbouring farmhouse was also using the septic tank but was not being charged for this.

The Respondent's Position

25. These issues are explained by practical and site-related factors. The Respondent claims it acted on the advice of specialist contractors in relation to the septic tank, any delays and difficulties arose due to practical constraints, including access issues. Alternative contractors were engaged where necessary, with works completed in June 2024, with costs apportioned accordingly. The farmhouse was not in the Factors remit, charges were not calculated correctly, however this was resolved and the correct bills applied to the farmhouse and the charges recalculated.

(c) Failure to Resolve Complaints

The Applicant's Position

26. The Applicant submits that the Respondent failed to deal properly with her complaints promptly or satisfactorily. She provides evidence of repeated complaints over a number of years. She highlights that the Respondent acknowledged on multiple occasions that the charges should not have been applied yet continued to include them in subsequent invoices. She contends that this demonstrates a failure to address complaints fully or to a satisfactory level.

The Respondent's Position

27. The Respondent maintains that it responded appropriately to complaints when raised. It relies on correspondence over a length period acknowledging the issues, providing explanations, and providing updates and resolutions. It further submits that the matter arose from accounting misallocation and was kept under review, culminating in a development-wide correction in May 2024. It also relies on copies of complaint responses they issued, which were issued within the relevant timescales.

(d) Failure to advise as to Charges applied

The Applicant's Position

28. The Applicant complains that the Respondent failed to provide information requested concerning debt recovery methods and failed to provide detailed invoices relating to septic tank and other communal charges.

The Respondent's Position

29. The Respondent states all invoices were on the Portal and charges were clear via development notices and via the Written Statement of Services.

(e) Failure to carry out regular property inspections and have appropriate staff

dealing with issues

The Applicant's Position

30. The Applicant details that there were ten different managers allocated to this development over a seven year period, many of whom never visited the development and others who only did so only after being repeatedly asked by homeowners. Therefore, there was no continuity of service and no responsibility or accountability for or to the development.

The Respondent's Position

31. Although managers changed, there was always a designated contact available for any specialist work and appropriate contractors were instructed as and when required.

Tribunal Decision and Reasons

32. A significant issue in this application is the distinction between the alleged failures occurring during the period governed by the 2012 Code and then further issues and complaints that arise after the respondent's terminated their appointment as factors in 2024.

33. The majority of the complaints arise from issues occurring at or around termination of the factoring agreement rather than conduct occurring during the earlier period governed by the 2012 Code.

Breaches under the 2012 code

34. The Tribunal does not find any breaches under the 2012 Code.

35. Section 1 is concerned with the content of the Written Statement of Services rather than subsequent disputes about how services were delivered. The Applicant does not identify any material information which ought to have

appeared within the Written Statement but was omitted.

36. Section 2 is concerned with communication and consultation. The evidence demonstrates substantial correspondence and communication between the parties. There is a difference between failing to answer complaints and not fully resolving matters. The evidence supports the latter rather than the former. No breaches were found under this section.
37. Section 3, financial obligations, no breaches are found under this section. This issue only arose following termination of the factoring arrangement, and therefore would be considered under the 2021 Code. The evidence is that billing details and invoices were all available through the portal and on request and there is no evidence that the homeowners requested these but were refused information. There is no evidence the applicant did not have access to the portal.
38. Section 4 of the 2012 relates to debt recovery, the evidence shows that the respondent had a written debt recovery procedure. There is nothing to suggest that it was not, clearly and consistently applied, prior to 2021. The existence of development debt in 2024/25 does not establish that the respondent failed to apply its debt recovery procedure during the earlier period governed by the 2012 Code. Within their policy document, the Respondent clearly state how delivery of services and charges will be impacted if one or more homeowners do not fulfil their obligations to pay. The applicant's concern is fundamentally that debt was redistributed at termination. The respondent has provided evidence of monitoring procedures and some legal action taken in the form of NOPLs. The written statement of service permit redistribution of debts. The Tribunal did not establish any breaches under this section of the Code.
39. Section 5, insurance, no breaches were established. The Applicant appears to have misunderstood the scope of this section, this provision concerns professional indemnity insurance maintained by the factor, not insurance of communal assets.

40. Section 6, carrying out repairs and maintenance, no breaches were established by the Tribunal. This element of the complaint relates to dissatisfaction with maintenance outcomes rather than absence of reporting procedures. The evidence demonstrates that reporting mechanisms existed and were used.

Breaches under the 2021 Code

41. Section 2 deals with communication and consultation, no breaches were found under this section. The development debt came as a surprise to homeowners, however there is evidence of communication around these issues. There is no evidence that the Respondent refused to provide information. Their responses may have been incomplete or unsatisfactory, but there is no evidence that information was withheld. The evidence suggests complaints were being processed and answered in accordance with the complaints procedure. The issue appears to be dissatisfaction with the responses rather than a failure to respond.

42. Section 4 of the Code deals with debt recovery and this is the main issue in this case. No evidence was provided that unreasonable debt recovery charges were applied to the homeowners account. The Respondent position was that no late payment charges were applied and the termination fee was refunded. There is clearly a written debt recovery procedure which satisfies the requirements of the Code. Although debt information was available through the portal and later communications were issued, homeowners do not appear to have been adequately informed about the scale of the debt, how it had accumulated, and the likelihood that it would ultimately be redistributed amongst compliant owners, this therefore results in a breach of Section 4.9 of the Code.

43. Although recovery action was taken by the Respondent, the evidence does not demonstrate that the full debt recovery process was exhausted before debt was redistributed to homeowners. Given the factor's decision to terminate services and redistribute debt, they ought to have taken more recovery action

beforehand. NOPLs appear to have been the primary recovery mechanism relied upon, despite the fact that they may not result in recovery of the outstanding sums for many years, if not until the properties are sold. The Tribunal was not satisfied all reasonable recovery options had been exhausted before the debt was spread across compliant homeowners and therefore this is a breach of Section 4.10.

44. Section 6 of the Code relates to carrying out repairs and maintenance, no breaches were found under this section. There were clearly procedures in place that resulted in the septic tank having works carried out requiring work on several occasions and the information that the factor provides re service records demonstrates they were applied “appropriately”. There is no direct evidence produced by either party of inspection visits or lack thereof.

45. Section 7 of the Code relates to complaints resolution, no breaches were found under this Section. No evidence was produced to support this alleged breach.

Overarching Standards of Practice

46. Based on all the evidence available, there is a breach of OSP 6, this states:
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.”

47. The tribunal finds a breach here following the management of the communal arrangements and costs. The Respondent applied charges, albeit they were later corrected and recalculated, in relation to a farmhouse, which is near to the development and uses the same septic tank. The Respondent failed to take early steps to ensure those charges were not passed onto the applicant. The failure to resolve the Farmhouse contribution issue, the debt accumulation in the development and the subsequent redistribution of this debt to compliant homeowners demonstrates a lack of reasonable care and skill in management of the development.

Outcome

48. Having established that the Respondent breached OSP6 and paragraphs 4.9 and 4.10 of the 2021 Code, *and having found that the Respondent failed to comply with its property factor duties*, the Tribunal considered whether a Property Factor Enforcement Order should be made.
49. The Tribunal was satisfied that the Applicant had been put to considerable inconvenience through the Respondent's failures in relation to the management of the development, the Farmhouse contribution issue and the handling of development debt. Accordingly, the Tribunal proposes to make a Property Factor Enforcement Order in terms of the Section 19(2)(a) Notice attached to this Decision.
50. Taking account of the breaches identified above, the Tribunal considers that an award of £500.00 is reasonable and proportionate. Of that sum, £148.07 relates to the Applicant's share of redistributed historical debt. The Tribunal was not satisfied that all reasonable recovery options had been exhausted before that debt was redistributed to compliant homeowners.
51. The balance of £351.93 reflects the time, trouble and inconvenience caused to the Applicant over a prolonged period in pursuing matters which were ultimately found to have merit.

Right of Appeal

52. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first

seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

B Black

Legal Convener

10th September 2026