

Housing and Property Chamber

First-tier Tribunal for Scotland



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under Section 19(1)(a) of the Property Factors (Scotland) Act 2011

Case reference: FTS/HPC/PF/25/0493, 0496, 0504, 0505, 0552, 0553, 0554, 0555, 0564, 0565, 0579, & 0580

Re: - Kilbowie House, Gallanach Road, Oban, Argyll PA34 4PE

The Parties: - Alexandra Burt, Andrew and Julie Loudon, David and Nicola McNaughton, Euan Finlayson and Carol McNiven, Margaret Nicholson, Adam and Jane Christie, Carden Studios Limited, and Morag Slessar.

("the Applicants")

and

**James Gibb Property Management Ltd,
("the Respondent")**

Tribunal Members:

Joy Hosie (legal member) and Andrew Murray (ordinary member)

Decision

The Tribunal unanimously determined that: -

1. The respondent has breached sections 1, 2, 6 and 10 of the 2011 Code of Conduct for Property Factors ("the 2011 Code") and the 2021 Code of Conduct for Property Factors ("the 2021 Code of Conduct").
2. The respondent has breached sections 2.5 and 3.3 of the Written Statement of Services.
3. The respondent has breached their property factor duties under Section 1 Codes j and k of the Written Statement of Services.

4. The respondent has breached the Overarching Standards of Practice sections 2 and 3 (Communication and Consultation and the Financial Obligations) in relation to the 2021 Code.
5. A Property Factor Enforcement Order (“PFEO”) is proposed in respect of the respondent’s breaches.

Application

6. By applications dated 24 March 2025, the applicants complain that the respondent has breached several sections of the Code of Conduct for Property Factors issued in terms of the Property Factors (Scotland) Act 2011 (“the 2011 Act”) and the Code of Conduct for Property Factors issued in terms of the 2011 Act together with their property factor duties.
7. The applicants also claim that the respondent has breached the 2011 Code and the 2021 Code.
8. The applications were accepted by the Tribunal. A Case Management Discussion (“CMD”) was arranged for 2 September 2025 at 2PM via teleconference. Intimations of the hearing were sent to the applicants and the respondent.

Documentation submitted into evidence

9. The written applications were accompanied by several supporting documents. This comprises amongst other items, the relevant title provisions, documents, and extensive correspondence between the parties.
10. The respondent lodged a written submission with attached documents.
11. The applicant lodged further written representations with attached documents.
12. All documents submitted pre and post the CMD have been considered by the Tribunal.

Procedure and hearing

13. The CMD took place on 2 September 2025. The applicants agreed it that Alexandra Burt and Andrew Loudon represent all the applicants.
14. The Tribunal used its inquisitorial function and applied the overriding objective within Rule 2 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017. It was discussed that the respondent had not properly responded to the Complaint Response Final Stage. The applicants claim that this amounts to a breach of the Property Factor Code 2021.

15. The applicants required the respondent to address each point raised by them. Specifically, the applicants asked for a more detailed breakdown of the Excel spreadsheet.
16. The Tribunal noted at pages 59-63 of the documents provided that the respondent had provided a stage 2 Complaint Response to Owners with attachments.
17. The Tribunal further noted that the respondent provided additional evidence on 18 August 2025 providing details of the costs to individual owners.
18. The applicants' position was that they were unhappy with the cause of the shortfall and the resolution of the dispute. The respondent's position was that this was irrelevant and that there had been a previous resolution in relation to the allegation of failure of accounting and lack of auditing by the respondent.
19. The applicants indicated that they wished to respond to the respondent's latest response.
20. The Tribunal issued Directions for responses within 28 days and a further 28 days to consider those responses. Thereafter an in-person hearing would be set down.
21. An in-person hearing was set down for 8 April 2026 in Oban, but this was postponed by the Tribunal on application by the respondent and an in person hearing at the Glasgow Tribunal Centre was arranged due to the respondent's inability to attend a hearing in Oban. The applicants did not want to have a video hearing due to their previous experience of connection issues.
22. The final evidential hearing took place in person at Glasgow Tribunal Centre on 9 July 2026 at 10.00 am. The respondent was represented by Ms Sophie Fairhurst, Senior Property Manager who was accompanied by Ms Madden for the Property Factor.
23. The Tribunal invited the applicants to present their case with reference to their letters of complaint to the respondent dated 24 March 2025 and the responses dated 18 August 2025, as set out by way of Direction previously.
24. The Tribunal sought appropriate clarification throughout on each matter raised and Ms Fairhurst, on behalf of the respondent, was given the opportunity of giving evidence and making submissions on each issue raised. At the conclusion of the hearing both parties were given the opportunity to make concluding submissions.

Findings in Fact

25. The applicants are the heritable proprietors and owner occupiers of Kilbowie House, Oban ("the property"). This was not disputed.

26. The respondent is a registered Property Factor – No PF000103. The respondent was Property Factor for Kilbowie house until they stopped acting on 10 October 2024.
27. The applicants received a supply of oil administered by the respondent which ought to have been charged to each individual flat according to usage. The applicants do not dispute that they received a delivery of oil and that they used said oil supply. It is accepted that oil supply is part of the title deeds.
28. The value to be charged to the applicants by the respondent between the years of 2019 to 2024 was £7,746.92. The respondent wrote to the applicants on 21 August 2024 in relation to this. A subsequent deduction of £1000 was made by the respondent on a goodwill basis.
29. The applicants queried the charging arrangements, and it was discovered by them that there were mistakes in how the oil was charged to the applicants. They requested calculations for the charges from the respondent. Some of the applicants were charged for oil usage of another flat within the property. All applicants challenged the basis on which the charging for the supply of oil was arranged by the respondent. They did not receive a response to their queries until 14 November 2025 when the respondent sent the applicants two detailed spreadsheets together with a list of invoices with reference to direct debit payments, Certas' invoices (though it is accepted that some were missing) and a document containing a financial explanation. However, the spreadsheet contained inaccuracies and deficiencies in the information contained within it. It was complexed and the applicants found it difficult to follow. The applicants maintained that there was a table average of twenty-one deliveries but none of the calculations are correct.
30. The sum of money for supply of oil disputed by the applicants is £6,746.92. The respondent recovered money for the supply of oil at Kilbowie House via the £840 per property float. The respondent had deducted £1000 from the sum they believed to be due from the applicants as a gesture of goodwill.
31. Two of the properties were charged more than the float amount by the respondent. Ms Burt disputed the excess charges because the respondent had not accounted to the applicants for how these amounts were due. Ms Burt eventually paid the excess charges to stop the letters which threatened that a notice would be placed on the title deeds. Ms Burt paid the full amount, under protest and whilst disputing the sum due. Mr Finlayson was in a similar position to Ms Burt, and he also paid the balance excess over and above the float amount, whilst maintaining his opposition as the respondent had not provided sufficient information in relation to how the individual amounts were being charged to each of the flats at Kilbowie House.
32. The applicants had not seen certified invoices until the end of 2025 when the respondent produced a complexed spreadsheet, and which does not cover the whole amounts charged and deducted.

33. The amounts deducted for the supply and usage of oil at Kilbowie House occurred over the period from 2019 until 2024. The applicants did not receive any invoices from the respondent for the supply and usage of oil for that period until the end of 2025. There had been an office move and staffing changes with the respondent. The applicants found that none of charges for the individual years tallied with what had been deducted by the respondent or charged. There had been no reconciliation of invoices for a seven-year period.
34. A site visit was conducted by the respondent on 25 March 2024 during which it was agreed by the respondent that there had been difficulties in charging for the oil supply at Kilbowie House. Some of the supplies to the individual flats had been mislabelled for charging purposes. This was the only occasion the property was checked by the respondent in relation to labelling and metering of the oil supply.
35. The respondent accepted that no audit had taken place prior to 2024. It was agreed by the respondent as fact that there was a problem with how the oil supply was measured and charged by the respondent between mid-2020 and March 2024 but no one realised this until 2024 when there was an audit.
36. The respondent was not checking or reconciling the invoices to the properties at Kilbowie House before charging and there was a significant delay in obtaining information about the shortfall.
37. There is no dispute with the calculation of oil charges at Kilbowie House since 2024. Prior to the respondents taking over a bespoke system of oil charging they invoicing had been based on the previous year's costs. This was because the respondent had no invoices from Certas and so they used the previous year's invoices. These amounts were recalculated by the respondent and the applicants were refunded. This highlighted the fact that the supply of oil had been calculated incorrectly.
38. The respondent tried to apply a bespoke manual system for the supply and usage of oil at Kilbowie House. Certas provided the oil and the respondent paid Certas and recovered monies from the applicants who invoiced each owner. The amounts paid by the applicants were without admission that the specific sum was due because the respondents had not accounted for how the individual flats were charged or on what basis.
39. The applicants responded to the respondent's letter in 2024 indicating that it was not clear how the amount charged had arisen. The applicants did not know what the deduction was for flats which had been sold or how that had been calculated. There was an error in the table calibration.
40. The applicants asked for a meeting with the respondent which took place in October 2024. The outcome of it all was that the respondent terminated their contract with the applicants in relation to Kilbowie House.
41. A Written Statement of Services was issued timeously by the respondent to the applicant and all other relevant homeowners when the respondent assumed

acting. The Written Statement of Services was last reviewed by the respondent on 23 August 2024. It was not disputed by the respondent that the Written Statement of Services calls for transparency by the respondent.

42. The respondent maintained that they sent a financial statement to the applicants twice per year containing a full breakdown of common charges. The applicants were referred to the client portal which they found to be scant. The applicants maintain that the amounts charged by the supplier do not tally with the invoices provided. The charged shortfall is disproportionate to the amounts charged to Certas. The tables of information provided by the respondent were not clear or transparent though the Tribunal accepted that the respondent applied considerable effort in producing this to the best of their ability.
43. The goodwill of the respondent is not in doubt. The Tribunal accepted that they did the best they could, given their resources and expertise.
44. The respondent has a written 'Complaints Policy and Procedures.' The document is fully transparent in respect of the procedures adopted in relation to the treatment and resolution of complaints and is available to all homeowners on request as specified clearly in the Written Statement of Services.
45. The Respondent has fully investigated the applicants' complaints and responded in detail and openly. There is no dispute that the respondent delayed in providing the relevant information to the applicants regarding how the supply of oil to individual flats at Kilbowie House had been charged.
46. The respondent provided a spreadsheet in 2025, which is complexed and it contains inaccuracies.
47. The applicants requested a detailed breakdown of how the oil had been charged by the respondent between 2019-2024. Payment for the supply of oil was disputed by the applicants who refused to pay until a detailed breakdown of costs was provided by the respondent. Payment for the supply of oil was deducted by the respondent via the float charged to the applicants. The applicants maintained their position that the sums deducted were not lawfully due until such times as the respondent could itemise the invoices to the individual property owners at Kilbowie House, Oban.
48. The applicants claim that the respondent have breached their duties and the Property Factor Code paragraphs 1, 2, 6 and 10 and the overarching statement of Practice. The applicants claim that the respondent has breached the written statement of services section 1. J and K together with section 2.5 (Communications and Consultation) section 3.3 (Financial Obligations), all as clearly set out in their written submissions.
49. The applicants claim that the respondent occasioned a GDPR breach and that termination of the contract was unfair. Item 10 (page 258) goes through the matters complained of related to the supply of oil.

Reasons for Decision

50. The Tribunal was satisfied that it had sufficient detailed evidence upon which to reach a fair determination of the application.
51. In terms of the initiating applications made to the Tribunal the applicants seek to complain about acts and omissions on the part of the respondent, and they claim that sections OSP1, OSP2, OSP6 and OSP10 of the Code have been breached, along with several property factor duties. The main point of contention by the applicants is that the respondent has been unable to account to the applicants for how the amounts invoiced to them had been calculated.
52. The Tribunal sought to ascertain the facts of the applicants' complaints against the respondent in relation to the claimed breaches of the respondent's duties and claimed breaches of the Codes. The Tribunal's inquiry was limited to the complaints made in relation to the alleged breaches by the respondent and the factual circumstances surrounding them. It was not the role of the Tribunal to decide the merits of whether the debt owed by the applicants was lawfully due and at what level but whether the respondent had breached the Codes and duties incumbent on them in their role as property factors for Kilbowie House by failing to account adequately to the applicants the correct amounts due.
53. The Tribunal found that the respondent showed goodwill. After resigning as Property Factors for Kilbowie House they continued to provide the applicants with information albeit belatedly in 2025. The respondent accepts that they made mistakes under explanation that this was a bespoke system and that on an administrative level the respondent lacked adequacy of administrative skills or training to deal with the issues arising.
54. The Tribunal found the applicants to be credible and that they had evidenced in the documentary evidence provided by them the deficits in the information provided to them by the respondent in relation to the charging to the individual properties at Kilbowie House how the oil supply was calculated. The Tribunal accepted that there was no way for the applicants to be certain that they had been charged the correct amounts by the respondent. The Tribunal noted further that the cost of the oil supply to the applicants was recovered by the respondent via the float though, on the face of it, there was no way of knowing that they had been charged the correct amount.

Code complaints

55. In relation to OSP1, there had been GDPR breaches by the respondent on two occasions. Ms Burt gave oral evidence in relation to this point which the tribunal found had been made out. The respondent did not substantively challenge the breaches.
56. In relation to OSP2 and the writing off from charges for the properties which had been sold, the Tribunal accepts that this has given rise to a degree of unfairness in relation to the other flats at Kilbowie House. The Tribunal found the respondent has been open and transparent to the extent they were able to,

but that they made mistakes which led to them being unintentionally unfair towards the applicants.

57. In relation to OSP6 the respondent owned up to there being an inhouse skills gap. The Tribunal found that the applicants suffered detriment because of this.

58. In relation to OSP10, the Tribunal decided that this was breached by the respondent because of the accepted GDPR issues.

Written Statement of Services

59. The applicants' main complaint is in relation to section 1 J and K. The respondent conceded that they did not provide an annual statement. Ms Madden indicated that they do provide an annual statement, but the charges are not broken down in detail other than for common repairs. This information was available on the web portal which the applicants claimed was inadequate. In relation to K the timescales for collecting payments were unclear. This was not disputed.

Property Factor Code Section 2

60. In relation to section 2.5, the respondent did respond to the best of their abilities, but they did not do so promptly, nor did they provide clarity for the applicants. This necessitated further inquiry by the applicants and a delay of at least a year.

61. In relation to section 3.3, the respondent did not provide a detailed breakdown of charges in the annual statement which was tolerably clear. Invoices were not provided by the respondent until 2025 and long after the respondent had resigned as Property Factor for Kilbowie House. The Tribunal accepted that whilst the complexed spreadsheet of charges had been produced by the respondent in 2025, it was difficult to follow, and it contained errors as pointed out by Ms Burt on behalf of the applicants.

Property Factor Enforcement Order (PFE0)

62. The Tribunal proposes to make a PFE0, given the Tribunal's findings and that the respondent has breached the 2011 and the 2021 Codes and their duties in terms of the Written Statement of Services.

63. The Tribunal therefore intends to make the following PFE0:

- "1. Within 14 days of the date of service of this PFE0 the respondent must pay the sum of £ 600 per property within Kilbowie House to be paid to the owners of each individual property within Kilbowie House in respect of inconvenience caused to them and additionally return any late payment charges still due to be refunded. Remittance of such funds should be by way of bank transfer.
2. The parties should note the Tribunal's proposal to make a PFE0, and intimation of this decision complies with the requirement to give notice

to the parties for the purposes of Section 19(2) of the Act. Any representations which the parties wish to make under Section 19(2)(b) of the Act (restricted to the terms of the PFE0) must reach the First-tier Tribunal for Scotland (Housing and Property Chamber) office no later than 14 days after the date of intimation of this decision to them.”

Appeals

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.

Legal Member
Ms Joy Hosie

Date: 13 October 2026