



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

Reference number: FTS/HPC/LM/25/3292

Re: Property at Area of land at 10 and 12 Whitehall Road, Aberdeen (“the Property”)

The Parties:

Miss Sylwia Podlesna, 10 Whitehall Road, Aberdeen, AB25 2PR (“the Applicant”)

Aberdeen Property Leasing Ltd, 138 Rosemount Place, Aberdeen, AB25 2YU (“the Respondent”)

Tribunal Members: Ruth O’Hare, Legal Member, and Mary Lyden, Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined to refuse the application.

Background

- 1 This is an application under rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (“the Rules”) and section 17 of the 2011 Act. The Applicant sought a determination that the Respondent had failed to comply with the Code of Conduct for Property Factors and the property factor’s duties.
- 2 The Applicant stated that the Respondent had breached Sections 2.1, 2.2, 2.5, 2.6, 3.1, 3.2, 4.1, 4.2, 4.4, 4.5, 6.1, 6.2, 6.4, 6.6, 7.1 and 7.2 of the Code and the property factor’s duties. In summary, the Applicant’s position is that the Respondent failed in their common law and contractual duties by allowing the application of toxic chemicals without consent, risk assessment and safeguards, which had rendered her garden unusable for herself and her son due to her son’s health condition, and had failed to prevent further actions and damage by her neighbour.
- 3 The application was accepted as valid and referred to a tribunal for determination. A case management discussion (“CMD”) was scheduled to take

place on 29 September 2026 at 10am. The Tribunal administration gave notice to the parties of the CMD under Rule 17(2) of the Rules.

- 4 Prior to the CMD the Tribunal received written submissions from the Applicant on 24 August 2026 and from the Property Factor on 25 August 2026.

The CMD

- 5 The CMD took place on 29 September 2026 at 10am by teleconference. The Applicant joined the call. The Respondent was represented by Miss Billie Redgate of IVEE Solutions.
- 6 The tribunal explained the purpose of the CMD and noted a preliminary issue had previously been identified in the case, namely whether the Respondent met the definition of a property factor for the purposes of the 2011 Act. Both parties had addressed this in their written representations. The tribunal heard further submissions from the parties. The following is a summary of the key elements of the submissions.
- 7 The tribunal highlighted to the Applicant the decision of the Inner House in *Proven Properties v Upper Tribunal for Scotland ([2020] CSIH 22 XA112/19)* in which the court had concluded that a person had to be acting in the course of their business as a manager of common parts to fall within the definition of a property factor under the 2011 Act. The tribunal queried whether the Respondent was in fact acting in the course of their business as a letting agent, not a property factor, in arranging the gardening works. The Applicant confirmed she was familiar with the decision. She outlined the reasons why she believed the Respondent was acting as a property factor, whether intended or not, having assumed and exercised management functions over common land. The Respondent was not the owner of the property, as had been the case in *Proven*. She believed the actions the Respondent had taken went over and above that of a letting agent. The maintenance they had undertaken included areas of the Applicant's land and shared land.
- 8 Miss Redgate made reference to the Respondent's written representations. She referred to the decision in *Proven Properties*, explaining that it was clear the Respondent was acting under the terms of the letting agent agreement with the landlord of the adjoining property, a copy of which had been submitted to the tribunal. The Respondent is authorised to instruct repairs and maintenance under that agreement, if necessary. All works carried out had been authorised by the landlord.
- 9 The tribunal adjourned the CMD to deliberate, at which point parties left the call, before resuming the discussion and confirming the decision.

Findings in fact and law

- 10 The Applicant is the owner of the property at 10 Whitehall Road, Aberdeen, AB25 2PR.

- 11 The Respondent is the letting agent for the owner of the property at 12 Whitehall Road, Aberdeen, AB25 2PR in terms of a fully managed letting and property management service agreement dated 4 February 2025.
- 12 The properties at 10 and 12 Whitehall Road form part of the same building with a garden that includes areas of private and shared ownership.
- 13 On or around 18 May 2025 the Respondent arranged gardening maintenance, including the spraying of weed killer, to areas of the privately owned and shared garden. The Respondent did so in the course of their business as a letting agent for the owner of 12 Whitehall Road.
- 14 In arranging the garden maintenance, the Respondent did not act as a manager of the common parts of land at 10 and 12 Whitehall Road. The Respondent is not a property factor within the meaning of section 2 of the 2011 Act.

Reasons for decision

- 15 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. The tribunal considered it could proceed to a decision in the absence of a hearing following the CMD as it had sufficient information before it, and to do so would not be contrary to the interests of the parties in this case.
- 16 Section 17(1) of the 2011 Act states *“(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—(a) to carry out the property factor's duties, (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the “section 14 duty”).”*
- 17 Section 2 of the 2011 Act provides as follows:-

“Meaning of ‘property factor’

(1) In this Act, ‘property factor’ means—

(a) a person who, in the course of that person's business, manages the common parts of land owned by two or more other persons and used to any extent for residential purposes,

(b) a local authority or housing association which manages the common parts of land used to any extent for residential purposes and owned—

(i) by two or more other persons, or

(ii) by the local authority or housing association and one or more other person,

(c) a person who, in the course of that person's business, manages or maintains land which is available for use by the owners of any two or more adjoining or neighbouring residential properties (but only where the owners of those properties are required by the terms of the title deeds relating to the

properties to pay for the cost of the management or maintenance of that land), and

(d) a local authority or housing association which manages or maintains land which is available for use by–

(i) the owners of any two or more adjoining or neighbouring residential properties, or

(ii) the local authority or housing association and the owners of any one or more such properties,

but only where the owners of those properties are required by the terms of the title deeds relating to the properties to pay for the cost of the management or maintenance of that land.”

- 18 The preliminary issue identified in this case was whether or not the Respondent is a property factor within the meaning of section 2(1). If they are not, the application is incompetent and must be refused.
- 19 In *Proven Properties v Upper Tribunal for Scotland*, the Inner House addressed the interpretation of section 2(1), in particular the question of whether a person was acting in the course of that persons business for the purposes of defining whether the person is a property factor within the meaning of the 2011 Act. The appellant in that case owned 13 of the 15 flats in a building, and arranged for various services including communal stair cleaning, payment of communal electricity, and the common insurance policy. They did not charge any factoring or management fees to the other owners. Both the First-tier Tribunal and the Upper Tribunal determined they were property factors within the definition of section 2 of the 2011 Act, which led to an appeal to the Inner House of the Court of Session.
- 20 In seeking to determine the legislative intention of the Scottish Parliament in introducing the regulation of property factors Lord Menzies, who chaired the appeal, at paragraph 13 of his opinion states “*The mischief which the 2011 Act was intended to rectify appears to me to be tolerably clear, namely the provision of management services by persons who were charging fees to homeowners for such services, whose conduct was not regulated by a Code of Conduct and for whom there was no regulated mechanism for dispute resolution. In order to address this mischief, the Act requires persons who, in the course of their business, manage, or intend to manage, the common parts of land owned by two or more other persons and used to any extent for residential purposes, to apply to the Scottish Ministers for entry in the register.*”
- 21 At paragraph 16 of his opinion, Lord Menzies goes on to state “*In the context of the 2011 Act, I consider that the phrase “in the course of that person’s business” must be given the more restricted meaning – ie in the course of their business as managers of the common parts of properties, rather than in the course of any business, however far removed its main purpose may be from the management of the common parts of land owned by other persons and used to any extent for residential purposes.*” Lord Drummond Young agreed with the reasoning of Lord Menzies, saying “*The purpose of the Act is to regulate those who carry on business as property factors and are paid for so acting*”.

- 22 There is no appointed property factor for the building at 10 and 12 Whitehall Road. It is accepted that the Respondent instructed maintenance of the garden, which encompasses both common land, and land owned by the Applicant. They did not do so in terms of any contract with the Applicant, nor of their own volition. They did not charge the Applicant any factoring or management fee for arranging the works. The tribunal accepted that they did so on behalf of the owner of number 12, as the owner's letting agent, and in terms of the letting management agreement they have in place with him. Were such an agreement not in place, the Respondent would not have been involved in such matters.
- 23 The tribunal therefore concluded that any actions taken by the Respondent in this case were in the course of their business as a letting agent, not as a manager of the common parts of the property. The Respondent is not a property factor within the meaning of section 2(1) of the 2011 Act and as such the tribunal refused the application.
- 24 The decision of the tribunal was unanimous.

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.

Legal Member

29 September 2026

Date