Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/24/4842

Property: 34 Lochburn Gate, Glasgow G20 0SN ("the Property")

The Parties:-
Ms Mai Sung, 34 Lochburn Gate, Glasgow G20 0SN ("the homeowner")

Newton Property Management Limited, registered in Scotland (SC224378) and having their registered office at 87 Port Dundas Road, Glasgow G4 0HF ("the property factors")

Tribunal Members:
George Clark (Legal Member/Chairman) and Jane Heppenstall (Ordinary Member)

Decision

The Tribunal determined that the property factors had not failed to comply with Sections 3.7, 4.4 or 4.5 of the Code of Conduct for Property Factors made under the Property Factors (Scotland) Act 2011 but that they had failed to comply with the property factor's duties. The Tribunal proposes to make a Property Factor Enforcement Order.

Background

1. By application, dated 20 October 2024, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. She alleged failures to comply with Sections 3.7, 4.4 and 4.5 of the Property Factors Code of Conduct effective from 16 August 2021 ("the Code"). She also alleged failures to comply with the property factor's duties.

2. The homeowner stated that, when she purchased the Property at auction in July 2022, the selling solicitors and her solicitors presented a Notice of Potential Liability Invoice of £818.91 which covered the period up until 28

May 2022, which she was happy to pay. She received her initial factoring Invoice dated 9 February 2023 for £463.85, for the period from which she took over the Property on 3 August 2022. The Statement she received on 6 June 2023, however, was for £5,802.93 and included a forwarded balance of £4,139.44. When she requested a breakdown of that balance, the property factors replied that it was due to the previous owner's Notice of Potential Liability ("NOPL"). The homeowner's complaint was that the property factors had either failed to be transparent in updating the balance of the amount due under the NOPL or had not updated the amount on the previous owner's account. When she queried the £4,929.45, the property factors said that £818.91 "was only part of the outstanding amount."

3. The homeowner provided the Tribunal with copies of debt collection letters of 22 April and 2 May 2025, an email from the property factors of 2 January 2024 in which they said that Chelsea Building Society, who had repossessed the Property, were not liable for any outstanding arrears balance accrued to the seller, and that the homeowner's solicitors should have informed her that there was an outstanding arrears balance with a registered NOPL. The property factors stated that the homeowner was liable for the outstanding debt.

4. The property factors provided written representations on 15 August 2025. They stated that, when the NOPL was registered in 2019, the balance was £794.01, but up to the date of the repossession, the seller continued to accrue charges on the account for services and repairs to the communal areas. In relation to the complaint under Section 3.7 of the Code, the property factors stated that the normal process in a sale would be for the property factors to be notified in advance by the seller's solicitor, with several questions asked, including the current balance on the account and any other charges that would apply to the account. The property factors had not, however, been made aware of the Property going to auction or that it had been sold, so they were not asked for the updated balance. Had they been notified of the auction, the information on the actual debt on the Property would have been provided to the solicitor responsible for the sale. As per the NOPL, the property factors transferred the balance on the previous accounts to the new owner (the homeowner). They cited the principle of "caveat emptor". With reference to the complaint under Section 4.5 of the Code, the situation with the debt on the Property had been explained to the homeowner and the property factors had communicated with her and provided all requested information. In relation to the complaint under Section 4.9 of the Code, they had not failed to keep the homeowner informed of outstanding debts. They had issued quarterly Invoices, reminder letters and Sheriff Officers' letters, and staff had written to her on numerous occasions.

5. On 25 August 2025, the homeowner responded to the property factors' written representations. She provided a copy of a Reminder Statement sent by the property factors to the solicitors acting for Chelsea Building Society dated 14 June 2022, which showed a nil balance brought forward and a closing balance due of £818.91. The homeowner contended that this was presented as a consolidated, final statement including all carried-forward

amounts. When the homeowner notified the property factors of the ownership change in August 2022, they became duty-bound to issue finalised financial details within three months. The Statement dated 6 February 2024 fulfils that requirement, itemising charges accruing back to May 2022. Under the NOPL, the property factors explicitly confirmed that they had transferred the seller's outstanding balance to the new owner. The seller's final Invoice dated 14 June 2022 recorded a balance of £818.91, which the homeowner received and agreed to settle. Despite this, the property factors had since imposed additional collection fees and, even after the homeowner lodged the application to the Tribunal, they continued to refer the disputed charges to debt-collection agents.

First Case Management Discussion

6. A Case Management Discussion was held on the morning of 8 October 2025. The homeowner was present and was represented by her son Mr Jack Sung. The property factors were represented by Ms Catherine Flanagan.

7. The Tribunal explained to the Parties that it could either determine the application based on the written representations and the Parties' evidence at the Case Management Discussion, could continue the application to a further Case Management Discussion, or could fix a full evidential Hearing.

8. The Tribunal expressed its view that it did not have all the information it required to make a Decision on the application. It had not seen the Legal Pack prepared in advance of the auction or any correspondence between the homeowner's solicitors and the selling solicitors, Aberdein Considine, so did not know what questions, if any, the homeowner's solicitors had asked about the NOPL, nor had it details of any responses to such questions. The Tribunal also did not know what, if anything, the homeowner's solicitors had reported to her regarding her liability in respect of the NOPL. It would not, however, be the function of the Tribunal to decide whether more, or different, questions should have been asked by the homeowner's solicitors. The homeowner's representative told the Tribunal that he would forward the Legal Pack, which the homeowner has in electronic form.

9. The homeowner's representative told the Tribunal that he wished to provide additional documentation. It was clear to the Tribunal that, before determining the application, the homeowner should be given the opportunity to present this further documentation, and the property factors should be given time to consider it and respond if they wish to do so. The Tribunal decided to continue the case to a further Case Management Discussion and to issue Directions to the Parties.

10. The property factors told the Tribunal that the basis of their response was that they were aware that the Property had been repossessed, but not that it was going to auction, and the first they knew that it had been sold at auction was when the homeowner contacted them as the new owner. Accordingly, they had never been asked to update the sums due in terms of the NOPL.

11. The Tribunal indicated that it would expect the property factors to provide an explanation of why the sums due under the NOPL were not included in the first Invoice sent to the homeowner and why they did not include any explanation of these costs when they added them to the Invoice of 6 June 2023, some 10 months after they were advised by the homeowner that she had purchased the Property.

12. The homeowner asked whether the Tribunal could instruct the property factors to stop the debt recovery process, but the Tribunal reminded her that, whilst the property factors should be regarding the sums claimed under the NOPL as being in dispute, she remained liable for their factoring charges from the date of entry in her purchase, and the property factors are entitled to take such steps as they think fit to protect their position and that of the other owners in the Development.

13. The Tribunal decided to adjourn the case to a further Case Management Discussion and issued a Direction to the Parties in the following terms:

    "*1. The homeowner is directed to provide the Tribunal with a copy of the Legal Pack relative to the auction at which she purchased the Property and copies of any correspondence between her and her solicitors and (if available) between her solicitors and the solicitors who acted for Chelsea Building Society which relates to the Notice of Potential Liability and the amounts due thereunder.*

    "2. The property factors are directed to provide the Tribunal with copies of any correspondence that passed between them and the solicitors acting for Chelsea Building Society in relation to sums due under the Notice of Potential Liability and to provide an explanation as to why the amounts due thereunder were not included in their first Invoice to the homeowner dated 9 February 2023."

14. The Tribunal directed that the documentation should be lodged with the Chamber no later than close of business on 30 November 2025.

15. The homeowner emailed the Tribunal with further submissions on 28 November 2025. She included a document headed "Tribunal Submission - Supplementary Evidence Regarding NOPL" dated 27 November 2025, which purported to attach 5 sets of documents but, due perhaps to a technical error, the attachments did not appear with the email.

16. The property factors did not provide any documentation to the Tribunal following the Direction.

Second Case Management Discussion

17. A second Case Management Discussion was held on the morning of 27 February 2026. The homeowner was again represented by her son, Mr Jack Sung. The property factors were not present or represented.

18. The Tribunal Members told the homeowner's representative that they could not determine the application on the basis of the evidence before them. Mr

Sung advised that he would re-send the email of 28 November 2025, ensuring that the documents which should have accompanied it were properly attached. He added that the homeowner has received no reply from the property factors to her request made months ago that they send her details of the undisputed amount that is owing, to enable her to settle it.

19. The Tribunal noted that the property factors appear to have been sending two Invoices each quarter to the solicitors acting in the repossession of the Property which resulted in the sale at auction to the homeowner. They are numbered 0273002201 and 0273002202. The latter account is the one to which the homeowner referred when she stated at the first Case Management Discussion that the selling solicitors and her solicitors had presented a Notice of Potential Liability Invoice of £818.91 covering the period to 28 May 2022 which she was happy to pay. It was important for the Tribunal to understand why the property factors were issuing two Invoices each quarter and whether the solicitors for the Building Society in possession were advised that both were covered by the Notice of Potential Liability. For that reason, the Tribunal required the property factors to respond to its Direction of 8 October 2025.

20. It was clear that the entire sum of £4,139.44, being the forwarded balance shown on the Invoice received by the homeowner on 6 June 2023 is in dispute and the Tribunal expected the property factors to advise the homeowner of the amount that does not appear to be disputed, as she had requested, and to take no enforcement action until the present application was determined by the Tribunal. The Tribunal also awaited documentation in compliance with its outstanding Direction to the property factors.

21. The Tribunal adjourned to a further Case Management Discussion.

22. On 27 February 2026, the homeowner provided the Tribunal with a copy email to the property factors of 2 November 2025 in which she requested an updated detailed invoice reflecting the undisputed amount from the date of purchase of the Property and the acknowledgement of the same date in which the property factors advised that someone from their Property Management team would aim to respond within five business days.

23. On 1 May 2026, the property factors advised the Tribunal that the reason why the debt was not immediately passed on to the homeowner was that attempts were still being made to have the lender, Chelsea Building Society, pay the balance. They attached copies of emails to Aberdein Considine dated 19 May 2022 and 22 February 2023, seeking payment of overdue amounts.

Third Case Management Discussion.

24. A third Case Management Discussion was held by means of a telephone conference call on the morning of 5 August 2026. The homeowner was present. The property factors were again represented by Ms Catherine Flanagan.

25. Ms Flanagan told the Tribunal that the property factors bill in arrears and that, whilst they had been aware that the Property had been repossessed by Cheslea Building Society, they had been unaware of the sale by auction until well after it had taken place. The amount stated in the Notice of Potential Liability was the amount due at the date of its registration, but charges continued to accrue. The Property had been sold under Articles of Roup, and any potential purchasers and their advisers should, therefore, have been aware that there was debt.

26. The homeowner told the Tribunal that she had still not been told by the property factors the amount that was undisputed.

Reasons for Decision

27. The application stated that the property factors had failed to comply with Sections 3.7, 4.4 and 4.5 of the Code and had failed to carry out the property factor's duties. In her formal notification to the property factors on 22 February 2025, she had included Section 4.9 of the Code, but this was not considered by the Tribunal as it had not been included in the application.

28. Section 3.7 of the Code states:-

"*In cases where a property changes ownership, the property factor must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be provided within 3 months of the property factor being made aware of the actual date of change in ownership (the date of settlement) unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing them of the change of ownership).*"

29. The Tribunal did not uphold the complaint under Section 3.3 of the Code. There was no evidence that the property factors had been made aware of the auction or of the sale to the homeowner at the time they occurred. The Tribunal could not speculate on whose fault that was, but the upshot was that the property factors were not at the time advised of the actual date of change of ownership, so had not failed to comply with Section 3.3 of the Code.

30. Section 4.4 of the Code states:-

"*A property factor must have a clear written procedure for debt recovery which outlines a series of steps which the property factor will follow. This procedure must be consistently and reasonably applied. This procedure must clearly set out how the property factor will deal with disputed debts and how, and at what stage, debts will be charged to other homeowners in the group if they are jointly liable for such costs.*"

31. The Tribunal did not uphold the complaint under Section 4.4 of the Code. No evidence was provided that the property factors' Written Statement of

Services does not include a Debt Recovery Procedure or that it fails to comply with Section 4.4 of the Code.

32. Section 4.5 of the Code states:-

"*When dealing with customers in default or in arrears difficulties, a property factor should treat its customers fairly, with forbearance and consideration to provide reasonable time for them to comply. The debt recovery procedure should include, at an appropriate point, advising the customer that free and impartial legal advice, support and information on debt solutions is available from not-for-profit debt advice bodies."*

33. The view of the Tribunal was that, in law, the homeowner is liable for the full arrears of factoring charges, not just the amount stated in the Notice of Potential Liability. The Tribunal could not speculate on whether the solicitors acting for Chelsea Building Society (the heritable creditors in possession), had failed to disclose material information regarding the level of debt that had accrued, and/or whether the solicitors acting for the homeowner in her purchase had failed to ask relevant questions in order to ascertain whether the amount shown in the Notice of Potential Liability comprised the total current level of debt. The Tribunal had no sight of any correspondence that passed between them and the homeowner had not provided a copy of the Articles of Roup ("the Legal Pack") which determined the conditions of the auction. It appeared to the Tribunal that the property factors opened a new account when responsibility for their charges passed from the previous owner to Chelsea Building Society when they repossessed the Property. The balance due at that point was shown in Account 0273002201 and, on 13 March 2023, the property factors transferred it as "NOPL debt" to the homeowner's account 0273002203, the balance transferred being £4,139.44. In addition, on 24 May 2023, they transferred the balance of £598.67 on Account 0273002202, from Chelsea Building Society to the homeowner, again as "NOPL debt". The amount due on that account had been £818.91 in June 2022 but was reduced following adjustments.

34. The Tribunal saw no evidence that the property factors explained to the homeowner at the time why the balance on her account had suddenly increased and was disappointed to note that the property factors had failed to respond to repeated requests from the homeowner for a detailed statement of charges from the date of her purchase, which she said she was willing to pay, along with the initial sum stated in the Notice of Potential Liability (£818.91). This would have been a relatively easy task and, whilst the Tribunal could not speculate as to whether the homeowner would have been content with the detailed account and would have paid it, it would at least have clarified for the homeowner the sum in dispute. She appears to have had no idea why sums were transferred on to her account and the Tribunal regarded her confusion as entirely understandable. She raised the matter with the property factors in December 2023 and, as at the date of the application to the Tribunal, had still not received a response which the Tribunal would regard as satisfactory. The indication was that she was always willing to pay what she was due but was not prepared to pay until she

was satisfied as to how the figure being pursued was arrived at. The property factors' handling of the matter was clumsy at best and was a significant failure to communicate effectively.

35. The Tribunal was unable to conclude that the poor and ineffective communication constituted a failure to comply with Section 4.5 of the Code but was satisfied that it amounted to a failure to comply with the property factor's duties. It should have been clear to the property factors that the homeowner did not understand why sums were, to her apparently arbitrarily, added to her account. Section D(c) of their Written Statement of Services states that they are committed to providing a customer-friendly experience. In that respect, they failed in the present case. The result was many months of unnecessary anxiety and inconvenience for the homeowner. There was a failure to communicate effectively and a lack of transparency, which could easily have been avoided.

Property Factor Enforcement Order

36. Having decided that the property factors had failed to comply with the property factor's duties, the Tribunal then considered whether or not to make a Property Factor Enforcement Order. The Tribunal's view was that the property factors should be ordered to pay to the homeowner a modest sum to reflect the anxiety and inconvenience she had suffered. Accordingly, the Tribunal proposes to make a Property Factor Enforcement Order in terms of the Section 19(2)(a) Notice attached to this Decision. The view of the Tribunal was that the level of compensation set out in the Notice is fair, reasonable and proportionate. The Tribunal could not order the property factors to write off any portion of the sum they claim is due by the homeowner, as the owner of the Property and anyone purchasing from them becomes liable for all sums that may become due in terms of the Notice of Potential Liability. The Tribunal would, however, suggest to the property factors that they consider, as a gesture of goodwill, writing off the debt collection charges.

37. The Tribunal's decision was unanimous.

George Clark

_____ **27 August 2026**

Legal Member