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/26/0213

Property: 38 Woodrow Road, Pollokshields, Glasgow G41 5PN ("the Property")

The Parties:-
Ms Naomi Le Sage, 38 Woodrow Road, Pollokshields, Glasgow G41 5PN ("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 Robert Buchan (Ordinary Member)

Decision
The Tribunal determined that the property factors had not failed to comply with Sections OSP11 or Sections 1.D.14, 1.D.15, 2.7, 3.1, 7.1 or 7.2 of the Code of Conduct for Property Factors made under the Property Factors (Scotland) Act 2011 and had not failed to comply with the property factor's duties.

Background

1. By application, dated 9 January 2026, 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 OSP11 and Sections 1.D.14, 1.D.15, 2.7, 3.1, 7.1 and 7.2 of the Property Factors Code of Conduct effective from 16 August 2021 ("the Code"). She also alleged failure to comply with the property factor's duties.

2. The homeowner stated that, despite a history of the owners of individual garages instructing and financing external repairs to their roofs, at the conclusion of a much larger soffit replacement contract to the 5 pitched roof garages, the property factors chose to divide the cost equally amongst all 12

owners at the Development of which the Property forms part. They invoked the assistance of the agency Under One Roof in interpreting responsibility for costs. That agency is clear on its website that it will not arbitrate and will only provide information, but the property factors stated that Under One Roof concurred with their view on responsibility for costs, which the property factors concluded required each owner to pay a one-twelfth share of any garage repairs. The homeowner was challenging the very basis of this collaboration. The homeowner had paid for her own legal advice to clarify the issue, but the property factors would not reciprocate. The title deeds state that charges for common parts will be borne in equal shares, but no definition of common parts is referred to.

3. The homeowner stated in the application that responses to complaints to the property factors typically take over two months, and are sometimes irrelevant to the issue raised, the critical issue of the complaint being left unaddressed.

4. The homeowner wanted a proper legal analysis of a complex situation, especially that pertaining to her garage, which has no pitched roof.

5. In an email of 4 January 2026, in which the homeowner's father, on her behalf, notified the property factors of her intention to refer her complaint to the Tribunal, it was stated that on 16 November 2022, the homeowner had received a letter regarding the apportionment of expenditure related to a garage roofing and soffit replacement contract pertaining to the 5 garages exclusively used by residents of 39 Woodrow Road. The property factors stated that they considered a one-twelfth share to be appropriate and endorsed this view by indicating that they had for further clarification sent the information to Under One Roof, who had "concurred with our comments." The homeowner regarded this approach as wholly unacceptable, as Under One Roof state categorically on their website that they do not enter into advocacy on behalf of any one party, to a disputed issue. Some belated attempts were made by the property factors to find wording in the Deed of Conditions which somehow justified their view that all 12 owners contribute to garage repair costs for one linked group of 5 garages, the owners of which had historically instructed and paid individually for any repairs. The homeowner, through her father, had repeatedly asked the property factors to seek legal opinion and share it with the owners, but the response had been to discuss the matter with a further member of their staff in their Maintenance section, who concurred with the Complaints advisor. The homeowner did not regard a view expressed by joint staff perusal to be legal advice. The homeowner's father had offered to share his legal advice if the property factors would reciprocate, but they had not done so. Accordingly, there had either been a refusal to resolve the homeowner's concerns or an unreasonable delay in attempting to do so. A further much more expensive renewal contract is envisaged for the 5 garages, paid for by 12 owners, 7 of whom have no usage, communality or shared physical attributes of the standalone 5.

6. The homeowner provided the Tribunal with copies of the property factors' Written Statement of Services ("WSS") and of email exchanges between the homeowner's father and the property factors. They included emails to the

property factors of 25 and 26 September 2025 in which the homeowner's father referred to the property factors having told him verbally that legal advice had been obtained, and a letter of 1 October from the property factors to the homeowner's father in which the property factors stated that their Director of Technical Services had observed the title deeds for the Development alongside their Customer Relationship Manager and had noted that the garages are mentioned in the Deed of Conditions "but not as separate to owners" and that all expenses and charges in respect of the common parts shall "unless provided otherwise in this Deed of Conditions be bourne (sic) by the proprietors in equal proportions." The homeowner's father replied on the same day to say that he did not regard this as "legal advice".

7. On 22 September 2026, the homeowner's father provided further documentation to the Tribunal. It included a copy of his email to the property factors of 14 April 2026, explaining that the homeowner's garage is uniquely situated in that neither it nor the decking area on its roof is common to any of the 5 garages under consideration for remedial works. It also included a copy of his "brief" to T C Young, solicitors, Glasgow, seeking an opinion on interpretation of the title deeds, but not a copy of their reply. There was also a copy of an email of 11 December 2025, seeking their help in interpretation of the title deeds and to Under One Roof. This followed an email of 22 November 2025 in which he had asked if Under One Roof had given advice to the property factors and their response of 25 November 2025 that they could not confirm or deny if they gave the property factors any advice relating to the ownership of the garages and associated shared costs, due to records having been deleted due to data protection rules. They stated that information provided by them is designed to help tenement owners understand their rights and responsibilities, but it is not advice or a recommended course of action, adding that owners should always seek professional help with anything more than a simple problem.

8. The homeowner's father also provided a copy of a letter of 16 November 2022 from the property factors to the homeowner which stated that they had sent information to Under One Roof "We can confirm that they concurred with our comments" (their understanding that each owner should pay a 1/12th share of any garage repairs).

9. The property factors provided written representations on 12 October 2026. They acknowledged that the application arises from a disagreement regarding the interpretation of the title deeds. The homeowner's father had submitted a complaint on behalf of the homeowner on 10 July 2025. It was acknowledged on 14 July 2025, and a substantive response was issued on 15 August 2025. At that stage they advised the homeowner's father that further enquiries regarding the garage ownership and title documentation were ongoing. They wrote again on 18 September 2025, confirming that, after discussion with their Technical Director, their interpretation remained that the relevant costs should be shared equally. The homeowner's father had obtained legal advice and was fully entitled to hold a different view, but a disagreement over title interpretation does not establish a failure to comply with the Code or that the property factors acted improperly. The property

factors did not agree that they had failed to investigate the complaint. The matter was reviewed on several occasions, and correspondence was exchanged over a number of months. The position was reviewed by senior staff and responses were sent to explain the reasoning behind the property factors' conclusions. The absence of separate legal opinion did not mean that the matter was not fully considered.

10. The property factors acknowledged that their initial response to the complaint took longer than the timescale set out in their Complaints Procedure, but it required additional investigation and there were staffing resourcing issues following annual leave. This had been explained within correspondence to the homeowner's father. They engaged with him throughout the process and the complaint was acknowledged, investigated and responded to. They took the complaint seriously, investigated the issues raised and reviewed the title documentation on more than one occasion before confirming their position The fact that the homeowner's father disagreed with their interpretation does not demonstrate a breach of the Code or a failure to carry out the property factor's duties.

11. The property factors provided, with their representations, copies of email correspondence with the homeowner's father. They included an email of 15 August 2025, apologising for the delay in responding, due to annual leave and replying substantively to his email of 10 July 2025 and an email of 18 September 2025, in which they advised that their view remained, after discussion with their Technical Director, that the cost of the works to the garages should be borne equally. In their email of 15 August 2025, they stated that they were currently awaiting further information relating to the disposition of the garages "and further legal guidance".

Case Management Discussion

12. A Case Management Discussion was held on the morning of 28 October 2026. The homeowner was not present or represented. The property factors were represented by Ms Catherine Flanagan.

13. Ms Flanagan told the Tribunal that, notwithstanding the letter of 16 November 2022 to the homeowner, the property factors had not taken advice from Under One Roof. When they took over the Development on 7 April 2022, they were advised that the established practice was that the garage costs were split equally amongst the 12 of them. It was not until the homeowner's father raised it that they had had to consider the matter. They had referred it to their Technical Director, who has 30 years' experience in property management. They accepted that they could write to the owners to ask if they wish them to obtain a legal opinion, the cost of which would exceed their delegated authority, but they added that the homeowner's father had sought legal advice but would not share it, so there was an impasse. The Technical Director's view was that the costs should be shared equally. Ms Flanagan expressed the view that if the property factors had a copy of the legal advice to the homeowner's father, the application would probably not have got to this stage.

Reasons for Decision

14. It would not be practicable to include in this Decision every adminicle of evidence presented to the Tribunal, but in arriving at its Decision, the Tribunal took into account all the evidence, written and oral, before it.

15. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision.

16. The Tribunal accepted that the fundamental point of dispute between the Parties is the question of whether the roofs of the garages in the two blocks can be said to be common parts of the Development and, therefore, covered by the provision in the Deed of Conditions that liability for maintenance and repair of common parts is to be shared equally amongst the owners of the 12 flats. The basic facts, as opposed to the disagreement on legal interpretation of the Deed of Conditions, do not appear to be disputed, and both Parties provided extensive written submissions. Accordingly, the Tribunal decided that it was able to determine the application without a full evidential Hearing.

17. It is not part of the function of the Tribunal to interpret title deeds when deciding whether property factors have complied with their obligations under the Code. The property factors have not obtained legal advice, but the homeowner's father has, from a law firm which specialises in property law, and the Tribunal's view is that a practical way forward would be for him to share that with the property factors and the other owners in the hope that it will be acceptable to all. The property factors indicated at the Case Management Discussion that having access to that advice might have avoided the necessity to take matters so far.

18. The Tribunal noted that there are 12 garages in the Development, 5 of them in two standalone blocks with pitched roofs. There are 6 garages which are integral to the residential block. The garage of the Property is attached to the residential block, but its flat roof also forms or is covered by a balcony or roof terrace to one of the flats. The evidence before the Tribunal suggests that the garages themselves have been conveyed to the individual owners of the flats to which they pertain.

19. The application stated that the property factors had failed to comply with OSP11 and Sections 1.D.14, 1.D.15, 2.7, 3.1, 7.1 and 7.2 of the Code and had failed to carry out the property factor's duties. The Tribunal considered each of these in turn.

20. OSP11 provides "*You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure.*" The Tribunal noted that there had been a delay in the property factors' initial

response to the homeowner's complaint, but that the property factors had, in their email of 15 August 2025, apologised and explained the reasons for delay. That explanation appeared to be reasonable in the circumstances, and the Tribunal did not uphold the complaint under OSP1.

21. Section 1.D.14 provides that the property factor's Written Statement of Services "WSS") must set out "*procedures and timescales for responding to enquiries and communications received from homeowners in writing and by telephone.*" The homeowner did not provide the Tribunal with a complete copy of the property factors' WSS, so the Tribunal had no evidential basis on which to uphold the complaint under this Section.

22. Section 1.D.15 provides that the WSS must set out *the property factor's complaints handling procedure.*" The Tribunal did not uphold the complaint under this Section. The homeowner provided the Tribunal with a copy of part of the property factors' WSS, including a clear section on complaints handling, setting out the Stage One and Stage Two procedures and providing contact details for the Tribunal, should the homeowner choose to refer the complaint to the Tribunal.

23. Section 2.7 provides "*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 keep the homeowner(s) informed if they are not able to respond within the agreed timescale.*" The Tribunal did not uphold the complaint under this Section. There had been an admitted delay in providing a substantive response to the homeowner's complaint, but this had been explained in an e-mail of 15 September 2025 and an apology offered. It appeared to the Tribunal that there had been regular correspondence between the Parties.

24. The relevant portion of Section 3.1 states that "*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.*" The Tribunal could not make a finding that any payment request made by the property factors had been improper. They had come to a conclusion on the liability for repair costs to the garages with which the homeowner did not agree, but the fact that they sought then to recover a proportion of the costs from the homeowner did not make their request for payment in any way improper. They were entitled to bill owners based on the opinion they had expressed. It is a disputed bill which perhaps can only be resolved by a joint remit to a suitably qualified lawyer for an opinion or, as suggested by the Tribunal, possibly resolved if the homeowner provides the property factors and other owners with a copy of the advice that her father has received, and all parties are prepared to accept that advice.

25. The relevant portion of Section 7.1 provides "*A property factor must have a written complaints handling procedure.*" The Tribunal did not uphold the complaint under this Section for the reasons set out in relation to the complaint under Section 1.D.15 of the Code.

26. Section 7.2 provides "*When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.*" The Tribunal noted that it did not have sight of any communication by the property factors that they regarded their complaints procedure as having been exhausted, but it appeared from the documentation provided by the Parties that the exchange of emails had ended with the property factors advising on 18 September 2025 that their view, after discussion with their Technical Director, remained that the costs of the garage works should be shared. The Tribunal did not have sight of any subsequent correspondence between that date and the date of the application, so was unable to conclude that the property factors' complaints process had actually been exhausted, so could not uphold the complaint under Section 7.2 of the Code.

27. The Tribunal's decision was unanimous.

_____ **9 November 2026**

Legal Member