Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) in connection with an application under section 17(1) of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/24/5479

Re: Property at 11 Orchard Row, Abbey Park Avenue, St Andrews, Fife, KY16 9HN ("the Property")

The Parties:

Ms Sheila Cassells, 11 Orchard Row, Abbey Park Avenue, St Andrews, Fife, KY16 9HN ("the Applicant")

Newton Property Management, 87 Port Dundas, Glasgow, G4 0HF ("the Respondent")

Tribunal Members: Yvonne McKenna (Legal Member) Ahsan Khan (Ordinary Member)

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to carry out its property factor duties. The Tribunal determined that the Property Factor had failed to comply with sections 2.7 and 3.1 of the 2021 Property Factor Code of Conduct ("the Code").

The decision is unanimous.

Background

1. In this Decision, the Property Factors (Scotland) Act 2011 is referred to as "**the 2011 Act**"; the Property Factors (Scotland) Act 2021 Code of Conduct for Property Factors is referred to as "**the Code**"; and the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 are referred to as "**the Rules**".

2. By application to the Tribunal dated 18 March 2025 the Applicant made an application under section 17 (1) of the 2011 Act.

3. In terms of the application, the Applicant complained that the Respondent had;

   A; Failed to comply with the Code in respect that:

- Section 2 Communication and Consultation, section 2.7 had been breached.

- Section 3 Financial Obligations, section 3.1 had been breached; and

B; Failed to carry out the Property Factor's duties;

4. The Applicant stated that much of the complaint about the Respondent's duties related to breaches of the Code under section 3.1. She specified that in relation to the question of the property float, the Respondent had failed to justify why it can demand payment over 7 years after the property was purchased, and had provided no substantive evidence about what the money is required for, and will be used for.

5. In relation to financial obligations the Respondent repeatedly issued invoices with incorrect accounting and was unable to issue a credit note and issue a new invoice until the next invoice date.

6. The Respondent unilaterally imposed a management fee increase of 157%. Eventually it transpired that the largest part of the increase was, in fact, a £12 penalty for not paying by direct debit. Again, no justification was provided. The Respondent had been advised that until its accounting and financial management improve, the Applicant will not pay by direct debit- particularly when her account has not been in arrears.

7. In terms of communication, she said that the Respondent's Written Statement of Services ('**WSS**') states that the Respondent aims to respond within 5 working days. This seems to be the exception rather than the rule. It took them 2 months to respond to an e-mail sent in August 2024, and 10 weeks to respond to an e-mail sent in December 2024, even after she chased them.

8. In support of the application, the Applicant submitted the following;

- Correspondence regarding demand for a float, pages 1-12, including extract from title deeds and management information
- Correspondence on accounting and invoicing errors, pages 13-22
- Correspondence on management fee and communication, pages 23-25
- E-mails to the Respondent, being notification under section 17 (3) (a) of the 2011 Act.
- The Respondent's written statement of services

9. The Tribunal was also in receipt of the Title Sheet which confirmed the Applicant to be the registered owner of the property.

10. By Notice of Acceptance of application dated 15 April 2025, a Legal Member with delegated powers from the Chamber President intimated that there were no grounds upon which to reject the application.

11. The application was therefore referred to a Case Management Discussion ('**CMD**'). The CMD took place on 10 September 2025, by teleconference at 2pm. Notification of the Case Management Discussion was given to the parties in accordance with Rule 17(2) of the Rules.

12. Prior to the CMD the Tribunal had received, on 7 August 2025, a written response from the Respondent, which included the following Productions:

- WSS
- Letter to owners requesting float funds as float is no longer held
- Copy of customer invoice
- Copy of Identifying invoice errors (pre invoice) process
- Copy of dealing with invoice errors (post invoice) process
- Response to float complaint
- Response to Major works charges complaint
- Response from Derek MacDonald Technical Director to Ms Cassells dated 9th July 2024.
- Statement of Account and letter re float at time of purchase

13. On 27 August 2025 the Applicant said that she would prefer a written process at that time, as her partner required care. He had been admitted to hospital and although he had been discharged, she said that she was not able to devote enough time to this issue at that stage. On 8 September 2025, the Applicant contacted the Tribunal administration to state that she would be unable to participate in the CMD as her partner had medical appointments.

The Case Management Discussion (10 September 2025)

14. The CMD took place by telephone conference on 10 September 2025. The Applicant was absent. The Respondent was represented by Ms Catherine Flanagan, Customer Services Manager.

15. Ms Flanagan indicated that she would be able to furnish the Tribunal with the full Deed of Conditions applicable to the Property.

16. She said that there had been discussions which had taken place directly between the parties. She had attended a meeting with several of the homeowners at the development, as previously there had been multiple homeowners who were dissatisfied. She had tried to explain that the Respondent could not continue to front fund the repairs which were required.

17. For a 2 year period no payments had been made, and any repair charges were deducted from the float money. A review was carried out and this resulted in a float charge. Many of the homeowners had paid into the float charge without issue.

18. She said that she had put in as much information as she could into her written response regarding the processes and the invoice error. There was no

requirement for any further productions. She did not anticipate calling any witnesses.

19. She said that there had been multiple meetings, conversations, and e-mails back and forward between the parties. These had all said the same thing. There had been 5 or 6 meetings which took place in May 2025. Things at that point had been volatile but then matters seemed to settle down. A cooling off period had been allowed, and the request for the float payment was re-intimated.

20. The Respondent's overall position is that they accept mistakes were made, but do not accept that the Code was breached.

21. Ms Flanagan said that the billing is carried out quarterly and in arrears. Normally what is done is that the Respondent requests a one-off float payment. In this case, the float was used to pay the previous factor's bills, so the Respondent had been left in a situation where they front funded repairs. That situation could not continue. Therefore, they checked the Deed of Conditions, and requested a float payment, after taking legal advice.

22. She said that the burdens on the title deeds for the owners in this development at times clash with the WSS, so it is recognised that there are issues there. The Respondents will carry out maintenance as part of their role as factors. If it comes to an argument, she said that the Respondent could not enforce the Deed of Conditions and that sometimes this can be seen as part of their responses. Where there is any disparity, the Respondent's position is that the WSS overrides the Deed of Conditions.

23. Separate directions were issued in the following terms;

'*The Applicant/Respondent is required to provide:*

1. *Both parties shall lodge by close of business on 10 October 2025, details of any witnesses they intend to rely on at the Hearing (if any are to be called).*

2. *Both parties will intimate by close of business on 10 October 2025, whether they intend to attend the Hearing, or whether they are content that the Tribunal deal with the case in terms of their written representations already lodged.'*

24. A Hearing was assigned for 17 February 2026. The Hearing was postponed at the request of the Applicant.

25. Both parties confirmed that they were content that the Tribunal proceeded without an oral Hearing. Neither party made any further representations nor lodged any further productions for the Tribunal's consideration.

26. The Tribunal agreed with the parties that it would proceed to a decision based on the submissions from the CMD, and the written representations from the parties in the absence of a hearing under Rule 18 of the Rules. The Tribunal convened on 20 May 2026 to consider the application.

Findings in Fact

27. The Applicant is the owner of the Property.

28. The Property is one of 13 townhouses in a larger development, Site C1, St Andrews being subjects 1 to 13 (all numbers inclusive) Orchard Row, Abbey Park Avenue, St Andrews; (hereinafter referred to as, 'the **Development** ').

29. The Property is subject to real burdens as set out in a Deed of Application of Development Management Scheme, registered 9 March 2015, by Robertson Homes Limited (hereinafter referred to as '**Deed of Application'**).

30. Clause 19 of the Deed of Application states,

'19. RULE 19 - SERVICE CHARGE

19.1 Amount of Service Charge

Except where Rule 19.2 applies, the amount of any Service Charge imposed under this scheme is the same as respects each Unit.

19.2 Service Charge exemption

The Association may at a General Meeting decide as respects a particular Owner and in relation to a particular payment that no Service Charge (or a Service Charge of a reduced amount) is payable.

19.3 Manager to collect Service Charge

When the draft budget has been approved in accordance with this scheme, the Manager-
19.3.1 must send to each Owner a notice requiring payment, on the date (or dates) specified in the budget, of the amount of the Service Charge so specified; and
19.3.2 may send to each Owner at any time a notice-
(a) requiring payment, on the date (or dates) stated in the notice, of an additional amount of Service Charge determined under Rule 20.1; and
(b) explaining why the additional amount is payable and each Owner is liable for that amount accordingly.

19.4 Redistribution of share of costs

Where an Owner is liable for a Service Charge but the Service Charge cannot be recovered
(for example, because the estate of that Owner has been sequestrated, or that Owner cannot, by reasonable inquiry, be identified or found) then that Service Charge is to be shared equally among the other Owners or, if they so decide, is to be met out of any reserve fund; but that Owner remains liable for the Service Charge.

19.5 Interest payable on overdue Service Charge

Where any Service Charge (or part of it) remains outstanding not less than twenty eight days after it became due for payment, the Manager may send a notice to the Owner concerned requiring that person to pay interest on the sum outstanding at such reasonable rate and from such date as the Manager may specify in the notice.

19.6 Initial deposit on account of Service Charge

19.6.1 On taking entry to a Unit the Owner must pay to the Manager an initial deposit on account of Service Charge of £200 or such other sum as may be determined by the Association at a General Meeting.

19.6.2 An Owner is entitled to repayment of his initial deposit on ceasing to be an Owner of the Unit but no repayment will be made by the Manager until the initial deposit has been paid by the new Owner of the Unit.

19.6.3 The initial deposit will be repaid without interest and under deduction of any sums due by the Owner on account of Service Charge during his period of ownership.'

31. Clause 20 of the Deed of Application states,

'RULE 20 - ADDITIONAL SERVICE CHARGE

20.1 Additional Service Charge
The Manager may from time to time determine that an additional service charge, limited as is mentioned in Rule 20.2, is payable by the Members to enable the Association to meet any expenses that are due (or soon to become due) and which could not be met otherwise than out of the reserve fund.

20.2 Limit on amount of additional service charge

in any financial year the total amount of any additional service charge determined under Rule 20.1 is not to exceed twenty five per cent of the total Service Charge for that year as set out in the budget approved by the Association; but in calculating that percentage no account is to be taken of any additional service charge payable in respect of the cost of Emergency Work.

20.3 Supplementary budget

If in any financial year the Manager considers that any additional service charge exceeding the percentage mentioned in Rule 20.2 should be payable, the Manager must prepare and submit to the Association at a General Meeting a draft supplementary budget setting out the amount of the additional service charge and the date (or dates) on which the charge will be due for payment; and Rulesl8.3, 18.4 andl9.3.1 apply as respects that draft supplementary budget as they apply as respects a draft budget and revised draft budget.'

32. The original factor for the Property and the Development, Greenhome Property Management Ltd arranged with the developers, Robertson Homes Ltd. to ask

purchasers for an advance common charge payment in lieu of a float payment.

33. The Respondent acquired the original property managers, Messrs Greenhome Property Management Ltd. in 2015.

34. The Applicant purchased the Property on or around 16 May 2017.

35. The Respondent has performed the role of the Property Factor of the Development from the date the Applicant purchased the Property.

36. At the time of purchase, the Applicant made a payment of £225 to the Respondent.

37. The payment of £225 was not credited by the Respondent to the Applicant's account until 8 November 2024.

38. The factored services for the Property are cleaning of the bin stores, cleaning of communal bike shelters and maintenance of communal gardens.

39. On assuming responsibility for the Development, the Respondent issued a joint statement, along with the Property developer, Robertson Homes, entitled, 'Management Information Robertson Homes, Abbey Park, St Andrews, Townhouses. Under the Heading 'Accounting & Funding' the joint statement included the following paragraph;

    'We have agreed with Robertson Homes that no float payment will be required for the development. Instead, Robertson Homes will arrange to ingather the first year's annual maintenance costs of at time of settlement. Robertson Homes will also confirm to us the dates when the first year's maintenance will commence. In subsequent years we will invoice for the maintenance costs yearly and in advance of the service being provided.'

40. The Respondent manages the Property subject to a WSS.

41. Section A of the WSS states;
    'Our Authority to Act
    We (Newton Property Management Ltd) have been appointed to manage the whole shared property in line with one or more of;
    the deed of conditions;
    any valid decisions made by the homeowners of the development;
    established custom and practice; or
    if we take over as manager from another firm who previously had the right to manage.'

42. Section C(f) of the WSS states;
    'We will collect funds from each homeowner to use as a 'float' to cover the cost of maintenance, repairs and insurance.'

43. Section C (l) of the WSS states;
    'You must pay us, when we ask, your share of the cost of repairs and maintenance, insurance premiums, shared and other charges and management and other fees in line with the deed of conditions, the Title Conditions (Scotland) Act 2003 or the Tenements (Scotland) Act 2004.'

44. Section D (c) of the WSS states;
    '……*We will do our best to deal with your concerns promptly. We aim to respond to phone calls by the following working day, emails within five working days and letters within 21 days…*'

45. On 3 July 2024, the Respondent demanded payment from the Applicant of the sum of £200 to represent a management float for the Property.

46. The Respondent invoices the Applicant quarterly in arrears.

47. The Respondent was unable to issue a credit note or a rectified invoice until the next invoice date.

48. On 13 November 2023 the Applicant was incorrectly charged £147 for a bin store upgrade which she had paid in advance.

49. In February 2024, the Applicant was invoiced in error regarding bin store lock repairs. This was not corrected until the May 2024 invoice.

50. In August 2024 the Applicant was invoiced in error for bin store cleaning which had been paid in the previous invoice.

51. A double charge for garden maintenance was made by the Respondent in an invoice to the Applicant covering the period 6 August -5 September 2024.

52. It has taken the Applicant time and effort to correct invoice mistakes.

53. On 10 September 2025 the Respondent sent an e-mail to the Applicant stating, "*we acknowledge that errors have been made in invoices."*

54. The Respondent afforded a reduction to their management fee by 5% to homeowners who paid invoices by direct debit.

55. The Applicant has refused to pay invoices by direct debit.

56. The WSS provides for responses to be provided within 5 working days.

57. The Respondent took 2 months to respond to an e-mail from the Applicant dated 25 August 2024, responding on 30 October 2024.

58. The Respondent took 10 weeks to respond to an email from the Applicant dated

December 2024.

59. On 15 January 2025, the Applicant e-mailed the Respondent in terms of section 17 (3) notifying the Respondent that they had failed to carry out their duties and to comply with the Code.

The Hearing on the Papers/ summary of submissions

Communications and Consultations

Section 2.7
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 to keep the homeowner(s) informed if they are not able to respond within the agreed timescale.

The Applicant's Position

60. The Applicant referred to the WSS provided by the Respondent which states that the Respondent aims to respond within 5 working days. She maintains this is the exception rather than the rule. She complains that it took the Respondent 2 months to respond to an e-mail she sent in August 2024, and 10 weeks to respond to an e-mail she sent in December 2024- even after she chased them.

The Respondent's Position

61. The Respondent has not specifically addressed this breach of the code in their written submissions.

Section 3.1

While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. 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. If a property factor does not charge for services, the sections on finance and debt recovery do not apply.

The Applicant's Position

62. There were several aspects to the Applicant's complaint under this section of the Code. The first related to the invoicing by the Respondent. The second related to the request for a float payment by the Respondent.

63. In addition, the Applicant said that the Respondent's management fee increased

by 157% in 2024. She detailed that after several exchanges of e-mails with the Respondent, that the actual management fee increase was 5%, with £12 being charged for not paying by direct debit. She refuses to pay by direct debit until the Respondent's accounting and invoicing improves. She complains that there was no consultation regarding the introduction of a fee for non-payment of invoices by direct debit. She states that paying by direct debit equates to lending money to the Respondent. The Applicant has also raised concerns regarding a lack of consultation prior to contractor fee increases.

64. The Applicant has raised concerns regarding errors in invoicing. Replacement bin store doors were requested. The Applicant paid her full share, prior to the new doors being installed. In her subsequent invoice she was charged again with an incorrect apportionment. A fault occurred with one of the locks. A local repair man was called out during the warranty period.

65. On purchasing the Property, the Applicant paid an amount to the developers, Robertson Homes of £225. She requests to know upon which provision in the title deeds the Respondent is relying upon to seek a further payment more than 7 years after taking entry. She relies on the joint statement (referred to in Finding in Fact 39). She states that whilst the deeds do allow for a supplementary charge to be requested, this is only in certain qualified circumstances. It is limited to 25 % of the service charge in that financial year. The annual service charge is nowhere near £800 which would be the sum of which £200 represents 25%. The deeds require that the manager prepares and submits for consideration a budget for the forthcoming financial year. A supplementary budget is required in certain circumstances. The Respondent has not provided a budget, nor management accounts in the past 7 years. There is no basis upon which the Respondent can demand a further float payment in the current circumstances.

The Respondent's Position

66. At the time the Respondent assumed factoring responsibilities for the development, the existing arrangement involved the developer making an upfront payment, which was then used to offset invoices issued to property owners. Upon taking over, the Respondent continued this arrangement on an interim basis.

67. Over time, the float funds allocated per property were depleted. Consequently, the Respondent began covering the costs of services, repairs, and maintenance directly, prior to invoicing owners. The Respondent operates on a quarterly arrears invoicing model, ensuring that owners are billed only after services have been rendered and actual costs determined. However, contractors providing essential services- such as grounds maintenance, stair cleaning, and repairs- require payment either upon receipt of invoice or within 29 days. Notably, services like grounds maintenance and cleaning are invoiced monthly.

68. Following a review of the accounts, it became evident that operating without a float was financially unsustainable. The Respondent was required to use company funds to cover development-related expenses, resulting in a lack of separation between company and development finances.

69. To address this, the Respondent issued a communication to owners on 3 July 2024 requesting the reinstatement of float funds to facilitate continued service provision. In response to concerns raised by some owners, a meeting was convened in May 2024. During the meeting, the Respondent explained that the float would be held in a separate bank account, distinct from company funds, and would be replenished following payment of invoices. This measure was proposed to ensure uninterrupted service delivery and timely contractor payments. Despite these assurances, several owners expressed dissatisfaction and did not accept the necessity of the float.

70. The Respondent's position is that the title deeds are binding on owners not the Property managers.

71. All relevant details are included in the quarterly invoices issued to owners. Each invoice entry specifies:

- The date of expenditure
- The name of the contractor or company paid
- A description of the service or repair (e.g., grounds maintenance)
- The total cost of the invoice
- The apportionment share (e.g., 1/6th)
- The actual cost charged to the individual owner

This format aligns with standard industry practice for factoring invoices.

72. The Respondent acknowledges that some errors have occurred and confirms that these have been identified and rectified accordingly. The process by which the Respondent's accounts team uploads and processes supplier and contractor invoices is manual. As with any high-volume manual system, there is an inherent risk of human error. The Respondent has implemented a procedure for identifying and correcting such errors; however, this process is also manual and therefore not immune to occasional mistakes. When a customer queries an item on their invoice, the property manager undertakes a thorough investigation and provides a detailed response. If an error is confirmed, the necessary correction is made promptly. This approach ensures accountability and transparency in their financial management practices.

73. Funds for major works are requested from owners in advance and held in a separate account until the contractor's invoice is received. At that point, the cost of the work is added to the customer's invoice, and the corresponding advance payment is credited to the same invoice. This ensures full transparency and a clear audit trail.

74. The installation of a bin store and replacement of locks were invoiced by the contractor separately, resulting in the costs being split across two invoice periods. For the first job, the cost and corresponding credit were both reflected on the same invoice. For the second job, the Respondent negotiated a discount with the contractor, which meant the final invoiced amount was lower than the advance payment originally requested. Nevertheless, the full advance payment made by the customer was credited to their account, and the difference was

deducted from the total cost of the invoice. This approach ensures that owners are not overcharged and that all transactions are clearly documented.

75. As part of the recent management fee adjustment, a charge was introduced for customers who opt not to use e-billing or direct debit payment methods. Where either option is adopted; a corresponding discount is applied to the customer's account each quarter. The actual increase in the management fee was 5%. Most direct debits are structured on a monthly basis and commence from the current invoice period. Annual invoices are divided into four quarterly instalments and paid over a 12-month period. For example, if an owner's annual charges total £1,200 and the first quarterly invoice is £400 due to a repair cost, the owner would be asked to pay £100 per month via direct debit starting the following month. This payment schedule is in arrears, not in advance. Invoices are due for full payment within seven days of being issued, whether by email, customer portal, or post. The Respondent does not apply interest charges for payments made via direct debit.

76. The Applicant has also raised concerns regarding a lack of consultation prior to fee increases. While businesses are not legally required to consult customers before implementing fee changes, property factors are obligated to provide advance notice of any increase, in accordance with the Code. The Code does not specify a required notice period. The Respondent complies with this requirement, and their WSS outlines their approach to fee adjustments and notifications.

Failure to carry out Property Factor's Duties section 17(5) of the 2011 Act

The Applicant's Position

77. In addition to the matters raised under the Code, the Applicant maintains that the matters raised by her also represent a failure by the Respondent to carry out the Property Factor's duties.

The Respondent's Position

78. The Respondent has not specifically addressed this failure in their written submissions.

Reasons for the Decision

79. The Tribunal considered all of the documentary evidence submitted by the parties and the written and oral submissions in reaching a decision on the application.

80. Section 17(3) of the 2011 Act states that a homeowner cannot apply to the Tribunal for a determination that a property factor has failed to carry out the property factor's duties or comply with the Code unless they have notified the

property factor in writing of their complaint and the property factor has refused to resolve or has unreasonably delayed in attempting to resolve the complaint. The Tribunal had before it the notification letter sent by the Applicant to the Respondent and was satisfied that proper notification had been given in accordance with the requirements of section 17(3).

81. Section 19 of the 2011 Act is in the following terms: -

"19 *Determination by the First-tier Tribunal (1) The First-tier Tribunal must, in relation to a homeowner's application referred to it under section 18(1)(a), decide— (a) whether the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, and (b) if so, whether to make a property factor enforcement order. (2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so— (a) give notice of the proposal to the property factor, and (b) allow the parties an opportunity to make representations to it. (3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order. (4) Subject to section 22, no matter adjudicated on by the First-tier Tribunal may be adjudicated on by another court or tribunal."*

82. The tribunal considered each aspect of the Applicant's complaint.

Section 2.7

83. The Respondent failed to comply with Section 2.7 of the Code. They did not deal with the Applicant's enquiries as quickly and as fully as possible and did not keep the Applicant informed where responses were delayed. In particular, the Applicant was required to raise repeated correspondence in relation to invoice discrepancies, and the Respondent's replies were delayed, reactive, and did not fully address the specific issues raised.

Section 3.1

84. The Respondent failed to comply with section 3.1 of the Code. The invoices regularly included admitted inaccuracies. That amounts to issuing improper payment requests. The Applicant could not reasonably be confident as to what she was being asked to pay for or how the charges had been calculated. This undermines the trust and transparency expected in financial matters, particularly where there is a clear expectation that charges are accurate and properly explained.

85. In addition, the Respondent further failed to comply with Section 3.1 in relation to the demand for a "float". While the Respondent relied on their WSS to justify requiring a float from time to time, the Deed of Application restricts such a payment to a one-off initial deposit on taking entry, with any later funding to be recovered through the separate additional service charge procedure.

86. The Deed of Application allows owners of land on which the development is built to register the development management scheme ('DMS') in the Land Register. The DMS was introduced by the Title Conditions (Scotland) Act 2003 with the intention of reducing disputes over maintenance, repairs and other issues affecting new build developments where owners share common property. Once registered the Deed of Application protects homeowners and ensures essential repairs can still be carried out fairly, even if the deeds are silent.

87. The mischaracterisation of the demand as a float, without clear authority in the Deed of Application, meant that the Applicant could not be confident as to why the sum was due, and so the demand constituted an improper payment request.

88. In considering the issue of the demand by the Respondent for a 'float' payment the Tribunal has had regard to the terms of the decision of the Upper Tribunal in the case of *Millar Property Management Ltd. v Hassan (2026) UT 47* and in particular Clause 17 thereof where the judge states;

'The terms of the Deed of Declaration of Conditions would determine the dispute between the parties as to whether the appellant was in breach of its obligations as property factor.'

89. In relation to the Applicant's complaint about the increase in a management fee, there is no breach of the Code. An increase in the management fee does not breach the Code. The Respondent is entitled in terms of the WSS to review and adjust their fee. There is insufficient evidence that the increase was not clearly identified or explained to the Applicant.

90. In relation to the Applicant's complaint of a direct debit charge, the imposition of a charge for non-payment by direct debit does not breach the Code. The requirement to pay by direct debit, and the associated charge where that method is not used, is expressly provided for in the Respondent's WSS. There is no evidence that it was applied in an unreasonable, excessive, or unclear manner.

Failure to carry out Property Factor's Duties section 17(5) of the 2011 Act

91. Section 17(5) of the Act states:

'In this Act, "property factor's duties" means, in relation to a homeowner—
(a)duties in relation to the management of the common parts of land owned by the homeowner, or
(b)duties in relation to the management or maintenance of land—
(i)adjoining or neighbouring residential property owned by the homeowner, and
(ii)available for use by the homeowner.'

92. Section 17(4) of the 2011 Act states;

'*References in this Act to a failure to carry out a property factor's duties include references to a failure to carry them out to a reasonable standard. '*

93. The Respondent failed to carry out its property factor duties by not exercising reasonable care and skill in the financial management of the development and by acting outwith its contractual authority. The regular issuing of inaccurate invoices demonstrates a failure to maintain reliable accounting procedures. The Respondent's demand for a "float" is outwith the terms of the Deed of Application and not in accordance with the governing contractual framework.

Proposed Property Factor Enforcement Order (PFEO)

94. Having determined that the Respondent has failed to comply with the Code, the Tribunal was required to decide whether to make a PFEO. The Tribunal decided to make a PFEO.

95. Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations. A proposed PFEO accompanies this decision. Comments may be made in respect of the proposed PFEO within 14 days of receipt by the parties in terms of section 19(2) of the 2011 Act.

Right of Appeal

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 original decision was sent to them.

Yvonne McKenna **11 July 2026**

Legal Member **Date**