

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under Section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 ('The Procedure Rules') in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').**

**Chamber Ref:FTS/HPC/PF/24/2710**

**Flat 1/2, 17 Prospecthill Street, Greenock, PA15 4HH ('the Property')**

**Miss Helen McGoldrick, Flat 1/2, 17 Prospecthill Street, Greenock, PA15 4HH ('the Homeowner and Applicant')**

**Riverclyde Homes, Clyde View, 22 Pottery Street, Greenock, PA15 2UZ ('the Factor and Respondent')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and Mary Lyden (Ordinary Member).**

### **Background**

1. The Homeowner is heritable proprietor of the property **Flat 1/1, 17 Prospecthill Street, Greenock, PA15 4HH ('the Property')**.
2. **Riverclyde Homes** are factors of the Property and are registered property factors.
3. The Homeowner submitted a C2 application to the Tribunal which sought determinations that the Factor had failed to comply with the Property Factor's duties and specified sections of the Property Factor Code of Conduct 2021.

The application states:

*'I do not feel RCH are honest, open and transparent with me as they do not treat me fairly or with respect. I do not think their responses to me are consistent and reasonable. They do not respond to my complaints within reasonable timescales. I do not believe I have been given a comprehensive written statement of services. I have*

*not been given target times for taking action in regards to work which should be done in relation to my complaint or frequency of property visits. Communication between myself and RCH is poor therefore I do not believe I have a positive relationship with them. Likewise they do not respond to my complaints quickly or fully and definitely do not inform me if they cannot respond within an agreed timescale. Further deterioration as RCH failed to make prompt repair. Inspections and repairs are not done in an appropriate timescale nor am I kept informed of progress. There does not appear to be a programme of cyclical maintenance to ensure properties are maintained appropriately. This could have prevented the damage to the exterior wall.*

*I have raised the following complaint on numerous occasions since December 2022: The outside wall of my property is badly stained between my living room and bedroom window. I am very concerned that eventually dampness will seep through into my home. All the other exterior walls of the flats are not discoloured, only mine. My building was the last to be completed under the Regeneration work. On another point the paint work in my close is extremely shabby and a very poor standard, looks as though it has been watered down. I also do not have tiles in the close as other blocks do. I am putting this down to lack of money and/or time at the end of this project but standards should not have slipped. March 2023- Inspections were carried out by Thomas Reid and Pat Monaghan and did not report anything untoward. They said "any weathering of the cladding is natural and there has been no instances of water ingress" However Pat Monaghan said it was "easily rectified with a specialist cleaning solution" so why has this not been done? It is very unsightly! I spoke to Robert Orr, Head of Assets and Regeneration, who apologised and assured me "it would be looked into and rectified" May 2023-1 decided to get an independent opinion from a roofer- KS Roofing, letter enclosed. He said "the property has black streaks on the walls due to water overflowing in the gutter system. Guttering needs cleaned and re-aligned to stop this problem". 16<sup>th</sup> November 2023- I spoke to Marie Crawley from Homefix about the guttering and rendering but she got it wrong and thought it was about water coming in my living room window. I requested a meeting with managers, as I was so fed up with the situation. but she said there was no need as she could deal with this. She told me she would call me back but did not. I tried her again on 21st Nov, 22nd and 24th November 2023- I eventually spoke to Gary McMenamin but again no call back as promised. Scaffolding was duly erected and the gutter cleaned in May 2024 but still*

*no repair or cleaning of exterior wall, only the gutters. Letter March 2024 from Steve McLachlan, Customer Services Director- RCH state " We understand the importance of maintaining the exterior of your property and assure you that we take your feedback seriously". If this is the case why on earth can they not fix the problem? March 2024- phoned to ask to speak to Kevin Smith but told he no Longer works at RCH which I found out later to be untrue. May 2024 -1 had a meeting with Heather Mitchell, Senior Customer Service Manager and Gillian Hail, Customer Experience Team Leader. Again the discolouration was put down to wear and tear. So far I have had 3 face to face meetings about this complaint and countless telephone calls with promises of call backs which rarely happens. Also, at most of these meetings there was a very dismissive attitude and I did not feel I was being heard or taken seriously. Due to all of the above I have become exceptionally frustrated with RCH and would like this matter sorted out at a Tribunal please as I am getting absolutely nowhere with them'.*

4. By Notice of Acceptance by Jacqui Taylor, Convener of the Tribunal, dated 22<sup>nd</sup> August 2024 she intimated that she had decided to refer the applications (which application paperwork comprises documents received between 14<sup>th</sup> June 2024 and 12<sup>th</sup> August 2024) to a Tribunal.

## **5. The Factor's Written Representations**

The Factor lodged written representations by email dated 4<sup>th</sup> February 2025. The detail is set out below in relation to the particular sections of the Code of Conduct below.

## **6. The First Case Management Discussion.**

An inperson Case Management Discussion (CMD) took place in respect of the application on 15<sup>th</sup> July 2025 at 10am at the Glasgow Tribunal Centre.

The Homeowner attended along with her sister and supporter, Frances McGoldrick.

The Factor was represented by Gary McMememie, the Factoring Officer with River Clyde Homes.

At the start of the CMD Miss McGoldrick explained that she had very limited sight and hearing. The Tribunal clerk arranged for a hearing loop to be set up but unfortunately it was not compatible with Miss McGoldrick's hearing aids. She advised that the only adjustment she required was for everyone to speak up. She acknowledged that the case papers had largely been printed in font size 72.

6.1 Both parties confirmed the following facts:

6.1.1 The Homeowner purchased her Property approximately 21 years ago.

6.1.2 The Factor has acted as property factor for the Property since 3<sup>rd</sup> December 2007.

6.1.3 The Property is a first floor flat. There are twelve flats in the block of which nine are privately owned and three are leased.

6.1.4 External Insulation to the block had been installed in 2017/2018.

6.2. At the start of the CMD the Homeowner explained that there are six main complaints in her application:

First, there is bad staining to the external wall of her Property and the Factor has not had this repaired.

Second, the close paintwork is in a poor condition.

Third, there are no tiles on the walls of the close of her block.

Fourth, the Factor is not arranging for wheelie bins to be returned to the rear of the Property after they have been brought to the front of the block on bin collection day.

Fifth, there is a lot of fly tipping at the rear of the Property and the Factor has not taken steps to resolve the issue.

Sixth, the Factor did not return her calls on 4<sup>th</sup>, 8<sup>th</sup> and 21<sup>st</sup> October 2024.

6.3 The detail of the parties' representations and are detailed below. At the end of the CMD the Tribunal determined that they were able to make decisions on the application without a hearing. The Tribunal's decisions are also detailed below.

**OSP2 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must be honest, open, transparent and fair in your dealings with homeowners**

**The Homeowner's complaint:**

**The Homeowner's written complaint:**

*'I do not feel RCH are Honest, Open and transparent with me as they do not treat me fairly or with respect. I do not feel respected or listened to.'*

**The Homeowner's oral representations:**

Miss McGoldrick explained that the external walls of the block 17 Prospecthill Street, Greenock are badly stained as are the external walls of the other buildings in the street. The Factor has told her that the staining is due to weathering. However, she had obtained a report from KS Roofing dated 21<sup>st</sup> April 2023. A copy of that report was sent to the Tribunal with her productions. The report says that the black streaks on the

walls are due to water overflowing the gutter system. The guttering needs to be cleaned and re aligned to stop this problem. She also suspects that the staining may be due to defects in the external insulation that was installed. The Factor is not arranging for the staining to be repaired.

With reference to the google streetview images of the Property (accessed by Mr McMememie during the CMD and shown to the Tribunal members, the Homeowner and her sister during the CMD) she acknowledged that the streetview images clearly showed that the external walls of the Property had been stained before the external wall insulation had been installed. She explained that she did not realise the external walls of the Property had been stained in 2014. She expressed surprise that the Factor had not showed her these images sooner as this would have resolved this aspect of her complaint.

**The Factor's response:**

**The Factor's written representations in relation to OSP 2:**

*'In the printed set of reasons and in your hand written pages you do not specify why you think that RCH have failed to be honest, open, transparent and fair in our dealings with you, so we cannot comment on this allegation with any detail other than to state that we do not find we have breached this overarching standard of practice.*

*On the subject of you feeling that you have not been listened to, it is worth noting that we have listened to your requests regards the weathering on the External Wall Insulation (EWI). The source of our conflict seems to be that while we have listened to you, we do not agree with your belief that there is a structural flaw with the EWI or the guttering that needs to be corrected. In response to reports that there was an issue with the gutter we duly had our contractor attend to source and repair any problems with the guttering. However, they did not find any issues with the guttering that would result in water not draining properly or unduly cascading down the side of the building. The gutter was cleaned, but there were no further works necessary to adjust or otherwise change the guttering. We have advised that the weathering on the EWI may be cleaned off the building but like any other form of maintenance this would be charged to all owners. Given that you have advised that you are unhappy to pay this cost, and no other residents have requested this service we have not pursued costs to have this work carried out as we would not have the requisite number of votes needed to instruct these works. We understand that you find this upsetting, but we do not agree that in telling you this on multiple occasions that we have not been honest, open, transparent or fair. On the subject of respect, in your handwritten pages you reference an incident involving one of our former call centre staff Chris. We note that in a discussion regarding you wanting to speak to Mr Orr who was unavailable at the time, Chris mentioned that he was going to "kick the managers backside". We note*

*that you describe this incident as disgusting and that he had no right to speak to you in that manner. We would respectfully suggest that this is something of an overreaction to what we understand was Chris trying to build a bit of rapport with you by saying he would take the manager to task for you albeit in a jovial, humorous way. We acknowledge that you did not take Chris's comments in the way he would have intended, but we do not believe this was an attempt at disrespect or otherwise offensive behaviour.'*

#### **The Factor's oral representations in relation to OSP2:**

Mr McMememie explained that the staining was not due to defects in the external insulation. The staining had been caused by weathering as a result of the position of the building.

He referred the Tribunal to the gable end of the building 9 Broomhill Street, Greenock which has the same staining and as there are no gutters on this section of that property he explained that this proves that the staining is not cause by defective guttering.

He showed the Tribunal and the Homeowner the google street view images for the Property. He was able to show images from:

2014 showing staining similar to the present staining.

2018 showing no staining.

Current day: showing staining.

He explained that this was clear evidence that the staining was caused by weathering. He advised that it can be removed by chemical cleaning but this would have to be repeated over time.

The only reason he had showed the images on Street view was to show the Tribunal the location of Broomhill Street, Greenock in relation to the subject Property. It had not occurred to him to show the images before.

#### **The Tribunal's Decision:**

The Tribunal allowed Mr McMememie to show everyone present at the CMD the streetview images of the Property at the CMD even although the images had not been lodged in advance of the CMD. The Homeowner did not object to the fact that they had not been lodged in advance of the CMD. The Tribunal also acknowledged that it is an overriding objective of the Tribunal to deal with matters justly and this includes seeking informality and flexibility in proceedings and avoiding delay and the Tribunal did not consider that the Homeowner was prejudiced by the fact that the images had not been made available in advance of the CMD.

The Tribunal acknowledged that at the CMD Miss McGoldrick accepted that the street view images showed that the staining was probably caused by weathering and that the staining to the external walls of the building had not been caused by faulty guttering or defective external insulation.

The Tribunal determine that the Factor has not breached OSP2 of the 2021 Code of Conduct in relation to the Homeowner's complaint as the Homeowner has not specified any other reason why she believes the Factor has failed to be honest, open, transparent and fair in their dealings with her.

**OSP5 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must apply your policies consistently and reasonably.**

**The Homeowner's complaint:**

**The Homeowner's written complaint:**

*"I do not think their responses to me are consistent and reasonable"*

**The Homeowner's oral representations:**

Miss McGoldrick explained that the Factor has not returned her phone calls. She referred to the non returned phone calls listed in her amended application.

**The Factor's response:**

**The Factor's written representations in relation to OSP 5:**

*In the printed set of reasons and in your hand written pages you do not specify why you think that RCH have failed to be apply our policies consistently and reasonably, or what policies for that matter, so we cannot comment on this allegation with any detail other than to state that we do not find we have breached this overarching standard of practice.*

*On the subject of our responses being consistent and reasonable, you also do not provide reasons on why you believe this to be the case. We do acknowledge, however, that in relation to the responses to your complaints (with specific reference to complaint C14438) that you have been provided with an erroneous response. Mr Kevin Smith's response to your complaint was inconsistent with our earlier advice that there were no structural defects with the EWI, this was later corrected in Mr Lee Gunn's response (C14520).*

### **The Factor's oral representations in relation to OSP5:**

Mr McMememie explained that the Factor has been in contact with Miss McGoldrick after the phone calls referred to by her. They speak to her regularly. The Factor had an inperson meeting with her on 8<sup>th</sup> July 2025 and her complaints were discussed.

He explained that they have a factoring team. There are two members of that team. There is also a factoring manager. It is the factor's contact centre who deal with the processing of repairs and generic enquiries.

### **The Tribunal's Decision:**

The Tribunal determine that the Factor has not breached OSP5 of the 2021 Code of Conduct in relation to the Homeowner's complaint as the Homeowner has not specified why she believes the Factor has failed to apply their policies consistently and reasonably.

The Homeowner's complaint that the Factor failed to return phonecalls is not a failure by the Factor to apply policies consistently and reasonably, without further explanation.

The Homeowner's complaints that the Factor has not returned her phonecalls are dealt with under the breaches of OSP 11 and section 2.7 of the Code of Conduct.

**OSP11 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): You must respond to enquiries and complaints within reasonable timescales and in line with your complaints handling procedure and**

**Section 2.7 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): 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 Homeowner's complaint:**

The Factor did not return her phone calls listed in her handwritten statement dated 22<sup>nd</sup> January 2025. The dates of the phonecalls are 4<sup>th</sup> October 2024, 21<sup>st</sup> October 2024, 24<sup>th</sup> October 2024, 8<sup>th</sup> November 2024 and 23<sup>rd</sup> December 2024. Also, the Factor did not respond to her formal complaint on time.

### **The Factor's response:**

### **The Factor's written representations in relation to OSP 11 and section 2.7:**

*On the subject of the weathering on the side of your building which was the basis for your complaint, we had answered this enquiry on various occasions. In review of the complaints you submitted copies of in your submissions, we note that in respect of complaint C14438 the response from Mr Kevin Smith was not sent within of our standard timeframe, for which we apologise. If a complaint is not sent within our timescales this would typically be addressed as a training issue with the responsible party, though it should be noted that Mr Smith is no longer an employee of RCH.*

**The Factor's oral representations in relation to OSP11 and section 2.7:**

The unreturned phone calls referred to by Miss McGoldrick dated 4<sup>th</sup> October, 21<sup>st</sup> October, 24<sup>th</sup> October, 8<sup>th</sup> November and 23<sup>rd</sup> December were calls that had been answered by the Factor's contact centre. She had asked to speak to Yvonne Kerr. Yvonne Kerr is the finance manager. Yvonne Kerr would not have called her back if it would have been one of her team. The member of the contact team would have sent an email to the Finance team advising them of the call and asking for someone from that team to return Miss McGoldrick's call.

The Factor's written statement of services states that their response time is ten working days.

He explained that he will ensure that the contact team ask Miss McGoldrick if she considers there are any outstanding matters when she calls.

**The Tribunal's Decision:**

The Tribunal accept Miss McGoldrick's submissions that the Factor did not return her phonecalls detailed in her handwritten statement dated 22<sup>nd</sup> January 2025. The Tribunal find that the Factor's response to the Homeowner's complaint C14438 (which they had received on 23<sup>rd</sup> February 2024) was dated 7<sup>th</sup> March 2024.

The Tribunal acknowledge that the Factor's written statement of services states (1) if the customer service centre cannot fully address the Homeowner's enquiry by telephone the Factor's factoring team will return the Homeowner's call within five working days and (2) the Factor's dispute resolution team will register formal complaints and provide a response within five working days.

The Tribunal find that the Factor did not comply with these provisions in their Written Statement of Service in relation to (1) Miss McGoldrick's phonecalls which she made on 4<sup>th</sup> October 2024, 21<sup>st</sup> October 2024, 24<sup>th</sup> October 2024, 8<sup>th</sup> November 2024 and 23<sup>rd</sup> December 2024 as the Factor did not reply to the phonecalls and (2)

Homeowner's complaint C14438 as the Factor did not issue a response within five working days.

Accordingly, The Tribunal determine that the Factor breached OSP 11 and section 2.7 of the 2021 Code of Conduct in relation to the Homeowner's complaints.

**Section 1 (B4) of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): The Written Statement of Services should specify the core services that the property factor will provide to homeowners. This must include the target times for taking action in response to requests from homeowners for both routine and emergency repairs and the frequency of property visits (if part of the core service);**

Miss McGoldrick withdrew this complaint.

**Section 2.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): Good communication is the foundation for building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect. It is the homeowners' responsibility to make sure the common parts of their building are maintained to a good standard. They therefore need to be consulted appropriately in decision making and have access to the information that they need to understand the operation of the property factor, what to expect and whether the property factor has met its obligations.**

**The Homeowner's complaint:**

**The Homeowner's written complaint:**

*Communication between myself + RCH is poor therefore I do not believe I have a positive relationship with them.*

**The Homeowner's oral representations:**

Miss McGoldrick explained that she has complained to the Factor about the fact that the stairs are not cleaned. She last cleaned the common close in June 2022, but unfortunately she is no longer able to clean the close and the other residents are not interested. Lindsay Hendry, the Housing Officer, has inspected the close and stated that she would arrange for the close to be cleaned as a one off but this has not happened.

**The Factor's response:**

**The Factor's written representations in relation to section 2.1:**

*In the printed set of reasons and in your hand written pages you do not cite specific reasons in your submissions as to why you think that RCH's communication has not*

*been good, although we appreciate the underlying tone of your complaint that you are dissatisfied. We cannot comment on this allegation with any detail other than to state that we do not find we have breached this section of the code of conduct.*

**The Factor's oral representations in relation to section 2.1:**

Mr McMememie explained that stair cleaning is not part of the Factor's core services.

**The Tribunal's Decision:**

The Tribunal acknowledge that the block at 17 Prospecthill Street, Greenock is a mixed tenure property that is part owned and part leased. The Housing Officer will have a role in relation to the leased properties but her role is separate from that of the Factor. They suspect that Lindsay Hendry's statement that she would arrange for the close to be cleaned has led to the Homeowner's belief that close cleaning is part of the Factor's responsibilities.

However, the Tribunal find that the Factor's written statement of service does not specify communal close cleaning as part of the Factor's core services. Consequently, the Factor is under no obligation to carry out routine close cleaning. The Tribunal determine that the Factor has not breached section 2.1 of the Code of Conduct in relation to the Homeowner's complaint.

**Section 6.1 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): This section of the Code covers the use of both in-house staff and external contractors by property factors. While it is homeowners' responsibility, and good practice, to keep their property well maintained, a property factor can help to prevent further damage or deterioration by seeking to make prompt repairs to a good standard.**

**The Homeowner's complaint:**

**The Homeowner's written complaint:**

*"Further deterioration as RCH failed to make prompt repair."*

**The Homeowner's oral representations:**

Miss McGoldrick advised that the wall of the close is damaged and the glass section of the front door is cracked. She reported this last year and the only repair that has been carried out is to replace the broken glass with a plastic insert. She reported this on 30<sup>th</sup> July 2024 and acknowledged that this complaint was not part of her application.

**The Factor's response:**

**The Factor's written representations in relation to section 6.1:**

*As we have advised on the various occasions, this weathering on the side of the building is not a defect of the EWI that can be repaired, rather this is the result of*

*weather conditions in Scotland and the location of 17 Prospecthill Street. If the weathering was cleaned off the building it would inevitably return, this is not something that can realistically be prevented. As mentioned previously, you have advised that you are unwilling to pay for this service and no other owners have requested this be done so we do not believe a ballot to have these works carried out would be successful. On that basis we do not find we have breached this section of the code of conduct.*

**The Factor's oral representations in relation to section 6.1:**

Mr McMenemy explained that they have ordered a replacement door. The repair has taken longer than expected as the door is not a standard door.

**The Tribunal's Decision:**

The Tribunal determine that as the Homeowner's application did not include the outstanding repairs to the close wall and the glass section of the front door they were unable to make a determination in relation to this complaint.

**Section 6.4 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021):**

**Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work.**

Miss McGoldrick withdrew this complaint

**Section 6.7 of the 2021 Code of Conduct Application C2 (complaint after 16<sup>th</sup> August 2021): It is good practice for periodic property visits to be undertaken by suitable qualified / trained staff or contractors and/or a planned programme of cyclical maintenance to be created to ensure that a property is maintained appropriately. If this service is agreed with homeowners, a property factor must ensure that people with appropriate professional expertise are involved in the development of the programme of works.**

**The Homeowner's complaint:**

**The Homeowner's written complaint:**

*There does not appear to be a programme of cyclical maintenance to ensure that properties are maintained appropriately, this could have prevented the damage to the exterior wall."*

**The Homeowner's oral representations:**

The close has not been painted since 2017. When the close was painted the contractors used watered down paint.

**The Factor's response:**

**The Factor's written representations in relation to section 6.7:**

*We can confirm that there is no programme of cyclical maintenance in place at 17 Prospecthill Street, to either regularly clean the exterior walls of weathering stains or for any other service. We would fundamentally disagree with the assertion that a cyclical programme could prevent weathering (damage) to the side of the building, this is a natural result of the buildings exposure to the elements which no set of works can prevent. As there is no cyclical programme of maintenance that has been agreed by the owners of 17 Prospecthill Street, this particular section of the code is not germane to RCH's actions as factor. Consequently, we do not find we have breached this section of the code of conduct.*

**The Factor's oral representations in relation to section 6.7:**

Mr McMemarie explained that regular close painting is not part of the core services provided by the Factor. The core services specified in the written statement of services includes reactive repairs. If a homeowner advises the Factor that a repair is required the Factor would propose the repair to the owners. As far as he is aware the close is currently in a good condition.

**The Tribunal's Decision:**

The Tribunal find that the Factor's written statement of service does not specify painting of the communal close as part of the Factor's core services. Consequently, the Factor is under no obligation to carry out such works. If the owners wished to have the communal close painted and tiles fitted to the close walls they would have to agree and instruct the Factor to obtain quotations. The Tribunal determine that the Factor has not breached section 6.7 of the Code of Conduct in relation to the Homeowner's complaint.

**Property Factor Duties**

**The Homeowner's complaint:**

Miss McGoldrick explained that the wheelie bins of residents of 17 Prospecthill Street, Greenock should live in the back court. However, they seem to be living at the front of the Property. They are an eye sore. She has had difficulty gaining access to the

Property due to the bins being kept at the front of the Property. She advised the Factor of the problem and in January they were taken to the rear of the Property. They stayed at the rear of the Property but have now returned to the front. She has owned her Property for 22 years and has seen a deterioration in the maintenance of the common parts of the block in the last couple of years. She has contacted the council about the problem. Lyndsey Hendry, the Housing Officer sent a letter to the owners dated 23<sup>rd</sup> August 2024 which stated that if the bins were not returned to the rear of the block they would be charged for the cost of employing a contractor to do this. Nothing further has happened. In addition, there is a real problem with fly tipping at the back of the Property. She referred the Tribunal to the photographs that have been produced.

**The Factor's response:**

Mr McMememie advised that the block is a mixed tenure close. No bin rotation service is provided by the Factor. It is in place in other buildings and owners are charged for the service. Miss McGoldrick could contact the council and enquire about large communal bins being provided.

**The Tribunal's Decision:**

The Tribunal find that the Factor's written statement of service does not specify a bin rotation service as part of the Factor's core services. Consequently, the Factor is under no obligation to carry out this service. The Tribunal determine that the Factor has not Property Factor duties in relation to the Homeowner's complaint.

**7. Property Factor Enforcement Order.**

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act to comply with OSP 11 and section 2.7 of the 2021 Code of Conduct.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

*'(One) The Factor must pay the homeowner £100 for the inconvenience she had suffered from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to the Factor of the Property Factor Enforcement Order*

#### **8. 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.**

Jacqui Taylor

Signed ..... Date 14th August 2025

Chairperson