



First-tier Tribunal for Scotland (Housing and Property Chamber)

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 19(1)(a) of the Property Factor (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/24/3846

Property at 0/1, 6 Mulberry Square, Renfrew, PA4 8AR (“the Property”)

Parties:

Mrs Joan Macdonald, 0/1, 6 Mulberry Square, Renfrew, PA4 8AR (Applicant and Homeowner)

Hacking and Paterson (HPMS), 1 Newton Terrace, Glasgow, G3 7PL (Respondent and Property Factor)

Tribunal Member:

**Melanie Barbour (Legal Member)
Elaine Munroe (Ordinary Member)**

Decision

The Property Factor is found to have (1) failed to comply with 2.1 of the Code of Conduct; (2) not to have failed to comply with OSP1; OSP2; OSP3; OSP4; 1A1; 1C8; 1C11; 2.1; 2.3 and 2.4 of the Code of Conduct; and (3) not to be in breach of the Property Factor’s duties. The decision is unanimous.

BACKGROUND

1. By application received on 20 August 2024, the Homeowner (“Homeowner”) complained to the Tribunal that the Property Factor (“Property Factor”) was in breach of OSP1; OSP2; OSP3; OSP4; 1A1; 1C8; 1C11; 2.1; 2.3 and 2.4; and not to be in breach of the Property Factor’s duties.
2. The Homeowner notified the Property Factor for purposes of section 17 (3)(a) of the Act on 11 February 2024.
3. The application was accepted by the Chamber on 27 August 2024.
4. The application proceeded to a case management discussion on 2 June 2025. The parties were still not in agreement, and the decision was made to proceed to a hearing. A direction was issued and complied with by both parties. The Homeowner had submitted a full copy of the title deeds, and the Property Factor had submitted a response to the Direction issued setting the Property Factor’s position on the complaint made by the Homeowner.
5. A hearing took place on 6 October 2025 by telephone conference. In attendance at the hearing were the Homeowner and Mr Henderson from the Property Factor.

FINDINGS IN FACT

6. The Tribunal made the following findings in fact: -
 - a. The Homeowner is Joan Macdonald.
 - b. The Property Factor is Hacking and Paterson (HPMS). The Property Factor is the factor for the Development.
 - c. The property is 0/1, 6 Mulberry Square, Renfrew, PA4 8AR.
 - d. The property is part of a development at Mulberry Square, Renfrew.
 - e. There is a written statement of services for the development.
 - f. There are title deeds for the development.

- g. The Property Factor carried out a review of the float for the development in 2023. This was the first review for “new” developments. The last increase in the float had taken place in 2012.
- h. By letter of 2 August 2023, the Property Factor advised the Homeowner that they were increasing the float from £350 to £500. This sum equated to around a minimum of two times the value of a “quarter’s” expenditure.
- i. The Homeowner had not been aware of the float review, which took place until receipt of the letter of 2 August 2023.
- j. The increased float sum was due to be paid in August 2023 as part of the common charges account.
- k. The title deeds included burdens, which included rule 16, which set out rules for matters on which decisions may be made. This included the appointment of a Property Factor on such terms as owners wanted; to determine what powers a Property Factor could exercise; to revoke, vary the rights of the Property Factor and to dismiss the Property Factor; and to fix the amount of the maintenance charge and the initial deposit.
- l. The written statement of services sets out that the Property Factor were appointed by custom and practice.
- m. The written statement of services sets out the services that the Property Factor provide.
- n. The written statement of services, set out in section 4, sets out the financial and changing arrangements. This includes 4.5 the amount of the float; 4.6 the float will be reviewed from time to time to ensure availability of funds to meet common works and services costs. 4.10 that the Property Factor issues common charges accounts quarterly. That account includes a detailed financial breakdown of charges and a description of the common works and services charged for. If requested, the factor will make available supporting invoices and other documents for inspection.
- o. The written statement of services sets out in section 5.2 communication arrangements and that the factor has a formal complaints handling procedure, and where that can be found on their website.
- p. The Homeowner notified the Property Factor for the purposes of section 17 (3)(a) of the Act on 18 June 2024.

- q. The Homeowner and Property Factor engaged in a stage 1 and stage 2 complaint process.
- r. The Homeowner agreed that, after further information had been provided to her, the increased float was in the best interests of the owners as it would ensure that common charges and repairs would be carried out without any delay.
- s. The review process carried out by the Property Factor was reasonable, given that the period since it had been previously set was over 10 years.
- t. Notification by the Property Factor that a review had been carried out should have been given earlier to the owners, in order that the owners were aware of the changes being made to the value of the float before the amended accounts were issued.

DISCUSSION

- 7. The Homeowner's complaint related to the Property Factor seeking to impose an increase to the property float in breach of the title deeds for the property. The Homeowner considered that the Property Factor had no authority to unilaterally make such a decision; this was a decision to be taken by the owners in accordance with the title deeds. The Homeowner stated that in August 2023, and without any consultation, the Property Factor imposed a float increase of £150 on her property in direct contravention of the provisions of her title deeds. The Homeowner challenged the Property Factor as to what rights flowed from the Property Factor's Written Statement of Services. Their complaints process was not easy to navigate, and she considered that the Property Factor's website did not easily lend itself to making a complaint, and she did not think that this was acceptable.
- 8. When the matter called for the hearing, the Homeowner advised that she still considered that the Property Factor had no right to unilaterally change the float's size; however, she now accepted that the increased size of the float was appropriate, having regard to rising costs.
- 9. She was still unhappy about the way that the Property Factor had gone about making that change. She considered that they should have consulted with the owners and that the owners should have had time to consider the proposed

changes. This was not done. The review was carried out, and they were advised that the next day, the increased fee was due. It appeared to the owners that it was a *fait accompli*. She did not think it was good practice.

10. The Property Factor provided their written submission. They advised that while they had carried out reviews for floats previously, this was for older tenanted buildings. This was a newer development, and this was the first of this kind of review. It had been on a large scale. The Property Factor advised that they would review the feedback received from owners. They accepted that timescales could have been better in terms of notifying owners. They advised that they had the right to do the review and raise the amount of floats. Their right was set out in the Written Statement of Services. They advised that the title deeds do regulate a development, and if the owners wished to hold a meeting and direct the Property Factor about what they could do in terms of their powers, including the float, then the Property Factor would be bound to act in accordance with those instructions. He also noted that in such circumstances, the Property Factor would have to consider whether they would have to take on new staff/could afford to take on board those changes and so forth. They would at that stage discuss the matters with the owners. They did not understand the owners to have had any such meeting.
11. They considered that the majority of owners were satisfied with their service, and they had accepted the increased float. They advised that the float should be increased in line with increasing costs.
12. They advised that in terms of the complaint's procedure. It was set out on their website, and they would send a copy of it on request. They did ask people to submit a complaint form when they were contacted about a complaint. They open a complaint file. They will also try and sort a complaint out in the first instance by speaking to the owner.
13. They did not consider that they had breached any of the code of conduct or duties in this case.

REASONS FOR DECISION

OSP1, you must conduct your business in a way that complies with all relevant legislation.

14. We do not find there to be any breach of this standard. The Homeowner considered that there was a breach of the title deeds, and this is what she was referring to. The title deeds may regulate aspects of a Homeowner's property and their relationship with a Property Factor, but title deeds are not legislation. Legislation would be in the form of an Act of Parliament, for example, the Property Factor are bound to comply with the Property Factor (Scotland) Act 2011. We do not find a breach of this standard.

OSP2 You must be honest, open, transparent and fair in your dealings with homeowners.

15. We do not uphold this part of the howsoever complaint. However, we do note that the Homeowner complained that they were not notified that the review was taking place. We consider that there could and should have been better notification that the Property Factor was increasing the float and the reasons why. That said, we do not consider that fact in itself means that the Property Factor were therefore not honest, open, transparent or fair in their dealings. We do consider that their communication could have been better, and it could have been given to the Homeowner at an earlier date, but this in itself does not mean that the Property Factor breached this standard. We note that the Property Factor did provide a letter in August 2023, which did explain their reasons for the float increase. We consider that this letter was clear enough about why the float was increasing and what the method of fixing the amount was. We note that the Homeowner's response to the Property Factor of 25 August 2023, she did understand that her quarterly charge was around £250. So, she would have understood that twice that sum would be £500. At the date of the hearing, she was also in agreement that this was a reasonable sum to be fixed. We also note that the Property Factor did provide some further information as her complaint

proceeded. We do not therefore consider that the Property Factor were dishonest or unfair in their dealings with the Homeowner as far as fixing the float was concerned.

16. Where we consider that the Property Factor did not ensure that the overarching standard was properly met with the timing of the notice of the increased sum being given to owners. We consider that this was unfair, as the notification appears to have been given immediately before the increased float sum was billed to owners. We considered that the Property Factor could have done better in relation to the timing of the notification.

OSP3 You must provide information in a clear and easily accessible way.

17. The Property Factor's written statement of services directs the Homeowner to their website for their complaint's procedure. We have considered the terms of the complaints procedure, and it includes the standard complaints policy: to try and resolve informally at first instance, and thereafter by the stage 1 and 2 complaints procedure. They require a form to be completed. Their reason was that they open a file for complaints when they are received. There was a degree of formality to a stage 1 and 2 complaints being made. The Homeowner said the form was not user-friendly, but she had submitted her complaint with a paper attached to it. In our opinion, there is no breach of this standard, the complaints procedure was clear and accessible.

OSP4 You must not provide information that is deliberately or negligently misleading or false.

18. The title deeds do allow the Homeowner to have a meeting with owners and appoint a Property Factor and fix their powers. It also allows owners to fix an initial deposit. The Written Statement of Services makes provision about the amount of the float and also, that the Property Factor can conduct a review. The Property Factor has to specify the amount of the Float. If the Property

Factor conducts a review of the float, it could be raised, maintained at the same level or reduced. In our opinion, the Written Statement of Services can be read that the Property Factor had the power to raise the float. If the Homeowner did not agree, then the Homeowner could have held a meeting with other owners and changed the Property Factor powers to restrict their right to do this. No meeting, as far as the Homeowner or the Property Factor knew, had taken place. In their letter of 2 November 2023 to owners, they advised that if owners had any questions about the increased float, they could contact the Property Factor, and they would answer any questions. The Written Statement of Services could have been more specific, i.e. that they were entitled to raise the float. However, a Factor has to be specific about the value of the float. It had been 10 years since the review, and the Property Factor had indicated that costs had increased; then it seems reasonable that a Property Factor would need to be able to raise or reduce the float to comply with confirming the value of it in the Written Statement of Services. This is what they did. We do not consider that the Property Factor acted in contravention of this overarching standard.

1A1 authority to act - the Property Factor must state the basis of their authority to act.

19. We do not find that there is any breach of this section. The Property Factor have confirmed in their Written Statement of Services the basis upon which they were appointed through custom and practice. This is the basis of their authority to act.

1C8 the Written Statement of Services must set out any arrangements relating to payment by Homeowners towards a deposit, float or floating fund, confirming the amount, payment process and repayment policy.

20. The Written Statement of Services is compliant as it specifies the amount of the float, and it confirms that the Property Factor will review the float. This section

of the code does not require the Property Factor to provide financial information in support of why they have fixed two quarters' charges. We do not find any breach under this section.

1C11 The Written Statement of Services will set out how the Property Factor will collect payments, including timescales and methods.

21. We do not find that there is a breach of this section of the code, for the reason that the Written Statement of Services provides information which confirms these matters. This is a different question from whether the timing of the notification before the accounts were issued was fair.

2.1 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.

22. We consider that there has been a breach under this section of the code as far as the Property Factor did not ensure that the Homeowner was consulted appropriately in decision-making and had access to the information, she needed to understand the operation of the Property Factor.

23. When a review has not been carried out on the development at all, or in over 10 years, the Property Factor should have ensured that the Homeowner was better informed that when a review had taken place, and that they were given time to consider the increased charges before they were imposed. We consider that issuing the letter on 2 August 2023 and imposing the increased charges the following day had led to misunderstanding and a decrease in respect. The

Property Factor accepted that they should have provided greater notice of the changes to the float. We consider that they should also have advised the owners that they were undertaking this review. There was nothing in our opinion unreasonable in the review having been carried out, or the outcome of the review, where we find a breach is in terms of the failure to notify the Homeowner timeously the outcome of the review, sometime before the invoices were sent out in order to give the Homeowner time to digest this new information. We do hold that there has been a breach of this section of the code.

2.3 The Written Statement of Services must set out how homeowners can access information, documents and policies/procedures. Information and documents can be made available in a digital format, for example, on a website, a web portal, an app or by email attachment. In order to meet a range of needs, property factors must provide a paper copy of documentation in response to any reasonable request by a homeowner.

2.4 Where information or documents must be made available to a homeowner by the property factor under the Code on request, the property factor must consider the request and make the information available unless there is a good reason not to.

24. In relation to the Homeowner's complaint about these sections of the Code of Conduct. We have already considered the complaints process earlier in this Decision. We do not consider that there has been a breach under either section of this code.

PROPERTY FACTOR DUTIES

25. The Homeowner complains that the Property Factor has breached their duties by failing to adhere to the title deeds and the Property Factor had no right to unilaterally make a decision to increase the float. For the reasons already set out above, we do not agree, and we do not find that there has been a breach of any duty in this regard.

RESOLUTION

26. The Homeowner advised that she still considers that there has been a failure to adhere to the title deeds; we do not agree. As a resolution, she considers that the Written Statement of Services should include further information whereby the Property Factor undertakes to notify the Homeowners that a review is being carried out, and further that the Homeowners can have a meeting to challenge this review.
27. The Property Factor advised that they would review what happened. They also told us that this review was the first one they had completed for this type of development. Although it was not the first time that they had done a review of older developments.
28. We do not consider that the Property Factor has to notify owners that a review is being carried out. A review of the size of a float is a budget assessment, and we assume an essential part of a Property Factors' practice. The Factor has to know that they can afford to undertake their role. If they don't know what budget they are working to, then this would seem reckless. We assume that Property Factors will do such reviews. We do not consider, therefore, that the Property Factor has to amend its Written Statement of Services to confirm "that they will notify Homeowners when a review is being carried out and owners can have a meeting to challenge the review". The title deeds allow the owners to hold a meeting. As the title deeds are what regulate owners' rights to their property, we see no need for this right to be repeated in the Written Statement of Services.
29. We do consider however, that an earlier notice that the float was being amended should have been provided to owners. If the Property Factor do carry out a review and make any changes to the size of the float, they will have to notify Homeowners as the Property Factor will need to update their Written Statement of Services at that time.

30. In our opinion the issue in this case is about the timing of the notification; the Property Factor advised that they would review what happened. The Property Factor accepted that the timing of the notice should have been better. We do not consider that there should be amendments to the Written Statement of Services but there does need to be earlier communication by the Property Factor in the future. We are prepared to accept the Property Factor's position that they will learn from this review and provide better notice in the future.

DECISION

The Property Factor is found to have (1) failed to comply with 2.1 of the Code of Conduct; (2) not to have failed to comply with OSP1; OSP2; OSP3; OSP4; 1A1; 1C8; 1C11; 2.1; 2.3 and 2.4 of the Code of Conduct; and (3) not to be in breach of the Property Factor's duties. The decision is unanimous.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

3 November 2025

Legal Member/Chair

Date