



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

STATEMENT OF DECISION: in respect of an application under section 17 of the Property Factors (Scotland) Act 2011 and issued under the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended

Chamber Reference: FTS/HPC/PF/24/0305 & FTS/HPC/LM/23/3165

Property address: 114 Muirdykes Avenue, Port Glasgow, PA14 5TS ("the Property")

The Parties

Mr Alan Guthrie, 114 Muirdykes Avenue, Port Glasgow, PA14 5TS ("the Homeowner")

Curb Factoring, Watling House, Callendar Business Park, Callendar Road, Falkirk, FK1 1XR ("the Property Factor")

Tribunal Members

Ms H Forbes (Legal Member)

Mrs M Lyden (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has failed to comply with section 1 of the 2012 Property Factor Code of Conduct ("the 2012 Code").

The decision is unanimous.

Background

1. By application received in the period between 11th September 2023 and 3rd March 2024 (FTS/HPC/LM/23/3165), the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraphs 1.2, 2.3, 2.7, 3.4, 4.2, 4.5, 4.11 of the 2021 Property Factor Code of Conduct ("the 2021 Code"). The notification provided to the Property Factor with this application stated that the application was made under the 2012 Code for omissions taking place before 16th August 2021.

2. By application received in the period between 19th January and 3rd March 2024 (FTS/HPC/LM/23/0305), the Homeowner applied to the Tribunal for a determination on whether the Property Factor had failed to comply with paragraphs 1.2, 2.3, 2.7, 3.4, 4.2, 4.5, 4.11 of the 2021 Property Factor Code of Conduct (“the 2021 Code”). The notification provided to the Property Factor with this application stated that the application was made under the 2012 Code for omissions taking place before 16th August 2021.
3. The Property Factor representative lodged written representations on 13th May 2024.
4. A Case Management Discussion (“CMD”) took place by telephone conference on 11th July 2024. The Homeowner was not in attendance. The Property Factor was represented by Mrs Lorna Dunsmore, Director of Property Management. The Tribunal decided to issue a Direction to the Homeowner ordering him to inform the Tribunal whether he intends to continue with the application, failing which, the application may be dismissed. The Homeowner responded by email dated 23rd July 2024 stating he had been out of the country and wished to proceed with the applications.
5. By Direction dated 15th October 2024, the following was issued to the Homeowner:

The Homeowner must respond to the following within 14 days of the date of issue of the Direction:

- (i) The Tribunal has noted that application FTS/HPC/LM/23/3165 purports to be made under the 2012 Code of Conduct for Property Factors; however, the paragraphs listed in the application form and the notification to the Property Factor appear to have been taken from the 2021 Code of Conduct. In the circumstances, it would appear that proper notification has not been made upon the Property Factor of the alleged breaches of the Code of Conduct in respect of this application. The Homeowner is asked to provide written representations as to how this application can proceed in the circumstances.
6. There was no response to the Direction.
7. By email dated 27th November 2024, parties were informed that the hearing set down for the following day had been converted to a Case Management Discussion.
8. A CMD took place by telephone conference on 28th November 2024. The Property Factor was not in attendance. The Tribunal explained to the Homeowner that an amendment to one of his applications was required to refer to paragraphs from the 2012 Code, as both application forms referred to the 2021 Code, but both notifications referred to 2012 Code. The Tribunal decided to issue a Direction to parties in the following terms:

The Homeowner must seek permission to amend both applications within 21 days of the date of issue of this Direction by submitting an amended section 7 of each application form to the Tribunal and the Property Factor, showing the correct Code paragraphs, as set out in the Case Management Discussion note of the same date as this document.

The Property Factor must, within 21 days of the date of issue of this Direction:

- (ii) Explain the reason for failing to notify the Tribunal in advance that they would not be in attendance at the Case Management Discussion of 28th November 2024.
- (iii) Confirm their agreement with the format of a telephone conference for the evidential hearing or provide their representations as to why a different format should be used.
- (iv) Provide their representations and any evidence or authorities to the Tribunal on the matter of whether a Sheriff Court decree can be removed on application by the Property Factor, in the event that the Tribunal was to find the decree had been sought and granted in error.

Reason for Direction

Amendment of the Homeowner's applications is required. Although the Homeowner has agreed to do this, the Tribunal is concerned that, without a Direction, this matter will not be attended to promptly.

The Property Factor failed to attend the Case Management Discussion on 28th November 2024, submitting two emails around 10.30am on that date, citing ill-health. The Tribunal requires to know why the Property Factor did not inform the Tribunal in advance of their inability to attend, or arrange for another staff member to attend on their behalf.

The Property Factor was not available for discussion regarding the format of the hearing, so their input is required.

Further information is required by the Tribunal regarding whether the Property Factor can apply to the Sheriff Court to have a decree removed in the event that the Tribunal was to find the decree ought not to have been sought or granted. The Tribunal has made no such finding at this stage, but there is an argument before the Tribunal that the total sums sought were not justified, particularly for the period where there was no contract between the parties, and the Homeowner has indicated

he is seeking for the decree to be removed. The Tribunal requires the Property Factor to investigate the position in respect of removing a Sheriff Court decree made in error, prior to the evidential hearing.

9. By email dated 16th December 2024, the Property Factor responded to the Direction, including information to the effect that only the Respondent could address the matter of the court decree. The Homeowner did not respond to the Direction.
10. A further Direction was issued to the Homeowner on 24th January 2025, in the following terms:

The Homeowner must seek permission to amend both applications within 14 days of the date of issue of this Direction by submitting an amended section 7 of each application form to the Tribunal and the Property Factor, showing the correct Code paragraphs, as set out in the Case Management Discussion note of the same date as this document.

11. The Homeowner did not respond to the Direction.
12. A hearing had been set down for 5th March 2025. Prior to the hearing, the Tribunal Members requested that parties be informed that the hearing had been converted to a CMD. This instruction was not acted upon. The Homeowner was in attendance at the hearing. Mrs Dunsmore and Mrs Mina were in attendance on behalf of the Property Factor. The Tribunal informed parties the hearing had been converted to a CMD, as the Homeowner had failed to deal with the amendment of the applications.
13. The Homeowner said he had contacted the case worker to discuss matters. It was his position that his applications did not require to be amended and the 2021 Code was the relevant Code. The Legal Member explained that this was not the case, and most of the issues complained of, including legal action by the Property Factor, took place under the 2012 Code. Mrs Dunsmore reiterated an offer from the Property Factor of £350 and a letter of comfort which may assist the Homeowner. The Homeowner said a letter of comfort stating that the debt has been paid is of no use to him. He can provide that information himself. He requires to have the decree removed. The Legal Member explained that the Tribunal does not have the power to order the decree to be removed. The Property Factor has provided representations in this regard, and it would appear that only the Homeowner can apply to have the decree removed, but it is likely that it is now too late to apply for recall. The Homeowner said a decision from the Tribunal that the Property Factor should not have sought decree may be of assistance to him. The Tribunal decided to issue a Direction to parties, indicating that a hearing would not be scheduled until the Homeowner had submitted a Direction response, as, if the Direction was not complied with, it was likely that the applications would be dismissed. The Direction was in the following terms:

The Homeowner must lodge an amended C1 application form within 14 days of the date of issue of this Direction showing at section 7 Code paragraphs from the Code of Conduct effective from 1st October 2012.

The Property Factor must:

- (i) Lodge a copy of their system log showing activity on the Homeowner's account from 4th February 2019 to 12th November 2021, within 14 days of the date of issue of this Direction.
- (ii) Lodge a response to the amended C1 application form, if received from the Homeowner, within 14 days of receipt of the amended form.

14. Both parties responded to the Direction. The Homeowner lodged an amended Form C1. The Homeowner lodged their system log and a response to the amended application.

The Hearing

15. A hearing took place by telephone conference on 2nd October 2025. The Homeowner was in attendance. Mrs Dunsmore and Mrs Mina were in attendance on behalf of the Property Factor.

Form C1 - FTS/HPC/LM/23/3165

Failure to provide a Written Statement of Services (“WSS”)

The Homeowner’s position

16. The Homeowner gave some background to the application. He moved into the Property in November 2016, having purchased the Property on the open market from Taylor Wimpey. He received no factoring invoices until 2018. He said he did not know who the letter with the invoice in 2018 was from so he ignored it. Responding to questions from the Tribunal as to whether the letter was on headed paper, the Homeowner said it was, but he thought it might be a scam, as he had previously received parking fines for places that he had not parked in. The Homeowner said he was unaware there was a property factor. He had not been informed of this by his solicitor at the time of purchase. The Property Factor had failed to contact him. The Homeowner said he should have looked through the Home Report, but nothing had stuck out for him regarding a property factor. The Homeowner said his mother-in-law lived a few doors down and she did not have a property factor, as she had purchased from a housing association, so he thought it reasonable to assume he did not have a property factor either.
17. The Homeowner said he had not been provided with a WSS from the Property Factor in 2018 in accordance with the 2012 Code.

18. The Homeowner made payment of the outstanding sums in order to discharge a notice of potential liability when selling the Property.

The Property Factor's position

19. Mrs Dunsmore said there had been a change of ownership of the Property to Taylor Wimpey prior to the Homeowner's purchase. The Property Factor had invoiced the previous owner to the end of their ownership, and then Taylor Wimpey, from November 2016. Neither Taylor Wimpey or the Homeowner informed the Property Factor of the change of ownership. The Property Factor became aware of the change of ownership on 22nd June 2018 through a title search. All correspondence from February 2019 was sent to the Homeowner. Responding to questions from the Tribunal as to why no contact was made in June 2018, Mrs Dunsmore said invoices were produced annually. Mrs Dunsmore said the Property Factor accepts they failed to provide a WSS as required by the 2012 Code when they became aware of the Homeowner in June 2018. Mrs Dunsmore said it would have been evident there was a property factor as grass was being cut on the development, and invoices were being sent from February 2019. There was no response to any communication from the Homeowner between 2019 and 2021. Legal action was taken by the Property Factor to recover the sums outstanding. Decree was granted at Greenock Sheriff Court in September 2021, and a notice of potential liability was put in place thereafter. There were nine letters sent to the Homeowner prior to legal action being taken. The Homeowner did not contact the Property Factor until November 2021.
20. Mrs Dunsmore said there is no obligation imposed by the Code on a property factor to refund any fees if a WSS is not provided. Mrs Dunsmore said a member of the Property Factor's staff told the Homeowner the factoring invoices for the period from November 2016 to June 2018 would be removed, but this was incorrect advice. Mrs Dunsmore said the sum of £350 was offered as a reduction on the Homeowner's account. The Homeowner refused the offer. This would have covered the invoices for the period in question. Mrs Dunsmore pointed out that, even if the £350 had been accepted and removed from the account, the Property Factor would still have sought a decree for the sum outstanding, which was over £700. Mrs Dunsmore said the Property Factor had tried to be as reasonable as possible in this matter.

Form C2 - FTS/HPC/LM/24/0305

Paragraph 1.2

The Homeowner's position

21. The Homeowner confirmed this complaint related to the 2012 Code.

Paragraph 2.3

22. The Homeowner said he was not questioning the content of the WSS and may have picked this matter up wrong.

Paragraph 2.7

23. The Homeowner said this referred to the Property Factor telling him he would be sent an amended bill in 2023, and he had to contact the Property Factor again in this regard.

Paragraph 4.2

24. The Homeowner confirmed this complaint occurred in the period covered by the 2012 Code.

Paragraph 4.5

25. The Homeowner confirmed this complaint occurred in the period covered by the 2012 Code.

Paragraph 4.11

26. The Homeowner confirmed this complaint occurred in the period covered by the 2012 Code. It was his position that he was not given enough time to make payment before legal action was taken. This occurred during the Covid-19 pandemic when he was without work for an extended period. Responding to questions from the Tribunal as to why he had not responded to any of the letters sent by the Property Factor prior to legal action being taken, the Homeowner said he was away from home for periods of 4 to 6 weeks at a time and the house was left empty. The Homeowner said he accepted there were some letters sent, but he did not agree there were 9 letters. Asked whether he had considered taking advice on this matter, the Homeowner said he had been told it would be expensive to take advice.

The Property Factor's position

27. Mrs Dunsmore referred to page 016 of her written submissions, which gave a timeline and showed the extent of correspondence sent. The activity log submitted showed an outgoing letter to the Homeowner on 19th March 2021. There was an email from the Homeowner on 12th November 2021, which was the first contact from the Homeowner.

28. Responding to questions from the Tribunal, Mrs Dunsmore said the letters and invoices provide information about debt recovery and advice. The Property Factor and their solicitor had asked the Homeowner to get in touch. If he had done so, they would have met with him.

Paragraph 2.3

29. Mrs Dunsmore said the Property Factor does not accept there was any failure in respect of the content of the Code.

Paragraph 2.7

30. Mrs Dunsmore said the Property Factor had given incorrect advice in February 2023, but this matter was dealt with timeously and the Homeowner was offered compensation of £350.

Paragraph 3.4

31. Mrs Dunsmore said a financial statement has been provided to the Homeowner since February 2019.

Paragraph 4.2

32. Mrs Dunsmore said invoices provided from February 2020 show late payment charges and signpost homeowners to sources of assistance.

Paragraph 4.5

33. Mrs Dunsmore said the Property Factor has treated the Homeowner fairly and provided time for him to make payment.

Paragraph 4.11

34. Mrs Dunsmore said letters were sent to the Homeowner on 19th and 29th March 2021, comprising a first and final warning of legal action respectively. A 7-day letter was sent by their solicitor on 4th May 2021. Responding to questions from the Tribunal, Mrs Mina confirmed the Property Factor moved to annual billing in 2018. The annual charge for factoring for the Property was £280. The invoices provided different methods of payment including direct debit, as shown on page 055 of the Property Factor's productions.

Summing up

The Homeowner

35. Asked by the Property Factor if he continued to dismiss the offer of £350, the Homeowner said it was never about the money. It was about having the Property Factor held accountable. The Homeowner said the decree had impacted upon his credit rating. He is currently attempting to get a mortgage for a new property and there are implications such as higher interest rates because of the decree, which will stay on his credit record for six years.

The Property Factor

36. Mrs Dunsmore referred to the submissions previously made and the extensive written submissions.

Findings in Fact and Law

37.

- (i) The Homeowner purchased the Property in November 2016.
- (ii) The Property Factor is registered under registration number PF000956.
- (iii) The Property Factor provides factoring services to the development of which the Property forms part.
- (iv) Prior to 22nd June 2018, the Property Factor was invoicing Taylor Wimpey for factoring services in respect of the Property.
- (v) The Property Factor became aware of the Homeowner's ownership of the Property on 22nd June 2018.
- (vi) The Property Factor invoiced the Homeowner in February 2019 for factoring services for the period from November 2016.
- (vii) In March 2021, the Property Factor issued two debt letters to the Homeowner.
- (viii) In May 2021, the solicitor acting for the Property Factor issued a debt letter to the Homeowner warning of impending court action.
- (ix) On 2nd September 2021, a decree for payment against the Homeowner was issued at Greenock Sheriff Court in the sum of £927.88 plus interest at 8% annually from 09 July 2021, with expenses against the Homeowner.
- (x) On 25th August 2022, a notice of potential liability was registered against the Property by the Property Factor.
- (xi) The Homeowner did not respond to correspondence from, or make contact with, the Property Factor until November 2021.
- (xii) The Homeowner did not defend the court action.
- (xiii) On 12th November 2021, the Homeowner contacted the Property Factor to request a copy invoice.
- (xiv) On 31st January 2023, the Homeowner contacted the Property Factor and was informed a revised invoice would be issued to remove some of the debt.

- (xv) At some time after 31st January 2023, the Homeowner was informed by the Property Factor that he had been incorrectly advised regarding the removal of some of the debt.
- (xvi) At some time after 31st January 2023, the Homeowner was offered a reduction in his account in the sum of £350. The Homeowner did not accept this offer.
- (xvii) On 28th March 2023, the Homeowner received a stage 1 complaint response.
- (xviii) On 26th April 2023, the Property Factor issued a stage 2 complaint response, reiterating the offer to reduce the account by £350.
- (xix) In or around November 2024, the Homeowner sold the Property.
- (xx) In or around November 2024, the Homeowner made payment of the outstanding sum.
- (xxi) On or around 7th November 2024 a notice of discharge of the notice of potential liability was drawn up.
- (xxii) The Property Factor has failed to comply with the 2012 Code by failing to provide a copy of the WSS.

Decision and reasons

- 38. The Tribunal found there was a failure under the 2012 Code to provide a WSS to the Homeowner when the Property Factor became aware of the Homeowner's purchase of the Property. This was accepted by the Property Factor. The Tribunal considered this to be a serious matter, and no reasonable excuse for this failure was provided by the Property Factor. The Tribunal did not, however, accept the premise that the Property Factor could not seek payment for services in the absence of a WSS. The services were provided and the Homeowner remains liable.
- 39. The Tribunal did not find any failures to comply with the 2021 Code, as most of the issues complained of did not occur after 16th August 2021. In respect of paragraph 2.7, the only issue that did occur after the relevant date, there was insufficient evidence before the Tribunal that the Property Factor had not complied with the timescales in their WSS when dealing with the matter of the incorrect information provided to the Homeowner in 2023 regarding the removal of fees from his account.

Observations

- 40. The Tribunal was frustrated that the Homeowner, despite being given numerous opportunities and guidance, failed properly to amend his

application under the 2012 Code, to ensure that his complaints were properly reflected. However, the Tribunal observed that, even if the Homeowner had correctly amended his Form C1 to include paragraphs of the 2012 Code to match those on the Form C2 (e.g. if he had amended paragraph 2.7 to 2.5; 3.4 to 3.3; 4.3 to 4.3, etc), it is unlikely the Tribunal would have found in the Homeowner's favour. The Tribunal considered the Homeowner ought to have been aware from the time of purchase of the Property that factoring fees applied. This ought to have been obvious from the Home Report and through information provided by his solicitor at the time of sale, not to mention from the fact that factoring services such as grass cutting were being provided. Even if the Homeowner was unaware of this, he was made aware of his liability to the Property Factor from February 2019, when he began to receive correspondence and invoices. It was incumbent upon the Homeowner to contact the Property Factor with any queries at that time. The Homeowner chose to ignore correspondence, including debt correspondence and letters regarding legal action. Initial letters in this regard were sent in March 2021 and decree was granted in September 2021, a period of seven months during which the Homeowner could have engaged with the process, discussed payment options, defended the action, and possibly avoided having a decree granted.

41. The Tribunal observed that the Property Factor ought to have taken steps sooner to ascertain the ownership of the Property by carrying out a property search or making further enquiries of Taylor Wimpey.

Proposed Property Factor Enforcement Order (PFEO)

42. Having determined that the Property Factor 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.
79. Section 19 of the Act requires the Tribunal to give notice of any proposed PFEO to the Property Factor and allow parties an opportunity to make representations.
80. 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 decision was sent to them.

Legal Member

Date

14th October 2025