



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 (“the 2011 Act”)

Chamber Ref: FTS/HPC/PF/24/4033

Flat 2/1, 15 Inverkip Street, Greenock, PA15 1SX (“the Property”)

Parties:

Rogoz Capital Limited, 17 Adamston Way, Port Glasgow, PA14 5DZ (“the Applicant/Homeowner”)

River Clyde Homes, Clyde View, 22 Pottery Street, Greenock, PA15 (“the Respondents/Property Factor”)

Tribunal Members:

Nicola Weir (Legal Member) and Mary Lyden (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Property Factor has failed to comply with the Section 14 duty in terms of the Act in respect of compliance with Section 2.1 of the Property Factor Code of Conduct 2021 (“the Code”) but would not make a Property Factor Enforcement Order.

Background

1. By application, subsequently amended, received on 2 September 2024, the Applicant (the Homeowner) applied to the Tribunal for a determination on whether the Respondent (the Property Factor) had failed to comply with Sections 2.1 (Communication and Consultation); and Sections 7.2 and 7.5 (Complaints Resolution) of the Property Factors (Scotland) (Act) 2011 Code of Conduct for Property Factors (“the Code”) in terms of section 14(5) of the 2011 Act, and also failed to carry out their Property Factor Duties. Supporting documentation was also submitted by the Applicant with the application and

subsequently, including a copy of the Respondent's Written Statement of Service; their title deeds in respect of the Property (Land Certificate REN 114949); copy missives regarding their purchase of the Property; copy Council Tax bills/correspondence from Inverclyde Council; copy utilities correspondence; copy correspondence between the parties regarding the internal complaints process; the Applicant's prior notification of their complaint to the Tribunal issued to the Respondent and the Respondent's response dated 18 October 2024.

2. On 12 November 2024, a Legal Member on behalf of the Chamber President accepted the application and referred it to a Tribunal for a Case Management Discussion ("CMD"). Both parties were notified of the details of same.
3. On 19 March 2025, the Applicant lodged further written representations.
4. On 26 March 2025, the Respondent lodged their written representations in response to the application.
5. On 6 April 2025, the Applicant lodged further written representations in response.

Case Management Discussion

6. The CMD took place by telephone conference call on 16 May 2025 at 2pm. The Applicant was represented by Mr Artur Rogoz and Mrs Katarzyna Rogoz, both Directors of the Applicant company. It was explained that Mr Rogoz dealt with the written side of the application, whereas Mrs Rogoz would do most of the speaking at the CMD. The Respondent was represented by Mr Gary McMenemie, Factoring Officer of River Clyde Homes.
7. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained. Reference was made to all the written representations made by both parties and supporting documentation lodged. There followed lengthy discussions regarding the application and the parties respective positions in the matter.
8. The basis of the Applicant's complaint to the Tribunal concerned confusion over the Respondent's numbering of their flat in the Applicant's flat address, the implications of this and their repeated unsuccessful attempts to get the Respondent to amend their records in this regard. Essentially, the Applicant's position is that their correct flat number is 2/1 but that the Respondent's records reflect it as 2/2. Apart from factoring the block, the Respondent owns three flats within the block, including the flat across the common close from the Applicant's flat. The Applicant's position is that that flat should be designated 2/2 but the Respondent's records have it as 2/1 ie. the same flat number as their flat. The Respondent's tenants therefore also use 2/1 and this has caused confusion with the post for the two flats, utility bills, etc. This is inconvenient both to the

Applicant and their own tenants. The Applicant purchased the flat in 2022 and have been trying to resolve this matter with the Respondent for some time. They do not feel the Respondent has dealt with the matter well or been of any help sorting out the situation. They have not taken their complaints seriously or sent out clear communications in response. The Applicant thinks they have just dismissed their complaints out of hand and their responses have been generic and lacking in specification. They feel offended at how they have been treated.

9. The Respondent's position is that they have some sympathy for the Applicant and the situation with the flat numbering but that they are unable to do anything about it. River Clyde Homes acquired the properties by way of a stock transfer and the data entered onto their systems had the flats numbered in this way. Flats can be numbered in different ways but their understanding is that, with this block, the properties on the left of the common close when taken at each landing would be designated /1 and those on the right would be designated /2. They do not consider that they can do anything about it as it would impact on their own tenants if they were to re-number all the flats. They have taken their own internal legal advice and cannot do what is being asked of them without a clear legal basis for doing so. The title deeds do not describe the properties by flat numbers and they cannot change the title deeds. It is not a straightforward matter. They consider that the Applicant's complaint should not be against them as property factor but rather against River Clyde Homes as the owner of the neighbouring flat, and should have been made to the Lands Tribunal or another body rather than to this Tribunal.
10. The Applicant's response was that they are not asking for any title deeds to be changed, only the Respondent's own records as to their particular flat and the one opposite. They had first approached the Respondent regarding this when the flat opposite was occupied by a tenant who had a bit of a reputation and this worried their own tenants as there was confusion with the mail and utility bills and they did not want to come into conflict with that tenant. He had subsequently died and the flat opposite was empty for a period during which the Applicant had urged the Respondent again to change the flat numbering as it would not then have impacted on any tenant of the Respondent. The flat opposite has, however, since been re-let again. The Applicant confirmed that it is the Respondent's records which are different from everyone else's. Reference was made to the Council Tax records, utility company records and the missives documentation in respect of their purchase of the flat. The Applicant also referred to Section 97 of the Civic Government (Scotland) Act 1982 which they state clearly covers the issue of house numbering, etc.
11. The Respondent responded to state that for utility bills, etc the companies concerned would simply address the property as instructed by the owner/occupier and that the Council Tax bills have the Applicant's flat as "201" which is different from 2/1. They wished to mention that the homeowners prior to the Applicant had not had any issue with the flat numbering. They had not produced their own title deeds as they were large and not particularly helpful in the way individual flats are described as they are similar to the Applicant's title which describes their flat as the 'westmost house on the second floor'. In

response to questions from the Tribunal, the Respondent stated that they are not aware of other complaints about the same issue exactly, although they do sometimes have to act as arbiter in disputes between different tenants. Their property factor team will sometimes have interaction with River Clyde Homes' housing officers but this is on a case-to-case basis.

12. There was discussion regarding the specific sections of the Code that the Applicant alleged had been breached by the Respondent. It was noted that these alleged breaches were denied by the Respondent. The Legal Member went through the various paragraphs of the Code and noted the Applicant's brief comments in respect of each. The Legal Member stated that her preliminary view was that, although the Applicant may have a claim in respect of Section 2.1 of the Code in respect of good communication, promoting mutual respect, etc, her preliminary view is that the Applicant may not have made out a valid claim in respect of Sections 7.2 and 7.5 of the Code as 7.2 was where the property factor had failed to confirm their final decision (in respect of a homeowner's complaint) in writing and 7.5 was about lack of co-operation in the transfer of information from a previous to current property factor (in the context of ongoing or unresolved complaints). As to the alleged failure to comply with property factor duties, the Legal Member explained that this was a very wide category and, apart from acting outwith the scope of their authority or contrary to the title deeds or the law, these duties also involved considerations as to whether the property factor had demonstrated care and skill, professional competence, trust and loyalty as an agent for the homeowner, etc. Accordingly, it would be considered by the Tribunal whether the Respondent had dealt reasonably with the Applicant's complaint, investigated it fully and considered whether there were any other options for resolving or improving the current unsatisfactory situation regarding the conflicting flat numbering.
13. It was the Tribunal's view that these matters would have to be further considered and ultimately determined at an Evidential Hearing and that they would require further documentation to be lodged by way of a formal Direction, such as the Respondent's title deeds relative to the flat across from the Applicant's, Council Tax communications issued in respect of the Respondent's flat and confirmation from the Royal Mail as to their position with regard to the numbering of the two flats. The Respondent indicated that they would take further legal advice in the matter. The Applicant was asked to consider their position in further detail too, particularly with regard to the particular sections of the Code included in their application. Both parties indicated that they would be willing to engage in further direct discussions with each other and were asked to advise the Tribunal should there be any change in either of their positions or any resolution of matters prior to the Evidential Hearing. It was considered that an in-person hearing may be best and there was some discussion on dates to avoid. Parties were thanked for their attendance and the CMD brought to a close. The application was adjourned to an Evidential Hearing, subsequently scheduled to take place on 22 October 2025.

Direction

14. Following the CMD, a detailed CMD Note narrating the discussions which had taken place at the CMD (as above) and a formal Direction were issued by the Tribunal to parties. The Direction stated as follows:-

“1. The Respondent is required to submit to the Tribunal within 28 days of the issue of this Direction:-

- (a) A copy of their title deeds/Land Certificate relating to the flat situated directly across the common close from the Applicant’s property, or the larger title of which that flat is part;*
- (b) A copy of any Council Tax invoices or other correspondence from the Council Tax authorities confirming their position as to the numbering/address of the flat situated directly across the common close from the Applicant’s property; and*
- (c) Written confirmation from Royal Mail or any other organisation confirming their position as to the numbering/address of the flat situated directly across the common close from the Applicant’s property.*

2. The Applicant and Respondent are required to provide:-

- (a) An inventory or list of any further documentation upon which the parties wish to rely, together with corresponding numbered copies of any such documents; and*
- (b) Any legal submissions in support of their respective positions in respect of this application, including references to any legislation, caselaw or other authorities and copies of any such authorities;*
- (c) A list of any witnesses that the parties wish to call to give evidence at the Evidential Hearing to be fixed in respect of this application, and to make arrangements for the attendance at the hearing of any such witnesses.*

*The documentation referred to in paragraph 2 above should be lodged with the Tribunal Administration no later than **14 days** prior to the Evidential Hearing to be fixed in respect of this application.”*

Further Procedure

15. On 5 June 2025, the Applicant Homeowner emailed the Tribunal with some further written representations in response to the Direction, together with a copy of a common charges invoice issued in respect of the Property.

16. On 12 June 2025, the Respondent Property Factor emailed the Tribunal with further written representations, in response to the Direction, confirming that, following legal advice, they accepted there had been some errors made and that they now agreed with the Homeowner’s position regarding the flat

numbering. They had notified the housing department of River Clyde Homes who own the other flat concerned and the corrected flat positions are now reflected in their records. They did not intend to lodge any further documentation and did not consider that an Evidential Hearing was now necessary, although confirmed that they would attend a hearing if necessary to answer further questions, etc.

17. On 9 July 2025, the Tribunal contacted the Homeowner, referring to the Property Factor's communication of 12 June 2025 and requesting that they confirm if this resolved the matters raised in their application or if they considered that a hearing was still required and if so, their reasons for this.
18. On 15 July 2025, the Homeowner responded to confirm that they were happy with the positive outcome of their complaint regarding the flat numbering, but that they felt the second part of their application was still outstanding. This had requested that the Property Factor be held accountable for their lack of problem-solving skills and poor customer service in dealing with the Homeowner's complaint. The Homeowner did state, however, that they still hoped a resolution could be achieved without an Evidential Hearing being necessary.
19. On 29 July 2025, the Tribunal contacted the Property Factor, referring to the Homeowner's communication dated 15 July 2025 and requesting that they confirm if they had any further representations to make in response. They were also reminded of the options available to the Tribunal in the event that the Tribunal upholds a Homeowner complaint.
20. On 1 August 2025, the Property Factor copied the Tribunal into an email they had sent to the Homeowner on that date. A response was issued by the Tribunal on 11 August 2025, advising that this could not be accepted by the Tribunal and that any such documents must be submitted to the Tribunal directly.
21. A reminder was issued to the Property Factor on 25 August 2025, as nothing further had been submitted.
22. In response, on 25 August 2025, the Property Factor emailed the Tribunal directly, attaching a copy of the email they had sent to the Homeowner on 1 August 2025. They acknowledged the remaining dis-satisfaction of the Homeowner regarding the other aspects of their complaint and provided further explanation as to what had occurred. They stressed the unusual nature of the complaint from the Homeowner, the scope of which fell outwith their usual procedures and reiterated their apology as to the errors in their earlier responses to the Homeowner's complaint. Again, the Property Factor confirmed that they would attend a further hearing if necessary.
23. On 12 September 2025, the Homeowner lodged with the Tribunal a copy of their response dated 11 September 2025 to the Property Factor's communication to them dated 1 August 2025. They apologised to the Property

Factor for their delay responding, due to extended leave, and provided further detail as to why they remained dis-satisfied with the Property Factor's response of 1 August 2025. The Homeowner indicated that they would like a full audit carried out by the Property Factor and that their staff should adhere to a formal procedure, be properly trained to deal with complaints in a professional manner, including providing customers access to managers where necessary. The Homeowner stated that they were not requesting apologies or compensation but wanted improvements in the service provided by the Property Factor.

24. On 12 September 2025, the Tribunal notified parties of the date and other arrangements for the Evidential Hearing, scheduled to take place on 22 October 2025.
25. On 16 September 2025, the Property Factor submitted a copy of their further communication to the Homeowner dated 15 September 2025 in response to the Homeowner's communication of 11 September 2025. The Property Factor indicated that they would not agree to the audit requested by the Homeowner on the basis that they considered this to be unreasonable and disproportionate, given the scope of the Homeowner's complaint and the resources which would be involved. They considered that they had acted reasonably throughout and had successfully persuaded River Clyde Homes to change the addresses of the two flats in their records. They stressed the unusual nature of the situation and the uncertainty of the legal position in relation to which conflicting advice had been received. They indicated that if the resolution offered was still not acceptable to the Homeowner, then a full hearing would likely be necessary.
26. On 2 October 2025, the Homeowner submitted further representations to the Tribunal, attaching a copy of their further communication of the same date sent to the Property Factor in response to their communication of 15 September 2025. In that communication, they reiterated some aspects of their complaints concerning the Property Factor's services and explained why they considered an internal audit and the other improvements in procedures, etc that they were seeking would be beneficial. The Homeowner also stated to the Tribunal that they had lodged everything required of them by the Tribunal throughout the process and, in their view, the Tribunal now had full submissions from both parties outlining their respective positions. They requested that the Tribunal consider reaching a decision on the application on the basis of the written submissions, without the need for the Evidential Hearing to take place.
27. On 6 October 2025, the Tribunal requested a copy of the letter from the Property Factor to the Homeowner dated 15 September 2025. This was requested in error, as the letter had already been lodged. The Tribunal also requested confirmation from the Property Factor that they were agreeable to the Homeowner's request for the application to be decided on the basis of written submissions, in accordance with Rule 18 of the Procedure Regulations.

28. On 7 October 2025, the Property Factor emailed to provide a further copy of their email dated 15 September referred to above and to confirm their agreement to the application being decided without the need for a further hearing.
29. Having considered the matter, on 8 October 2025, the Tribunal notified parties that it would proceed to determine matters on the basis of Rule 18 and that the Evidential Hearing scheduled for 22 October 2025 would now be cancelled. Parties were informed that a decision would be issued in writing in due course.
30. The Tribunal Members subsequently considered the application in detail and reached a unanimous decision.

Findings-in-fact

1. The Applicant (Homeowner) is the proprietor of the Property, having purchased the Property on or around 10 January 2022 and whose title was registered in the Land Register under title number REN114949.
2. The Respondent (Property Factor) was the appointed Property Factor in respect of the Property, was on the Property Factor Register and had a Written Statement of Services.
3. The Property is a second floor flat in a block of flats, which the Homeowner lets out to a tenant, and has the postal address 2/1, 15 Inverkip Street, Greenock, PA15 1SX.
4. Some of the other flats in the same block as the Property remain in the ownership of River Clyde Homes who acquired title from Inverclyde Council by way of stock transfer.
5. The Property Factor is the property factoring arm of River Clyde Homes, which is distinct from the housing/landlord function of River Clyde Homes.
6. For historical reasons, following the stock transfer from Inverclyde Council, the records of River Clyde Homes had the Property designated as flat 2/2, rather than flat 2/1.
7. For historical reasons, following the stock transfer from Inverclyde Council, the records of River Clyde Homes had the flat situated on the opposite side of the common close from the Property (which flat they still own) designated as flat 2/1.
8. The discrepancy with the flat numbering adhered to by River Clyde Homes caused confusion with mail, Council Tax and utility bills which impacted negatively on the Homeowner and their tenant in respect of the Property.

9. The Homeowner had complained to the Property Factor regarding the issue with the flat numbering, had explained the difficulties and inconvenience caused to them and their tenant and requested that the records of River Clyde Homes be amended to re-designate their Property as Flat 2/1 and the flat opposite as Flat 2/2.
10. The Property Factor refused the Homeowners request.
11. The parties communicated over a lengthy period of time but the Homeowner remained dis-satisfied with the responses received from the Property Factor.
12. The Homeowner invoked the Property Factor's formal complaints process but remained dis-satisfied with their response.
13. The Homeowner intimated the alleged breaches of the Code and the Property Factor Duties to the Property Factor on 11 September 2024, intimating their referral of the matter to the Tribunal, due to the absence of a satisfactory response.
14. The Property Factor responded to the Homeowner on 18 October 2024, responding to the alleged breaches, denying same and maintaining their position regarding the flat numbering.
15. The Homeowner initially applied prematurely to the Tribunal on 2 September 2024, but following submission of further documentation on 22 October 2022, including the 'prior intimation' documentation and response referred to above, , the application was formally accepted by the Tribunal on 12 November 2024.
16. The application was opposed by the Property Factor and their position was maintained at the CMD which 16 May 2025, following which a Direction was issued and an Evidential Hearing scheduled.
17. On 12 June 2025, the Property Factor emailed the Tribunal, confirming that, having taken further legal advice on the matter, they had changed their position regarding the flat numbering and had instructed River Clyde Homes to alter their records in respect of the flat numbering, in accordance with the Homeowner's wishes.
18. Between 12 June 2025 and 7 October 2025, the parties submitted a number of further written representations with the Tribunal, and also exchanged further correspondence directly with each other which was also lodged with the Tribunal.
19. Although the Homeowner was satisfied that the Property Factor had now resolved the situation with regard to the flat re-numbering, the Homeowner remained dis-satisfied with the way the Property Factor had handled their enquiries and complaints throughout and the length of time it had taken for the flat numbering issue to be resolved.

20. The Property Factor maintained their position in respect of the application.
21. Both parties wished the application determined on the basis of their written representations without the need for an Evidential Hearing.
22. The Tribunal decided that it was accordingly appropriate to cancel the scheduled Evidential Hearing and to proceed to determine the matter in terms of Rule 18 of the Regulations.

Reasons for Decision

1. The Tribunal gave careful consideration to all of the background papers including the application and initial supporting documentation; the further written representations and supporting documentation from the Applicant; the initial written representations, together with supporting documentation from the Respondent; the detailed discussions which had taken place at the CMD; and the further written representations from both parties. Having regard to the resolution of the practical issue regarding the flat numbering, the extensive written representations and submissions lodged by both parties and both parties' views on the matter, the Tribunal decided to determine the matter without a further hearing in terms of Rule 18 of the Tribunal Procedure Rules which is as follows:-

“Power to determine the proceedings without a hearing
18.—(1) *Subject to paragraph (2), the First-tier Tribunal—*
(a) may make a decision without a hearing if the First-tier Tribunal considers that—
(i) having regard to such facts as are not disputed by the parties, it is able to make sufficient findings to determine the case; and
(ii) to do so will not be contrary to the interests of the parties; and
(b) must make a decision without a hearing where the decision relates to—
(i) correcting; or
(ii) reviewing on a point of law,
a decision made by the First-tier Tribunal.
(2) Before making a decision under paragraph (1), the First-tier Tribunal must consider any written representations submitted by the parties.”

The Tribunal proceeded to consider the alleged breaches of the Code in turn, and thereafter considered the alleged breach of Property Factor duties.

2. Breaches of the Code

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.

On balance, the Tribunal did find a breach of this section of the Code to have been established. The Homeowner's position was that they considered the Property Factor to have issued generic responses to their enquiries and complaints and to have been generally dismissive of their complaints. The Homeowner had provided the Property Factor with detailed information, explanation and supporting documentation in respect of their complaint over a period of around two years and had become increasingly frustrated at the attitude of the Property Factor towards the matter. The Homeowner had sought mediation and access to management personnel in an effort to resolve the matter and frequently pointed out that they considered the error in the flat numbering to be a simple, typographical-type error in the records of River Clyde Homes which could be easily rectified and that they were not seeking to 'change' the title deeds as the Property Factor seemed to think. The Homeowner simply wanted an assurance that their complaint was being properly investigated and that the information they were putting forward was being communicated properly to the relevant decision-makers. The Property Factor's position was that they had dealt properly with their communications with the Homeowner and had responded in accordance with their timescales and procedures. They conceded that they did use template letters for much of their correspondence with homeowners and also explained their position regarding mediation (which they say was not refused) and regarding the Homeowner's request for 'access' to managers/decision-makers. In their later written representations, the Property Factor explained that the issue was not a straightforward one and that they had taken but received conflicting legal advice on the request being made by the Homeowner. This, they considered, explained the original stance of River Clyde Homes on the flat-numbering issue and the reason for the subsequent change in their position on the matter. The Tribunal considered the Property Factor's communications with the Homeowner throughout the matter as a whole. The Tribunal was satisfied that the Property Factor had failed in their communications over an extended period of time to properly explain the position to the Homeowner and to reassure the Homeowner that they (*as Property Factor*) were investigating their complaints properly and not simply sticking to their original stated position in the matter, that River Clyde Homes could not change the flat numbering stated in their records. The Tribunal considered that this amounted to failure to comply with section 2.1 of the Code in that the Property Factor had failed in '*building a positive relationship with homeowners, leading to fewer misunderstandings and disputes and promoting mutual respect*'.

7.2 When a property factor's in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed in writing.

7.5 Where a property factor has taken over the management of property and land owned by homeowners from another property factor, the previous property factor must co-operate with the current property factor (and vice versa) to ensure the exchange of all necessary or relevant information. This can include information about outstanding complaints. Where information about an unresolved issue that was the subject of a complaint has been shared with the new, formally appointed factor, they have the option, if they so choose, to progress this complaint rather than starting a new one.

The Tribunal did not find a breach of either of these sections of the Code to have been established.

In respect of section 7.2, the Property Factor had made reference in their initial written representations to the Tribunal to the fact that the Homeowner had acknowledged in their application the stage 2 complaint response from the Property Factor dated 18 October 2024 which the Property Factor stated was their final decision on the matter and had been confirmed in writing to the Homeowner. The Tribunal understood that the Homeowner was disappointed and dis-satisfied with the Property Factor's final decision in the matter, following the formal complaints process, but agreed with the Property Factor that there was no breach of the specific wording of section 7.2 of the Code, given that their final decision on the matter had been confirmed in writing to the Homeowner.

In respect of section 7.5, the Property Factor had made reference in their initial written representations to the Tribunal that this section of the Code is only applicable to circumstances where there has been a transfer from one property factor to another of the management of property and that this did not apply here as they had factored the Property throughout. Again, the Tribunal understood why the Homeowner had sought to fit their specific complaint into this section of the Code, given that the Property Factor had made frequent reference in their communications to the stock transfer to River Clyde Homes and to the two distinct 'arms' of River Clyde Homes, namely the property factoring and housing arms. However, the Tribunal agreed with the Property Factor that this section of the Code did not apply to the situation here and that there was therefore no breach of this section.

The Tribunal also noted that there had been discussion regarding both sections of 7.2 and 7.5 of the Code at the CMD where the Tribunal had expressed the preliminary view that there did not appear to be a valid claim in respect of either section.

3. Breach of Property Factor Duties

The Tribunal did not consider that the Homeowner had established that the Property Factor had failed to comply with their Property Factor Duties. A failure to follow specific clauses in their Written Statement of Services or complaints procedure was not alleged. Nor was there any allegation that they had not followed the terms of the title deeds or breached the law. Rather, the Property

Factor's responses to the Homeowner's request that they re-number the flats and subsequent complaints appeared to be based on a misinterpretation of the legal position and what they were being asked to do. Had the Homeowner been asking for River Clyde Homes to change the title deeds, then the Property Factor may well have been correct in their assertion that this was outwith their powers as Property Factor and may have to have been a remedy sought against River Clyde Homes in their capacity as remaining owner of some of the property. The Tribunal was of the view that it was regrettable that the Property Factor did not appear to have investigated the position fully, nor considered other options, at an earlier stage in their communications with the Homeowner. Had they done so and further taken legal advice as matters progressed, this may have resulted in the matter being resolved much more quickly and without application to the Tribunal being necessary. The Tribunal had some sympathy for the Homeowner in this regard and accepted their recently stated position that they did not believe that the flat-numbering issue would have been resolved without the Tribunal referral. However, the Tribunal did not consider that there had been any bad faith on the part of the Property Factor, nor that they had breached their fiduciary duties owed as agent to the Homeowner. Accordingly, the Tribunal did not consider the Property Factor to be in breach of their Property Factor duties.

4. In summary, therefore, the Tribunal found the Property Factor to be in breach of Section 2.1 of the Code only and not to have failed to comply with their Property Factor Duties.
5. The remedies that the Applicant was seeking from the Tribunal in terms of their application were for an amendment to the flat-numbering applied by River Clyde Homes to their Property and the flat opposite but also for the Property Factor to be held accountable for their lack of problem-solving skills and poor customer service in dealing with the Homeowner's complaint. The first remedy was achieved following the CMD and the issue of the Tribunal's formal Direction by way of the Property Factor changing their previously stated position and arranging for the re-numbering of the flats to take place and to be reflected in the records of River Clyde Homes. The second remedy remained opposed by the Property Factor. They had offered apology to the Homeowner and also fully explained their changed position to the Tribunal. The Homeowner had made it clear in their recent representations that they did not want an apology or any compensation from the Property Factor in relation to the matter. The Homeowner indicated that they would like a full audit carried out by the Property Factor and that their staff should adhere to a formal procedure, be properly trained to deal with complaints in a professional manner, including providing customers access to managers where necessary and wanted to see improvements in the service provided by the Property Factor. The Homeowner mentioned other complaints against the Property Factor which the Tribunal considered to be outwith the scope of this application. The Tribunal agreed with the Property Factor's submission that the scope of the Homeowner's complaint had been relatively narrow and quite unusual in nature and that it would therefore be disproportionate to expect the Property Factor to undertake a full internal audit of their procedures, staff training, etc. The Tribunal also

considered that this remedy sought was wider than was justified in the context of this particular application. The Tribunal did hope that the Property Factor would take cognisance of the Tribunal's findings and comments above in respect of their communication failings and failure to fully investigate the basis of the Homeowner's complaint at a much earlier stage than they did and that they would keep their processes under review and strive to make continuous improvements in the services provided to homeowners. However, the Tribunal considered that, in all of the circumstances, despite their finding that section 2.1 of the Code had not been complied with, that the Homeowner's original complaint regarding the flat numbering had now been resolved and that it would not proceed to make a Property Factor Enforcement Order. This was determined in accordance with Section 19(1) of the 2011 Act which is as follows:-

"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."*

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.

Nicola Weir
18 November 2025