Housing and Property Chamber
First-tier Tribunal for Scotland

Statement of Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 17 of the Property Factors (Scotland) Act 2011 ("the Act") and Rule 17 (4) of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules")

Chamber Ref: FTS/HPC/PF/25/2474

Re: Property at Flat 10, Ritz Apartments, 26 Townhead Street, Strathaven, ML10 6AB ("the Property")

Parties:

Mr Kenneth MacDonald, 2 Aspen Place, Strathaven, ML10 6PY ("the Homeowner")

Park Property Management, 26 Townhead Street, Strathaven, ML10 6AB ("the Property Factor")

Tribunal Members:

Fiona Watson (Legal Member)
Helen Barclay (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Property Factor has not failed to comply with parts 1, 4, 5 and 6 of the Overarching Standards of Practice and no Property Factor Enforcement Order is issued.

Background

1. By application dated 9 June 2025 ("the Application") the Homeowner applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Factor had failed to comply with the Code of Conduct for Property Factors ("the Code").

2. The Application comprised the following documents: -

   (i) application form in the First-tier Tribunal standard application form C2 (relating to matters after August 2021), indicating that the parts of the Code complained of are “*OSP 1, 4, 5 and 6”*
   (ii) copy correspondence between the Homeowner and Property Factor;
   (iii) a copy of the Property Factor’s written statements of services (WSoS)

3. On 23 July 2025, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application. A Case Management Discussion (CMD) was fixed for 19 December 2025 at 10am by telephone conference call.

Case Management Discussion

4. The CMD took place on 19 December 2025 at 2pm by telephone conference call. The Homeowner was not present on the call and had emailed the tribunal administration in advance to advise that he would not be participating in the CMD and requested that his application and written submissions be accepted. Mr Paul McDermott, Managing Director of Park Property Management Limited was present and represented the Property Factor.

5. The Tribunal advised the Property Factor that the Homeowner would not be attending and that the purpose of the CMD was to identify if matters were disputed or could be resolved and if a Hearing on evidence is required.

6. No written submissions were submitted by the Property Factor prior to the CMD and oral submissions were made at the CMD.

7. The Property Factor submitted that the application was disputed entirely and that there had been no breaches of the Code. It was submitted that the contingency fund had been set up prior to the Homeowner taking

ownership of the Property and the Homeowner had not contributed to same. The Float payments were increased from £50 to £250 per homeowner following a request being made by the Property Factor to all homeowners, and that Mr McDonald had paid this increased sum in response to that request and did so without complaint. It was submitted that the development was in dire financial straits when the Property Factor took over management. Nine of the thirteen homeowners in the development were not paying their fees, and only three homeowners paid the uplifted amount requested.

8. It was submitted that there was no money in the development pot to carry out any repairing works. It was submitted that the contingency fund was set up to be able to pay for any unforeseen events. The Property Factor took money from that fund to meet the cost of the buildings insurance renewal premium, which was necessary. Had they not done that, the buildings insurance would have lapsed. It was submitted that the Property Factor was entitled to use the funds for that purpose.

9. It was accepted that no repairs were carried out in relation to the roof leak reported by the Homeowner but that this was not due to any refusal to carry out works, but rather an inability to do so as there were no funds held to enable the Property Factor to instruct same. The Property Factor cannot subsidise the costs of works for homeowners. The Property Factor cannot instruct contractors without the funds to meet their invoices.

10. It was submitted that following the Property Factor terminating the contract, they followed the debt recovery process in their WSoS insofar as they were able to attempt to recover debts, however the level of the individual debts versus the costs associated with formally recovering same via court proceedings meant that court proceedings were not financially viable.

11. It was submitted that all homeowners were written to following conclusion of the debt recovery process to advise that they were due a refund of their portion of the funds held and that they should provide their bank details for payment to be made. It was submitted that the

Homeowner has failed to provide his bank details in order that his refund of £178.38 can be made.

12. The Tribunal adjourned to consider matters. Upon reconvening, the Tribunal advised that given that the basis of the application was disputed by the Property Factor, evidence would require to be heard in order for the Tribunal to determine whether any breaches of the Code had occurred. The Tribunal advised that a Hearing would be fixed for evidence to be heard, and directed that the Property Factor must lodge their response to the application in writing, within 28 days of the CMD.

13. The Tribunal adjourned the CMD to a telephone Hearing to take place on a date to be hereinafter fixed.

The Hearing

14. A Hearing took place on 3 July 2026 by telephone. The Homeowner again was not present on the call and had emailed the tribunal administration in advance to advise that he would not be participating in the Hearing and requested that his application and written submissions be accepted. Mr Paul McDermott, Managing Director of Park Property Management Limited was present and represented the Property Factor.

15. Following the CMD, the Property Factor had submitted written submissions setting out their position to the Application. A Response to same had been submitted by the Applicant. The Property Factor submitted that they wished to rely on their written submissions as evidence, and to have an opportunity to summarise their position orally.

16. The Property Factor submitted that the development of which the Property forms part was severely underfunded, which rendered their appointment unsustainable. It is not the role or purpose of a Property Factor to subsidise or bankroll any works in a development. The Homeowner had not established that they had suffered any financial loss. The lack of funding within the development was due to inaction by homeowners and not due to any misconduct by the Property Factor. The

Property Factor’s options were limited.

17. The Property Factor submitted that they did not impose anything on the owners regarding an increased float. A request was made to Homeowners to make additional payment as there were no funds in the development, and the Homeowner voluntarily paid this. The Homeowner only objected to the float payment after the Property Factor submitted their resignation. There had been a final reconciliation of the float, and there is a credit balance allocated to the Homeowner for their Property. The Homeowner was asked for bank details in April 2025 to enable this to be returned to him, but he has failed to provide these. The contingency fund was not passed over to the new factor as they had no instruction from the homeowners in the development do so.

18. The Property Factor submitted that they did not carry out a roof repair as there were no funds to do so. The property factor cannot fund client developments. It was submitted that the Property Factor had communicated with the Homeowner effectively, and 20-30 letters had been issued to him during their period of appointment.

19. The Property Factor submitted that they had ensured that insurance cover remained in place, but due to the lack of funds, this was the only thing that could be done.

20. The Property Factor submitted that whilst the Homeowner stated in their application that they had not been made aware of the contingency fund, this had been mentioned in the letter from the previously factor (Lorimer) to the homeowners, when the transition to Park PM took place. The previous factor’s letter referred to the contingency fund being passed over at transfer. It was submitted that the Property Factor would have reported to the homeowners annually on matters relating to the contingency fund and debt recovery, but as they did not hold appointment for a 12 month period such annual reporting did not take place.

21. The Property Factor submitted that they did not take any payment form development funds for anything other than to meet the insurance

renewal cost, and their management charges. They followed their debt recovery procedure to attempt to recover the development owner debts.

22. The Property Factor submitted that there had been no evidence produced by the Homeowner to substantiate any breaches by the Property Factor of the Overarching Standards of Practice. Dissatisfaction of a homeowner is not evidence of a breach.

Findings in Fact.

23. The Tribunal had regard to the Application and written representations in full, and to the submissions made at the CMD and Hearing, whether referred to in full in this Decision or not, in establishing the facts of the matter and that on the balance of probabilities.

24. The Tribunal found the following facts established:

i) The Parties are as set out in the Application;

ii) The Property forms part of a development and in terms of which the Homeowner is liable for payment of a 1/13 share of the development costs;

iii) The Property Factor was appointed as manager of the development of which the Property forms part in June 2024;

iv) The Property Factor advised the homeowners of their resignation as manager of the development in August 2024 and after a three-month notice period, the Property Factor ended their management of the development in November 2024.

v) There were insufficient funds within the development to cover ongoing liabilities due to inaction of a number of homeowners within the development;

vi) Only three of the thirteen owners in the development agreed to increase their float contribution when requested to by the Property Factor;

vii) The Property Factor arranged for payment of the development insurance renewal from the funds held, leaving insufficient funds thereafter to meet any repair costs.

viii) The Property Factor provided the Homeowner with an account reconciliation at the end of their appointment;

ix) The Property Factor requested that the Homeowner provide them with bank details to enable payment to be made to him of his share of the contingency fund, but the Homeowner has failed to provide these.

Decision of the Tribunal with reasons

25. The Tribunal has not found any evidence of failure by the Property Factor to comply with parts 1, 4, 5 or 6 of the Overarching Standards of Practice.

26. With regard to the specific parts of the Overarching Standards of Practice referred to in the Application and the information before it, the Tribunal made the following findings: -

(i) OSP1

"You must conduct your business in a way that complies with all relevant legislation."

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice. The Homeowner submits that the Property Factor imposed an increased float on the owners, which was a breach of this OSP. Clause (Ninth)(i) of the title to the Property states that "…*the Factor shall be entitled to insist on payment of a float from each feuar of fifty pounds or such other amount to be agreed from time to time from each feuar…such float to be used by the Factor to meeting expenses and outlays incurred by him in the course of his duties….in the event of any factor being unable to recover any sum due to him by any feuar despite court and enforcement proceedings because of the insolvency or disappearance of such feuar then the Factor may recover such sum and any necessary court or enforcement cost from the remaining feuars equally."*

The Homeowner refers to the “imposition” of an increased float as being a breach of OSP 1. The Tribunal notes the letter from the Property Factor to the Homeowner of 18 June 2024 and which advises that an invoice for payment of the property float will follow and the float amount will be £250. This letter does not make any reference to this being a proposed increase from that amount contained within the title to the Property, nor does it seek explicit consent or agreement from the homeowner to such an increase. Whilst the Tribunal notes that the Homeowner paid this without question at the time of issue, and only complained about this following the Property Factor’s resignation, the Tribunal does consider that the Property Factor should have sought agreement from the owners in the development to increasing the float from that as stated in the title. However, the tribunal also notes that the reasoning behind seeking an increased amount form the owners was to ensure that the development held sufficient funds to enable ongoing costs to be met, for the benefit of the owners. Whilst this may arguably be a breach of the terms of the title, the Homeowner has failed to specify what legislation he considers has been breached.

(ii) OSP 4

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

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice.

The Homeowner states that the Property Factor refusing repairs and stating a lack of funds was misleading. The Homeowner refers to the development accounts being in a “cash positive” state. The Tribunal is satisfied from the accounts lodged that there were insufficient funds to meet the costs of any repairs, taking into account the sum needed for the development insurance renewal premium. The title at Clause (Twelfth) places an obligation on owners to insure and therefore it is entirely reasonable that the Property Factor prioritises payment of same from the limited funds held. The Tribunal was not satisfied on the basis of the information before it that the Property Factor was misleading in this regard.

The Homeowner states that the Property factor's letter of introduction of 21 May 2024 stated that they "*work in partnership with all our clients*" and the Homeowner states that in his experience, this was misleading. The Tribunal was satisfied on the basis of the information before it that the Property Factor made reasonable efforts to seek engagement from the owners in the development but a large proportion of the owners simply failed to do so. The Tribunal was not satisfied on the basis of the information before it that the Property Factor was misleading in this regard.

(iii) OSP 5

"You must apply your policies consistently and reasonably."

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice.

It was unclear to the Tribunal which part of the Homeowner's complaint constituted an alleged breach of OSP 5. The Homeowner does not refer to OSP 5 in his complaint to the Property Factor, nor does he refer to this in the paper apart to his application. There is mention in some of the documentation to the Homeowner taking issue with the way the Property Factor attempted to recover debts, and therefore it is assumed that the Homeowner may be referring to the Property Factor's debt recovery policy. However, the Homeowner has failed to provide any specification as to which parts of the debt recovery policy he claims have not been adhered to, nor has he provided any evidence in this regard.

(iv) OSP 6

"You must carry out the services you provide to homeowners using reasonable care and skill and in a timely way, including by making sure that staff have the training and information they need to be effective."

The Tribunal was not satisfied on the basis of the evidence before it, that the Property Factor had failed to comply with this part of the Overarching Standards of Practice.

The Homeowner states that the Property Factor did not investigate nor carry out the roof repair in a timely manner. The Tribunal was satisfied that the development did not hold sufficient funds to meet any roof repair and therefore the Property Factor could not be expected to incur any costs associated with this at their own expense. It is the homeowners themselves who have an obligation under the terms of their titles to ensure that the building is maintained and repaired adequately. Whilst the Property Factor is appointed to manage such works where required, the Property Factor is under no obligation to fund same where homeowners fail to do so themselves.

The Homeowner states that the Property Factor did not transfer the contingency fund to the new Factor in a timely manner. The Tribunal was satisfied that the Property Factor has acted reasonably in seeking to return each owner's portion of the fund to them directly, having not obtained instruction from the owners in the development to pass same to the new factor. It was noted that the Homeowner had been asked for bank details in April 2025 to allow his portion of the fund to be paid to him and he has failed to provide these.

The Homeowner states that the Property Factor didn't issue invoices in a timely manner nor collect debts in timely manner. The Tribunal was not satisfied on the basis of the information before it that this has been evidenced. The Homeowner also refers to the Property

Factor's "*insistence on dragging out the termination.*" The Tribunal is satisfied that the Property Factor has acted reasonably in providing owners with a suitable notice period within which they can find a new factor, to ensure an orderly transition and ensure that the development is not left unmanaged for any period.

27. Having made a decision in terms of Section 19(1)(a) of the Act that the Property Factor has not failed to comply with parts 1, 4, 5 and 6 of the OSP, no Property Factor Enforcement Order will be issued.

28. The decision is unanimous.

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.

Fiona Watson
Legal Member/Chairperson
11 July 2026