Housing and Property Chamber
First-tier Tribunal for Scotland

Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011

Chamber Ref: FTS/HPC/PF/25/4385 and FTS/HPC/PF/25/4386

Property: 1/2, 315 Glasgow Harbour Terrace, Glasgow G11 6BL and 5/2, 21 Meadowside Quay Square, Glasgow G11 6BT ("the Properties")

The Parties:-
Ms Christie Allan, 1/2, 315 Glasgow Harbour Terrace, Glasgow G11 6BL and Mr Francesco Mancuso, 5/2, 21 Meadowside Quay Square, Glasgow G11 6BT ("the homeowners")

Hacking & Paterson Management Services Limited, incorporated in Scotland (SC073599) and having their registered office at Pavilion 2, 99 Berkeley Street, Berkeley Square, Glasgow G3 7HR ("the property factors")

Tribunal Members:
George Clark (Legal Member/Chairman) and Helen Barclay (Ordinary Member)

Decision
The Tribunal determined that the property factors had not failed to comply with Sections 3.2 or 3.12 of the Code of Conduct for Property Factors made under the Property Factors (Scotland) Act 2011 and had not failed to comply with the property factor's duties.

Background

1. By applications, dated 10 October 2025, the homeowners sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011. They alleged failures to comply with a number of Sections of the Property Factors Code of Conduct effective from 16 August 2021 ("the Code"). They also alleged failures to comply with the property factor's duties. At the Case Management Discussion on 19 August 2026, however, they agreed that consideration of the applications should be restricted to Sections 3.2 and 3.12 of the Code and a failure to comply with the property factor's duties.

2. The homeowners' complaint was that the property factors have failed to provide an official bank statement for the interest-bearing account said to hold homeowners' funds or a plausible explanation for not doing so. What they have provided is effectively a "homemade" spreadsheet showing transactions said to have been made on the account, but the homeowners have no means of verifying that the figures are truthful, accurate and correct. They required sight of an official Bank of Scotland statement. There is a lack of clarity and transparency in the accounting procedures, and the homeowners have no way of verifying that their funds are being held in a separate bank account from the property factors' own funds. The homeowners regarded the arrangement as highly unusual and certainly not industry practice and that, as a result, the property factors had failed to comply with Sections 3.2 and 3.12 of the Code.

3. The homeowners also contended that the funds could be earning a much higher rate of interest than was currently being received on the account. They were also concerned as to what would happen to their funds if the property factors became insolvent.

4. The applications included further complaints but as these did not refer to Sections 3.2 or 3.12 of the Code, there is no need to summarise them here and they were not considered by the Tribunal.

5. In their written response of 21 January 2026 to the homeowners' formal complaints, the property factors advised that they hold the cyclical maintenance fund in an interest-bearing account with Bank of Scotland. It is the only account that the property factors have with Bank of Scotland. and it holds only customers' funds. No fee income or other monies are held in that account. The property factors' fee income is received into an account with Virgin Bank (formerly Clydesdale Bank). They enclosed a redacted Bank of Scotland statement of December 2025 and a copy of the Trial Balance from their property management system, redacted to show the balance held for the cyclical maintenance fund for the Development of which the properties form part. This could be reconciled to the transaction report and balance the property factors had confirmed holding for the Development. The property factors had recently developed a new Fund Reconciliation to provide a clearer format of information, including opening and closing balances, interest earned, homeowners' contributions and transaction dates and purposes. If the group of homeowners wanted to have an account opened in their name, they would all be required to provide identity documents, complete "know your customer" information and comply with any other requirements of the bank. The advice the property factors had received was that they could not open an account in the name of the collective homeowners as they do not form a legal entity.

6. The property factors later provided the homeowners with a copy of a letter of 14 April 2026, in which the Bank confirmed that all money standing to the credit of the account is held by the property factors as nominees and the Bank are not entitled to combine it with any other account or to

exercise any right of offset or counter claim against any sums owed by the property factors or any of its subsidiary companies. The homeowner, Mr Mancuso, responded to that letter, expressing concern that it did not address the question of the application of the Financial Compensation Scheme deposit protection to pooled client accounts maintained by the property factors, where homeowner funds are held within a single account and distinguished solely by internal sub-coding arrangements.

7. In further written submissions of 17 July 2026, the homeowners invited the Tribunal to find that the property factors were in breach of Sections 3.2 and 3.12 of the Code in respect of their current accounting practices and to grant a Property Factor Enforcement Order ("PFEO") requiring the property factors to take immediate steps to place homeowners' funds in a separate bank account dedicated solely to the Development and to provide bank statements of such account promptly to homeowners upon request. The homeowners also invited the property factors, when segregating homeowners' funds pursuant to the PFEO, to seek formal advice on account options which yield higher interest rates, in order to maximise the annual return on investment.

Case Management Discussion

8. A Case Management Discussion was held on the morning of 19 August. The homeowner Ms Allan was present and also represented Mr Mancusa, who was also present. The property factors were represented by Mr Daniel Kinghorn and Ms Lauren McAloon.

9. The Parties agreed that the Tribunal should consider only the complaints under Sections 3.2 and 3.12 of the Code and the alleged failure by the property factors to comply with Clause 4.7 of their Written Statement of Services ("WSS").

10. The Parties advised the Tribunal that there are 321 units in the Development, which was completed about 20 years ago. The funds held in the Bank of Scotland account on behalf of the homeowners in the Development are approximately £500,000. This account is a reserve/sinking fund for major works and is separate from the float account used for daily operational works. The homeowners contended that the property factors should have the reserve/sinking fund in a separate account for the Development.

11. Mr Kinghorn responded that the reason for there being a collective account rather than a separate account for each development they manage was the complication of having a bank account opened in the name of residents. The homeowner, Ms Allan, acknowledged that the Residents' Committee is not a legal entity but proposed that an interest-bearing account should be opened exclusively for the Development. The homeowner, Mr Mancuso, said that it was common practice in the industry for each development to have a designated account and he repeated his

concerns about capital protection where funds were “separated” only by sub-coding.

12. Mr Kinghorn advised the Tribunal that the property factors did not accept that they were in breach of the Code, but they were willing to set up a separate bank account if the Residents’ Committee request it and that a Director of the company had agreed at a meeting on 27 July 2026 that it will happen. Ms Allan confirmed that this suggestion had been made, but the Residents’ Committee members were reluctant to become responsible for such a large sum of money. The Committee wished the comfort of a PFEO requiring the property factors to set up the separate account, even if it then required a vote of all the homeowners. Mr Mancuso confirmed that he had, as Treasurer of the Residents’ Committee, attended the meeting on 27 July 2026, as had the Chair. He added that the homeowners want the property factors to work with the Residents’ Committee to see whether a higher rate of interest can be achieved.

13. In relation to the property factor’s duties, the homeowners referred to Clause 4.7 of the WSS and to the length of time it had taken to obtain a bank statement, almost all of which was, in any event, redacted. The homeowners were unable to test what the property factors presented as a reconciliation of the bank statement with the statement of income and expenditure. Mr Kinghorn advised the Tribunal that the property factors are now presenting monthly reconciliations to the Residents’ Committee.

14. The Parties confirmed that they were content for the Tribunal to determine the applications on the basis of the written representations and the evidence provided at the Case Management Discussion and that they did not wish a full evidential Hearing.

Reasons for Decision

15. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 provides that the Tribunal may do anything at a Case Management Discussion which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it sufficient information and documentation to decide the application without a Hearing.

16. Section 3.2 of the Code states the overriding objective of Section 3 of the code, which is to protect homeowners’ funds, to provide clarity and transparency for homeowners in all accounting procedures undertaken by the property factor and to make a clear distinction between homeowners’ funds, for example a sinking or reserve fund, payment for works in advance or a float or deposit and a property factor’s own funds and fee income.

17. The Tribunal did not uphold the complaint under Section 3.2 of the Code. There was no evidence before the Tribunal to indicate that the property

factors did not have in place systems to ensure that homeowners' funds could be clearly distinguished from the property factors' own funds and fee income. The reserve/sinking fund was held in an account which Bank of Scotland had confirmed was a nominee account and could not be utilised to offset any sums owed on any other accounts in the name of the property factors and it was not disputed that there was a further account with Virgin Bank from which routine repairs were paid and to which factors' charges were credited.

18. Section 3.12 of the Code states:

"*In situations where a sinking or reserve fund is arranged as part of the service to homeowners, an interest-bearing account must be opened in the name of each separate group of homeowners. A property factor must only transfer funds from one such account to another in line with the arrangements in any agreement with homeowners to do so.*"

19. The Tribunal did not uphold the complaint under Section 3.12 of the Code. In arriving at its decision, the Tribunal considered the purpose of the Section, which is to ensure that homeowners' contributions to a reserve or sinking fund are ring-fenced. The Tribunal noted that the property factors operate only one account to hold such funds for the many developments it factors, but recognised the practical impossibility of opening an account in the name of the homeowners of the Development, given that this would involve 321 parties in providing the Bank with the documentation it would require to fulfil its obligations to know its customers, and that the process would have to be gone through with every new owner on each occasion that a property changed hands or an owner died. Bank of Scotland had confirmed that the account was in the name of the property factors as nominees and the Tribunal accepted that a system of coding was used by the property factors to allocate income and expenditure to the correct development. The Tribunal also noted that the property factors have agreed to open a new account, which will, presumably, also have to be a nominee account in their name, exclusively for the Development. It was not for the Tribunal to determine how this should be achieved. It was for the Residents' Committee and the property factors to agree the basis on which the account should operate, and it was for the Residents' Committee to decide whether they should seek further comfort by way of a ballot of the body of homeowners to determine the limits of the Committee's authority to approve expenditure on their behalf.

20. The Tribunal could not speculate as to the application of the Financial Compensation Scheme deposit protection to pooled client accounts, but noted that if there was any risk, that risk was significantly reduced by the proposal to open a new nominee account exclusive to the Development.

21. The Tribunal noted that the reserve/sinking fund account is interest-bearing. There is no requirement that property factors seek out the best interest rate available on the market from time to time.

22. The Tribunal then considered the complaint that the property factors had failed to comply with the property factor's duties.

23. Clause 4.7 of the WSS states:
"*If we collect sinking or reserve funds from you, they will be held in an interest bearing account, designated in the name of the relevant group of homeowners. Details will be available on request.*"

24. The Tribunal did not uphold the homeowners' complaint in respect of Clause 4.7 of the WSS for the reasons set out in Paragraph 20 of this Decision.

25. The Tribunal's decision was unanimous.

George Clark

Legal Member **26 August 2026**