Housing and Property Chamber
First-tier Tribunal for Scotland

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

**Decision on Home Owners Application Property Factors (Scotland) Act 2011 Section 19(1)(a)**

**Chamber Ref: FTS/HPC/PF/25/3429**

**Property address: 34 Canal Court, Threemiletown, Linlithgow, EH49 6LZ ("the Property")**

**The Parties:**

**Mr Rodger Fleming, 34 Canal Court, Threemiletown, Linlithgow, EH49 6LZ ("the Applicant and Homeowner")**

**James Gibb Property Management Limited, 23 Alva Street, Edinburgh, EH2 4PS ("the Respondent and Property Factor")**

**Tribunal Members:**

**Ms B Black (Legal Member)**

**Mr A Khan (Ordinary Member)**

## Introduction

In this decision the Property Factor (Scotland) Act 2011 is referred to as "the 2011 Act"; the Property Factor (Scotland) Act 2011 Code of Conduct for Property Factors is referred to as "the code" and the First-Tier Tribunal for Scotland (Housing and Property Chamber) (Procedure) Regulation 2016 is referred to as "the rules".

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that Respondent has failed to comply with the duty under Section 14(5) of the Property Factor (Scotland) Act 2011 (the 2011 Act) and has failed to comply with Sections 3.1, 3.5, 4.1,4.9 and 4.10 of the Code.

**Background**

1. The Homeowner made an application to the First-tier Tribunal on 10th August 2025 by way of C2 Application.

2. A Case Management Discussion ("CMD") took place by telephone conference on 23rd March 2026 at 10am. The alleged breaches of the Code were not accepted by the Respondent and it was agreed, following direction from the Tribunal and agreement from the Applicant, that the Tribunal would determine the application based on the case file and evidence available.

3. The Applicant asked the Tribunal to determine that the Respondent has failed to comply with the Code and has failed in their Property Factor duties. It was agreed at the CMD that there were 4 heads of complaint, these relate to a debt applied to the property factor account arising from other homeowner's failure to pay their share of common and factoring charges, failure to maintain the septic tank and dispute regarding the charges applied in relation to this, charges for common services for a TV system/aerial and charges applied for the communal electricity, failure to resolve complaints.

4. By way of written submission, the Homeowner alleges breaches under the Property Factor Code of Conduct 2021 under Sections 2.7, 3.1, 3.5, 3.6, 3.7, 4.1, 4.2, 4.9, 4.10 and 6.4.

**Finding in Fact**

5. The Applicant is the owner of the property at  Canal Street, Threemiletown, Linlithgow, EH49 6LZ.

6. The Applicant seeks compensation in the total sum of £982.60.

7. In July 2024, the Property Factor gave notice to the development and the Homeowners that they were ceasing to factor the development as at 16th October 2024.

8. At the time of giving notice , there was an outstanding debt from the other homeowners within the development. Upon the point of termination this debt was re-allocated amongst the remaining homeowners, including the Applicant.

9. The Property Factor took advice from BTO Solicitors LLP in relation to the debt.

10. The Property Factor   put in place  Notices of Potential Liability and registered these against the title of the properties belonging to those homeowners that had  accrued debt in terms of factoring charges.

11. The development ‘s sewage waste is managed via a septic tank.

12. The Applicant has complained to the Property Factor over a number of years (2017 – 2022) and has  disputed charges and raised concerns in relation to factoring issues in the development.

13. Incorrect charges in relation to the TV system/satellite charges were applied to the applicant’s account. These were amended in May 2024, with charges being reversed/corrected.

14. The relevant Written Statement of Services is version 15.

**(a) Development Debt**

*The Applicant's Position*

15. The Applicant's position is that the Respondent failed to act transparently in the financial management of the development. He submits that significant development debt was allowed to accrue and was then allocated to homeowners at termination without adequate explanation.

16. The Applicant states that final financial information was not provided within the required timescale and that the delay created uncertainty regarding liability and the final sum due.

17. **T**he final account issued in April 2025 applied the float against development debt and other charges.

18. The Applicant's position is that the development debt accumulated over a prolonged period and was ultimately redistributed among homeowners, indicating that the Respondent failed to act promptly to prevent escalation.

19. The Applicant contends that he was not kept adequately informed of the extent of development debt or his potential liability for it until a late stage.

*The Factor's Position*

20. The Respondent relies on its termination correspondence of July 2024, which set out the level of development debt and the potential for redistribution. It also refers to information made available through the client portal and account statements, and to what it describes as earlier instances of "spread debt". All homeowners had access to account balances via the client portal, including the

applicant.

21. The Respondent accepts the delay and relies on the fact there were ongoing recovery steps and this led to changes in the balances, resulting in a need to have ongoing account reconciliation and recalculation of redistributed debts. They maintain this constitutes a "good reason".

22. The float was offset against outstanding debts in accordance with the Written Statement of Services. They say that Paragraph 3.6 of their written statement of services, expressly permits deduction of "outstanding debts".

23. The Respondent submits that it operated a structured recovery process in line with its policy which is provided, and that some of the arrears arose after it gave notice to terminate factoring services.

24. The Respondent says that its Written Statement of Services included details of late payment charges and its debt recovery procedure. The income recovery guide was available and provided on request, and is published online. Homeowners were informed of late payment consequences through reminders and billing documentation.

*Alleged Breaches*

25. Sections 3.1, 3.5, 3.6, 3.7, 4.1, 4.2,4.9, 4.10 of the Code

**( b) Electricity and Aerial Charges**

*The Applicant's Position*

26. The Applicant raises concerns regarding historic electricity charges and the allocation of television aerial/satellite costs, asserting that these were inaccurate or improperly applied to his account, yet he still needed to pay for them until corrections were issued.

27. He was charged for services not applicable to him, he had to pay his aerial charges under duress to avoid penalties etc, despite him not being liable.

28. The applicant alleges he was overcharged for communal electricity, some of these charges were historical. He asserts that the Respondent relied on estimated meter readings, resulting in an overcharge of approximately 2,951 kWh, and that this, together with the application of incorrect VAT and other adjustments, led to an overall overcharge. Invoices in the case file show the Applicant's apportioned share of these amounts across multiple billing periods between October 2018 and July 2021.

*The Respondent's Position*

29. The charges arise from supplier billing and meter estimation processes, and they are entitled under their Written Statement of Services to rely on estimated meter readings, and that obtaining actual readings was not reasonably practicable given the location of the meter beyond the development boundary and the associated health and safety considerations associated with the septic tank pump. They further state that any VAT errors were identified and corrected, and disputes that specific invoices demonstrating ongoing overcharging have not been established by the Applicant.

30. The Respondent in its submission asserts that the "*The Aeriel charges are too historical to form part of a claim."* The Respondent also states that this was all corrected on 10th May 2024.

*Alleged breaches*

31. Section 3.1 of the Code

### ( c) Issues with the Septic Tank

*Applicant's Position*

32. There were difficulties in arranging emptying of the septic tank, including access constraints and the need for an alternative contractor, and that more than one visit was required to complete the work. The Applicant maintains that the works were inefficient or avoidable. He also raises concerns regarding electricity monitoring and the effectiveness of maintenance arrangements associated with the septic tank.

*The Respondent's Position*

33. These issues are explained by practical and site-related factors. The Respondent claims it acted on the advice of specialist contractors in relation to the septic tank, any delays and difficulties arose due to practical constraints, including access issues. Alternative contractors were engaged where necessary, with works completed in June 2024, with costs apportioned accordingly.

*Alleged Breaches*

34. Section 6.4 of the Code

### (d) Failure to Resolve Complaints

*The Applicant's Position*

35. The Applicant submits that the Respondent failed to deal properly with his complaints, particularly in relation to incorrect television aerial/satellite charges. He provides evidence of repeated complaints over a number of years (2017–2022), including emails in which he disputes the charges and states that he paid under protest. He highlights that the Respondent acknowledged on multiple occasions that the charges should not have been applied, yet continued to

include them in subsequent invoices. He contends that this demonstrates a failure to address complaints fully.

*The Respondent's Position*

36. The Respondent maintains that it responded appropriately to complaints when raised. It relies on correspondence from 2017 and April 2021 acknowledging the issue, providing explanations, and confirming that credits would be applied. It further submits that the matter arose from accounting misallocation and was kept under review, culminating in a development-wide correction in May 2024. It also relies on its formal complaints response in August–September 2025, which was issued within the relevant timescales.

*Alleged Breaches*

37. Section 2.7 of the Code

## Tribunal Decisions and Reasons

### Tribunal Decision and Reasons in relation to Development Debt

38. The Applicant's claim for £148.07 relates to the loss of his float funds and the redistribution of outstanding arrears at the point of termination.

39. Section 3.5 of the Code states :"*If homeowners decide to terminate their arrangement after following the procedures laid down in the title deeds or in legislation, or the property factor decides to terminate the arrangement, a property factor must make the financial information that relates to their account available to the homeowners. This information must be provided within 3 months of termination of the arrangement unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services).*

40. The Respondent chose to terminate the arrangement and had advance notice and control over the termination process. In those circumstances, it ought to have taken steps to ensure that final financial information could be provided within the 3 month period. While some delay may be justified by ongoing recovery and reconciliation, we do not consider that these factors explain or justify the extent of the delay (approximately 6 months post-termination), final accounts were not provided until April 2025. In particular the ongoing recovery of debts reflects a process not completed prior to termination.

41. The applicant did not receive a timely and clear financial position at termination. Final accounts were issued significantly later than the 3 month requirement. The Respondent chose to terminate the arrangement and had advance notice of that decision and therefore should have been in a position to clearly set out any debts remaining to be paid within the expected timescale. In those circumstances, the delay cannot be justified solely by the complexity of reconciliation.

42. Section 4.9 of the Code states: *"A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation."* While the Respondent did provide notice of the existence and level of development debt in July 2024, there is no clear evidence that homeowners were made aware, prior to that point, of the overall scale of the debt or their potential liability for redistribution or that they were kept informed of their growing liability.

*43.* Paragraph 3.1 of the Code states : "*While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a property factor does not charge for services, the sections on finance and debt* *recovery do not apply."* This requires more than the provision of information at a single point in time. Homeowners must be placed in a position where they understand what they are being asked to pay for and can have confidence in the financial management of the development. Presenting the full extent of development debt only at termination, particularly where termination was initiated by the Respondent does not meet that standard.

44. The Respondent's assertion that "spread debt" occurred in earlier years is not supported by clear documentary evidence demonstrating that homeowners were informed of the scale or implications of the liability now attributed to them.

45. The Respondent's approach in offsetting the Applicant's float against liabilities shown on the final account , is consistent and they were entitled to do so, as outlined in Section 3.6 of the Code*: " Unless the title deeds specify otherwise, a property factor must return all funds due to homeowners (less any outstanding debts) automatically at the point of settlement of final bill, following a change of property factor."*

46. Paragraph 4.1 of the Code states: *" Non-payment by some homeowners may affect provision of services to others, or may result in other homeowners in the group being liable to meet the non-paying homeowner's debts in relation to the factoring arrangements in place (if they are jointly liable for such costs). For this reason it is important that homeowners are made aware of the implications of late payment and property factors have clear procedures to deal promptly with this type of situation and to take remedial action as soon as possible to prevent non-payment from escalating."*

47. This requires not only that a property factor has procedures in place, but that it takes remedial action as soon as possible to prevent non-payment from escalating. While the Respondent may have taken some recovery steps, including the use of Notices of Potential Liability, we do not see evidence that those steps were taken promptly or progressed sufficiently to prevent arrears building up over time. In particular, there is no clear evidence of early or decisive

escalation as the level of debt increased, including progression to more formal stages of recovery in a timely manner. The position reached at termination was that significant arrears remained and required redistribution, which indicates that escalation had not been prevented. We are not satisfied that the Respondent took remedial action "as soon as possible" to prevent non-payment from escalating.

48. Section 4.2 of the code states: *"It is a requirement of section 1 of the Code (written statement of services) that a property factor informs homeowners of any late payment charges and the property factor's debt recovery procedure is made available to homeowners."*

49. Paragraph 4.2 is concerned with whether the Respondent informed homeowners of late payment charges and made its debt recovery procedure available. The Respondent has done this through its Written Statement of Services and supporting materials, including its recovery policy and billing communications. The Applicant's complaint goes to the effectiveness of the recovery process and the outcome in this case, rather than whether that process was disclosed.

*50.* Section 4.9 and 4.10 of the Code state: " *4.9 A property factor must take reasonable steps to keep homeowners informed in writing of outstanding debts that they may be liable to contribute to, or any debt recovery action against other homeowners which could have implications for them, while ensuring compliance with data protection legislation.*

*4.10 A property factor must be able to demonstrate it has taken reasonable steps to recover unpaid charges from any homeowner who has not paid their share of the costs prior to charging other homeowners (if they are jointly liable for such costs). This may include providing homeowners with information on options for accessing finance e.g. for major repairs. Any supporting documentation must be made available if requested by a homeowner (subject to data protection legislation).*

51. Redistribution appears to have occurred as a consequence of the Respondent's decision to withdraw, rather than following the exhaustion of recovery options. While recovery action was initiated, and some payments have been received since termination, the evidence does not demonstrate that the collection steps set out in the Respondent's policy were fully progressed or exhausted prior to redistribution. In particular, there is no clear evidence that later stages of recovery were taken before the decision to spread the debt.

52. Section 3.7 of the Code states: **"***In cases where a property changes ownership, the property factor must confirm the process for repaying any funds that are due and presenting the final financial information relating to the account. This must be provided within 3 months of the property factor being made aware of the actual date of change in ownership (the date of settlement) unless there is a good reason not to (for example, awaiting final bills relating to contracts which were in place for works and services or the property factor has not been provided with the specified period of notice informing them of the change in ownership)."* This section applies specifically to the provision of financial information following a change of ownership of an individual property, and not to the termination of a factoring arrangement affecting a development as a whole.

53. Based on the evidence available we find there to be breaches of Sections 3.1,3.5,4.1, 4.9 and 4.10 of the Code.

**Tribunal Decision and Reasons in relation to Electricity and Aerial Charges**

54. Paragraph 3.1 of the Code states : "*While transparency is important in the full range of services provided by a property factor, it is essential for building trust in financial matters. Homeowners should be confident that they know what they are being asked to pay for, how the charges were calculated and that no improper payment requests are included on any financial statements/bills. If a*

*property factor does not charge for services, the sections on finance and debt recovery do not apply."*

55. The electricity charges arise from supplier billing and meter estimation processes, and there is no clear evidence that the Respondent was responsible for those calculations or failed to take appropriate corrective action when issues were identified. The Respondent submits, in its representations of April 2026, that it is entitled under its Written Statement of Services to rely on estimated meter readings, and that obtaining actual readings was not reasonably practicable given the location of the meter beyond the development boundary and the associated health and safety considerations. It further states that any VAT errors were identified and corrected, and disputes that specific invoices demonstrating ongoing overcharging have been established by the Applicant.

56. In these circumstances, the charges are more properly characterised as arising from supplier billing and estimation processes rather than any breach by the Respondent. In the absence of clear evidence that the Respondent was responsible for the alleged overcharge, or that any outstanding loss remained after corrective VAT adjustments, we are not satisfied any breach is established or that reimbursement of the sum claimed is appropriate.

57. In relation to the aerial/satellite charges the invoices provided do not demonstrate overcharging in the sense of incorrect pricing or duplication, the issue relates to the allocation of costs across the development. The Respondent also states that this was all corrected on 10th May 2024 and there is nothing to counter this.

**Tribunal Decision and Reasons in relation to issues with the Septic Tank**

58. *Section 6.4 of the Code states: " Where a property factor arranges inspections and repairs this must be done in an appropriate timescale and homeowners informed of the progress of this work, including estimated timescales for completion, unless they have agreed with the group of homeowners a cost*

*threshold below which job-specific progress reports are not required. Where work is cancelled, homeowners should be made aware in a reasonable timescale and information given on next steps and what will happen to any money collected to fund the work."*

59. The Applicant's complaint centres on delay, repeat contractor attendance and resulting costs. However, the evidence demonstrates that the Respondent arranged for contractors to attend and, when the original contractor was unable to complete the work due to access and ground conditions, took steps to engage an alternative contractor. The need for more than one visit and the delay in completion are explained by practical constraints, including restricted access to the site, rather than a failure to act. There is no clear evidence that the works were arranged outside an appropriate timescale, nor that the Respondent failed to keep homeowners reasonably informed of progress. While the Applicant maintains that the works were inefficient or avoidable, there is no evidence of any negligence, error, or failure to act by the Respondent.

**Tribunal Decision and Reasons in relation to Failure to Resolve Complaints**

60. *Section 2.7 of the Code states: "A property factor should respond to enquiries and complaints received orally and/or in writing within the timescales confirmed in their Written Statement of Services. Overall a property factor should aim to deal with enquiries and complaints as quickly and as fully as possible, and to keep the homeowner(s) informed if they are not able to respond within the agreed timescale."* The evidence demonstrates that the Respondent did respond to complaints when raised, provided explanations, and took steps to address the issue, including applying credits and ultimately correcting the charging structure. While the issue persisted over a considerable period, much of the complaint history predates the 2021 Code, and the persistence of the issue reflects a failure in service delivery rather than a failure to respond to complaints within the meaning of section 2.7.

61. The key point in this case is that the factor made a deliberate decision to withdraw its services unilaterally. In doing so, it had both advance notice and control over the timing of termination, and therefore a corresponding opportunity to ensure that debt recovery, financial reconciliation and communication with homeowners were properly addressed before exit. It is not reasonable for the factor to step away from the development in those circumstances, with the consequence that significant outstanding debt was redistributed among the remaining homeowners. This appears to be a situation that developed over time within the Property Factor's management and was not properly resolved before termination. Having considered the information in the case file, there is a lack of evidence demonstrating that all stages of the recovery process were followed in this case, particularly the issue of a 7-day demand letter by solicitors and the progression to court action where required. Information contained within the invoice to Mr Fleming (page 48 of the second factor response) details, *"30/04/24 BTO Solicitors LLP Legal costs for the recovery of debt £180.00".* While this may relate to legal recovery action, there is no evidence as to the nature of that work, and in particular no evidence that it relates to the issue of 7 day demand notices.

**Tribunal Decisions and Reasons in Relation to Compensation**

62. £148.07 relates to the applicant's claim for the loss of float and redistribution of historical debt, we don't accept the Respondent took all reasonable steps to pursue this matter and when it did take action, it was too late, therefore the Applicant is entitled to this money back.

63. The Respondent's failures in relation to transparency, debt management and communication caused the Applicant inconvenience and uncertainty over a prolonged period. Taking these matters into account, we consider that a compensatory award of £300 is reasonable and proportionate.

64. The total due to the applicant is £448.07 and a Property Factor Enforcement order will be made to reflect this.

65. Having decided that the property factors had failed to comply with the 2021

Code of Conduct and failed to comply with the property factor's duties, the Tribunal then considered whether or not to make a Property Factor Enforcement Order. The Tribunal noted that the homeowner had been engaged in correspondence with the property factors over a prolonged period and they should have understood that this situation would be exacerbated by any delay in responding to his complaints. Their failure to correctly reconcile individual home owners accounts correctly and attribute and explain former owner debts and take meaningful action in relation to this, mean they have breached the 2021 Code. Accordingly, the Tribunal proposes to make a Property Factor Enforcement Order in terms of the Section 19(2)(a) Notice attached to this Decision. The view of the Tribunal was that the level of compensation set out in the Notice is fair, reasonable and proportionate. The Tribunal is satisfied that the Applicant has been put to considerable inconvenience through the Respondent's failure to comply with the Code and carry out their property factor duties. The total due to the applicant is £448.07 and a Property Factor Enforcement order will be made to reflect this.

**Right of Appeal**

30. 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.

**B Black**
**Legal Convener**
**13th August 2026**