Housing and Property Chamber
First-tier Tribunal for Scotland

Written Decision and Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under section 19 of the Property Factors (Scotland) Act 2011

Reference number: FTS/HPC/PF/25/2776

Re: Property at 1 Riverside Gardens, Inverness, IV3 5TB ("the Property")

The Parties:

Mrs Joan McTaggart, Glen Islay, 5 Cocked Hat Wood, Culbokie, Ross-Shire, IV7 8JF ("the Applicant")

Newton Property Management limited, 87 Port Dundas Road, Glasgow, G4 0HF ("the Respondent")

Tribunal Members: Ruth O'Hare, Legal Member, and Nick Allan, Ordinary Member.

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) determined to dismiss the application.

Background

1 This is an application for a determination that the Respondent had failed to comply with the duty under section 14 of the 2011 Act in respect of their compliance with the Code of Conduct for Property Factors and the property factor's duties under section 17(5) of the 2011 Act.

2 The application was accepted as valid and referred to a tribunal for determination. A case management discussion took place on 14 April 2026 which both parties attended. Having heard submissions from the parties the tribunal determined to fix a hearing on the application which was scheduled for the 14 and 15 October 2026. The tribunal further determined to carry out an inspection of the development prior to the hearing.

3 On 1 June 2026 the Respondent provided submissions to the tribunal which highlighted a competency issue. In summary, the Respondent noted that Mr Alan McTaggart now appeared to be advancing the case which differed from the original application in which he was named as the Applicant's representative. The Respondent provided a copy of the title deeds for the property which evidenced that the Applicant was not the homeowner when the

application was made. The Respondent referred to the provisions of the 2011 Act which state that only a homeowner can make the application under section 17 of the 2011 Act. The application was therefore incompetent and should be dismissed.

4 On 8 June 2026 the Applicant's representative, Mr Alan McTaggart, provided submissions on the competency point. In summary, Mr McTaggart confirmed that the title deeds produced by the Respondent were correct. He confirmed that he was a joint owner of the property along with three of his children, all of whom were related to the Applicant. The ownership arrangements were put in place because of the Applicant's vulnerabilities. All communications with the Respondent were with Mr McTaggart. Mr McTaggart did not intend to deceive anyone and would accept the determination of the tribunal on this issue. If the application were to be dismissed, he would simply re-submit the application in his own name.

5 On 10 June 2026 the Respondent made further submissions objecting to any amendment of the parties to the application, pointing out that the application was incompetent at the time it was submitted and should have been rejected.

6 Following the CMD the application was allocated to a new Legal Member of the Tribunal. The Legal Member was made aware of the competency issue on 2 September 2026.

Reasons for decision

7 The tribunal has carefully considered the written submissions from both parties on the competency issue raised by the Respondent in this case and determined that it could proceed to a decision in the absence of a hearing. It is regrettable that this matter has only come to light once proceedings are at an advanced stage.

8 Section 17 of the 2011 Act states "*(1) A homeowner may apply to the First-tier Tribunal for determination of whether a property factor has failed—(a) to carry out the property factor's duties, (b) to ensure compliance with the property factor code of conduct as required by section 14(5) (the "section 14 duty").*"

9 That the Applicant was not the homeowner when the application was submitted to the Tribunal is not in dispute. As such the Applicant was not entitled to make the application to the Tribunal.

10 The tribunal considered whether Mr McTaggart, as a homeowner, could be substituted as the Applicant under Rule 32 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017. The tribunal has determined however that this would not remedy the defect in terms of the statutory requirements. Section 17 is clear that only a homeowner can make the application to the Tribunal. A homeowner did not do so in this case. It therefore falls that the application is incompetent and must therefore be dismissed.

11 The tribunal therefore determined to dismiss the application. For the avoidance of doubt this means that the inspection and hearing scheduled to take place on 14 and 15 October will no longer proceed.

12 The decision of the tribunal was unanimous.

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.

Ruth O'Hare **30 September 2026**

Legal Member **Date**