



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:HOHP/PF/17/0006

4 The Park, Victoria Road, Forres, IV36 3AH ('the Property')

The Parties:

Elizabeth Bruce and Ricardo Petrocelli ('the Homeowner')

James Gibb Residential Factors, 2 Thistle Street, Aberdeen, AB10 1XZ ('the Factor')

Committee members:

Jacqui Taylor (Chairperson) and Andrew Taylor (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has failed to comply with sections 1; 2.5; 5.6 and 5.7 of the Code of Conduct and the Property Factor's duties.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 23rd November 2012.
2. The Homeowner purchased his Property 4, The Park, Victoria Road, Forres, IV36 3AH on 10th February 2014. The title of the Property is registered in the land Register of Scotland under Title Number MOR7744. The Property is part of a development of nine properties. Grant and Wilson, trading as Bruce and Partners were the original property factors. James Gibb acquired the business of Grant and Wilson on 2nd March 2015. James Gibb have factored the Property since that date.
2. By application dated 6th January 2017 the Homeowner applied to the First- tier Tribunal (Housing and Property Chamber) for a determination that the Factor had failed to comply with the following sections of the Property Factor Code of Conduct ('The Code') and also failing to carry out the Property Factor's duties.

- Section1: Written Statement of Services.
Section 1
- Section 2: Communications and Consultation.
Sections 2.1, 2.2 and 2.5
- Section 3: Financial Obligations.
Sections 3.3 and 3.6a
- Section 5: Insurance.
Sections 5.2, 5.5, 5.6, 5.7 and 5.8
- Section 7: Complaints Resolution.
Section 7.2

3. The application had been notified to the Factor.

4. By Minute of Decision by Maurice O'Carroll, Convener of the First- tier Tribunal (Housing and Property Chamber), dated 11th January 2017, he intimated that he had decided to refer the application (which application paperwork comprises documents received on 9th January 2017) to a Tribunal.

5. An oral hearing took place in respect of the application on 23rd March 2017 at Forres House Community Centre, High Street, Forres, IV36 1BU.

The Homeowner appeared on their own behalf. The Factor was represented by Morgan Cooper, Operations Director.

Following the Hearing the Tribunal issued a Direction dated 2nd April 2017 (hereinafter referred to as 'The First Direction') which required the Factor to:

'Provide the Tribunal with further details and evidence of the tendering process carried out by their broker for the purposes of selecting an insurance provider for the block buildings insurance policy. The Tribunal acknowledged there may be some commercially sensitive information which cannot be divulged and consequently stated that they would accept anonymised details by naming the insurance companies A, B, C etc. The following details were requested:

1. *How many insurances companies were invited to provide quotations for the block insurance for the year to May 2017 ('the policy').*
2. *How many quotes were provided?*
3. *What were the insurance premiums and cover for each of the quotations?*
4. *Advise if a price/ quality selection matrix was used and if so what were the weightings and quality criteria.*
5. *What was the brokers commission paid for each of the quotations?*
6. *Identify the insurance company that the policy was placed with.'*

The parties provided the Tribunal with written representations in response to the Direction.

The details of the application and the parties' written and oral representations are as follows:

- Section 1: Written Statement of Services.

The Code of Conduct for Property Factors ('The Code') requires the Factor to provide their written statement of services to the Homeowner within one year of initial registration as a property factor. However it must be supplied before that time if they are requested to do so by the Homeowner.

The Homeowner's complaint:

The Factor acquired the property management business on 2nd March 2015. It delivered the Written Statement of Services to the Homeowner one year two months and three days later and the Development Schedule one year two months and fourteen days after that.

The Factor's response:

Morgan Cooper explained that the Written Statement of Services was provided to the Homeowner with the August 2015 newsletter. This was sent to the Homeowner electronically. The newsletter provided a link to the Factor's newsletter which also stated that written copies of the Written Statement of Services was available on request.

The Tribunal's Decision:

The Tribunal determined that the Written Statement of Services had not been provided to the Homeowner timeously.

Section 2: Communications and Consultation.

2.1: 'The Factor must not provide information which is misleading or false.'

The Homeowner's First complaint:

The Factor sent the Homeowner the RCA Report prepared by JE Shepherd in its original version and three later revisions. All versions of the report contained errors. In particular their Property is valued at £277,500. However they have provided a Home Report dated 2013, which values the Property at £220,000.

The Factor's response:

The errors contained in the report prepared by JE Shepherd were not false details provided by the Factors.

The Home Report provided by the Factor was dated 2013. Also the Home Report valuation was not as comprehensive as the report prepared by JE Shepherd as it does not include VAT or common parts in the rebuild valuation.

The Tribunal's Decision:

The Tribunal determined that the Factor was not responsible for the errors in the report by JE Shepherd. Consequently the Tribunal determined that the Factor had not breached Section 2.1 of the Code, in relation to the Homeowner's first complaint.

The Homeowner's Second Complaint:

The letter from the Factor to the Homeowner dated 30th August 2016 contained details that were misleading and false. The letter detailed JE Shepherd's explanation of the errors in their RCA report.

The Factor's response:

A large number of surveys were instructed by them. Many of the valuations were carried out without doing individual valuations of particular properties. There is not a majority of owners unhappy about the valuation method that was used.

The Tribunal's Decision:

The Tribunal determined that there was no intent on the part of the Factor to give information that is misleading or false. Consequently the Tribunal determined that the Factor had not breached Section 2.1 of the Code in relation to the Homeowner's second complaint.

The Homeowner's Third Complaint:

On 14th August 2016 the factor informed the Homeowner that the applicable value of their property was £482,105.25 which was 11.011% of the total premium resulting in an annual charge for their property of £914.28. They insisted several times that this valuation was wrong. It was not until 1st September 2016 when the Factor advised that Homeowner that the valuation had been revised to £277,500 or 7.184% of the new premium. Had they not persisted in having the valuation corrected they would be paying £388.25 too much for their buildings insurance policy.

The Factor's Response:

Morgan Cooper confirmed that when the revised property valuation was provided the insurance premium was recalculated. The Factor cannot be held responsible for the errors in JE Shepherd's report.

The Tribunal's Decision:

The Tribunal determined that the Factor cannot be held responsible for the errors in the report by JE Shepherd. Consequently the Tribunal determined that the Factor

had not breached Section 2.1 of the Code in relation to the Homeowner's third complaint.

The Homeowner's Fourth Complaint:

The revised rebuild valuation of £277,500 is wrong. The correct valuation is between £225,000 and £230,000. Ricardo Petrocelli, one of the Homeowners, explained that he is a qualified civil engineer and he used online guidance to calculate the rebuild valuation of his Property. The valuation on this basis is £190,000. They continue to be over insured.

The Factor's Response:

Morgan Cooper explained that the Homeowner's property is a very individual property. It is constructed of both granite and sandstone. She doubted if an online system could be used to determine the correct rebuild valuation of a property of this kind.

The Tribunal's Decision:

The Tribunal accepted that the Factor relied on the surveyor to provide the rebuild valuation of the Property. The Factor cannot be held responsible for any inaccuracies in the rebuild valuation. Consequently the Tribunal determined that the Factor had not breached Section 2.1 of the Code in relation to the Homeowner's fourth complaint.

The Homeowner's Fifth Complaint:

The Factor sent the Homeowner an email dated 7th September which stated:

'Following a meeting of owners at the Park it was agreed and accepted by a majority of owners that this cover would be arranged by James Gibb for the development as a whole, please see attached email ..'

This is false as there was not and there is not any commitment with James Gibb to provide the insurance for 2016/2017.

The Factor's Response:

The email of 7th September cannot be taken in isolation. Since the original developer appointed a property factor in 2005 there has been a block insurance policy. The Title deeds of the property state that there must be a common insurance policy. The residents EGM meeting voted to maintain the block policy. James Gibb had provided the block insurance policy for the development in the previous year and were asked to continue to provide it. The statement is not false as there was a commitment to remain with James Gibb for the provision of the block buildings insurance policy.

The Tribunal's Decision:

The Homeowner provided a copy of the minute of the meeting of the residents of the Park held on 1st July 2016. The sole purpose of the meeting was to vote on whether to opt out of the block buildings insurance policy. The Minute of the Meeting states that the majority vote was to keep the block insurance. Consequently the Tribunal determined that the Factor had not breached Section 2.1 of the Code in relation to the Homeowner's fifth complaint.

2.4: 'You must have a procedure to consult with the group of homeowners and seek their written approval before providing work or services which will incur charges or fees in addition to those relating to the core service. Exceptions to this are where you can show that you have agreed a level of delegated authority with the group of homeowners to incur costs up to an agreed threshold or to act without seeking further approval in certain situations (such as emergencies).

The Homeowner's First Complaint:

The Factor has taken important decisions regarding the insurance policy and they have not consulted with any of the proprietors. They proceeded at their own discretion and did not follow the Homeowner's requests and suggestions.

The provision of the block insurance policy is not a core service provided by the Factor. When it is time for the policy to be renewed the Factor does not have an appropriate procedure.

The Factor's Response:

Morgan Cooper explained that the Factor's do have procedures for consulting with the owners. Section 6 of the Written Statement of Services details the procedure.

The Tribunal's Decision:

The Tribunal accepted that the Factor had arranged the common buildings insurance policy as a result of custom and practice until the arrangement was formally endorsed by the residents meeting held on 1st July 2016. The Minute of that meeting states that the majority vote was to keep the block insurance policy. Consequently the Tribunal determined that the Factor has not breached section 2.4 of the Code in relation to the Homeowner's first complaint.

The Homeowner's Second Complaint:

The Homeowner did not consider that VAT should be included in the rebuild valuation. The inclusion of VAT resulted in a higher rebuild valuation and also a

higher premium. VAT was added to the rebuild value this year without consulting the owners on the change in policy.

At the hearing the Homeowners accepted that his complaint regarding the VAT is not relevant to clause 2.4 of the Code.

The Factor's Response:

The insurance was arranged by the broker for the full portfolio of the Factor's properties, in accordance with brokers, insurers and HMRC guidelines. VAT was added at 20% to part of the costs should a rebuild become necessary. It is imperative to the integrity of their business that they do not under insure any property. Inclusion of VAT was not optional.

The Tribunal's Decision:

The Tribunal determined that the matter of including VAT in the insurance rebuild value is not a breach of section 2.4 of the Code.

2.5: 'You must respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond. Your response times should be confirmed in the written statement.'

The Homeowner's First Complaint:

Their email to the factor dated 28th June 2016 was replied to on 30th June 2016. However the Factor did not respond to all of the points in the email.

The Factor's Response:

As the Homeowner does not reside in the UK and is not writing to the Factor in UK time, emails sent by the Homeowner will not be seen by the Factor until the next working day. Consequently a response issued on 30th June to an email sent on 28th June is reasonable.

The Tribunal's Decision:

The Tribunal considered the email from the Homeowner to the Factor dated 28th June 2016. That email stated, in summary:-

- The Homeowner considers that his insurance premium is too high.
- Email from the Factor dated 16th March 2016 stated that the Factor would comment on this matter once they have the Chartered Surveyor's valuation. The Factor has had the valuation for some time but they have not heard from the factor on this point.

- Taking account the insurance premium due is the rebuild value of their property divided by the rebuild value of the development; the floor area of their property is per the floor plan they provided; the new Chartered Surveyors valuation has been provided.
- The correct charge should be £84.73 and not £136.66 per quarter.
- They asked for the wrong invoice to be cancelled and a spreadsheet to be provided detailing all the overpayments made since they moved into the property in February 2014.
- There is another error re. electricity charges which they asked to be corrected.

The Factor's reply dated 30th June 2016 referred to the fact that the owners had called an EGM to discuss the buildings insurance. They explained that if the owners stay with the Factors the buildings insurance premium will be charged quarterly in arrears instead of annually in advance. The other matters in the Homeowner's email were not replied to.

Consequently the Tribunal determined that the Factor had breached Section 2.5 of the Code.

The Homeowner's Second Complaint:

The Homeowner explained that they considered that the Factor had delayed in attending to the insurance requirements.

At the hearing the Homeowner accepted that his complaint is not relevant to clause 2.5 of the Code.

The Factor's Response:

Morgan Cooper explained the insurance cover was in place.

The Tribunal's Decision:

The Tribunal determined that the alleged delays are not a breach of section 2.5 of the Code.

The Homeowner's Third Complaint:

The Homeowner wrote to the Factor on 12th August and asked the Factor to answer their insurance related questions. On the same day the Factor replied saying 'Please find attached the insurance certificate as requested. I advise that our figures are correct, however, will ask our Operations manager on her return from annual leave...'

The insurance certificate was issued on 21st July 2016. Only a few days later it was proven that the certificate and the calculations that led to it had been totally wrong.

The Factor's Response:

The Factors accepted that the figures needed to be amended and were subject to review. They provided a full response on 30th August. The delay was due to the Operations Manager being on annual leave.

The Tribunal's Decision:

The Tribunal determined that the alleged delays are not a breach of section 2.5 of the Code as the delays was due to the Operations Manager being on annual leave.

3.3: 'You must provide homeowners, in writing at least once a year (whether as part of billing arrangements or otherwise) a detailed financial breakdown of charges made and a description of the activities and works carried out which are charged for. In response to reasonable requests, you must also supply supporting documentation and invoices or other appropriate documentation for inspection or copying. You may impose a reasonable charge for copying, subject to notifying the homeowner of this charge in advance.'

The Homeowner's Complaint:

The Homeowner explained that he never received an annual statement.

The Factor's Response:

Morgan Cooper explained that the financial details were provided in the quarterly invoices.

The Tribunal's Decision:

The Tribunal determined that the quarterly invoices comply with section 3.3 of the Code and there is no obligation on the Factor to provide an additional annual statement.

3.6a: '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.'

The Homeowner's Complaint:

At the hearing the Homeowner explained that he agreed that the float is not a sinking fund.

The Factor's Response:

Morgan Cooper confirmed that the funds held are a float.

The Tribunal's Decision:

The Tribunal determined that section 3.6a of the Code does not apply to a float.

5.2: 'You must provide each homeowner with clear information showing the basis upon which their share of the insurance premium is calculated, the sum insured, the premium paid, any excesses which apply, the name of the company providing insurance cover and the terms of the policy. The terms of the policy may be supplied in the form of a summary of cover, but full details must be available for inspection on request at no charge, unless a paper or electronic copy is requested, in which case you may impose a reasonable charge for providing this.'

The Homeowner's complaint:

The Factor refused to provide information of the floor areas of flats 1, 2 and 5. This information may affect the validity of the report by JE Shepherd. Without this information they cannot verify the final calculations. He also considers that the Factor has not obtained competitive quotes and the commission received by the factor is very high.

The Factor's response:

They are not in a position to provide additional information relating to neighboring properties. The Homeowner has had sight of the reports from which the development valuations and cover is based. They are communicating with the Homeowner as an individual owner. The Homeowner is not acting on behalf of others.

Morgan Cooper explained that the insurance development schedule has been provided to the Tribunal and the Homeowner. She acknowledged that the Factor receives commission on the buildings insurance policy. However she emphasized that they receive a share of the broker's commission and the commission that is paid has no effect on the premium.

The Tribunal's Decision:

The insurance details required by section 5.2 of the Code have been detailed in the insurance schedule that the Factors have provided. The Tribunal determined that the Factor has not breached of section 5.2 of the Code.

5.3: 'You must disclose to homeowners, in writing, any commission, administration fee, rebate or other payment or benefit you receive from the company providing insurance cover and any financial or other interest that you have with the insurance provider. You must also disclose any other charge you make for providing the insurance.'

The Homeowner's First complaint: The Factor has stated that 'they share the commissions earned by the broker and explained that no additional commissions are earned.' Full details of the commercial and economical intricacies of the block insurance policy have not been provided.

The Factor's response: The information is detailed in the Written Statement of Services (item 7.5) and the Development Schedule under section 9.

The Tribunal's Decision: The commission details required by section 5.3 of the Code have been provided by the Factor, as follows:-

(i) Section 9 of the Written Statement of Services states:

'Our broker's commission for the provision and management of insurance products is normally around 22.5% of net premium, plus a standard brokerage fee of 2.5%. James Gibb residential factors do not take any further commissions on top of this. Each year, a share of the broker's commission is negotiated and awarded to James Gibb residential factors. The agreed split has, of course, no effect on your premium.'

(ii) Following the hearing the Tribunal issued the Direction dated 2nd April 2017. In response to that Direction Douglas C Weir, Chief Executive of the Factor provided further written submissions which included the Placement Authorisation Form in connection with the block insurance policies placed through Marsh, their chosen insurance broker. The Placement Authorisation Form detailed the commission split allocated to the Factor of 28.5% of the Property Premium and 17.5% of the Engineering Premium.

(iii) The said further written submissions by Douglas C Weir also stated:

'It is important to note, at this point, that we do not take any commission beyond that taken by the broker. We negotiate a share of their own commission. This ensures the customer is in no way affected by the amount of commission we earn. This is simply a matter between us and the broker.'

Consequently the Tribunal determined that the Factor has not breached of section 5.3 of the Code.

The Homeowner's Second Complaint: The Factor has not obtained the prior approval of the Homeowners to add VAT to the rebuild insurance valuation.

At the hearing the Homeowner accepted that VAT had to be added to the rebuild insurance valuation and accordingly they wish to withdraw this complaint.

The Factor's Response: VAT was added in accordance with brokers, insurers and HMRC guidelines.

The Tribunal's Decision:

As the Homeowner withdrew this complaint the Tribunal determined that the Factor has not breached of section 5.3 of the Code.

5.6: 'On request, you must be able to show how and why you appointed the insurance provider, including cases where you decided not to obtain multiple quotes.'

The Homeowner's complaint: The Factor has not demonstrated how and why they appointed the insurance provider.

The Factor's response: Insurance cover was tendered for by various brokers and providers and the best value policies for cover and terms was put in place for their developments. This was communicated in their newsletters. They have considerable purchasing power due to the size of their total portfolio of properties they manage.

The Tribunal's Decision:

As a preliminary matter section 5.6 of the Code requires the Homeowner to have requested the Factor to show how and why they appointed the insurance provider selected by them. This request underlies the extensive correspondence and emails between the parties. In particular the email from the Homeowner to the Factor (responded to by Brenda Troup on 20th September 2016) specifically requests that the Factor show the Homeowner how and why they appointed the insurance provider selected by them.

As previously explained following the hearing the Tribunal issued the First Direction. In response to the First Direction Douglas C Weir sent the Tribunal written representations which stated *inter alia*:

- They took over the business of Grant and Wilson residential factors in March 2015. On acquisition they determined that Grant and Wilson had various brokers and insurers and staged renewal dates. They embarked on discussions to streamline insurance arrangements as they wanted to reduce the number of brokers/ insurance companies and have one renewal date of 28th May.
- During this process they invited three brokers (Marsh, Mackays and Bruce Stevenson) to quote on a like for like basis for the combined portfolio. They asked the brokers to test the market with up to three insurers and provide their best premium for the combined portfolio.
- Eight insurance companies quoted in total.
- Each broker was given all key information to allow them to quote on a like for like basis for the combined portfolio. This included development addresses, number of units, building type, quoted declared values, claims history etc. The instruction to each broker was clear- to seek quotations based on the information given and provide a premium quotation which included broker's commission.

- From November 2015 Insurance Premium Tax for all policies increased from 6% to 9.5%. Consequently a 3.5% increase would be applied before any increase in premium.
- Consequently they were delighted to accept a renewal quote that was only 2.24% greater than the combined existing policies. This was in effect a reduction in the overall premium.
- They asked each broker to return their most favorable package to them. Three quotations received were:
 - Marsh/ Allianz- 2.24% increase in premium compared to 2015.
 - Mackays/ RSA- 2.37% increase in premium compared to 2015.
 - Bruce Stevenson/ LV- 3.51% increase in premium compared to 2015.
- They accepted the Marsh quote as they delivered best value for customers in terms of price and service.
- At the bidding stage, the only financial information relevant to them was the overall premium as that is what affects the clients' payments. As such, no commission share discussions with other brokers were considered relevant.
- The overall historic commission levels, in the 'acquired' portfolios have not increased since their acquisition. In fact, they have decreased slightly due to their highly competitive quotations.

The Tribunal determined that the Factors' representations did not answer the following questions that were detailed in the Direction:

- '3. What were the insurance premiums and cover for each of the quotations?*
- 4. Advise if a price/ quality selection matrix was used and if so what were the weightings and quality criteria.*
- 5. What was the brokers commission paid for each of the quotations?'*

The Factor had only provided details of the 'best' quotation. Details of all of the quotations requested in points 3, 4 and 5 of the Direction were not provided. Section 5.6 of the Code of Practice states that the Factor must 'show how and why you appointed the insurance provider'.

The Tribunal issued a Second Direction dated 5th June 2017 ('The Second Direction'), in the following terms:

'The Factor is Directed to provide the Tribunal with the following details and evidence for each of the eight/ nine quotations:-

- (a) What were the insurance premiums and cover for each of the quotations?***
- (b) What was the brokers commission paid for each of the quotations?***

(c) If selection of the successful quotation was not made on the basis of the lowest price advise if a price/ quality selection matrix was used and if so what were the weightings and quality criteria.

The Tribunal acknowledges there may be some commercially sensitive information which cannot be divulged and consequently will accept anonymised details by naming the insurance companies A, B, C etc.

The said details and evidence to be produced to the Tribunal by 19th June 2017.

The Factor is given notice that if the required details and evidence are not produced the Tribunal will consider drawing an adverse inference from the failure to provide them.'

In response to the Second Direction Douglas C Weir sent the Tribunal written representations dated 16th June 2017 which stated *inter alia*:

- **What were the insurance premiums and cover for each of the quotations?**

The quotations provided covered one lump sum for the whole of their portfolio (780 developments). As such this information is commercially sensitive and irrelevant to this case. He provided details of the premium from each broker for the Park. He stated that he could not provide the premium from all of the insurers asked to quote as each broker was only asked to provide him with their single best deal from the quotes they received. The cover provided was essentially the same in each case with no broker offering more or less than the others in the standard areas of cover. However Marsh included additional cover for removal of wasps and bees nests, replacement of locks and keys and tree felling and lopping.

- **What was the brokers commission paid for each of the quotations?**

Each broker quoted one lump sum price for the combined portfolio. This included overall insurance premium, broker's fee, commissions etc. but didn't break it down at this stage. Our overall focus was the overall cost to the owners. Once we identified the best value deal, we then drilled down the constituent figures, provided by our chosen broker, and negotiated a share of the commissions taken by the brokers. This of course, has no effect on the cost to the owner.

- **If selection of the successful quotation was not made on the basis of the lowest price advise if a price/ quality selection matrix was used and if so what were the weightings and quality criteria.**

Our chosen broker, Marsh, did actually deliver the best price for our customers but it wasn't the only factor taken into consideration. Equally important is the level of service received from the insurers in the event of a claim, including their approval of claims, quotes etc. Historically we have found the Allianz process to be the smoothest..... In summary we were delighted that Marsh/ Allianz were able to deliver both on price and service.

The Tribunal determined that the Factor did not provide the detailed information requested in points 3, 4 and 5 of the First Direction and the Factor did not provide details of all of the quotations requested in points (a), (b) and (c) of the Second Direction. The Factor's response was a summary without providing the details requested. The Tribunal were most concerned that the Property Factor chose not to provide the information specifically requested in the said Directions.

Section 5.6 of the Code of Practice states that the Factor must 'show how and why you appointed the insurance provider'. Accordingly the Tribunal determined that the Factor has not complied with section 5.6 of the Code.

5.7: 'If applicable, documentation relating to any tendering or selection process (excluding any commercially sensitive information) should be available for inspection, free of charge, by homeowners on request. If a paper or electronic copy is requested, you may make a reasonable charge for providing this, subject to notifying the homeowner of the charge in advance.'

The Homeowner's complaint: The Factor has not provided documentation relating to any tendering or selection process of the insurance provider and premium cost.

The Factor's response: As previously advised, insurance cover was tendered for by various brokers and providers and the best value policies for cover and terms was put in place for their developments.

The Tribunal's Decision:

As the Factor has only provided details of the successful tenders the Factor has not provided complete documentation of the tendering and selection process. Details of all the tenders has not been provided. Accordingly the Tribunal determined that the Factor has not complied with section 5.7 of the Code.

5.8: You must inform homeowners of the frequency with which property revaluations will be undertaken for the purposes of buildings insurance, and adjust this frequency if instructed by the appropriate majority of homeowners in the group.'

The Homeowner's complaint: The Written Statement of Services states that the revaluations will take place every three years. They were not advised in advance that the revaluation would be carried out externally. There was no consultation with the homeowners regarding cost or process.

The Factor's response: There is an obligation on the Factor to ensure that the Property is insured. There was no valuation report on the file and no report verifying the base valuation. The homeowners were advised that a revaluation would be

carried out in their Newsletter dated Autumn 2015 and the Factor's letter of 2nd June 2016. These were both issued to the Homeowner with their quarterly invoices which were paid by the Homeowner.

The Tribunal's Decision: The Factor's newsletter dated Autumn 2015 explained that the revaluation would be carried out and stated their intention to introduce any revised declared values in the following years premiums. The Factor's letter dated 2nd June 2016 advised that RICS Guidance suggests that surveys should be carried out every three years but their insurers only require them to be carried out every five years. They explained that they have no information as to how the base valuation had been arrived at and gave details of the valuation carried out by J & E Shepherd Chartered Surveyors. Accordingly the Tribunal determined that the Factor has complied with section 5.8 of the Code.

7.1: You must have a clear written complaints procedure which sets out a series of steps, with reasonable timescales linking to those set out in the written statement, which you will follow. This procedure must include how you will handle complaints against contractors.

The Homeowner's complaint: The Homeowner accepted that the Factor has a complaints procedure in place.

7.2: 'When your in-house complaints procedure has been exhausted without resolving the complaint, the final decision should be confirmed with senior management before the homeowner is notified in writing. This letter should also provide details of how the homeowner may apply to the Housing and Property Tribunal.'

The Homeowner's complaint: The correct procedure was not followed by the Factor in relation to the Homeowner's complaints.

The Factor's response: The Factor's complaints procedure guide details the procedure to be followed. The correct procedure was followed. All complaints are reviewed by the factor's chief executive on a quarterly basis.

The Tribunal's Decision: The letter from the Factor to the Homeowner dated 28th November 2016 was sent by Morgan Cooper the Factor's Operations Director. The letter explained the Factor's response to the Homeowner's complaint and explained that if the Homeowner 'remained unhappy they could formally record their complaint with a relevant external body (e.g. Home Owners Housing Panel).' Accordingly the Tribunal determined that the Factor has complied with section 7.2 of the Code.

Alleged Breach of Property Factor Duties:

The Homeowner's complaint: The Factor has a duty of care to provide competitive insurance. The commission they receive is not transparent. The Homeowner

explained that he should not have to fight for these rights. They are victims of the Factor following their usual working practice.

The Factor has a duty to react timely. They failed to do this. They were late in taking the necessary steps to arrange the revaluation and the communal buildings policy.

The Factor's response: The errors that were made in arranging the revaluation of the property were made by the surveyor. They were not responsible for these errors. The insurance policy always remained in place. The policy did not lapse.

In response to the Second Direction Douglas C Weir summarized that during the 2016 renewal process, where they consolidated a range of diverse insurers/broker, he spent an enormous amount of time negotiating a deal which saw better value, better premiums and a consistent quality of service throughout their portfolio.

The Tribunal's Decision:

The Tribunal accepts the Homeowners submission that the Factor has a duty to provide competitive insurance. In terms of section 17(4) of the Property Factors (Scotland) Act 2011 the Factor is required to carry out property factor's duties to a reasonable standard.

The Factor has not provided the detailed information requested in paragraphs 3, 4 and 5 of the First Direction or paragraphs (a), (b) or (c) of the Second Direction. This detailed information is required to enable the Tribunal to determine if the Factor had arranged competitive insurance. The Tribunal gave the Factor notice in the Second Direction that if the required details and evidence are not produced the Tribunal will consider drawing an adverse inference from the failure to provide them.

As the detailed information was not provided by the Factor the Tribunal are taking an adverse inference from the failure to provide this information. Accordingly the Tribunal determined that the Factor has breached the Property Factor's duties.

Property Factor Enforcement Order.

In all of the circumstances narrated above, the Tribunal finds that the Factor has failed in its duty under section 17(1)(b) of the 2011 Act, to comply with Sections 1; 2.5; 5.6 and 5.7 of the Code of Conduct and the Property Factor's duties.

The Tribunal therefore determined to issue a Property Factor Enforcement Order.

In considering the terms of the proposed Property Factor Enforcement Order the Tribunal were aware that the Homeowner had provided details of alternative insurance quotations in their representations. However no evidence was produced to the Tribunal demonstrating that the cover provided by the alternative quotations were in identical terms to the insurance arranged by the Factor. The Homeowner detailed in their application that they estimated the additional insurance premiums to amount to £660 for years 2015/2016. The actual insurance premiums charged for 2015 were

£546.64 and for 2016 were £526.04. In considering the amount of payment to award the Tribunal are required to consider such amount as they consider to be reasonable (section 20(1) Property Factors (Scotland) Act 2011). The Tribunal consider that a compensation payment of £550 to be reasonable taking account of the particular sections of the code and the Property Factor's duties that have been breached and the stress and frustration caused to the Homeowner by the lack of transparency of the Factor with regards to the insurance arrangements.

Section 19 of the 2011 Act requires the Tribunal to give notice of any proposed Property Factor Enforcement Order to the Property Factor and allow parties an opportunity to make representations to the Tribunal.

The Tribunal proposes to make the following Order:

'James Gibb Residential Factors are directed to pay the Homeowner £550 as compensation from their own funds and at no cost to the owners. The said sums to be paid within 28 days of the communication to them of the Property Factor Enforcement Order'

Appeals

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.

J Taylor

Signed

Date 12th July 2017

Chairperson