



Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) issued under section 26 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').

Chamber Ref:FTS/HPC/PF/17/0466

Flat 2, 85 South Oswald Street, Edinburgh, EH9 2HH ('the Property')

The Parties:

Andrew Paxton residing at Flat 2, 85 South Oswald Street, Edinburgh, EH9 2HH ('the Homeowner')

Hacking & Paterson Management Services, 103 East London Street, Edinburgh, EH7 4BF ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Frances Wood (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor:- (1) has failed to comply with section 2.1 of the Code of Conduct and (2) has not failed to comply with to comply with sections 5.2, 5.6, 5.7 and 7.2 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 31st March 2016.
2. The Homeowner purchased his property **Flat 2, 85 South Oswald Street, Edinburgh, EH9 2HH** on 20th July 2016. The title of the Property is registered in the Land Register of Scotland under Title Number MID1057731.

The Property is approximately ten years old and is part of a development of eleven properties.

Hacking and Paterson have factored the Property for over five years.

2. By application dated 7th December 2017 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 following sections of the Property Factor Code of Conduct ('The Code') and also the following Property Factor's duties.

- Section 2: Communications and Consultation.

Sections 2.1 and 2.5

- Section 5: Insurance.

Sections 5.2, 5.6 and 5.7

- Section 7: Complaints Resolution.

Section 7.1 and 7.2

3. The application had been notified to the Factor.

4. By Minute of Decision by Patricia Pryce, Convener of the First-tier Tribunal for Scotland (Housing and Property Chamber), dated 28th January 2018, she intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 8th December 2017 to 26th January 2018) to a Tribunal.

5. An oral hearing took place in respect of the application on 12th April 2018 in George House, 126 George Street, Edinburgh, EH2 4HH.

The Homeowner appeared on his own behalf. The Factor was represented by Gordon Douglas, a Director of Hacking and Paterson.

As a preliminary matter the Chairperson advised the parties that the proceedings could not be recorded.

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

Section 2: Communications and Consultation.

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

The Homeowner's First complaint:

The Homeowner's written representations:

'Based on what was documented in the owner minutes from 1 September 2016, he was expecting to be involved in selecting next insurance cover, but this never happened.'

The Homeowner's oral representations:

Andrew Paxton explained that following the owner's meeting on 1st September 2016 he had been left with the impression that he would be involved in the next insurance renewal. However he acknowledged that this was not explicitly stated.

The Factor's response:

The Factor's written representations:

Minute of 1 September 2016 (Paxton Documents Supporting Tribunal Application, document No 2) states that "Mr Andrew Paxton wanted to review quotes for insurance cover as the sum assured seemed high and it was agreed that H&P should arrange for a building surveyor to provide an estimate for the full reinstatement cost to the building" Wiseman Associates Ltd Chartered Building Surveyors, were instructed by HPMS on behalf of the homeowners.

The Tribunal's Decision:

The Tribunal determined that the fact the Homeowner had been left with the impression that he would be involved in the next insurance renewal was not a breach of section 2.1 of the Code.

The Homeowner's Second complaint:

The Homeowner's written representations:

On 24 April 2017 he was advised "a majority vote has been achieved in favour of proceeding with the new reinstatement value". On 15 August 2017 he was advised "we have not received instructions from a majority of homeowners to make these alterations".

The Homeowner's oral representations:

Andrew Paxton referred the Tribunal to the two emails from the Factor dated 24th April and 15th August which contained the contradictory statements.

The Factor's response:

The Factor's written representations:

They acknowledged this error, however HPMS did not intentionally or deliberately issue false or misleading information. HPMS issued incorrect information regarding authorisation to increase the building sum insured in line with the Surveyor's recommendations. HPMS acknowledged this error in their letter to the homeowner dated 15 August 2017 (Paxton Documents Supporting Tribunal Application, document No 18) and offered their apologies for any confusion that this had caused the Homeowner.

The Factor's oral representations:

Gordon Douglas acknowledged the error made and explained that it had not been made intentionally.

The Tribunal's Decision:

The Tribunal acknowledged that the Factor had made an error in providing the conflicting information. They accepted the evidence of Gordon Douglas that the incorrect information had not been provided deliberately. The Tribunal noted that the

Factor had apologized to the Homeowner in their letter dated 15th August 2017. Accordingly the Tribunal determined that there had been no breach of section 2.1 of the Code as the error that had been made had not been deliberate.

The Homeowner's Third complaint:

The Homeowner's written representations:

The minutes from the owners meeting on 7 September 2017 written by H&P stated "GD confirmed the broker receives a commission from the insurer in the sum of 25%". He requested this to be corrected on 6 October to reflect what had previously been advised and stated in the Terms of Service and Delivery Standards – "Commission equivalent to 25% of the pre-tax premium is received by HPMS". H&P declined to change the minutes, leaving owners misled.

The Homeowner's oral representations:

The Homeowner explained that at the meeting held on 7th September 2017 the Minute recorded that the broker receives 25% commission but he had been left with the impression that the Factor receives this 25% commission. He was trying to ensure that the Factor corrected the Minute to clarify that it is the Factor that receives 25% commission. However he accepted that he cannot produce evidence of what was said at the meeting or of any sum received by the Factor from the Broker.

The Factor's response:

The Factor's written representations:

HPMS were requested by the Homeowner to change the minute to reflect "GD confirmed that H&PMS receives a commission from the insurer in the sum of 25% and is responsible for handling most of the administration of the policy" (Paxton Documents Supporting Tribunal Application, document No 23). As this is not accurate and HPMS do not receive commission directly from the insurance provider, no change was made to the minute to include this incorrect information.

The Factor's oral representations:

Gordon Douglas advised that any correction to the Minute would be done at the next meeting.

The Tribunal's Decision:

As the Homeowner had not produced evidence of what had been said at the meeting on 7th September 2017 the Tribunal were unable to make a determination on this point.

The Homeowner's Fourth complaint:

The Homeowner's written representations:

On 2 October 2017 H&P stated "I can confirm that a (standalone) quote has now been received". On 10 October H&P stated "that we are currently unable to provide an alternative rate, via our broker, for the homeowners".

The Homeowner's oral representations:

The Homeowner confirmed that he had received a credit of one quarter's management fees. He commented that it had been paid as a goodwill gesture and had not been requested and had not addressed the issue.

The Factor's response:**The Factor's written representations:**

They acknowledged this error, however HPMS did not intentionally or deliberately issue false or misleading information. HPMS in their letter dated 1 February 2018 (HPMS submission a) acknowledged that incorrect information was provided regarding a standalone quote and that in recognition of this an apology was offered along with a credit of the sum equivalent to one quarter's management fee, to the Homeowners' account.

The Factor's oral representations:

Gordon Douglas acknowledged that this error had been made and they had credited the Homeowner's account with a sum equivalent to one quarter's management fees.

The Tribunal's Decision:

The Tribunal determined that the Factor had breached section 2.1 of the Code as incorrect information had been provided in relation to the standalone quote. However as the Factor had already paid compensation to the Homeowner of a sum equivalent to one quarter's management fee they determined that no order would be made in relation to this breach.

The Homeowner's Fifth complaint:**The Homeowner's written representations:**

On 10 October H&P stated "that we are currently unable to provide an alternative rate, via our broker, for the homeowners." Our new standalone insurance cover (at a 55% discount) was arranged through the same broker that H&P stated were unable to quote.

The Homeowner's oral representations:

The Homeowner acknowledged that he had not produced the standalone policy to the Tribunal. He explained that he had a copy with him. The Chairperson explained that the Tribunal could only accept the copy of the standalone policy with the consent of the Factor as it had not been produced within 7 days of the hearing. Gordon Douglas advised that he was not prepared to consent to the copy being produced. Consequently the chairperson advised that the Tribunal were unable to accept the copy.

The Factor's response:

The Factor's written representations:

The position regarding the existing insurance arrangement at that time was confirmed in HPMS letter to the Homeowner's dated 10 October 2017. (Paxton Documents Supporting Tribunal Application, document No 22). HPMS were not provided details on the new insurance arrangements placed by the Homeowner therefore HPMS were not able to pass this information onto their broker to consider the matter further.

The Factor's oral representations:

Gordon Douglas made no further representations in relation to this point.

The Tribunal's Decision:

As the Homeowner had not produced a copy of the standalone policy that had been arranged by the Homeowners the Tribunal were unable to make a determination on this point.

The Homeowner's Sixth complaint:

The Homeowner's written representations:

Wrong calculation of premium rate, which was not changed despite advising of the error.

The Homeowner's oral representations:

The correct rate is 16p per £100. This is the rate of 14.5p plus the premium tax. The letter dated 10th October 2017 from David Jones, the Factor's Property Manager, to the Homeowner stated that their broker had confirmed that the current rate of 0.145p per £100 was a competitive rate. This statement is incorrect. The rate is £0.145 or 14.5p.

The Factor's response:

The Factor's written representations:

HPMS provided details on the homeowners' individual share of the insurance payable through HPMS' quarterly invoicing. They attached a standard invoice (HPMS Submission b) showing the Homeowners share to be apportioned correctly.

The Factor's oral representations:

Gordon Douglas explained that the incorrect figure of 0.145p was a typographical error and it was not intended to be misleading.

The Tribunal's Decision:

The Tribunal accepted Gordon Douglas' evidence to the effect that the incorrect figure of 0.145p was a typographical error and it was not intended to be misleading and determined that there had been no breach of section 2.1 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:

H&P's complaints procedure states following timescales:

- Step 1 – 7 working days
Complaint raised 31 May 2017 – H&P advised on 7 June that they needed until 16 June to provide full response.
Response on 15 June was a partial response.
Their full response provided on 28 June which was well beyond the promised response time and did not fully address his complaints.
- Step 2 – 14 working days
He never got into this as three requests to move to Stage 2 were ignored by the Property Manager – 17 June, 22 June and 27 June.
- Step 3 – 14 working days
On 3 July I wrote to three directors (Responsible/Relevant Persons) to see if they would intervene. They elected to pass my letter to the Property Manager. Clearly could not care less.

The Homeowner's oral representations:

At the hearing the Homeowner advised the Tribunal that he wished to withdraw this part of his application.

The Factor's response:

The Factor's written representations:

HPMS advised the Homeowner that due to the wide-ranging topics covered and that information was required from third parties further time would be required. This was intimated to the Homeowner within five working days. As HPMS awaited further information from third parties, rather than delay the matter further, a partial response was issued excluding information from our broker and a building surveyor. On receipt of this information a further letter was issued to the homeowner along with copies of the information requested. (Paxton Documents Supporting Tribunal Application, document No 5, 6 & 9).

As it was clear that HPMS were not going to be able to resolve the Homeowners' complaint at stage 1, and to enable us to quantify and fully understand the complaint and what was required to resolve the same, they moved the complaint to stage 2 with an application for formal complaint resolution issued to the Homeowner on the 4 July 2017, this form was not returned to them by the Homeowner (HPMS submission c). A letter was issued to the Homeowner appealing to him to allow them to fully understand his complaint and what was required from them to resolve the same. (Paxton Documents Supporting Tribunal Application, document No 12).

As HPMS do not consider that their complaints process could progress correctly and that they were not afforded the opportunity to respond in the early stages without the Homeowner determined to escalate his complaint through HPMS formal complaint

handling procedure, they believe that the steps taken by us satisfies our obligations here.

The Factor's oral representations:

Gordon Douglas made no further representations on this point.

The Tribunal's Decision:

The Tribunal made no determination as the Homeowner had withdrawn this part of his application.

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 Homeowner's written representations:

While H&P provided a summary sheet showing his 8.4% share of the premium as £730.76, he had requested details of what the premium was for the development and how this was determined as part of an undisclosed portfolio.

Despite repeated attempts to get the information, all H&P provided was the following statement on 31 October, including an incorrect insurance rate:

"The policy that is in place forms part of the LV portfolio, which includes other property and this information was confirmed in our previous letters to homeowners. While your property forms part of a larger portfolio, it is as previously advised by us on a standalone rating. As stated in our letter issued to homeowners on the 10th October 2017, our broker has confirmed that your current rate of 0.145p per £100 insured is a competitive rate in a hardening market and offers the homeowners an appropriate premium and level of cover".

The Homeowner's oral representations:

The summary of cover provided by the Factor does not show how the premium is calculated. It does not explain how the premium for the development is set.

The Factor's response:

The Factor's written representations:

Whilst HPMS's insurance renewal letter of 12 June 2017 (HPMS submission d) detailed the singular apportioned share of the insurance premium payable by the Homeowner, HPMS quarterly invoice details how the share is calculated, which the Homeowner will know as he is the title holder. They provided a copy of a standard invoice (HPMS submission b) showing the Homeowner's share apportioned on a percentage basis.

The Factor's oral representations:

The insurance for this development is a standalone policy. Their broker goes to the market and gets a premium based on the details of this particular property. The policy is not affected by the insurance claims of other properties in the portfolio.

The Tribunal's Decision:

The Factor's quarterly invoice dated 9th November 2017 shows that the Homeowner is charged 8.4% of the total premium of £2174.87 resulting in the share of the premium due by him of £182.69. The letter from the Factor to the Homeowner dated June 2017 advised that the sum insured is £5,435,098.09 and the apportioned policy premium is £730.76.

The summary of cover provided with the letter dated June 2017 detailed:

- The name of the insurance company: London Victoria.
- The excesses payable: Private excess: £150; common excess £150 and water damage £250.
- The terms of the policy.

Consequently the Tribunal determined that the Factor has provided the Homeowner with all the insurance details stipulated in section 5.2 of the Code. The fact that the Factor has not provided details of the premium charged for the whole portfolio is not a breach of section 5.2 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 Homeowner's written representations:**

Inadequate justification provided when requested. The Property manager provided no evidence to justify the selection of the insurance broker other than to say "due to the service provided". There is no mention of access to competitive insurance

The Homeowner's oral representations:

The Homeowner clarified that he asked the Factor how they select a broker to work with in his email dated 2nd April 2017.

The Factor's response:**The Factor's written representations:**

Where the Homeowner has requested that HPMS show how the insurance provider is appointed, HPMS have done so. An example of the letter sent to the homeowner from Bluefin (Paxton Documents Supporting Tribunal Application, document No 6 & 9) is attached.

The Factor's oral representations:

Gordon Douglas explained that the Homeowner is querying how the Factor appoints the broker and the insurance provider. However the Code only states that they have to show how and why the insurance company is provided. The appointment of their broker Bluefin is a private business arrangement.

The Tribunal's Decision:

The Tribunal noted that the Factor had sent the Homeowner a letter from Bluefin headed 'Buildings Insurance Renewal 31st May 2017.' That letter explains that they had undertaken an annual review of the insurance arrangements and they continually monitor and review the insurance market for suitable pricing, therefore ensuring that renewal premiums and cover stay competitive. They had full discussions with the market which resulted in positive responses from Zurich, Axa, Allianz and Liverpool Victoria. They chose Liverpool Victoria as their premium was a 2.4% increase and 3.6% index linking to apply to the sum assured. They explained that the key factors in selecting Liverpool Victoria are:

Rating

- A credit rated insurance company
- Excellent policy coverage
- An insurer who is well established in writing residential blocks of flats insurance
- A delegated in-house claims authority model that provides a quality service and understanding
- Competitive premium payment terms (with no additional costs applicable).
- Continuity of insurance company.

Consequently the Tribunal found that the Factor had shown the Homeowner how and why the insurance company Liverpool Victoria had been appointed. Section 5.6 of the Code does not require the Factor to show how and why they appointed their insurance broker. Accordingly the Tribunal determined that the Factor had not breached the terms of 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 Homeowner's written representations:

Nothing useful provided. Two non-specific letters provided by Bluefin were included with H&P's letter of 28 June 2017.

The Homeowner's oral representations:

The Homeowner accepted that he had not specifically asked the Factor to provide copies of the documents explaining why they had selected the broker.

The Factor's response:

The Factor's written representations:

HPMS letter dated the 28 June 2017 (Paxton Documents Supporting Tribunal Application, document No 9) which included a letter from Bluefin, confirmed details on the tendering process and provided the homeowner with details on the tendering process (excluding any commercially sensitive information).

The Factor's oral representations:

Gordon Douglas advised that he had nothing to add.

The Tribunal's Decision:

As the Homeowner had not specifically asked the Factor to provide copies of the documents explaining why they had selected the broker the Tribunal determined that they were unable to consider if there had been a breach of section 5.7 of the Code in relation to providing documentation relative to the selection process of the broker.

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's written representations:

He could not see any reference on how H&P handle complaints against contractors on their relevant webpage <https://www.hackingandpaterson.co.uk/customer-support/complaints/>. Also to take 7 months to get a reinstatement valuation carried out is ridiculous. The report generated by the surveyor lacked basic detail, had no surveyor's name and was undated. H&P see nothing wrong with this unprofessional report and he believes they raised no complaint.

The Homeowner's oral representations:

The Homeowner explained that he wished to withdraw this section of his application.

The Factor's response:

The Factor's written representations:

HPMS written statement 'Core Factoring Services' point 4 confirms "Investigating complaints of inadequate work or service from contractors or service suppliers and pursuing them to remedy these. (Paxton Documents Supporting Tribunal Application, document No 1). In addition to this commitment we also handle complaints against contractors we deploy on behalf of our homeowner clients using the same complaint process as detailed on our website under Complaints). (HPMS submission e).

We refer to HPMS letter of the 15 June 2017 which outlined the timeline of events relating to the appointment of a surveyor on behalf of the homeowners and the action taken by HPMS following the initial request from homeowners. (Paxton

Documents Supporting Tribunal Application, document No 6). Further correspondence from the surveyor was then provided to the homeowner along with our letter of the 28 June 2017 (Paxton Documents Supporting Tribunal Application No 9).

The Factor's oral representations:

Gordon Douglas made no oral representations in relation to this complaint.

The Tribunal's Decision:

The Tribunal made no determination as the Homeowner had withdrawn this part of his application.

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 Homeowner's written representations:

He could not get to this step as H&P slowed down the process and would not accept his position that their procedure had been exhausted/failed.

The Homeowner's oral representations:

The Homeowner explained that he had nothing further to add.

The Factor's response:

The Factor's written representations:

HPMS' letter of the 1 February 2018 was issued and considered as their final response. The letter was issued by an HPMS Director and provided details to the Homeowner of how he may apply to First-tier Tribunal for Scotland (Housing and Property Chamber). (HPMS submission a).

They believe the aforementioned satisfies HPMS' obligations here.

The Factor's oral representations:

Gordon Douglas made no oral representations in relation to this complaint.

The Tribunal's Decision:

The Tribunal determined that the Factor's letter dated 1 February 2018 met the requirements of section 7.2 of the Code.

Alleged Breach of Property Factor Duties:

The Homeowner's First complaint:

The Homeowner's written representations:

Failure to disclose that common buildings insurance was being arranged under an undisclosed portfolio policy with a resulting higher risk rating and premium rate than would be obtained on a standalone basis. Real benefit of the portfolio insurance is to make less work for H&P and Bluefin.

Quotes obtained by homeowners were significantly lower than provided by H&P. Actual insurance taken out by homeowners on 1 December 2017 has a premium rate 45% of that arranged by H&P.

Same comment on premiums being around twice as high obtained directly. Insurance brokers approached directly provided quotes from companies not included in H&P quotes.

H&P appear to be the policyholder and recharging insurance to homeowners. Policy number given to him was recognised by LV although this is claimed insurer.

The Factor did not get a standalone quote despite having mandate from homeowners. It is unclear if one was sought and chosen not to be shared (conflicting written email and letter).

The Homeowner's oral representations:

The Homeowner accepted that he has not produced evidence to demonstrate his assertion that the common insurance policy arranged by the Factor was not competitive.

The Factor's response:

The Factor's written representations:

We refer to our letter of dated the 10th October 2017, which confirmed the insurance arrangements in place at the time. We also refer to the letter from our broker which we previously issued to you providing details on how the policy had been marketed. (a copy of these letters is attached for your convenience).

As Factor, we commit to "Placing insurance cover through HPMS's broker, where appropriate...", as outlined in our Written Statement. That is the extent of our involvement in the process and as such we are unable to comment here. As we were not provided with details of the quotes obtained by the homeowners, our broker is not able to consider the matter further.

The policy was held in the name of the Co-Proprietors and Bondholders in possession per Hacking and Paterson Management Services.

Their broker confirmed that Liverpool Victoria were the insurance provider prior to the homeowners taking the decision to terminate the arrangement. All the policy documentation including the policy number was provided by Liverpool Victoria. This included access to a dedicated claims line through which they are aware homeowners raised claims.

The Factor's oral representations:

Gordon Douglas referred the Tribunal to the written representations and had nothing further to add.

The Tribunal's Decision:

The Tribunal were unable to determine this alleged breach of property factor's duties as no evidence had been produced to demonstrate that the common insurance policy that had been arranged by the Factor was not competitive.

The Homeowner's Second complaint:

The Homeowner's written representations:

While disclosing the mandated 25% commission received by H&P from Bluefin, they failed to disclose how this might impact insurance premiums due to excluding certain insurance companies and driving up premiums.

The letter from H&P explaining how Bluefin were selected made no reference to competitive insurance.

The Homeowner's oral representations:

The Homeowner accepted that he has not produced evidence to demonstrate his assertion that the common insurance policy arranged by the Factor was not competitive.

The Factor's written representations:

They provided a letter from their broker which clarified details on how the policy was marketed along with arrangements for payment of the declared commission.

The Factor's oral representations:

Gordon Douglas referred the Tribunal to the written representations and had nothing further to add.

The Tribunal's Decision:

The Tribunal were unable to determine this alleged breach of property factor's duties as no evidence had been produced to demonstrate that the common insurance policy that had been arranged by the Factor was not competitive.

The Homeowner's Third complaint:

The Homeowner's written representations:

No proper justification had been provided by the Factor as to how Bluefin were selected and how often this decision is reviewed. It is clear Bluefin see H&P as the customer, not the homeowners. Other property factors he works with are far more open about the broker relationship and the broker communicates with the homeowners.

The Homeowner's oral representations:

The Homeowner accepted that he has not produced evidence to demonstrate his assertion that the common insurance policy arranged by the Factor was not competitive.

The Factor's written representations:

As the financial industry including insurance, is very heavily regulated through the Financial Conduct Authority, Hacking and Paterson Management Services is a registered Property Factor with the Scottish Government, registration number PF000288. HPMS is not an insurance broker and have never made an application to the Financial Conduct Authority as such. HPMS do not have the personnel for appropriate ongoing training, qualifications and expertise to "sell" insurance in a

regulated financial industry and we cannot approach insurers directly. Our Terms of Service and Delivery Standards statement "Core Factoring Services" point 16 states that we commit to "Placing insurance cover through HPMS's broker, where appropriate..." and while there is no requirement or duty to confirm why we choose to transact business through our chosen broker, they remain confident that Bluefin provide their clients with appropriate guidance on creating insurance solutions that best protect their assets, revenues and lifestyle. Bluefin are one of the UK's leading brokers employing over 1400 staff based in offices across the country. Bluefin place over 500 million of insurance premium and have a huge buying power in the insurance market and are backed by AXA UK plc, part of one of the largest financial service companies in the world.

The Factor's oral representations:

Gordon Douglas referred the Tribunal to the written representations and had nothing further to add.

The Tribunal's Decision:

The Tribunal were unable to determine this alleged breach of property factor's duties as no evidence had been produced to demonstrate that the common insurance policy that had been arranged by the Factor was not competitive.

The Homeowner's Fourth complaint:

The Homeowner's written representations:

The Factor is unwilling to show how the premium for 85-89 South Oswald Road is established from overall portfolio insurance premium. Despite asking how his development's share of the portfolio insurance cost was determined. He was given a very generic response with no supporting evidence or calculation.

The Homeowner's oral representations:

The Homeowner accepted that he has not produced evidence to demonstrate his assertion that the common insurance policy arranged by the Factor was not competitive.

The Factor's written representations:

They are not entirely clear on what is meant by this statement, but they refer again to their letter of the 10th October 2017 confirming the policy rating per £100 insured. The premium is calculated using a rate of £100 insured. If for example a property is insured for £5,000,000 and the rate is £0.18 per £100 insured, you would apply 0.18% to the £5,000,000 resulting in a premium of £9,000.00. In addition to the premium all insurance is subject to the current rate of Insurance Premium Tax. The premium is then apportioned amongst the homeowners in accordance with their Deed of Conditions.

They refer to the letter? from Bluefin, which provides clarification on how the policy was marketed at renewal. They apologised if their explanation on how the premium was calculated was unclear. The premium is calculated by multiplying the insurance rating against the sum insured for the property, then applying Insurance Premium Tax. The premium is then apportioned amongst the homeowners in accordance with the Deed of Conditions, with his apportioned share of the premium detailed in the

body of his quarterly common charges account. They referred to a copy of the letter issued to the Homeowner in June 2017 detailing the premium and his calculated share of the same.

The position concerning the insurance, following the meeting of homeowners, was confirmed in their letter of the 10 October 2017. They did however acknowledge that our Mr David Jones incorrectly advised him by email that a quote had been obtained by his broker, which was not the case. In recognition of this error, they arranged to credit his common charges account with the sum of £45.30 which equates to one quarter's management fee.

The Factor's oral representations:

Gordon Douglas referred the Tribunal to the written representations and had nothing further to add.

The Tribunal's Decision:

The Tribunal were unable to determine this alleged breach of property factor's duties as no evidence had been produced to demonstrate that the common insurance policy that had been arranged by the Factor was not competitive.

The Homeowner's fifth complaint:

The Homeowner's written representations:

To secure competitive common buildings insurance for owners or under the factor's duty of care, He would expect the Factor to advise owners that they are arranging insurance as a service and that there is no assurance that the premium secured is competitive. In his case, the insurance obtained was more than double the competitive market.

The Homeowner's oral representations:

The Homeowner accepted that he has not produced evidence to demonstrate his assertion that the common insurance policy arranged by the Factor was not competitive.

The Factor's response:

The Factor's written representations:

As Factor, they commit to "Placing insurance cover through HPMS's broker, where appropriate...", as outlined in their Written Statement. That is the extent of their obligation to the Homeowner. Although they requested details of the quotes obtained by the Homeowner, they were not provided with them and therefore their broker is not able to consider the matter further. They had provided evidence from the broker to the homeowner illustrating the tendering process. (Paxton Documents Supporting Tribunal Application, document No 6 & 9).

The Factor's oral representations:

Gordon Douglas referred the Tribunal to the written representations and had nothing further to add.

The Tribunal's Decision:

The Tribunal were unable to determine this alleged breach of property factor's duties as no evidence had been produced to demonstrate that the common insurance policy that had been arranged by the Factor was not competitive.

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 section 2.1 of the Code. However as the Factor had already paid the Homeowner compensation the Tribunal determined that they would not issue a 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.

Signed Date 23rd April 2018

Chairperson