



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/17/0398

9 Ascot Court, Glasgow, G12 0BB ('the Property')

The Parties:

William Westhead residing at 9 Ascot Court, Glasgow, G12 0BB ('the Homeowner')

Redpath Bruce, Crown House, 152 West Regent Street, Glasgow, G2 2RQ ('the Factor')

Tribunal members:

Jacqui Taylor (Chairperson) and Mike Links (Ordinary Member).

Decision of the Tribunal

The Tribunal determines that the Factor has not failed to comply with to comply with sections 5.2, 5.3, 5.6, 5.7, 6.3, 6.6, 6.7 and 6.8 of the Code of Conduct.

The decision is unanimous.

Background

1. The Factor's date of registration as a property factor is 7th December 2012.
2. The Homeowner is heritable proprietor of the property 9 Ascot Court, Glasgow, G12 0BB. The title of the Property is registered in the Land Register of Scotland under Title Number GLA53565. The Property is a top floor flat in a block of nine properties and it is approximately thirty five years old. Redpath Bruce have factored the Property since it was built.
3. By application comprising the original application dated 21st October 2017 and subsequent documents received in the period 24th October 2017 to 15th February 2018, the Homeowner applied to the First-tier Tribunal 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 5: Insurance.
Sections 5.2, 5.3, 5.6 and 5.7
- Section 6
Sections 6.3, 6.6, 6.7 and 6.8

4. The application had been notified to the Factor.
5. By Minute of Decision by Patricia Pryce, Convener of the First- tier Tribunal, dated 19th February 2018, she intimated that she had decided to refer the application (which application paperwork comprises documents received in the period 24th October 2017 to 15th February 2018) to a Tribunal.
6. An oral hearing took place in respect of the application on 24th April 2018 in The Glasgow Tribunals Centre, Room 1, 20, York Street, Glasgow, G2 8GT

The Homeowner attended the hearing and the Factor was represented by Robert Campbell, Director, and Karen McDermid, Associate Director.

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:

The Homeowner in his application explained that the basis of his complaint is that he received two alternative insurance quotes for £7195.52 and £8929.21 for like for like policies. The Redpath Bruce Quote is £11723.91.

He provided generic written representations as follows:

'The Factor has failed to comply with the Code of Conduct by accepting an exorbitant insurance quote and using ridiculous comparisons for using alternative quotes that were supplied to them; not supplying information and proof of quotes that they have; accepting existing contracts without tendering for alternative quotes and when requesting other quotes, he was informed that a majority of owners were necessary.'

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 oral representations:

At the hearing the Homeowner advised that on reflection the Factor has complied with this section of the Code.

The Factor's response:

The Factor's written representations:

Clear information has been provided to you on the basis of the allocation of premiums and the sum insured. The proportionate share of the premium is indicated on the half yearly invoices at 3.5%. Accordingly, based on a sum insured for the building of £8,805,622.73 on Day 1, your flat would be insured for £308,196.79 in the event of a total loss. Enclosed are copies of documentation issued with the November 2017 invoices, i.e a Summary of Cover, Schedule of Insurance, Broker Statement and Key Facts document.

The Factor's oral representations:

Robert Campbell confirmed that the common insurance policy was renewed with Victoria Liverpool in November 2017.

The Tribunal's Decision:

The Tribunal determined that the Factor has complied with 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 oral representations:

At the hearing the Homeowner also advised that on reflection the Factor has complied with this section of the Code.

The Factor's response:

The Factor's written representations:

As required in compliance of the Code of Conduct, commissions are disclosed on the Key Facts document 6.4 outlines what you will have to pay our firm for services i.e. current remuneration in respect of insurances as by way of commission and this will not exceed 25% of the gross premium, payable net of Insurance Premium Tax.

The Factor's oral representations:

Robert Campbell explained that the required documents have been provided.

The Tribunal's Decision:

The Tribunal determined that the Factor has complied with section 5.3 of the Code.

The Factor's response:

The Factor's written representations:

Where work of a substantial nature is necessary, competitive estimates are secured and passed to individual proprietors for information and instructions. Major work to common property is only undertaken once we have sufficient agreements and/ or funding in place from the individual proprietors.

The Factor's oral representations:

Robert Campbell explained that the letter from Scottish Brokers dated 25th October 2017 provided a summary of the position regarding the quotes obtained from the various insurance companies. Giant was asked to provide a quote but they declined to do so. He acknowledged that the details of the other quotes were not provided but he confirmed that all of the companies were asked to quote on a like for like basis and he explained that the commissions paid by the various companies would be the same.

He also explained that the Deed of Conditions for the development permits individual owners to arrange their own insurance. This would have to be agreed by a majority of the owners and the owners would have to ensure that the building was adequately insured.

In any event he explained that he does not believe that section 6.6 applies to the arrangement of common insurance policies. It only applies to carrying out repairs and maintenance.

The Tribunal's Decision:

The Tribunal determined that this section of the Code does not apply to the Homeowner's complaint as it relates to carrying out repairs and maintenance.

6.7: 'You must disclose to homeowners, in writing, any commission, fee or other payment or benefit that you receive from a contractor appointed by you.'

The Homeowner's oral representations:

The Homeowner explained that the Factor has not disclosed the commission they receive.

The Factor's response:

The Factor's written representations:

No commissions or fees or other payments or benefit are received from the various contractors employed by Redpath Bruce Property Management in carrying out common repairs. Redpath Bruce have no financial interest in the various firms used to provide works or services to common property. Enclosed is a copy of our property specific Statement of Services, which confirms this fact.

The Factor's oral representations:

Robert Campbell confirmed that they do not receive commission on arranging common repairs.

The Tribunal's Decision:

The Tribunal accepted the evidence of Robert Campbell to the effect that the Factor does not receive commission on arranging common repairs and determined that there has been no breach of Section 6.7 of the Code.

6.8: You must disclose to homeowners, in writing, any financial or other interests that you have with any contractors appointed.'

The Homeowner's oral representations:

The Homeowner explained that on reflection this section of the Code does not apply to his complaint.

The Factor's response:

The Factor's written representations:

As indicated in the previous section, Redpath Bruce have no financial interest in firms of contractors or suppliers who carry out works of a common nature in properties under management.

The Factor's oral representations:

Robert Campbell explained that he had nothing to add.

The Tribunal's Decision:

The Tribunal determined that this section of the Code does not apply to the Homeowner's complaint as it relates to carrying out repairs and maintenance.

Alleged Breach of Property Factor Duties:

The Homeowner's written representations:

The Homeowner stated in his application that he believes the Factor has failed in the following duties:

- To obtain multiple quotes for services and insurance.
- Supplying biased and self serving information to owners.
- Not supplying information and prices of quotes requested.
- Unilaterally accepting quotes because you have used the companies before.

He explained that the reasons for believing this are:

- He had tried to obtain information for quotes and prices for the current year. His requests were ignored.
- He was asked to supply quotes for the coming year because his concern at the cost of the current policy. Redpath Bruce were then supplied with two quotes that had a like for like basis. The quotes were from notable insurance companies and broker.
- Redpath Bruce tried to get around this by saying that their policy differences. This was reported to the broker and he informed him that he had instructed the insurance companies to make the policies exactly the same.

- He feels that paying £3500 more for the same thing is ridiculous.
- The reason for this he assumes is because they are receiving 23% commission from their choice of insurance company.

The Homeowner's oral representations:

The Homeowner explained that he had contacted Holland Insurance Brokers and they had provided two common insurance quotes for his development. The premiums were £7195.52 and £8929.21. Both quotes are inclusive of insurance tax. The quotation at the premium of £8929.21 was from Giant. Consequently he is very surprised that the Factor has advised that Giant refused to provide a quotation to the Factor's broker.

The Factor sent the Homeowner an email dated 27th September 2017 which explained that they can send his quotation to the homeowners in the development but they would highlight the following:

- Unoccupancy condition- cover restriction after 30 days- LV unoccupancy condition only applies if the entire building is empty.
- LV policy does not restrict cover in respect of letting.
- No CJJ judgements of any resident- LV policy does not have this restriction.
- No criminal records of any resident- LV policy does not have this restriction.
- Enhanced buildings definition- The LV building definition has been extended.
- No storm damage to fences cover.
- No matching items.

The Homeowner does not consider these differences to be good and substantial reasons and he does not think that it validly explains why the Factor's quotation is £3500 more than his quotation.

The Factor's response:

The Factor's oral representations:

Robert Campbell explained that if the owners wish to insure the building under a different arrangement it would be necessary for a majority of the owners to instruct the change to the common insurance arrangements. He confirmed that the insurance they arrange is part of the insurance arranged for the company's whole property portfolio.

The Tribunal's Decision:

The Homeowner's written representations state the Factor has failed in the following property factor duties:

- To obtain multiple quotes for services and insurance.
- Supplying biased and self serving information to owners.
- Not supplying information and prices of quotes requested.
- Unilaterally accepting quotes because they have used the companies before.

The Homeowner's oral representations were to the effect that he considers that the Factor is under a duty to provide the cheapest common insurance policy.

The Homeowner did not provide any evidence to the effect that the Factor is under an obligation to comply with these duties. Neither the Written Statement of Services nor the title deeds for the Property contain any requirement on the Factor to comply with these duties.

However the Written Statement of Services does state that the Factor will provide common insurance through an independent insurance broker, where appropriate. Further, 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.

Whilst the Tribunal accepts the Homeowner's evidence that he was able to obtain quotes that were £3500 cheaper than the common insurance policy arranged by the Factor as he did not provide the Tribunal with a copy of the proposed cheaper policies the Tribunal were unable to determine the differences between those policies and the policy arranged by the Factor. Consequently they were unable to determine whether or not the Factor has acted reasonably in arranging the common insurance policy with Liverpool Victoria, in light of the cheaper quotations obtained by the Homeowner.

Therefore the Tribunal are unable to determine if the Factor has breached the property factor's duties detailed in the Homeowner's application.

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.

Jacqui Taylor

Signed Date 13th May 2018

Chairperson