

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Section 17(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/24/1474**

**Property: 4 Lochend Butterfly Way, Edinburgh EH7 5BF (“the Property”)**

**The Parties:-**

**Mr Kiril Ivanov, 4 Lochend Butterfly Way, Edinburgh EH7 5BF (“the homeowner”)**

**Residential Management Group Scotland Limited, registered in Scotland under the Companies Acts (SC591810) and having their registered office at Unit 5, 95 Morrison Street, Glasgow G5 8BE (“the property factors”)**

**Tribunal Members: George Clark (Legal Member/Chairman) and Sara Hesp (Ordinary Member)**

### **Decision**

**The First-tier Tribunal for Scotland Housing and Property Chamber determined that the property factors have failed to comply with Section 5.3 of the Property Factors Code of Conduct effective from 16 August 2021 and have failed to comply with the property factor’s duties. The Tribunal does not propose to make a Property Factor Enforcement Order.**

### **Background**

1. By application, dated 2 April 2024, the homeowner sought a Property Factor Enforcement Order against the property factors under the Property Factors (Scotland) Act 2011 (“the Act”). He alleged failures to comply with OSP2, OSP3, OSP6, and OSP 11 and Sections 2.1, 2.7, 5.1, 5.3, 5.4, 5.5, 6.1, 6.6 and 7.2 of the Property Factors Code of Conduct effective from 16 August 2021 (“the 2021 Code”), and a failure to carry out the property factor’s duties. The homeowner later added a failure to comply with Section 5.8 of the 2021 Code.

At the Hearing held on 18 November 2024, the homeowner advised the Tribunal that his remaining complaints related only to issues regarding insurance. Accordingly, the Tribunal considered the application only under Section 5 of the 2021 Code and failure to carry out the property factor's duties.

2. The homeowner's complaint, in summary, is that owners were given no notification of significant increases in insurance charges or of a change in insurance provider. In a formal complaint emailed to the property factors on 5 December 2023, the homeowner stated that, upon reviewing the latest invoices from the property factors, he had been shocked to discover a significant increase in the insurance premium without any prior notice or explanation. The Act clearly stated that property factors are required to consult and obtain the agreement of homeowners before incurring any significant costs on their behalf. This included buildings insurance charges, which should be discussed and agreed upon in advance. The owners did not receive any communication from the property factors regarding the impending increase. The homeowner requested a detailed breakdown of the factors leading to the rise in building insurance charges and an explanation of any modifications to the policy or external factors influencing the premium increase along with a clear and transparent justification for the lack of consultation.
3. On 5 January 2024, the property factors replied to the homeowner's email. They stated that they had been required to instruct block buildings insurance at very short notice as the previous insurer was no longer holding the policy. They apologised sincerely for the fact that this had resulted in the policy being placed prior to owners being made aware, but they had to ensure the building had adequate insurance in place. The full year's policy charge had been applied to owners' accounts, but the property factors had written to owners to ask that anyone wishing to discuss their account to contact them so that they could agree payment terms.
4. The homeowner had not been satisfied that the property factors' response adequately covered the requests in his original email.
5. The homeowner stated that he had been placed at a financial disadvantage without being given an option to choose from insurance providers or being given notice of a significant charge. He wanted the property factors to write off the insurance charges.
6. The homeowner provided the Tribunal with a copy of the property factors' Written Statement of Services ("WSS").
7. On 9 August 2024, the property factors made written representations to the Tribunal. They stated that the developer had initially placed the block insurance, but on 3 November 2022, the property factors received an email from the

developers advising that Places for People, who currently placed the insurance cover were, from January 2023, going to cancel the policy and the property factors would have to make arrangements for a new policy. The property factors use an insurance broker, who goes to market to obtain the best possible policy for owners. There are limited insurers who have the ability to offer terms on large block insurance policies. They instructed the broker to seek cover from 31 January 2023. Due to rebuild costs and the construction methods used in the block, the brokers had difficulty in finding any insurers to offer terms. The property factors provided copies of email correspondence with the brokers, including answering queries regarding the method of construction, the insulation material used and the panelling around balconies.

8. The brokers advised on 29 January 2023 that Zurich were the only insurers on their panel that would offer terms, due to the rebuild costs and the construction methods that had been used. Cover was then placed on 31 January 2023.
9. The insurance invoice was billed to owners on 10 July 2023 and the property factors advised owners that payment plans could be set up to settle the invoice rather than paying it off in one lump sum.
10. The property factors accepted that there might have been a minor breach of the 2021 Code, in that owners were not advised up front of the insurance cost for 2023, but this was due to the urgency of getting insurance in place. For 2024, owners had been advised in advance of the upcoming cost.
11. The property factors referred to their WSS, which states that they do not receive any commissions on insurance beyond a share of the brokers' standard commission. They are able to do this by taking some of the administrative work in-house. They had advised the homeowner of the standard commission in an email of 25 April 2024, in response to his complaint. They stated in that email that they were not prepared to refund the insurance charges, as having cover in place was required by the Deed of Conditions for the development, but, as an acknowledgment that communication could have been better in relation to the 2023 policy and as a gesture of goodwill, they were prepared to offer two quarters' management fees by way of compensation for any inconvenience caused. They confirmed that their commission was 5% of the premium.
12. The property factors' written representations also included a copy of a circular letter of 17 January 2024, detailing the process that had been gone through regarding insurance renewal for the forthcoming year, advising of the renewal premium due by the homeowner and offering an instalment payment option. If the homeowner did not respond by 29 January 2024, the property factors would take it that he agreed to a lump sum payment.
13. A Case Management Discussion was held on 6 September 2024. The homeowner confirmed that he was still not satisfied with the property factors'

response, and the Tribunal decided to continue the case to a full evidential Hearing. It issued a Direction to the property factors to provide a copy of the Minutes of a Residents' Meeting of 10 January 2024. They emailed this to the Tribunal on 25 September 2024. The Minutes related primarily to matters which were no longer part of the homeowner's complaint, but confirmed that the property factors had issued details of the insurance renewal costs for 2024/2025 between 16 and 18 January 2024 and asked owners if they would prefer to make a one-off payment or pay in instalments. The owners of 99 of 127 properties had responded and, as regards the remainder, the property factors would apply the costs as a one-off payment in Invoices for January to March 2024.

14. On 7 October 2024, the homeowner added Sections 5.8 of the 2021 Code to his complaint. In particular, he referred to the property factors' assertion that due to the specifics of the construction, no other insurance company was willing to provide a quote, but they had also stated that there is not a lot of choice for block insurance due to high risks and the costs to rebuild blocks, making it a high-risk category. This indicated that there are, in fact, insurers willing to provide quotes, but the property factors had not pursued them despite owners' requests to do so. The property factors had also confirmed receiving 5% of the insurance premium as commission. This contradicted the statement in their WSS that they do not receive any commission beyond that taken by the broker. Some of the owners had sought quotes from an alternative factor and the quote shows the buildings insurance at £33,510.59 per annum, considerably less than the premium charged by Zurich.
15. On 15 November 2024, the property factors provided further written representations. In relation to Section 5.8 of the 2021 Code, they repeated that they use a third-party broker who will approach a panel of insurers for quotes to obtain the best policy. Only one insurer had quoted, so there were no other quotes for the property factors or owners to consider. The property factors had advised owners at the meeting held on 10 January 2024 that communication would be issued to all regarding the insurance renewal and costs. The property factors share the commission paid to the broker and this is written in their WSS.

## The Hearing

16. A Hearing was held by means of a telephone conference call on the morning of 18 November 2024. The homeowner was present. The property factors were represented by Mr Darren Gallagher and M/s Tracy Urquhart. The homeowner confirmed that the only issue for the Tribunal to consider was the complaint about the block insurance.
17. Mr Gallagher told the Tribunal that he was the Property Manager at the relevant

time. Places for People notified the property factors in early November 2022 that they were cancelling the insurance, as they were no longer the owners of the majority of properties in the block. The current reinstatement valuation was out of date. They approached their brokers, who have a panel of insurers, but only one company came back with a quote. The others would not quote due to the rebuild costs and the construction methods used. They carried out a review following the complaint and accepted that communication around the 2023 renewal could have been better and that they should have been in touch with owners before the charge was applied, but time was very short and they believed they acted in the best interests of the owners at the time. The homeowner pointed out that the property factors had had three months' notice from Places for People. Mr Gallagher responded that the brokers had come back with a number of questions regarding the method of construction used. The homeowner said that his complaint was that the first he learned of the issue was in August 2023 and that he had no option but to pay. Owners have no protection against large premium increases. He contended that the property factors were refusing to try other insurers as it might affect their commission. Twenty or so of the owners had arranged a meeting with an alternative factor, whose insurance estimate was lower, and the owners had to have safeguards against inflated insurance premiums. Mr Gallagher responded that the brokers have a panel and that they do try to get the best policy for their customers. The estimate provided by the other factors might not have been based on current valuation, construction methods and reinstatement costs. He added that, from July 2024, the property factors do not receive any commission on insurance premiums. Prior to that, they received a proportion of the brokers' commission.

18. The Parties then left the conference call and the Tribunal Members considered all the evidence before them.

## **Findings of Fact**

- i. The homeowner is the co-proprietor of the Property, which is a second floor flat in a modern block of flats, part of a development at Lochend Butterfly Way, Edinburgh.
- ii. The property factors, in the course of their business, manage the common parts of the block of which the Property forms part. The property factors, therefore, fall within the definition of "property factor" set out in Section 2(1)(a) of the Property Factors (Scotland) Act 2011 ("the Act").
- iii. The property factors were under a duty to comply with the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors from the date of their registration as a Property Factor.
- iv. The property factors were registered on The Scottish Property Factor Register on 5 April 2018.

- v. The homeowner has notified the property factors in writing as to why he considers that the property factors have breached the Codes of Conduct under the Act.
- vi. The homeowner made an application to the First-tier Tribunal for Scotland Housing and Property Chamber on 2 April 2024, under Section 17(1) of the Act.

## **Reasons for Decision**

19. The Tribunal considered carefully all the evidence before it, namely the written representations of both Parties and the oral evidence given at the Hearing. Not every document forming part of the written representations is referred to in the following statement of Reasons for Decision, but the Tribunal took all of them into account in arriving at its Decision.
20. The Tribunal noted that the WSS specifically states that the property factors place buildings insurance cover by means of a common policy via their brokers. It is common practice for brokers to work with a panel of insurance companies. The Tribunal accepted that there is some nervousness amongst insurers with regard to the construction of buildings and, in particular, cladding composition, and that, whilst only one company was prepared to provide cover, it is a well-respected insurer. The property factors were under severe time constraints to take steps to ensure that a replacement policy was in force by 31 January 2023. Before they could place a policy with the only company on their panel that would be prepared to provide cover, the brokers required various items of information, which the property factors provided timeously, and it is clear from the correspondence between them that the property factors fully understood the urgency of the situation in which, through no fault of their own, they found themselves. Had they undertaken a full consultation exercise with the owners and sought consent from them, it is possible that they would have run out of time to fulfil their obligation under their WSS to place at least Property Owners' Liability cover and that the owners would also, for a period, have had no property insurance in place. That said, the property factors should have taken proactive steps to advise owners of the situation as soon as possible and should have told owners of the arrangements that had been put in place, rather than have them find out only when the quarterly invoices were issued, months after the event.
21. The Tribunal had no information before it to indicate whether the alternative factors who had been approached by a group of owners were aware of the current reinstatement value of the block or the details of its construction that had been provided by the property factors to the brokers, so could not speculate as to whether fully informed, the alternative factors would have been able to source insurance at a lesser cost.
22. The Tribunal noted that the property factors had accepted that their communication fell short of what it should have been and that they addressed the issue differently the following year, giving the homeowner full details of the process and the premium calculation for 2024/2025. This information included details of their commission. They also offered two quarters' factoring fees by way of compensation to the homeowner, although the Tribunal did not know whether

or not the payment had been made to, or had been refused by, the homeowner. The Tribunal was satisfied that the property factors had reviewed what happened in December 2022 and January 2023 and had acted to ensure the communication was clearly set out the following year.

23. Overall, apart from the failure to communicate effectively, the Tribunal considered that the property factors had acted reasonably in the difficult circumstances with which they were faced.
24. The Tribunal then considered the evidence in relation to the alleged failure to comply with each Section of the 2021 Code.

### The 2021 Code

25. **Section 5.1** relates to the requirement for property factors to have professional indemnity insurance. The subject of the application was Block Insurance for the Property, not professional indemnity insurance, so the Tribunal **did not uphold** the complaint.
26. **Section 5.3** requires property factors to provide an annual insurance statement to each homeowner (or within 3 months following a change in insurance provider) and that, whilst the information may be provided in the form of a summary of cover, full details must be made available if requested by a homeowner. The Tribunal **upheld** the complaint under this Section, as the property factors failed to inform the homeowner of the change of insurer within the required 3-months period from 31 January 2023.
27. **Section 5.4** states that homeowners must be notified of any substantial change to the cover provided by the policy. The Tribunal **did not uphold** the complaint under this Section, as no evidence was provided that the new policy with Zurich contained any substantial change to the cover provided.
28. **Section 5.5** requires property factors to disclose to homeowners. In writing, any commission, administration fee, rebate or other payment or benefit that is paid to them in connection with the policy. The Tribunal **did not uphold** the complaint under this Section. The WSS states that “in order to maintain insurance premiums at the lowest possible level, RMG Scotland property factors do not receive any commissions beyond that taken by the broker. Instead, it shares the broker’s standard commission.”
29. **Section 5.8** provides that, on request, a property factor must be able to demonstrate how and why they appointed the insurance provider, including an explanation where the factor decided not to obtain multiple quotes. The Tribunal **did not uphold** the complaint under this Section. The property factors had

provided a full explanation of the process, namely that they rely on the brokers to seek insurers and that, in the present case, only one company on their panel was prepared to quote.

### **Property Factor's Duties**

30. The homeowner's complaint related to a failure to notify him of a significant increase in insurance charge and the change of provider, and this was **upheld** by the Tribunal. The property factors had admitted their failure in this regard.

### **Property Factor Enforcement Order**

31. Having determined that the property factors had failed to comply with Section 5.3 of the 2021 Code and with the property factor's duties, the Tribunal considered whether to make a Property Factor Enforcement Order.

32. The Tribunal accepted that the property factors' failings caused the homeowner worry and inconvenience, but took into account the fact that the property factors had acknowledged that their communication could have been better, had offered instalment payment terms, had changed their procedures for the following year in light of their review of the situation, had sincerely apologised and had made an offer of compensation to the homeowner. The view of the Tribunal was, therefore, there was little that would be achieved by making a Property Factor Enforcement Order.

33. The Tribunal's Decision was unanimous.

### **Right of Appeal**

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.

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**Legal Member**

**13 January 2025**

**Date**