



Section 17 of the Property Factors (Scotland) Act 2011 and the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors.

Reference number: FTS/HPC/PF/21/1765

Re: G/L 22 Polwarth Street, Glasgow, G12 9TY (“the Property”)

The Parties:

Mr Michael Craig, 68 Crown Road North, Glasgow, G12 9HW (“the Applicant”)

Redpath Bruce Property Management Ltd, Crown House, 152 West Regent Street, Glasgow, G2 2RQ (“the Respondent”)

Tribunal Members:

**Martin J. McAllister, Solicitor, (Legal Member)
Mike Scott, (Ordinary Member)
(the “tribunal”)**

Background

1. This is an application by Mr Craig in respect of the Property in relation to the Respondent's actings as a property factor. The application was accompanied by a number of documents. The application is in terms of Section 17 of the Property Factors (Scotland) Act 2011 (the 2011 Act). The application alleges that the Respondent has failed to comply with Sections 1 para 1.1aE, 2.1, 3, 5.3 and 5.6 of the Property Factors (Scotland) Act 2011 Code of Conduct for Property Factors (“the Code”). It also states that the Applicant considers that the Property Factor has not carried out the property factor’s duties in terms of the Act. The application was received by the Tribunal on 21st July 2021 and was accepted for determination on 2nd September 2021.

2. A Case Management Discussion was held on 3rd November 2021 and, prior to it, the Respondent submitted a paginated set of documents and an inventory together with written representations. Subsequent to the Case Management Discussion, the Applicant submitted a copy of his title sheet.

Findings in Fact

- (i) The Applicant is the co-owner of the Property.
- (ii) The Property is in a tenement which is factored by the Respondent.
- (iii) The title of the Property requires that it be insured.
- (iv) The title of the Property delegates arrangement of the property insurance to the property factor appointed to manage the tenement.
- (v) The Respondent instructed Broker Scotland Ltd to obtain quotations for the property insurance and thereafter to arrange cover.
- (vi) The properties in the tenement are insured under an omnibus policy with NIG.
- (vii) The premium payable by the Applicant in respect of the insurance premium is £814.85.
- (viii) The premium payable by the Applicant for another property which he owns, and which is comparable to the Property, is £244.40.

Findings in Fact and Law

- (i) In relation to the arrangement relating to insurance of the property, the Respondent has provided sufficient information in the written statement of services issued by it.
- (ii) In relation to the matters raised in the application, the Respondent has not provided information which was false or misleading.
- (iii) In relation to the matters raised in the application, the Respondent has complied with paragraph 3 of the Code.
- (iv) In relation to the matters raised in the application, the Respondent has complied with paragraph 5 of the Code.
- (v) In relation to the matters raised in the application, the Respondent has complied with the property factor's duties .

The Hearing

3. A Hearing was held by audio conference on 15th December 2021.
4. The Applicant was present and the Respondent was represented by Mr Stuart McMillan, a director of the Respondent. Both gave evidence.

Matters Not in Dispute

5. It is helpful to set out matters which are relevant to determination of the application and which were not in dispute.
6. The Property is a flat in a tenement of eight flats.
7. The Respondents are property factors of the tenement.
8. The Applicant is the co-owner of the Property.
9. The Property is registered in the Land Register of Scotland under title number GLA3054.

10. The title sheet of the Property contains *inter alia* the following provisions:

10.1. "The respective proprietors of the dwellinghouses forming said tenement shall be bound to concur in keeping the said tenement and other buildings constantly insured against loss by fire with an established Insurance Company or Companies to be selected by the said Factor for such amount as may from time to time be fixed by the said Factor."

10.2. "The insurance premiums shall be paid to the Factor by said proprietors in equal proportions that is to say One eighth in respect of each dwellinghouse."

10.3 "The said proprietors shall also be bound to concur in maintaining an insurance in respect of the said tenement against Property Owners Liability..."

10.4 "...the proprietors of the dwellinghouses in the said tenement shall be entitled to appoint a qualified person as Factor to take charge of the matters in said tenement which are common or mutual to the proprietors thereof and to delegate to him the exercise of the powers conferred on them by the provisions hereof and to change the Factor or alter or renew the said appointment from time to time."

10.5 "In the event of any difference between the proprietors in regard to such an appointment or the services to be performed by him the matter shall be decided by the proprietor or proprietors of the major number of the dwellinghouses in the said tenement whose decision shall be binding upon the other proprietor or proprietors."

11. The Respondents arrange insurance for the properties in the tenement and use an insurance broker, Broker Scotland Ltd, to obtain quotations and thereafter to place the insurance cover.

12. The insurance is placed by use of an "omnibus policy" where the Respondents arrange for a number of properties which they factor to be included.

Matter at Issue

13. The Applicant clearly set out what the principal issue was. He said that he believed that the Respondents were not and are not dealing properly with the insurance policy for the Tenement. He said that he was paying a higher insurance premium for the Property than he should.

14. It was decided that the Hearing would progress by dealing with each alleged breach of the Code in turn and thereafter address the alleged failure to comply with the property factor's duties.

The Code of Conduct

Paragraph 1.1aE

SECTION 1: WRITTEN STATEMENT OF SERVICES

You must provide each homeowner with a written statement setting out, in a simple and transparent way, the terms and service delivery standards of the arrangement in place between you and the homeowner. If a homeowner applies to the homeowner housing panel for a determination in terms of section 17 of the Act, the Panel will expect you to be able to show how your

actions compare with the written statement as part of your compliance with the requirements of this Code

The written statement should set out:

E. Declaration of Interest

o. a declaration of any financial or other interests (for example, as a homeowner or lettings agent) in the land to be managed or maintained;

15. Mr Craig said that the issue which he had in relation to this paragraph of the Code was the relationship between the Respondent and Broker Scotland Ltd which was the insurance broker used to obtain insurance quotes for the tenement. He said that the Respondent should declare the close relationship which it has and he said that the broker occupies an office in the same block as the property factor and is its tenant. He said that this demonstrates a clear connection between the two parties and that this section of the Code requires the Respondent to declare this in its written statement of services.

16. Mr McMillan said that Broker Scotland Ltd is an independent insurance broker. He said that the Respondent operates from offices in Edinburgh and Glasgow. He said that Redpath Bruce LLP which is connected to the Respondent owns the building in Glasgow where the Respondent has its office and that the broker is a tenant. He said that it was a perfectly normal commercial arrangement. He said that there is no ownership connection between the property factor and Broker Scotland Ltd. He said that one of the directors of Broker Scotland Ltd shares the same surname as a member of Redpath Bruce's staff but that there is no relationship between them.

17. Mr McMillan referred the tribunal to the written statement of services and, in particular, to page four where it states:

"If we place insurance on your behalfwe arrange this through independent Insurance Brokers of our choosing, who have direct access to the insurance market and who market the policies on our behalf to demonstrate how and why they have recommended placing cover with a particular insurance provider.....In addition to placing insurance as part of our standard factorial services, we carry out a number of tasks that would normally be carried out by the Broker and for providing these services the Broker shares with us their commission received from the insurer. Where we receive a share of commission from the Broker, details are provided in our insurance Key Facts document issued at Renewal."

18. Mr McMillan said that the insurance broker does share commission with the property factor and that this is declared in the Key Facts document provided to homeowners. He said that it was a commercial decision of the Respondent to select an insurance broker to provide the quotations.

19. Mr Craig said that, twice in the previous twelve months, the terms of the written statement of services had been changed. He said that the original wording had been *insurance brokers* but that this had been changed to *insurance broker*. Mr McMillan said that there was no significance to this and did not accept Mr Craig's assertion that this showed a lack of transparency.

20. Mr McMillan said that the written statement of services had been issued to all homeowners and that he believed that the Respondent had been fully transparent and compliant with the requirements of the Code.

21. Mr Craig said that he had tried to engage with other proprietors in the tenement in connection with the matter of property insurance and had put letters through doors of the properties. He said that he had received little response and said that there were obviously problems caused by the pandemic and the fact that some of the properties in the tenement are tenanted

Paragraph 2.1 of the Code: You must not provide information which is misleading or false.

22. Mr Craig said that he believed that the information provided by the Respondent was misleading. He said that the whole process by which the property insurance was renewed was misleading to homeowners. He said that he considered that it would be appropriate for the Respondent to approach a number of insurance providers. Mr Craig said that he owned a number of properties and the insurance premium for the Property was by far the highest. He referred the tribunal to documentation which he had lodged which was in relation to a flat which he owns at Flat 3/2, 15 Falkland Street, Glasgow. He said that this is a property which is comparable in size and construction to the Property. The documentation was an insurance certificate relating to the flat in Falkland Street issued by Allianz to Bruce Stevenson Insurance Brokers. The document shows the insured party to be Partick Housing Association. Mr Craig said that the Association is property factor for the flat in Falkland Street. He said that the premium for this property is £244.40 per annum as opposed to £814.85 for the Property.

23. Mr Craig said that the Respondent should have gone to more than one insurance broker to obtain quotations and that such tendering procedures were common in industry.

24. Mr McMillan said that it was common for housing associations to get better insurance terms than other property factors. He said that the insurance policy was an "omnibus policy" where a number of properties factored by the Respondent were included. He said that this allowed a tenement, such as the one where the Property is situated, not to be adversely affected if it sustained claims which would otherwise affect terms on policy renewal.

25. Mr McMillan said that homeowners could opt to have a stand alone policy rather than one which includes other properties. He said that it was entirely a matter for them and that, if they decided to do this, the Respondent would do all it could to assist. Mr McMillan said that other brokers had been used in the past but that an established relationship had been developed with Broker Scotland Ltd and that he is happy with the service that it provided.

26. Mr Craig said that he had made a simple request of the Respondent which had not been complied with and that was that another insurance broker be approached to provide quotations in addition to Broker Scotland Ltd. He said that it was misleading of the Respondent not to deal with the insurance renewal in a competitive environment and that he had to bear the cost of this not being done.

SECTION 3: FINANCIAL OBLIGATIONS

While transparency is important in the full range of your services, it is especially important for building trust in financial matters. Homeowners should know what it is they are paying for, how the charges were calculated and that no improper payment requests are involved.

The overriding objectives of this section are:

- ***Protection of homeowners' funds***
- ***Clarity and transparency in all accounting procedures***
- ***Ability to make a clear distinction between homeowners' funds and a property factor's funds***

27. Mr Craig said that, in relation to this alleged breach of the Code, it was the overriding objectives of this section of the Code that he believed the Respondent has not complied with rather than any specific paragraph. He said that a property factor has to protect homeowners' funds and show clarity and transparency in its accounting procedures. Mr Craig said that it was his position that the Respondent had to ensure that he was getting value for money in the services he was paying for and that it was his belief that he was not getting this.

28. Mr Craig said that, in relation to repairs, the Respondent came to homeowners with quotations even for relatively small works. He said that this was done to obtain approval from homeowners prior to work being done. He said that the respondent did not follow this approach in relation to insurance.

29. Mr McMillan said that the two matters were completely different. He said that the Deed of Conditions required a common insurance policy to be in place for the properties in the tenement. He said that there was a fairly short time within which the insurance renewal had to be dealt with and that there would not be time to

get approval from all the homeowners. He said that the Respondent proceeds on the basis that homeowners need to have the protection of the insurance policy being in place and that the fact that a broker was used who approached a number of insurance companies ensured that homeowners' financial position was protected.

30. Mr McMillan said that the fact that Broker Scotland Ltd had approached a number of insurance companies for quotations ensured that homeowners were getting value for money.

Section 5

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.

31. Mr Craig said that the Respondent was paid up to 25 % commission from the insurance policy and that this was not insubstantial. He said that this evidenced that the interests of the Property Factor and the homeowners were not aligned. He said that the information on the insurance renewal is provided after it has taken place rather than before.

32. Mr McMillan said that, on the last renewal, there was commission of £1,745.77 of which the Respondent received £1,454.81. He said that the Respondent, in the documentation provided to homeowners, was fully transparent in relation to it receiving commission. He said that responsibility for payment to the insurance broker rests with the Respondent and that it would have to make payment of the whole premium if one or more homeowner did not pay the premium due. He said that payment of commission was partly in recognition of this and that it also reflected that the Respondent dealt with claims handling and circulation of the Key Facts Document. He said that the broker has no direct relationship with homeowners and that the Respondent was agent for the proprietors of the properties in the tenement.

33. Mr McMillan said that the Respondent did not have the detailed knowledge and understanding of the insurance market and that is why it used insurance brokers for all properties for which it arranges insurance.

34. Mr Craig said that he did not consider that the statement regarding commission is clear enough in the written statement of services.

35. Mr McMillan disagreed and stated that the written statement of services is compliant with the requirements of the Code. The tribunal was also referred to an email sent by the Respondent to the Applicant on 5th January 2021 where a detailed breakdown in relation to insurance commission was provided.

36. Mr McMillan said that he believed that the omnibus policy provided the best cover for homeowners. Mr Craig disagreed and said that, at the last renewal, the premiums had increased by 15% despite there having been no claims made in relation to the tenement.

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

37. Mr Craig said that the principal issue under this paragraph of the Code was that the Respondent had used Broker Scotland Ltd without getting multiple quotes from other suppliers. He said that he would have no objection to Broker Scotland Ltd being one of those suppliers providing a quote. He said that there was no incentive to Broker Scotland getting the best deal for insurance because it would be aware that it was going to get the business no matter what.

38. Mr McMillan said that, if the Respondent went to three brokers, it would mean that two of them would not get the business and Mr Craig said that this would be entirely normal that, in a situation where tenders were being sought from suppliers, some would be unsuccessful. He said that this was normal in a competitive environment.

39. Mr Craig said that insurance companies will only provide a quotation for one property or group of properties and he said that it was unlikely that they would provide different prices to different insurance brokers for the same property or group of properties.

40. Mr Craig said that it was not known that Broker Scotland Ltd had got the best terms and that perhaps larger more specialised brokers would have different terms and conditions. He said that the fact that he was being charged around three times more for insurance for the Property as opposed to another comparable property which he owned evidenced that Broker Scotland Ltd was not getting the best terms.

41. Mr McMillan referred to the document from Broker Scotland Ltd dated 14th October 2020. He said that this was sent to homeowners following the placing of the insurance in 2020. The document states that a number of insurers were approached for quotations. He said that the document shows that the market was explored and that eleven companies were asked to provide quotations with only some responding. He said that the document states that NIG remained the most competitive.

Property Factor's Duties

42. Mr Craig said that he had no issue with the Respondent in its general factoring of the Property but that he did not consider that it was properly protecting his interests and was therefore not complying with the property factor's duties. He said that the requests he had made to the Respondent to obtain multiple

quotations were straightforward and simple and had not been complied with. He said that the commission paid to the Respondent from the insurance premium was high.

Submissions

43. Mr Craig said that he considered that there had been sufficient evidence to support his contention that the Respondent had not complied with the Code and had not complied with the property factor's duties. He said that the level of premium was such that it was clear that the Respondent was not properly dealing with matters in connection with the property insurance.
44. Mr McMillan said that the tribunal had sight of the extensive correspondence which had passed between the Respondent and the Applicant. He said that it was evident from the correspondence that the Respondent had done everything possible to deal with the concerns raised by the Applicant.
45. Mr McMillan said that the Respondent was entitled to make a commercial judgement as to how the interests of homeowners would best be served in relation to insurance of the tenement of which the Property forms part.
46. Mr McMillan said that he accepted that homeowners were entitled to consider having another property factor appointed.
47. Mr McMillan said that, in terms of their title, homeowners required to have a common insurance policy to be arranged by the property factor for the tenement.
48. Mr McMillan said that the Respondent would be happy to assist by asking Broker Scotland Ltd to obtain a policy for the tenement alone rather than it to be included in an omnibus policy. Mr Craig requested that he be provided with the necessary information to enable him to obtain quotations and Mr McMillan said that he would be happy to provide any information that might be required to enable this to be done.

Discussion and Reasons.

49. The tribunal considered that the matters it had to determine were focused. The Applicant had concerns about the placing of the common insurance policy and the cost of such insurance.
50. Both witnesses provided evidence in a courteous straightforward manner and, whilst they had differing views on matters, there were no issues of credibility to be determined. The standard of proof which the tribunal had to apply to the evidence was that of the balance of probability. In arriving at its determination, the tribunal had regard to the application and the information submitted with it, the written representations and the oral evidence.

51. The title of the Property provided a clear statement that the Property had to be insured and that this requires to be arranged by the property factor appointed by the proprietors of the tenement.
52. The title of the Property contained provisions for replacement of a property factor and the homeowners had not exercised their rights in this regard.
53. The tribunal accepted that the insurance cost for another property owned by the Applicant and which was comparable to the Property was considerably lower than the level of premium which was the subject matter of the application before it. The Respondent did not dispute that the two properties were comparable.
54. The tribunal accepted that the Respondent was entitled to make a decision as to how it arranged insurance for the Property. What the tribunal had to determine was whether or not, in arranging the insurance policy, it was complying with the terms of the Code and the Property Factor's duties.

Paragraph 1.1aE of the Code of Conduct

55. The Applicant's position was that this paragraph of the Code had been breached because the written statement of services failed to disclose a relationship between the Respondent and Broker Scotland Ltd. Mr Craig said that the fact that the insurance broker operated from the same office as the Respondent was significant and should have been declared in the written statement of services. The Respondent's position was that Broker Scotland Ltd was a commercial tenant in the building where the Respondent had an office and that the building was owned by an entity with an ownership relationship with the Respondent. The Applicant also stated that the fact that commission was shared between the Respondent and Broker Scotland Ltd was something which should be declared in the written statement of services and that there was significance in the different language used in versions of the written statement of services- broker and brokers.
56. The tribunal did not consider that the mere fact of the insurance broker being a tenant of an entity connected with the Respondent was a declaration of interest that required to be disclosed in the written statement of services. The tribunal did not consider that there was any significance in the use of "broker" rather than "brokers." Both are used in common parlance to describe a firm or company which arranges insurance. It also accepted that the Respondent had included sufficient information in its written statement of services to disclose any financial interest it had in the placing of the insurance policy. It also noted the terms of the Key Facts Document provided to homeowners.

Paragraph 2.1 of the Code

57. The Applicant's position was the process which was used by the Respondent to renew the property insurance misled homeowners and that it should have approached a number of insurance providers.

58. The tribunal did not consider that the Applicant had placed any evidence before it to support the contention that the Respondent had provided him with false information.
59. The tribunal did not consider that the fact that the Respondent had only approached one insurance provider constituted provision of misleading information. The title of the Property set out the requirement for property insurance and that it was for the property factor to arrange it. The title provisions delegated power to the property factor to arrange insurance. The Respondent set out, in its written statement of services and in the Key Facts Document, information with regard to renewal of the insurance. The tribunal found nothing misleading in what information was provided to the Applicant. The tribunal did not accept that, in the words of the Applicant, it was misleading of the Respondent not to deal with the "insurance renewal in a competitive environment." The Respondent was entitled to deal with the renewal in the way it saw fit as long as it complied with the Code. The tribunal considered it significant that the insurance broker instructed by the Respondent had offered the insurance to eleven providers.
60. The tribunal accepted that the Applicant was not happy with what he was asked to pay for the insurance premium and it appreciated that it was reasonable for him to make comparisons with the premium charged for a comparable property but that, in itself, did not mean that the Respondent had provided misleading information. It was within the powers of the Applicant and other homeowners in the tenement to change the property factor or to require the Respondent to seek quotations for the tenement to be insured under a stand alone policy.

Paragraph 3 of the Code

61. The Applicant's position was that his funds had not been protected because the Respondent had not ensured that he was getting value for money in connection with the sum charged for insurance and that the Respondent was not transparent in its dealing with the renewal of the policy for property insurance.
62. The tribunal considered that, from the evidence led before it, the Respondent had properly discharged its duty in relation to this paragraph of the Code. It had utilised an insurance broker who had offered the insurance cover to eleven insurance companies. The Respondent had been transparent in providing information on how the insurance company was selected and how the premium had been allocated.
63. The tribunal did not consider that it was a requirement of the Respondent to approach more than one insurance broker and that the report on the renewal process provided to the homeowners in the tenement by Broker Scotland Ltd on 14th October 2020 demonstrated that a number of insurance companies had been asked to quote for the business.

Paragraph 5.3 of the Code

64. The tribunal accepted the evidence of the Respondent that it had been transparent in providing information to the Applicant on the fact that it would receive commission and this was declared in the written statement of services and the Key Facts document issued to homeowners.
65. The tribunal accepted that, with the particular nature of renewal of an insurance policy it would be difficult to get approval of homeowners prior to renewal and that, in any event, the title of the Property delegates the necessary power to the Respondent to arrange the insurance.
66. The tribunal accepted as perfectly valid that the Applicant may want the tenement where the Property is situated to be covered by a separate independent policy rather than an omnibus policy which included properties other than the tenement of which the Property forms part. That is a matter for the proprietors of the tenement.

Paragraph 5.6 of the Code

67. The tribunal accepted that the Respondent had provided information on why NIG was appointed to insure the tenement. It had employed insurance brokers who had gone to various insurance companies.
68. The Respondent had only gone to one insurance broker but that broker had gone to eleven insurance companies in an attempt to have them quote for the insurance cover. Multiple quotes had been sought. The tribunal considered that it was a matter for the Respondent as to how it arranged the obtaining of insurance quotes and it did not accept that it should have gone to a number of brokers. Whilst it noted the Applicant's position that more than one broker should have been approached so that it was a "competitive environment", it distinguished the use of an insurance broker to obtain quotes for insurance with, for example, a property factor seeking to have a roof repair undertaken. An insurance broker acts as an agent and is not itself providing the end product which is the insurance cover.

Property Factor's Duties

69. The Applicant considered that, in relation to the insurance cover for the Property, the Respondent was not protecting his interests and was therefore not complying with the property factor's duties.
70. The Tribunal did not consider that there had been any evidence led to support that the Respondent was not complying with the Property Factor's duties.

Summary

71. The tribunal determined that, in respect of the application before it, the Respondent had complied with the Code and the property factor's duties.

NOTE

72. The tribunal noted that the Respondent's representative had indicated that he would provide the information necessary for the Applicant to seek a comparative quotation for insurance. It seemed to the tribunal to be in the interest of both parties that, if the Applicant wanted such information, it be provided. It might also be useful for the Respondent to ask its broker to obtain a quotation for a separate policy for the tenement. Both actions would provide homeowners in the tenement with useful information which would allow them to make decisions.

A homeowner or property factor 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.

Martin J. McAllister, Legal Member
of the First-tier Tribunal for Scotland
4th January 2022