

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber) Property Factors (Scotland) Act 2011 (“the Act”), Section 19

The First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the 2017 Regulations”)

Chamber Ref: FTS/HPC/PF/19/0835

Property at 2/2, 7 Barlanark Place, Springboig, Glasgow G32 0PP (“the property”)

The Parties: -

Miss Jennifer Hanna, 2/2, 7 Barlanark Place, Springboig, Glasgow G32 0PP (“the homeowner”)

James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX (“the property factor”)

Tribunal Members: -

Simone Sweeney (Legal Member)

Decision of the Tribunal Chamber

The First-tier Tribunal (Housing and Property Chamber) ("the Tribunal") determined that the property factor has complied with sections 5.3 and 5.6 of the Code of Conduct for Property Factors ("the Code") as required by section 14(5) of the Act. The Tribunal finds no breach of the Property Factor's duties in terms of section 17 of the Act.

Background

1. By application dated 12th March 2019, the homeowner applied to the Tribunal for a determination on whether the property factor had complied with sections 5.3 and 5.6 of the Code imposed by section 14 of the Act.
2. The homeowner indicated on the application that her complaint included a failure to carry out the property factor duties in terms of section 17 of the Act. Further specification of this was provided by way of a paper apart added to the homeowner's application form.
3. The homeowner formally intimated her complaint to the property factors, in compliance with section 17(3) of the Act by letter dated, 14th December 2018. Copies of this letter together with further documentation and copy letters from the property factor were produced by the homeowner as part of an appendix to the application.
4. By decision dated 25th March 2019, a convenor referred the application to the Tribunal for a hearing. Notices of referral were sent to the parties on 28th March 2019. A hearing was assigned for 24th May 2019 in Glasgow. By email of 1st May 2019, the property factor's Operations Director, Debbie Rummens sought a discharge of the hearing due to the fact that she was representing the property factor at another hearing on the same date. In response, the homeowner opposed the request, indicating that, "*I have just started a new position at work so it's not viable for me to be messing around asking for alternative time off work.*" By email of 11th May 2019, the property factor confirmed that a colleague could attend the hearing in her place.
5. A hearing took place on 24th May 2019 at 10am within the Glasgow Tribunals centre, 20 York Street, Glasgow. In attendance at the hearing was the homeowner and David Smith, Operations manager on behalf of the property factor.

Hearing of 24th May 2019

6. The background to the homeowner's complaint was that she had received an invoice in December 2018 which revealed that there had been an

increase in her insurance premium. It had come to light that the property had been underinsured. A valuation of the reinstatement value of the property resulted in an increased premium. For the homeowner the effect was an increase in her quarterly charge from £80 to £140. The homeowner had made a formal complaint to the property factor set out in a letter dated 14th December 2018, a copy of which was available to the Tribunal. The homeowners had dismissed the property factor and appointed a replacement in 2019.

Section 5.3 of the code

7. The homeowner alleged a breach of section 5.3 of the code by the property factor. Section 5.3 provides that the property factor,
“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 insurance.”
8. In support of this allegation the homeowner referred to a letter dated 9th January 2019 which she had sent to the property factor. The letter was before the Tribunal. The homeowner believed that the property factor must have benefitted financially from the new insurance arrangement which had seen her charges increase. Therefore she formally requested information in this regard from the property factor. The homeowner drew particular attention to the final paragraph of the letter which read,
“Finally – as per section 5 of the code of conduct for property factor, please provide me with the following information: 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. Any any other charge you make for providing the insurance.
Show how and why you appointed the insurance provider, including any cases where you decided not to obtain multiple quotes.
Documentation relating to any tendering or selection process (excluding any commercially sensitive information).”

9. The homeowner submitted that the property factor had responded to her in writing on 29th January 2019 but failed to answer her questions. The response had attached to it a development schedule and documentation from Marsh insurance brokers. The homeowner argued that the letter of 29th January 2019 failed to explain the significance of the documentation which was attached. The letter was a final response to the complaint and directed the homeowner to the First Tier Tribunal if necessary but the content of the letter was silent on the issues posed about any benefit from the insurance cover.
10. The development schedule provided was to be read in conjunction with the written statement of services. Section 09 of the document was of relevance. It provided,

"Block Insurance Commission Unlike many other factors, James Gibb does not take any commission beyond that taken by our broker. Instead, we negotiate a share of their commission in order to keep your premium as low as possible. Commissions are calculated from the net premium (i.e. excluding insurance premium tax) The agreed internal split is negotiated each year and has no effect on the overall premium."

The homeowner found the wording of this paragraph confusing and contradictory.

Response of the property factor

11. In response, Mr Smith denied any breach of this section of the code by the property factor. He referred the Tribunal to section 8.4 of the written statement of services which had been produced by the homeowner in support of her application. Section 8.4 provided,
- "In order to maintain insurance premiums at the lowest possible level, James Gibb residential factors does not take any commissions beyond that taken by the broker. Instead, it shares the broker's standard commission. It is able to do this by taking some of the administrative work in-house."*
12. Mr Smith did not dispute the fact that the letter of 29th January 2019 was silent on the matters raised by the homeowner. However he submitted that there was no need to provide any documentation or information to the homeowner as the property factor received no financial benefit. She

already had access to the written statement of services and the development schedule which sets out the position of the property factor in relation to the question of financial benefit. Moreover these documents are available to the homeowners on the property factor portal to which the homeowner has access. In fact the homeowner had accessed the portal on 18th January 2019 and downloaded the development schedule. She had access to the information.

13. It was put to Mr Smith that section 09 of the development schedule was confusing to a layperson with little understanding of insurance matters. Mr Smith denied this suggestion.

Section 5.6 of the code

14. The homeowner alleged a breach of section 5.6 of the code by the property factor. Section 5.6 requires of the property factor,

“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.”

15. The homeowner claimed that she had requested from the property factor how and why they had appointed this particular insurance provider but no explanation had been provided. The homeowner claimed to have made the request in her letter of 9th January 2019 where she wrote,

“You advise that your insurance broker approached eleven companies to provide a quote for your portfolio. Do correct me if I am mistaken but when you refer to your portfolio, I assume you mean every property that you provide services for? If so, I struggle to understand how we as a block are receiving best value for money, when insurance companies are declining to quote your entire portfolio. What is the reason the majority of the insurers declined? I would have assumed that they would be in the business to make money.”

16. The homeowner submitted that she did not know what was meant by use of the word, “portfolio” but suspected that it referred to more than just the building in which her property was allocated.
17. Also, the homeowner felt that the documentation from Marsh the insurance brokers which was attached to the property factor's response letter of 29th January 2019 was confusing. The documentation from Marsh was a letter

addressed to the property factor from May 2018. There was no specific date on the letter. The letter read,

"It is our recommendation following an full extensive marketing arrangements of your insurance arrangements....to renew the insurance arrangements with Allianz for a further 12 months. Our recommendation is based on the following observations Aviva, Covea, MS Amlin, Protector, NIG, QBE and RSA all declined to quote based on the overall portfolio claims experience."

18. The homeowner was unclear why seven companies would have declined to provide quotes. There was no explanation within the covering letter of 29th January 2019. Moreover the homeowner had undertaken her own research and contacted RSA, one of the insurance companies mentioned by Marsh as declining to provide a quote. In fact, RSA had provided the homeowner with a quote which the homeowner had found to be very competitive. The homeowner submitted that the property factor had failed to provide her with an explanation as to how and why the particular insurer had been appointed and that this failure breached section 5.6 of the code.
19. The Tribunal chair directed the homeowner to emails which she had produced in support of her application, in particular, an email exchange from 18th December 2018 between Cathy McGowan and Kayleigh McLachlan, property manager. The homeowner explained that Cathy McGowan was her neighbour. Ms McGowan and the homeowner had been pursuing this matter together initially but the homeowner had submitted the application. The homeowner confirmed that Ms McGowan had shared the email exchange with her and permitted the homeowner to rely on the emails in her application before the Tribunal.
20. The email from Cathy McGowan of 18th December to the property factor read,

"I have researched property prices for our building for the past few years following your comment that our property value has risen. Can I ask you to provide me with evidence that this is in fact the case as I have found that there has been a fall in some of the properties..."

21. The property factor's property manager, Kayleigh McLachlan replied in the following terms,

"This year, Marsh approached eleven insurance companies and asked each to quote for our portfolio. Of these eleven, one offered no response, six declined to quote and 4 provided a quotation. Of the four who provided a quotation, we worked with Marsh to identify the best overall deal, looking at premium, cover, claims process, policy enhancements etc. Taking all of the above into account, we agreed that our current insurance provider, Allianz, continues to provide the best overall deal. Not only were they offering the cheapest premium, their cover and policy enhancements are superior to the others."

22. The homeowner confirmed that she was familiar with the content of this email. She accepted that the email provided an explanation of how and why the property factor had appointed the particular insurer.

Response of the property factor

23. By way of response, Mr Smith denied any breach of section 5.6 of the code by the property factor. He submitted that, in her original complaint letter of 14th December 2018, the homeowner had not requested information from the property factor about how and why the insurance provider had been appointed. The letter of 14th December 2018 was before the Tribunal. The content of the letter was divided into 3 broad headings: buildings insurance premium, secure entry door and broken window. In respect of the buildings insurance premium, the letter read,

"I want to know why in 2017/18 the building sum insured was £1,560,411 but this year it is £2,715,700. How on earth in the course of 1 year can the cost to reinstate the building be so much higher...please tell me where the figures for the building reinstatement value were taken from in previous years...have you searched for a more competitive price from other insurance companies, as opposed to accepting the renewal from Allianz?"

24. Mr Smith submitted that he only became aware that the homeowner wanted to know how and why the insurance provider had been appointed by her letter of 9th January 2019. The property factor had responded by letter of

29th January 2019. Although the letter was silent on the points raised, the necessary documentation was provided for the homeowner.

25. Mr Smith accepted that the homeowner is a layperson with no expertise in insurance. The tribunal chair put to Mr Smith that, against that background, the property factor could have included an explanation as to why the documents were being included and could have directed the homeowner to the sections of the documentation which were relevant to her complaint. Mr Smith rejected any suggestion that the property factor should have done this. His position was that the documentation was made available to the homeowner and that was enough. It was not for the property factor to sign post a customer to the relevant parts of the documentation. He drew a comparison with him purchasing motor insurance. He would take it upon himself to read the entire policy. Mr Smith accepted that the property factor was arranging this policy on behalf of others and that the role of the property factor was to make available the policy documents only. There was no responsibility on the property factor to provide any additional explanation to customers.

Property Factor's duties

26. With regard to the property factor's duties, the homeowner's complaint was in three parts; it was alleged that the insurance premium which had been agreed with the current insurance provider was too expensive; it was alleged that, in advance of the increase in the premium, the property factor had not communicated this to homeowners effectively; and that the property factor had not replied to the specific questions posed in her letter of 9th January 2019.
27. In respect of the allegation that the current insurance cover was too expensive, the homeowner submitted that her property was valued for mortgage purposes in April 2017. The homeowner was advised that the reinstatement value of the building was £200,000. The homeowner had undertaken enquiries of other insurers and found them less expensive than the sum agreed by the property factor with the current insurance provider. In her application, the homeowner stated,

"I have also received a number of quotes from insurance companies online, where the annual premium is also around the £100 - £140

mark. So I am completely lost as to why James Gibb have appointed an insurer who is charging an annual premium of £4508 (£563 per household)."

28. In respect of the allegation that the property factor had not intimated the increased premium effectively, the homeowner explained that intimation was first received by homeowners by way of a paragraph in the property factor's spring newsletter in 2018. She then heard nothing until receipt of the invoice of December 2018 to which she had referred, earlier. The homeowner did not think this was satisfactory in light of the impact it would have on her monthly charges. In her application, the homeowner stated that,

"I understand that not all homeowners in their scope would have been impacted on the same scale as ourselves, but a letter advising us of the specific impact would have at least softened the blow."

29. Finally, with regard to the failure of the property factor to respond to the questions posed in her letter of 9th January 2019, the homeowner confirmed that she had touched on this point already in relation to the alleged breaches of the code. In her application, the homeowner stated,

"They insist on blaming the revaluation for the massive increase in premium. In my letter, I questioned James Gibb about this, asking who would have been responsible for the shortfall in rebuild costs, should the worst have happened during the time we were apparently uninsured. Unanswered. James Gibb advised that they have approached 11 insurance companies to provide a quote for their "portfolio." I asked what they meant by "portfolio", does this mean all properties they provide services for? Unanswered. James Gibb advised a number of insurance companies declined to provide quotes. I asked why this was this case, as in my experience, insurance companies are generally in the business to make money. Unanswered."

30. In response to the allegation that the current insurance provider was too expensive, Mr Smith submitted that an explanation as to how the cost had been reached had already been provided. He suggested that the homeowner had previously misunderstood the value of the property with

the cost of rebuilding it. The revaluation figure is what the insurance company would need to spend were the building to be destroyed and require to be re-built from scratch.

31. Mr Smith provided an explanation to the homeowner of what was meant by the use of the word, “*portfolio*” in the documentation. The property factor has 509 separate developments. The property factor is the policy holder for one insurance policy. When referring to “*portfolio*”, the property factor is referring to all 509 separate developments. The homeowner was satisfied that she had been provided with an explanation.
32. In response to the allegation that the property factor had failed to provide satisfactory notice of the increase, Mr Smith denied this. He explained that changes to the insurance premiums were first brought to the attention of the homeowners as far back as summer 2017. Mr Smith explained that homeowners were made aware that, to satisfy regulatory requirements, a revaluation of the building in which the property is located would be undertaken at 5 year intervals. Before the Tribunal was a letter produced by the homeowner in support of her application. It was dated 29th August 2017 and sent from the property factor to the homeowner’s neighbour, Ms McGowan. The letter read,

“It’s been 5 years or more since your building was revalued, and it’s very important to know that the “declared value” quoted on your Insurance Certificate is accurate. If it’s too low, you’d be under insured. If it’s too high, your premium will be higher than it needs to be.... Revaluation Surveys will be carried out between 1st August 2017 and 31st December 2017. We will arrange access for the Surveyors, and on receipt of each Re-valuation Report, we will advise the co-owners and the Insurers of the revaluation figure, and add a copy of the report to your client portal.”

Mr Smith advised that the survey of the property was carried out in October 2017. The survey identified that the previous revaluation figure was inaccurate. The property factor agreed with the insurer that enhanced cover would be provided until 29th May 2019 with no cost to homeowners. Information (including the valuation and the development schedule) were placed on the client portal to which the homeowner had access. Mr Smith

had identified that the homeowner had accessed the client portal and downloaded information from it. Mr Smith was satisfied that adequate notice had been provided by the property factor.

33. Finally, in response to the allegation that the property factor had not replied to the matters raised in her letter of 9th January 2019, Mr Smith referred to the question therein which read, "*What is the reason the majority of the insurers declined? I would have assumed they would be in the business to make money.*" Mr Smith was not of the view that this comment required a response. As far as the other questions in the letter of 9th January 2019 were concerned, Mr Smith referred to his earlier submissions.

Findings in Fact

34. That the homeowner is the owner of the property.
35. That the property factor provided management services to the property until 2019.
36. That a survey of the property was carried out in October 2017, the purpose of which was to provide a re-instatement value.
37. That the survey revealed that the reinstatement cost of the building in which the property is located was £2,089,000. This was an increase from the previous reinstatement cost of £1,176,781 on which the existing insurance policy had been based.
38. That the increased reinstatement cost caused an increase in the existing buildings insurance policy.
39. That the increase in the policy had an effect on the homeowner's quarterly insurance fees.
40. That the homeowner received an invoice from the property factor in December 2018.
41. That the invoice revealed an increase in the homeowner's quarterly insurance fees from £80 to £140.
42. That the homeowner contacted the property factor to complain about the increase by phone calls initially and then in writing by letter of 14th December 2018.
43. The homeowner's letter of 14th December 2018 requested an explanation from the property factor about the increase in the reinstatement value and

what efforts the property factor had made to secure a competitive price for the renewed insurance premium.

44. The property factor issued a response to the homeowner's letter of 14th December 2018 by letter.
45. That the property factor provided information to the homeowner and to her neighbour, Ms McGowan, about how and why the insurers had been appointed by emails dated 18th and 19th, December 2018.
46. The homeowner wrote to the property factor on 9th January 2019 requesting details of any financial benefit to the property factor from providing the renewed insurance cover.
47. The property factor replied on 29th January 2019 with a copy of the development schedule.
48. That section 09 of the development schedule confirms that the property factor negotiates a share of its insurance broker's commission when renewing a buildings insurance policy.
49. That the property factors' insurance brokers received quotes from only 4 insurance companies.
50. That the recommendation of the insurance broker was set out to the property factor in a letter from May 2018 and intimated to the homeowner by the property factor's letter of 29th January 2019.
51. That, by email of 18th December 2018, the property factor provided an explanation why the existing insurers offered the most competitive quotation.
52. That, by letter of 29th August 2017, the property factor intimated to the homeowner's neighbour that a revaluation survey of the building would be undertaken by 31st December 2017.
53. That the letter stated, "*...it's very important to know that the declared value quoted on your Insurance Certificate is accurate. If it's too low, you'd be under insured. If it's too high, your premium will be higher than it needs to be.*"
54. That this letter was produced by the homeowner.
55. That the property factor's spring newsletter of 2018 provided warning of a potential change to insurance fees for homeowners.

56. That the property factor's letter of 29th January 2019 did not answer the questions of the homeowner in her letter of 9th January 2019.

Reasons for decision

57. By letter of 29th January 2019 the property factor responded to the homeowner's request for details of any financial benefit which they had made from renewal of the buildings insurance. The property factor provided a copy of the development schedule. Section 09 of that document confirms that the property factor negotiates a share of the commission which the insurance broker makes from the block policy. Current commission totals were set out at section 09. The Tribunal observes that there was no reason why the property factor could not have directed the homeowner to this specific section of the document in the covering letter of 29th January 2019. However the property factor complied with the homeowner's request and has complied with the terms of section 5.3 of the code.
58. By emails of 19th December 2018 to the homeowner's neighbour, Ms McGowan, the property factor provided information about how many insurance companies they had contacted, how many had responded, how many had declined and how many had provided a quotation. In those emails, the property factor explained that the current provider offered the best deal in terms of price, cover and policy enhancements. By email of 19th December 2018 to Ms McGowan, the property factor set out how the increase in the insurance premium was impacted by the revaluation figure from the survey of October 2017. The property factor has provided to the homeowner an explanation of how and why the current insurer was appointed and in so doing has complied with section 5.6 of the code.
59. In her letter of 9th January 2019 the homeowner asked what was meant by the word, "*portfolio*"; why some insurance companies had declined to provide a quote to the homeowner and; who would have been responsible for the shortfall between the previous insurance policy and the new policy should the building have been destroyed. Explanations were not provided in the property factor's letter of response of 29th January 2019. However explanations were provided by Mr Smith at the hearing to the first two points. As the building was never destroyed, the third point was academic.

The homeowner confirmed in the course of the hearing that the explanations were satisfactory. There is no evidence before the Tribunal which suggests that the insurance policy which was accepted by the property factor on behalf of the owners was not competitive in the circumstances presented. The property factor issued letters to homeowners in August 2017 to advise that revaluation surveys were to be undertaken to check that the reinstatement value of the property was accurate and that this had impacted on the block buildings insurance cover. The homeowner accepted that the survey of the building in which her property is located went ahead in October 2017. The homeowner advised that reference was made to the possibility of increased insurance premiums in Spring 2018 by way of a newsletter. By invoice of December 2018 the homeowner received confirmation that her insurance premium had increased. Whilst it may have been courteous to issue a letter to those homeowners affected by the price rise, the evidence suggests that the property factor provided notice to homeowners, in advance of the price increase and the homeowner received this notice. For these reasons, the Tribunal finds no breach of the Property Factor's duties in terms of section 17 of the Act.

Decision

1. The tribunal, having found no breach of sections 5.3 and 5.6 of the Code and no breach of the Property Factor's duties in terms of section 17 of the Act, does not propose to issue a Proposed Property Factor Enforcement Order ("PFEO").

Appeals

1. 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 within 30 days of the date the decision was sent to them.

Simone Sweeney, Legal chairing member, 11th June 2019