

# Housing and Property Chamber

## First-tier Tribunal for Scotland



**First-tier Tribunal for Scotland (Housing and Property Chamber)**

**Decision in terms of Section 23(1) of the Property Factors (Scotland) Act 2011**

**Chamber Ref: FTS/HPC/PF/17/0367**

**Re: 4 The Park, Victoria House, Forres, IV36 3AH ("the Property")**

**The Parties:-**

**Mr Ricardo Petrocelli and Ms Elizabeth Bruce, The Park, Victoria House, Forres, IV36 3AH ("the Homeowner")**

**James Gibb Property Management Ltd., 1 Thistle Street, Aberdeen, AB10 1XZ ("the Factor")**

**Tribunal Members**

**Ms Helen Forbes (Legal Member)**

**Mr Angus Anderson (Ordinary Member)**

**Decision**

The Tribunal hereby determines that the Property Factor Enforcement Order ("PFEO") issued on 10<sup>th</sup> April 2018 has not been complied with. The decision of the Tribunal is unanimous

**Reasons for Decision**

1. The Tribunal made a PFEO on 6<sup>th</sup> April 2018 in the following terms:

James Gibb Residential Factors are directed to:

- (1) pay to the Homeowner £500 as compensation from their own funds and at no cost to the development homeowners. The said sum to be paid within 28 days of the communication to them of the Property Factor Enforcement Order.
- (2) in relation to the selection of the insurance provider in May, 2016 (this being the information used as the basis of the renewal of the insurance

in May, 2017), to provide the Homeowner with details of the insurance premiums and cover of each of the alternative quotes obtained and advise if a price/quality selection matrix was used, and, if so, what the weightings and quality criteria were. Commercially sensitive information which cannot be divulged may be anonymised by substituting names with A, B, C, etc. The said information is to be provided within 28 days of the communication to them of the Property Factor Enforcement Order.

2. On 16<sup>th</sup> April 2018 the Factor provided the following information to the Tribunal:

**Direction 1**

This payment was made, to the homeowner, from the firm's own funds, within the specified period.

**Direction 2**

**Details of the insurance premiums and cover of each of the alternative quotes obtained**

As stated in our response to last year's Direction (HOHP/PF/17/006), the quotations provided covered one lump sum for the whole of our portfolio (around 780 developments). As such, this information is both commercially sensitive and not useful to this case. In order to answer your question, though, I have calculated what the premium would be for The Park from each broker/chosen insurer. These are as follows:

<i>Broker / Insurer</i>	<i>The Park Forres 2016</i>		
	<i>Net</i>	<i>IPT (9.5%)</i>	<i>Gross Premium</i>
<i>Marsh/ Allianz</i>	<i>£6,687.00</i>	<i>£635.27</i>	<i>£7,322.27</i>
<i>Mackays / RSA</i>	<i>£6,695.49</i>	<i>£636.08</i>	<i>£7,331.57</i>
<i>Bruce Stevenson/ LV</i>	<i>£6,770.07</i>	<i>£643.15</i>	<i>£7,413.22</i>

As we had a fixed two year deal with Marsh/Allianz, the only difference in this latest year's premium was a reflection of the increase in insurance premium tax (IPT) from 9.5% to 10%, increasing the development's overall insurance cost to £7,335.70.

During our recent correspondence, we also intimated that, going forward, we are working with our brokers to ensure that our quotations are presented to us in such a way that we can

fully demonstrate the process and quotations involved in the selection process without the implications of commercial sensitivity.

We are in renewal discussions, currently, with our broker who are happy to work with us in order to allow full visibility of quotes in a more accessible manner.

We will always accept that, if we can improve the way in which we do anything in our business, we'll be happy to do so and, indeed, as mentioned above, we are changing our insurance quotation process in order to allow the visibility requested here without supplying commercially sensitive information.

As our current deal was for a two year duration, we have, of course, been unable to make such changes until now.

In terms of cover, the cover provided was essentially the same in each case with no broker offering more or less than the others in the standard areas of cover. Marsh, however, included the following additional cover:

Removal of wasps and bees nests - £500 in any one claim  
Replacement of locks and keys - £5,000 in any one claim  
Tree felling and lopping - £10,000 in any one claim.

**If selection of the successful quotation was not made on the basis of the lowest price, advise if a price/quality selection matrix was used and, if so, what were the weightings and quality criteria?**

Our chosen broker, Marsh, did actually deliver the best price for our customers but it wasn't the only factor taken into consideration. Equally important is the level of service received from the insurers in the event of a claim, including their approval of claims, quotes etc. Historically, we have found the Allianz process to be the smoothest. As an example, if an owner's car damages a wall, some buildings insurers automatically step back from the claim, instead insisting that the driver makes a claim via their car insurance policy. Allianz, typically, settle the claim then work to have the costs recovered from the driver's insurers.

We also hold a quarterly claims review meeting with Marsh and Allianz where we discuss on-going claims, issues etc. This ensures that all parties are aware of all significant works on-going.

In summary we were delighted that Marsh / Allianz were able to deliver both on price and service.

We would also wish to re-iterate the following part of our response to the previous Direction: It is a fundamental part of our ethos and company values to be as open and honest as we can and to deliver the best possible service and value to our customers. The negotiations we had with the various insurance brokers as part of the 2016 renewal were hugely extensive and we used every means possible to minimise the premiums to our customers, particularly in a time where premium tax was increasing significantly. It was with genuine delight that we were able to secure what we consider is an exceptional deal for our customers.

3. By representations dated 18<sup>th</sup> April 2018, the Homeowner confirmed to the Tribunal that payment in the sum of £500 had been made to their account by the Factor on 26<sup>th</sup> March 2018.
4. By representations dated 23<sup>rd</sup> April 2018, the Homeowner submitted that the Factor had not complied with the second requirement of the PFEO, and had not provided an explanation of the method by which the premium had been assessed. The Homeowner said that the Factor had not provided anonymised information as suggested by the Tribunal, nor had the Factor given details of whether a price/quality matrix had been used. The Homeowner said that the Factor had made false statements and contradictions, and had demonstrated a lack of transparency.
5. By representations dated 25<sup>th</sup> April 2018, the Homeowner provided information in relation to a recent quotation provided by Bridge Insurance Brokers Limited, whereby the insurance premium for the development was significantly lower than that of Marsh/Allianz, the insurer chosen by the Factor.
6. The Tribunal considered the representations of both parties and found that the Factor had complied with paragraph 1 of the PFEO but had failed to comply with paragraph 2, as follows:
  - (a) The information from the Factor is a repetition of what has already been submitted; there is no new information in the Factor's response. The Factor has not provided the required complete information on the quotations which form the foundation of the premium charged to this development and it follows that there is no clear explanation of the method by which the premium applied to the development has been assessed.
  - (b) In the response relating to insurer selection, the Factor states that it was based on cost, supplemented by previous experience of the claims handling process with the selected broker/insurer. The Factor claims that the premium was "an exceptional deal for our customers"; however, it is much higher than the quote obtained independently by the Homeowner. While the Tribunal accepts that there may be additional factors, such as claims history and valuation of buildings to be taken into account when comparing

different quotes, there is a significant difference between the Bridge quote and that chosen by the Factor. It has not been clearly demonstrated that the selection of insurer by the Factor was the best choice for the Homeowners.

7. Accordingly, the Tribunal finds that the Factor has failed to properly comply with the PFEO.

### **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.**

Helen Forbes

Legal Member and Chairperson

21<sup>st</sup> May 2018