

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

**Decision on homeowner's application: Property Factors (Scotland) Act 2011
Section 19(1)(a)**

Chamber Ref:

FTS/HPC/PF/25/3462

Flat 2, 6 Brighthouse Park Crescent, Edinburgh, EH4 6QS

("the Property")

The Parties:-

Mr Tom Davidson, Flat 2, 6 Brighthouse Park Crescent, Edinburgh, EH4 6QS

("the applicant")

Ross and Liddell, 60 St Enoch's Square, Glasgow, G1 4AW

("the respondent")

Tribunal Members:

Iain MacRae (Legal Member)

Mary Lyden (Ordinary Member)

Representation

Applicant: Self

Respondent; David Doig, solicitor

DECISION

1. The application is refused as the respondent had not failed to comply with its duties under section 14(5) of the Property Factors (Scotland) Act 2011 (**the 2011 Act**) in that it did comply with Overarching Standards of Practice 2 and 3 in that it was honest, open, transparent and fair in the dealings with homeowners and provided information in a clear and easily accessible way in relation to the commission paid to it for organising common insurance.
2. The decision is unanimous

Introduction

3. The Factor was the Registered Property Factor in respect of the Flat 2, 6 Brighthouse Park Crescent, Edinburgh, EH4 6QS (**the property**). It terms of section 14(5) of the Property Factors (Scotland) Act 2011 (**the 2011 Act**). It was under a duty to comply with the property factor the 2021 Code of Conduct for Property (**the Code**).
4. This is an application for orders under Rule 43 of the First-tier Tribunal for Scotland (Housing and Property Chamber) Rules of Procedure 2017 (the Rules) and section 17 the 2011 Act. The Form C2 alleges a breach of the Overarching Standards of Practice 2, 3 and 6 and a failure to carry out the Property Factor's duties.

Case Management Discussion

5. A case management discussion (**CMD**) took place by teleconference on 5 March 2026. The respondent had provided written representations and productions in advance of that. Following introductions and introductory remarks by the Legal Member, the purpose of the CMD was explained. The tribunal members had read the application, the respondent's submissions and supporting documentation lodged by both parties. It was explained that the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision.

Summary of submissions

The applicant

6. The applicant advised that there were no breaches of the Property Factor's Duties over and above the breaches of the OSPs. Part 7B of the C2 application was allowed to be withdrawn. The applicant's position was that respondent had not been transparent over the insurance. Part of the money paid for insurance premium was a commission to the respondent. Nowhere is it stated the homeowners were paying this. It is unfair that they paid an insurance premium and were then be told by the insurers that it can only be refunded less the commission paid to the respondent.

7. He thought that respondents were in effect charging a lower management fee and the commission was a disguised management fee. He did not dispute the 7.5% for broker but the respondent should have returned the 22% they had received in relation to the premiums refunded by the insurers after the policy was cancelled. He was of the view that the respondent had walked away from the development and they should have used their discretion to repay the commission. The information, provided was not clear and accessible.
8. There was detailed discussion in relation to the factors said to amount to breaches of OSP 6. The first related to how contractors appointed by insurers manage work. The second and sixth related to other homeowners. The applicant withdrew these.
9. The third related to the respondent failing to install 24 hour monitoring which would connect an EV point, recently installed in the building's garage, to the fire alarm and to a 24 hour monitoring company; the fourth related to work recommended by a fire safety report, the work was undertaken poorly, and then removed but no charges were made to him. The fifth related to what might be considered essential gas safety work, following an inspection, but this had not been carried out and the homeowner also confirmed that the present factor had not undertaken that work either.
10. He would like to pro rata amount of the commission on insurance premium paid back to him.

The respondent

11. Mr Doig explained that the respondent had approached the case on the basis that the complaint was that the commission had not been paid back. That was consistent with the letter initiating the stage 2 complaint and the letter answering the stage 2 complaint. Some of the matters relied on by the applicant did not relate to him, so if these were breaches of Code it would be for the affected homeowner to complain and seek orders.

12. As for the commission the respondent's written submission set the matter out clearly. There was no breach of the Code.
13. Having heard from Mr Doig there was an adjournment to allow the respondent to lodge the stage 1 and 2 complaint paperwork.
14. On resuming the hearing there was discussion with parties about this correspondence. The applicant stated that he no longer sought orders in relation the claimed breach of OSP 6 and so that was allowed to be withdrawn. However, he confirmed that he was still seeking a decision on the insurance.
15. Both parties confirmed that they were content that the tribunal had sufficient information before it to make a decision and did not seek a hearing.

The Tribunal makes the following findings in fact:

16. The respondent is a regulated property factor.
17. The respondent was formerly the property factor for the development at 4-7 Brighthouse Park Crescent, Edinburgh (The development)
18. The applicant is the owner Flat 2, 6 Brighthouse Park Crescent, Edinburgh, EH4 6QS (the property) which is within the development;
19. The respondent's written statement of service stated that they do not charge clients a fee for the Insurance Services they provide. It stated that Insurance Commission of 22.5% is received which covered the costs incurred in administering the Insurance Policy, including ensuring compliance with all relevant Financial Conduct Authority Regulations, dealing with the common claims and assisting clients with claims;
20. The respondent guaranteed payment of premiums due under the Insurance Policy taken out by them on behalf of the homeowners and paid a Broker's fee to secure their market knowledge and experience, to ensure a competitive renewal for clients;
21. The respondent arranged an annual common policy of buildings insurance for the development for the period 15 May 2024 to 14 May 2025;

22. The insurance policy states that the respondent received remuneration from insurers by way of commission of 22.50% for all classes of insurance other than terrorism which is 10%.
23. The respondent received a commission of 22.5% in respect of the placing of the insurance policy.
24. The homeowners at the development appointed new factors during the insured period.
25. The respondent's appointment as factor ended in November 2024; The homeowners' insurance, arranged by the respondent lapsed with effect from the date of termination;
26. The respondent was not obliged to return to the homeowner any of the insurance commission paid to them by insurers.

Reasons for Decision

27. Parties were agreed that the decision could be made on the basis of the information before the Tribunal. We agree that the facts of the case were sufficiently clear to allow us to proceed to make a decision. We considered all of the documents lodged by the parties as well as their submissions made at the CMD. At the conclusion of the hearing the remaining issue was whether the respondent had breached OSP 2 and or 3. The OPS which are as follows

OSP2. You must be honest, open, transparent and fair in your dealings with homeowners.

OSP3. You must provide information in a clear and easily accessible way.

28. The real issue for the applicant was that he felt that the respondent was obliged to or should have returned part of the commission they had been paid when arranging the common insurance.
29. We do not accept that the respondent was not open, honest, transparent and fair in their dealings with the applicant. Nor is it proved that the information provided was unclear or not easily accessible. The respondent's WSS (set out in a Service Level Agreement) is clear that as to how the respondent arranges insurance and that they are paid a commission and the rate. The WSS also

refers to the commission being stated on the reverse of the policy. On the policy the commission is stated as 22.5% of the premium. The applicant had himself produced and referred to the certificate. The WSS explains in detail that rather than charge homeowner for the service of obtaining, guaranteeing payment of the premium and maintaining the policy (in the sense of dealing with any claims) they are paid a commission.

30. The WSS explains that in the event that a policy was cancelled during the insured period any refund of premiums was not guaranteed. This would be at the discretion of the insurer. It also clearly states that any refund paid by the insurers would be on a pro-rata basis but after deduction of the full commission already paid by the insurers.
31. Insurance is an annual policy. The insurers accept the risk from the first day of the policy. If an insured decides to change insurer during the period of a policy the insurance company would be entitled to keep the whole premium paid. The annual policy for the development cost the homeowners £28,780. After the respondent's appointment was terminated the insurance ended. The insurers, at their discretion refunded £14,390 which, the applicant stated, was £3,175 short. The shortfall is the pro-rata commission paid by the insurers on the repaid premiums. The shortfall to the applicant was £82.82.
32. The respondent here has done nothing other than what they were entitled to. The fact that they have decided not to return the commission paid to them is not a breach of the Code.
33. If the homeowners wished to minimise the consequence of any refund of insurance being subject to the deduction of the commission (already paid by the insurers to the respondent) they could have decided to terminate the respondent's appointment on the last day of the annual insurance policy rather than half way through it.

Appeal

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.

5 October 2026

Legal Member & Chair

Date