



**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Homeowner Housing Panel) issued under the Homeowner Housing Panel (Applications and Decisions) (Scotland) Regulations 2012 in an application under section 17 of the Property Factors (Scotland) Act 2011 ('The Act').**

**Chamber Ref:FTS/HPC/PF/21/1661**

**7 Oakfield Avenue, Glasgow, G128JF ('the Property')**

**The Parties:**

**Andrew McVitie residing at 7 Oakfield Avenue, Glasgow, G128JF ('The Homeowner')**

**James Gibb Residential Factors, 65 Greendyke Street, Glasgow, G1 5PX ('The Factor')**

**Tribunal members:**

**Jacqui Taylor (Chairperson) and John Blackwood (Ordinary Member).**

### **Decision of the Tribunal**

The Tribunal determines that the Factor has not failed to comply with section 5.6 of the Property Factor Code of Conduct.

The decision is unanimous.

### **Background**

1. The Factor is a registered property factor and property factor of the Property. Their Property Factor ID is PF000103.
2. The Homeowner is heritable proprietor of the Property. He purchased the Property in 1993.
3. By application dated 12<sup>th</sup> July 2021 the Homeowner applied to the First-tier Tribunal (Housing and Property Chamber) for a determination that the Factor had failed to comply with section 5.6 of the Property Factor Code of Conduct ('The Code') and Property Factor duties.

- Section 5: Insurance.

Section 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.

4. The application had been notified to the Factor by letter from the Homeowner dated 26<sup>th</sup> July 2021.

5. By Notice of Acceptance by Martin McAllister, Convener of the First- tier Tribunal (Housing and Property Chamber), dated 17<sup>th</sup> August 2021, he intimated that he had decided to refer the application (which application paperwork comprised documents received in the period 12<sup>th</sup> July 2021 to 30<sup>th</sup> July 2021) to a Tribunal.

6. The Factor lodged written representations with the Tribunal on 1<sup>st</sup> November 2021 comprising:

Appendix 1: Development Deed of Conditions.

Appendix 2: Written Statement of Services and Development Schedule.

Appendix 3: Correspondence between the parties.

Appendix 4: Renewal process information distributed to clients.

Appendix 5: Final communication unanswered by David Reid regarding breach of the PFA.

Appendix 6: Communication with the Tribunal in regard to sift of this application.

7. Mr McVitie lodged additional written representations with the Tribunal by email on 13<sup>th</sup> November 2021.

## **8. The Hearing**

An oral conference call hearing took place in respect of the application on 19<sup>th</sup> November 2021 at 10.00 am.

The Homeowner attended on his own behalf. The Factor was represented by David Reid, Deputy Chief Executive; Lorraine Stead, Regional Director and Alistair Vallance, Operations Manager, Glasgow.

### **8.1 Agreed Facts**

At the beginning of the hearing the parties confirmed and agreed the following facts, which were accepted by the Tribunal:-

8.1.1 The Property is 7, Oakfield Avenue, Glasgow which is a second floor flat in the traditional tenement 7 Oakfield Avenue, Glasgow. There are eight flats in the tenement.

8.1.2 The Factor is property factor of the Homeowner's Property. They first started factoring the Property in 2014.

8.1.3 There is no residents association for the tenement.

## **8.2 Preliminary Matters**

**8.2.1** Mr McVitie confirmed that his application solely concerns the alleged breach of section 5.6 of the Code of Conduct and breaches of Property Factor duties. He acknowledged that there is reference to an alleged breach of section 5.2 of the Code within the application but he confirmed that he is not pursuing that alleged breach.

**8.2.2** Mr McVitie acknowledged that he had sent written representations to the Tribunal on 13<sup>th</sup> November 2021 which was less than seven days before the hearing. He explained that they had been sent late as he had been busy and work and had a lot on his plate. Mr Reid confirmed that he had received copies of the written representations and he had no objection to the Tribunal receiving them even although they had been sent to the Tribunal late. The Tribunal confirmed that they would allow the written representations to be lodged late.

## **8.3 The parties' representations, findings in fact and the Tribunal's decisions:**

### **8.3.1 The Code Complaint.**

Section 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.

#### **8.3.1.1 The Homeowner's complaints.**

a. Mr McVitie explained that when presented with significantly cheaper quotes on buildings insurance the Factor stated 'James Gibb cannot comment on why your quotes are less than James Gibb'.

b. He acknowledged that the Property Factor obtained multiple quotations but his buildings insurance premium is currently charged at £70 per month and there is available buildings insurance at £8 per month for the same rebuild value. In his view the disparity is too large and James Gibb will not entertain looking at these options.

#### **8.3.1.2 The Factor's Representations.**

c. The buildings insurance premium was increased significantly in 2017 as a result of an insurance valuation being carried out. This valuation noted the sums

insured being under insured. The sum insured was increased to ensure that in the event of a total loss or partial loss the homeowners did not find themselves with a shortfall in rebuild costs to bridge. The increase in premium is minor compared to paying out the shortfall on a rebuild cost if a block is not correctly insured. The valuation was completed by an independent valuer. Mr McVitie raised a complaint that a cheaper buildings insurance quote should be obtained and was unhappy that the buildings insurance renewal process had not delivered a cheaper quotation for building insurance. The Factor's Written Statement of Services confirms the process for renewal of insurance. The alternative buildings insurance quotation obtained by Mr McVitie focused on the rebuild value of the development and was a single property quotation. The quotation did not include insurance cover for the common parts of the tenement. The quotation was not for a like for like policy when compared with the policy obtained by the Factor.

d. The Factor wrote to Mr McVitie in May 2021 providing details of how they appointed the insurance provider Protector with effect from the insurance renewal date of 28<sup>th</sup> May 2021. The letter explained they had secured the best deal from Protector in a difficult market. The residential property insurance market was imposing significant premiums across the board for a variety of reasons including hardening market, high industry claims, external wall systems risks and decreasing numbers of insurers interested in the market. There had been a number of insurers who had indicated, via the renewal process, significant increases beyond 30%. That fact confirmed their decision the buildings insurance for 7, Oakfield Avenue, Glasgow with the current insurer as it was the most cost effective option. Following their industry analysis they had identified competitors being imposed with average increases of 20-30% this year. Following many hours of talks, discussions and negotiations Protector had agreed to cap the increase for 2021/ 2022 at 10%. They provided a copy of correspondence with their insurance broker Marsh which provided information in relation to the insurance renewal process carried out.

e. During the hearing Mr Reid gave a full explanation as to how his company arranges buildings insurance on behalf of homeowners.

In particular he explained:-

e(i) The Factor's Written Statement of Services at paragraph 8 explained the Factor's position and obligations regarding arranging buildings insurance for homeowners. The quotation that Mr McVitie had obtained from Admiral was not an offer of insurance as the insurance provider had not completed their due diligence. It was simply a quotation.

e(ii) As a company they manage several developments where the homeowners have chosen to use different insurers. If Mr McVitie obtained the agreement of a majority of homeowners in the tenement to change insurance provider James Gibb would switch the policy to the new provider. He acknowledged that the email from Lorraine Stead to Mr McVite dated 8<sup>th</sup> July 2021 stated that this would not be possible but he clarified that the email from Lorraine Stead was incorrect in this regard.

e(iii) He confirmed that James Gibb use Marsh as their insurance broker. They negotiate with Marsh that James Gibb receives a share of the commission that Marsh receive from the particular insurance companies. This arrangement does not affect the insurance premium that is paid by the homeowners.

### **8.3.1.3 The Tribunal's Decision:**

#### **8.3.1.3.1 The Tribunal makes the following findings in fact:**

f(i) The Factor has arranged a common buildings insurance policy on behalf of the property owners of the tenement building 7 Oakfield Avenue, Glasgow, G12 8JF.

f(ii) The Homeowner sent an email to the Factor on 23<sup>rd</sup> April 2021 questioning the Factor's procedures of arranging buildings insurance and advising that he could obtain a significantly cheaper insurance quote using comparative insurance websites.

f(iii) The Homeowner sent an email to the Factor dated 7<sup>th</sup> July 2021 advising that it is possible for him to get insurance quotes at £12.50 per month on the internet with the same rebuild value of £2,500,000 as the Factor's insurance broker who charges £70 per month.

f(iv) The Homeowner sent an email to the Factor dated 13<sup>th</sup> November 2021 which states *inter alia*, 'My point is that there are very competitive rates available. I have attached one such quote from Admiral (£12.79/month). This was not the cheapest, 33 of 38 quotes were under £21/month when checked on a comparison website.

f(v) The letter from the Factor to the Homeowner headed 'Block Insurance Renewal May 2021', previously referred to, explains why the Factor decided to keep the

common buildings policy with Protector and how they use their insurance broker Marsh to arrange the renewed buildings insurance policy.

#### **8.3.1.3.2 The Tribunal makes the following Decision:**

g(i) The Tribunal recognized that it is a preliminary requirement of Section 5.6 of the Code that the Homeowner asks the Property Factor to show how and why they appointed the insurance provider. The Tribunal determined that the said emails from the Homeowner to the Property Factor dated 23<sup>rd</sup> April 2021 and 7<sup>th</sup> July 2021 had the effect of asking the Property Factor how and why they appointed the insurance provider.

g(ii) The Tribunal acknowledged that letter from the Factor to the Homeowner headed 'Block Insurance Renewal May 2021' states:

' The Property Factor had secured the best deal from Protector in a difficult market. The residential property insurance market was imposing significant premiums across the board for a variety of reasons including hardening market, high industry claims, external wall systems risks and decreasing numbers of insurers interested in the market. There had been a number of insurers who had indicated, via the renewal process, significant increases beyond 30%. That fact confirmed their decision to insure the buildings insurance for 7, Oakfield Avenue, Glasgow with the current insurer as it was the most cost effective option. Following their industry analysis they had identified competitors being imposed with average increases of 20-30% this year. Following many hours of talks, discussions and negotiations Protector had agreed to cap the increase for 2021/ 2022 at 10%. This indicated their commitment to working with them on behalf of the homeowners. In addition, an indexed linked increase in declared value (where revaluations have not been conducted for over two years) has been capped at 2.5%. This revaluation ensures the building sum insured matches full rebuild costs.

g(iii) The said letter also included a copy of correspondence with their insurance broker Marsh which provided information in relation to the insurance renewal process carried out and in particular it stated:

'Renewal was secured with Protector Insurance with a moderate rate increase and with no changes to the existing policy excesses. The policy excess will continue to be shared equally amongst the co-proprietors to reduce the individual burden of the development. From our knowledge and insurance market investigations, the current

rate provided by Protector insurance remains the most competitive providing a broad market coverage. We approached a number of insurers to obtain alternative terms but due to a variety of reasons including market and portfolio conditions, no insurers were prepared to offer terms that would be competitive against Protector Insurance. This position was further exacerbated by all Insurers reducing or withdrawing out of the residential Insurance market due to the well documented position affecting the UK, in particular, construction methods relating to cladding.

g(iv)The Tribunal determined that this letter from the Factor to the Homeowner headed 'Block Insurance Renewal May 2021' meets the requirements of section 5.6 of the Code of Conduct and shows the Homeowner how and why they appointed Protector Insurance as the insurance provider.

g(v) The Tribunal determined that the Property Factor has not breached section 5.6 of the Code of Conduct for Property Factors.

g(vi)The Tribunal separately acknowledged that the Code of Conduct for Property Factors does not require the Property Factor to obtain the cheapest buildings insurance policy on behalf of the homeowners. Also, if the homeowners do not wish to continue with the policy arranged by the Property Factor they are entitled to arrange their own common buildings insurance policy if a majority of the proprietors of the tenement agree.

## **8.4 The Complaint that the Property Factor had not complied with Property Factor duties.**

### **8.4.1 The Homeowner's complaint.**

Mr McVitie advised that he did not have any additional matters to add beyond the complaint that the Property Factor had failed to comply with section 5.6 of the Code of Conduct.

### **8.4.2 The Tribunal's Decision.**

The Tribunal determined that they considered the Applicant to have withdrawn his complaint that the Property Factor had not complied with Property Factor duties.

## **Appeals**

**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.**

Signed



Date: 19<sup>th</sup> November 2021

Chairperson