

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Proposal regarding the making of a Property Factor Enforcement Order (“PFEO”) Property Factors (Scotland) Act 2011 (“the Act”), Section 19 (2)

Chamber Ref: FTS/HPC/PF/19/0987

Property: Flat 28, The Fairways, 823 Clarkston Road, Glasgow, G44 3UZ (“the property”)

The Parties:-

Mrs Kathleen Stalker, Flat 28, The Fairways, 823 Clarkston Road, Glasgow, G44 3UZ (“the homeowner”) represented by

Moira Stalker, 3 Midlothian Drive, Shawlands, Glasgow, G41 3RE.

McCarthy and Stone Management Services, 4th Floor, 100 Holdenhurst Road, Bournemouth, BH8 8AQ (“the property factor”)

The Tribunal members:

Simone Sweeney (legal chairing member) and Elizabeth Dickson (ordinary housing member)

This document should be read in conjunction with the decision of the Tribunal of even date under the reference number noted above.

1. By decision of even date with this Notice, the tribunal determined that the property factor has failed to comply with section 2.5 of the Code of Conduct for Property Factors (“the Code”) as required by section 14(5) of that Act and the Property Factor’s duties in terms of section 17 of the Act.
2. Therefore, the tribunal proposes to make the following PFEO:

Within 28 days of the communication of the PFEO to the property factor, the property factor must:

- (i) Issue to the homeowner a written apology for its failures and for the actions and inactions of Carol Elliott which gave rise to the original complaint and for which Carol Elliott has already provided an oral apology.
- (ii) Facilitate and meet the cost of mediation for parties to attempt to improve relations going forward.
- (iii) Extend the offer of mediation to the homeowner.
- (iv) Pay to the homeowner compensation in the sum of £150.

3. Section 19 of the 2011 Act provides:

"(2) In any case where the First-tier Tribunal proposes to make a property factor enforcement order, it must before doing so—

(a) give notice of the proposal to the property factor, and

(b) allow the parties an opportunity to make representations to it.

(3) If the First-tier Tribunal is satisfied, after taking account of any representations made under subsection (2)(b), that the property factor has failed to carry out the property factor's duties or, as the case may be, to comply with the section 14 duty, the First-tier Tribunal must make a property factor enforcement order."

4. The intimation of the tribunal's decision and this proposed PFEO to the parties should be taken as notice for the purposes of section 19(2)(a) and parties are hereby given notice that they should ensure that any written representations which they wish to make under section 19(2)(b) reach the tribunal by no later than **14 days** after the date that the decision and this proposed PFEO is sent to them by the tribunal. If no representations are received within that timescale, then the tribunal is likely to proceed to make a final PFEO without seeking further representations from the parties.

Failure to comply with a PFEO may have serious consequences and may constitute a criminal offence.

