

Housing and Property Chamber First-tier Tribunal for Scotland



Decision in respect of an Application under Section 17 of the Property Factors (Scotland) Act 2011

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

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

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)

Decision of the Tribunal Chamber

The First-tier Tribunal (Housing and Property Chamber) (“the tribunal”) unanimously 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 the Act. In addition the tribunal determines that the property factor has failed to satisfy the Property Factor’s duties in terms of section 17 of the Act. The tribunal finds no breach of section 2.2 of the Code.

Background

1. By application dated 27th March 2019, the homeowner applied to the Tribunal for a determination on whether the property factor had complied with sections 2.2 and 2.5 of the Code imposed by section 14 of the Act. The application form also

contained the word, “*seventeen*” hand-written at section 7. In response to an enquiry by the tribunal’s administration whether this was a reference to an alleged breach of section 17(1) of the Act, the homeowner confirmed that she was including a breach of the Property Factor’s duties. Specifically the homeowner alleged that the property factor had failed to follow its own complaints procedure. The homeowner produced a letter dated 17th April 2019 confirming intimation of this alleged breach to the property factor.

2. By decision dated 30th April 2019, a convenor referred the application to the Tribunal for a hearing. Notices of referral were sent to the parties on 10th May 2019. A hearing was assigned for 28th June 2019 in Glasgow. By email of 16th May 2019, the homeowner’s representative, Ms Stalker sought a discharge of this hearing due to a pre-existing commitment. The Tribunal granted the request and a new hearing was assigned for 26th July 2019. Reference is made to the Tribunal’s direction of 10th June 2019.
3. A hearing took place on 26th July 2019 at 10am within the Glasgow Tribunals Centre, 20 York Street, Glasgow. In attendance at the hearing on behalf of the property factor were, Mr Peter Clark, area manager at the development, Mrs Caroline Sanderson, regional manager and Mrs Nicola Brady, area manager. The homeowner was absent but represented by her daughter, Moira Stalker. Ms Stalker was accompanied by Ms Sonja Bader who attended as an observer, only.

Hearing of 26th July 2019

4. A number of preliminary issues required to be addressed. The Tribunal was informed that, regrettably, the applicant had been admitted to hospital earlier that morning. Ms Stalker confirmed that she had her mother’s authority to proceed in her absence and did not wish to discharge the hearing and assign a new diet. Ms Stalker wished to lodge emails between herself and the property factor dated 18th and 25th July 2019. The property factor did not oppose the emails being received. Having been the person with whom Ms Stalker was communicating in the emails Mr Clark was familiar with their content.

Evidence of the homeowner’s representative

Section 2.2 of the code

5. Section 2.2 of the code provides that the property factor,

“...must not communicate with homeowners in any way which is abusive or intimidating, or which threatens them (apart from reasonable indication that you may take legal action).”

6. In support of the allegation that the property factor had breached section 2.2 of the code, Ms Stalker provided some examples of behaviour by a member of the property factor's personnel towards her mother. The homeowner had moved into her home in November 2014 and had been happy there. Around November 2017 she felt that there was a change in the attitude of the house manager at the development towards her. She became rude and abusive towards the homeowner and other residents yet friendly towards certain others. The house manager is Carol Elliott. She has been employed in this role by the property factor since the homeowner came to live at the development.
7. Specifically, Ms Stalker referred to an incident in April 2018. Due to her failing health, the homeowner had decided to stop driving and to surrender her parking space at the development. The car parking spaces form part of the common areas at the development. Allocation of the spaces is managed by Carol Elliott. It was the homeowner's intention to offer her space to a friend, Mrs Morton, another resident at the development. The homeowner shared this with Carol Elliott. Ms Stalker alleged that Carol Elliott had reacted with aggression, told the homeowner not to interfere in management issues and pointed her finger towards her. Carol Elliott raised her voice, she warned the homeowner not to discuss the matter with anyone else. The homeowner was distressed and upset by the incident. An uncomfortable atmosphere developed. The homeowner felt that this was not good for her health and well- being.
8. A more recent example was cited. Unfortunately the homeowner's health is poor and she suffers from, amongst other conditions, high blood pressure and diabetes. On 4th March 2019, the homeowner suffered a stroke and was admitted to hospital. The homeowner had initially taken unwell at the development in the presence of Carol Elliott. Carol Elliott was requested to call an ambulance but offered the homeowner a biscuit, assuming that her symptoms were the result of a diabetic hypo. A few days after the homeowner's return from hospital Carol Elliott arranged for a bunch of flowers to be handed into her by a colleague. Ms Stalker felt that should the gesture have been sincere then Carol Elliott ought to have delivered them herself. It was alleged that Carol Elliott did not enquire after

the homeowner's health. It was alleged that Carol Elliott had given a great deal of attention to other owners in the past as and when they had taken unwell. It was alleged that Carol Elliott failed to demonstrate these behaviours towards the homeowner but kept a distance from her. In doing so the allegation was that Carol Elliott was treating the homeowner differently to other residents.

9. Finally it was submitted that a security alarm fitted at the homeowner's home was due for a routine inspection. In the normal course of events the house manager would undertake these inspections alone. However the homeowner and two other owners had received letters from the property factor to advise that their alarms would be inspected by two managers, Carol Elliott and Peter Clark. Ms Stalker advised that her mother had felt that she was being "*singled out*" and treated differently to other homeowners. She felt threatened by two people coming into her home when she was alone. Ms Stalker confirmed with the Tribunal that her mother would have been against Carol Elliott coming into her home at all. She accepted that her mother would not have felt comfortable with Carol Elliott entering her home on alone but thought that she would not have minded Peter Clark inspecting the alarm, alone. In her submission, Ms Stalker claimed that these incidents revealed a breach of section 2.2 by the property factor.

Section 2.5 of the code

10. Section 2.5 requires the property factor to,
"respond to enquiries and complaints received by letter or email within prompt timescales. Overall your aim should be to deal with enquiries and complaints as quickly and as fully as possible, and to keep homeowners informed if you require additional time to respond."
11. The homeowner had discussed her concerns with her family and with other homeowners. Ms Stalker had discussed the matter with Sonja Bader. Ms Bader's mother was a neighbouring resident who shared the homeowner's concerns about Carol Elliott's conduct. Ms Stalker provided a timeline to the Tribunal to illustrate how the complaints process had progressed.
12. In June 2018 Ms Stalker and Ms Bader met with Carol Elliott's manager, Alison Downie. They made a formal complaint about Carol Elliott's behaviour. Ms Stalker alleged that Ms Downie confirmed that she was aware of a bad atmosphere at the development and that Carol Elliott had communication issues.

Ms Stalker received no communication from Alison Downie after the meeting and became aware that Alison Downie was on long term absence at the end of August.

13. On 1st October 2018 Ms Stalker sent an email to the property factor's Nicola Brady requesting a response to the complaint she had made in June 2018. In her telephone response, Nicola Brady denied any knowledge of a complaint from June 2018. Ms Stalker provided specification of her complaint to Nicola Brady by email of 2nd October 2018.
14. Nicola Brady acknowledged the complaint by email of 3rd October 2018. She intimated her intention to investigate the allegations and provided the following timescale, *"I am out of the office for the rest of the week, but will look into all of the issues you raised and get back to you next week."*
15. Ms Stalker send an email to Nicola Brady on 10th October 2018 requesting an update which was responded to the same day with, *"...there will be a formal meeting in the next few days ...I would however ask that this is not discussed in any manner at the current time."*
16. Ms Stalker's submission was that she received an email from Nicola Brady on 16th October 2018 confirming that Alison Downie had returned to work but, *"Carol Elliott will not be at The Fairways for the foreseeable future."* The email was silent on progress with the applicant's complaint.
17. The next communication from the property factor was an email on 19th November 2018 from Alison Downie. This read,
"...we are unable to share any information regarding Carol's absence as this would be a breach of confidentiality...where it may appear that an issue that has been brought to our attention is not being addressed as you have had no communication, I would like to assure you that all matters brought to our attention are taken seriously however, we are unable to share information with you regarding any action that may or may not have been taken....There is currently no further update regarding Carol absence (sic) at this stage. When there is any further information...I will contact you directly."

18. Sonja Bader replied to Alison Downie, stating, *“All we need to know is that Carol will not be returning ever to the Fairways”* to which Alison Downie responded with,
- “We have an investigation process to follow with regard to the concerns you have raised but we are unable to embark on this process until Carol returns to work.”*
19. Dissatisfied with this response, Ms Stalker escalated her complaint to the property factor’s Chief Executive, John Tonkiss by email dated 22nd November (a copy of which was before the tribunal). The complaint was passed from Mr Tonkiss to Mark Riddington, Managing Director of Management Services. This was intimated to Ms Stalker in an acknowledgement email from Mr Tonkiss on 22nd November. Mr Riddington sent an email to Ms Stalker on 29th November 2018, apologising for the delay in responding to Ms Stalker’s email of 22nd November and committing to a *“full response, or an update on progress, in 7 days time.”*

Alleged breach of the property factor’s duties

20. In her letter of 17th April 2019 (which was before the Tribunal) the homeowner had alleged a breach of the property factor’s duties in terms of section 17 of the Act by failing to follow its own complaints’ process. The letter specified that the property factor had (i) failed to keep the homeowner informed of progress of the complaint and (ii) not met target timescales for responses and (ii) not responded to specific questions.

21. The letter provided,

“I do not believe that McCarthy & Stone have followed their own complaints procedure.

McCarthy & Stone have failed to address the concerns raised within their own timescales.

McCarthy & Stone have failed to address the concerns raised in the complaints made.

I also believe that you have failed to comply with your own Written Statement of Services, specifically:

Communications and Complaints Procedure

Communications MSMS not keeping me informed of progress of my complaint.

Complaints *Not adhering to MSMS Complaints Procedure, in particular target timescales for responses and responding to specific questions.”*

22. In evidence Ms Stalker advised that she had expected a swift response to her complaint on 20th June 2018. She would have expected matters to have been concluded within a week. She alleged that the property factor failed to address matters seriously until it was escalated to John Tonkiss by email of 22 November 2018. Ms Stalker submitted that she never expected that she would have required to bring the complaint before a Tribunal.

Response of the property factor

Section 2.2 of the code

23. In response Ms Brady, for the property factor, denied any breach of section 2.2 of the code. Ms Brady explained that she and her colleague, Caroline Sanderson, had met with Carol Elliott within days of her return to work at the development. At this meeting Carol Elliott admitted she had demonstrated poor judgment in her conduct towards the homeowner. After the relationship between her and the homeowner had broken down, Carol Elliott admitted that she had then pulled back in communication with the homeowner but she accepted that this had not been the right thing to do. In her defence, Ms Brady submitted that Carol Elliott is now a different person as a result of this experience. She looks different, has lost weight and is sorry for all that has occurred.

24. Ms Brady submitted that the property factor arranged a meeting for Carol Elliott to discuss matters with the homeowner and the other two owners who had complaints against her, namely Mrs Morton and Mrs Stewart. This went ahead in early 2019 soon after Carol Elliott's return to work from some months' absence. Caroline Sanderson and Ms Brady were in attendance at the meeting. Ms Brady explained that there had been an unexpected issue arose on the morning of the meeting. An external venue close to the development had been identified as a suitable location for the meeting to proceed. The property factor was advised that the lift facility had broken down unexpectedly which meant this venue was no longer a suitable option. The property factor was reluctant to reschedule the meeting given the homeowners and Carol Elliott had prepared for this date and Caroline Sanderson had travelled from the south of England. Consideration was given to using a neighbouring golf club for the meeting but this was unavailable at short notice. In the end the property factor decided to hold the meeting at the development. Ms Brady explained that, regrettably, the common lounge area was

the only place suitable for the meeting to proceed. She accepted that someone had passed through the area during the course of the meeting and that it was not the best environment to conduct a meeting of this nature but it allowed the meeting to proceed. All those invited to the meeting, attended. Ms Brady received the agreement of all present that the meeting should proceed. The homeowner's allegations were put to Carol Elliot. It was Ms Brady's evidence that Carol Elliott apologised to the homeowner for each of the criticisms made of her. This was supported by Ms Sanderson. Specifically, in relation to the incident in the car park in April 2018, Carol Elliott had admitted that she had raised her voice and should not have done so. However neither Ms Brady nor Ms Sanderson considered such conduct to have been threatening or intimidating. The minutes of the meeting were recorded by Ms Brady but never shared with any of the owners.

25. In response to the allegation that the property factor had demonstrated conduct which was threatening or intimidating when checking the alarm system at the property, Mr Clark submitted that he had been present at this time. Mr Clark explained that the security alarms in the properties are usually checked by Carol Elliott, alone. However, in light of the breakdown in relations between her and the homeowner, Carol Elliott had requested that Peter Clark assist her to check the alarms at the properties of the homeowner, Mrs Morton and Mrs Stewart. A letter was issued to each of the ladies offering a date and time for the visit to take place and intimating that both Carol Elliott and Mr Clark would be in attendance. Mr Clark's telephone number was provided on the letter should the homeowner wish to make contact and alter what was being suggested. Mr Clark received contact from Mrs Stewart who indicated that she felt uncomfortable with Carol Elliott coming into her home. She agreed to Mr Clark carrying out the check on the security alarm, alone. Mrs Morton was agreeable to the terms proposed and allowed both Carol Elliott and Mr Clark into her home. Having received no communication from the homeowner to the contrary Mr Clark and Carol Elliott attended her home as scheduled. The homeowner had accused the property factor of "*singling her out*" by having the check of her alarm undertaken by two people. As Mr Clark was in the process of checking the alarm, the homeowner claimed to feel "threatened" by two people being in her home for this purpose. Mr Clark advised that Carol Elliott was visibly flustered. So much so, that she failed to leave the alarm operational when she left. Mr Clark confirmed to the tribunal that he found the word "threatened" unusual. Notwithstanding the comment, Mr Clark proceeded to inspect the alarm system.

Section 2.5 of the code

26. In response Ms Brady rejected any breach of this section of the code. submitted that the property factor deals with all complaints seriously. However investigations into the allegations made by the homeowner were hampered by long periods of absence by Carol Elliott and Alison Downie.
27. The meeting with Alison Downie in June 2018 had not been made known to the property factor. There remains no evidence of any record of the meeting. The property factor did not dispute that a meeting had gone ahead on 20th June 2018 as narrated by Ms Stalker. Ms Brady did not dispute that complaints had been made to Alison Downie about Carol Elliott. Ms Brady “guessed” that Alison Downie may have spoken to Carol Elliott directly. What could be confirmed was that Alison Downie took annual leave between 29th June and 16th July 2018. Unfortunately Alison Downie sustained an injury on holiday necessitating an operation. She was absent from work from 31st August until 16th October 2018. Alison Downie was involved in some communications between her return to work on 16th October and her leaving her employment with the property factor on 14th December 2018.
28. Meanwhile Carol Elliott was absent from work between 24th July and 23rd August 2018 and again between 16th October 2018 and 14th January 2019.
29. Ms Brady confirmed that the property factor knew of the homeowner’s complaint from 2nd October 2018 upon receipt of Ms Stalker’s email. The property factor has its own investigation process to deal with complaints against staff members whereby the staff member has the chance to respond to the allegations made against them. Ms Brady explained that no investigations could be carried out during Carol Elliott’s period of absence between October 2018 and January 2019. To do otherwise would have breached employment legislation. Ms Brady advised that investigations had commenced on receipt of the email of 2nd October 2018 although she did not provide any specification but investigations were cut short by Carol Elliott’s absence from 16th October 2019.
30. Ms Brady insisted that as soon as Carol Elliott returned to work on 14th January 2019, the property factor acted quickly. A meeting was arranged for 17th January 2019 with Carol Elliott, Ms Brady and a senior manager from Human Resources.

The outcome of the meeting was that Carol Elliott would remain in post at the development. Certain action points were identified and addressed internally. Thereafter the meeting with the homeowner, Mrs Morton and Mrs Stewart was arranged and took place a few days later. The property factor's position was that the homeowner's complaint of 20th June 2018 was at an end. Ms Brady recognised that the process had taken longer than both parties would have liked but the unusual circumstances prevented matters being concluded more expeditiously.

31. Ms Brady insisted that communication had been maintained with the homeowner through her representative throughout this seven month period. She claimed that, *"barely a week goes by without us communicating with Ms Stalker."* Ms Brady denied that any emails received from the homeowner's representative had gone unanswered.

Property Factor's duties

32. Within the property factor's written submissions of 31st May 2019 received by the Tribunal on 1st July 2019 were the property factor's responses to the allegations of a breach of the Property Factor's duties.
33. The property factor denied that the homeowner had not been kept informed on progress with her complaint. The property factor provided the relevant section of the Written Statement of Services which provides:-
"MSMS will endeavour to acknowledge written communications within three working days and to provide a substantive response within 10 working days. If the matter is more complex, the response will take longer than 10 working days but MSMS will keep Homeowners informed of progress."
34. The property factor insisted that the commitment in the Written Statement of Services had been met, throughout. It was submitted that,
"...we provided substantive responses within: 5 working days of their email of 22 November 2018 notifying them that we needed longer, and within 7 working days of that date with a more detailed response; 5 working days of their email of 9 December 2018; 5 working days of their letters of 24 March 2019; and 10 working days of the letters of 17 April 2019."

35. In response to the allegation of a failure to meet target timescales for responses, this was disputed by the property factor and referred to the aforementioned submission.
36. In response to the allegation of a failure to respond to specific questions, the property factor responded that all questions had been answered with the exception of those relating to, “*confidential matters between an employer and employee.*”

Findings in Fact

37. That the homeowner is the owner of the property.
38. That the homeowner has lived at the property since November 2014.
39. That the property factor provides management services to the property which includes provision of a property manager at the development and has provided services since the homeowner came to live at the property.
40. That the property factor is responsible for recruitment, training and supervision of the property manager.
41. That the property manager at the development within which the property is located was Carol Elliot, an employee of the property factor.
42. That Carol Elliott was absent from work from 16th October 2018 until 14th January 2019.
43. That the property factor was prohibited from investigating the allegations with Carol Elliot directly during her period of absence.
44. That an incident occurred in April 2018 at the car park of the development when Carol Elliott raised her voice at the homeowner.
45. That the conduct of Carol Elliott was unprofessional.
46. That the conduct had been investigated by the property factor and that Carol Elliott had accepted that the conduct was unprofessional.
47. That Carol Elliott had apologised to the homeowner at a meeting on 28th January 2019.
48. That the homeowner refused to accept the apology from Carol Elliott.
49. That Carol Elliott and Peter Clark attended the homeowner’s property for the purposes of inspecting an alarm in July 2019.
50. That the homeowner advised that she felt threatened.
51. That Carol Elliott would usually inspect alarms in owners’ properties, alone.

52. That Carol Elliott's manager was Alison Downie, also an employee of the property factor.
53. That the homeowner's representative, Ms Stalker made allegations about Carol Elliott's conduct to Alison Downie at a meeting on 20th June 2018.
54. That the property factor holds no record of this complaint having been made.
55. That the homeowner made a complaint to the property factor on 20th June 2018.
56. That the homeowner received no response to her complaint of 20th June 2018.
57. That the property factor only became aware of the homeowner's complaint from Ms Stalker's email of 2nd October 2018.
58. That the property factor gave a commitment to the homeowner on 3rd October 2018 to investigate her complaint.
59. That, in response to emails, the property factor sent an email on 10th October 2018 indicating that internal investigations were on-going.
60. That, the property factor's internal investigation process allowed Carol Elliott to respond to the allegations received.
61. That the property factor's emails of 10th and 16th October 2018 provided no timescales for further communication on the issue of the complaint.
62. That, by email of 19th November 2018, the property factor communicated to the homeowner that there was no further update.
63. That the homeowner requested information about Carol Elliott's long term employment position at the development.
64. That the homeowner was not entitled to any information about Carol Elliott's employment position nor details of the internal investigations undertaken by the property factor and that this was intimated to the homeowner.
65. That on her return to work on 14th January 2019, the property factor undertook internal investigations with Carol Elliott on 17th January 2019.

Reasons for decision

66. The tribunal heard evidence that the homeowner felt threatened by the conduct of Carol Elliott during the course of the exchange in the car park in April 2018 and by the presence of two members of personnel attending her property to undertake an alarm inspection in July 2019. The evidence before the tribunal was that Carol Elliott accepted that her conduct was not professional in April 2018. She admitted that she raised her voice. The tribunal is of the opinion that the conduct fell short of what may have been expected of a house manager in the circumstances. The tribunal accepts that the homeowner may have felt

uncomfortable and upset by the episode. However the tribunal is not persuaded that this incident breached section 2.2 of the code. In any event, in January 2019, Carol Elliott provided the homeowner with an apology for her conduct.

67. The tribunal accepts that Peter Clark accompanying Carol Elliott to inspect the alarm at the homeowner's home was unusual. The tribunal accepts that Carol Elliott usually carried out checks, alone. Peter Clark was to be present at checks to the alarms at the homes of the homeowner, Mrs Stewart and Mrs Morton, only. Each of these owners had made formal complaints about Carol Elliott. Each of these owners had attended the meeting in January 2019 when Carol Elliott apologised for her previous conduct. The tribunal accepts that Carol Elliott may have felt some reluctance attending these homes, alone, against this background. Given that the homeowner had refused to accept her apology, the tribunal accepts that Carol Elliott may have felt hesitant about attending the homeowner's home alone. The tribunal accepts that Carol Elliott broke from her usual practice on this occasion. The tribunal accepts that Carol Elliott did so for good reason which was to protect her from any further complaint or allegation. The tribunal accepts that the homeowner intimated to Peter Clark that she felt threatened. The evidence was that she felt threatened by the presence of two people attending her home. The homeowner received a letter in advance of the visit. The homeowner has the support of her daughter who has represented her throughout her complaint. It was open to the homeowner to refuse the proposal of two people entering her home. It was open to the homeowner to refuse Carol Elliott entry to her home. The homeowner chose not to do so. The tribunal is not persuaded that two people entering the homeowner's home in these circumstances is '*threatening*' conduct on the part of the property factor. Accordingly the tribunal finds no evidence of a breach of section 2.2 of the code.

68. Section 2.5 of the code focuses on responses by the property factor to complaints received by letter or email. It is a matter of agreement between the parties that the homeowner made a complaint to Alison Downie on 20th June. However, the homeowner's complaint was not formalised in writing until Ms Stalker's email of 2nd October 2018. The tribunal considers the allegation of this section of the code against what occurred from 2nd October 2018, therefore.

69. The evidence before the tribunal was that the property factor responded to emails within reasonable timescales. However the tribunal is not satisfied that the responses were as full as possible. It is accepted that Carol Elliott was absent from work for 3 months which created delay. It is accepted that data protection regulations and Employment law requirements made it impossible for the property factor to share with the homeowner any information about the details of any internal procedures and related outcomes. However the tribunal is not satisfied that certain responses from the property factor were as full as they could have been. For example, in the email of 16th October 2018 Ms Brady advised the homeowner that Carol Elliott would not be at work *“for the foreseeable future.”* There was no explanation to the homeowner on how Carol Elliott’s absence would impact on the homeowner’s complaint. It was open to the property factor to explain that the homeowner’s allegations could not be investigated during Carol Elliott’s absence. The tribunal is of the opinion that the property factor ought to have explained this as soon as possible after Carol Elliott’s absence began on 16th October 2019. It was not until Alison Downie’s email of 19th November 2018 that the property factor indicated that their internal process could not be followed until Carol Elliott returned to work.

70. In their emails the property factor failed to provide definite timescales by which updates would be provided. The tribunal is of the opinion that the property factor ought to have been communicating with the homeowner by email at regular intervals (eg. 14 or 21 days). The tribunal accepts that the property factor would not have known, necessarily, the length of time Carol Elliott was likely to be absent from work. For the tribunal this heightens the requirement on the property factor to ensure the homeowner was made aware that little could be done to move her complaint forward. Even if it had meant that the homeowner had only received confirmation that the position remained unchanged, the tribunal is of the view that the property factor ought to have communicated with the homeowner more frequently between 16th October 2018 and January 2019 when their investigations ended. The property factor failed to provide an explanation to the homeowner of how Carol Elliott’s absence would impact on the complaint at an early stage. In this failure the property factor has not dealt with the complaint as fully as possible. Accordingly the tribunal finds the property factor to be in breach of section 2.5 of the Code.

71. Whilst the tribunal accepts the evidence of the property factor that emails received were given an acknowledgement timeously, the tribunal does not accept that substantive responses were provided to the homeowner. It is acknowledged by the tribunal that there were regulations and procedures which prohibited sharing details of matters between the property factor and Carol Elliott. However, for the reasons set out above, the tribunal is of the opinion that there was no reason to prevent the property factor from simply explaining to the homeowner how and why their investigations were curtailed. The property factor accepts that the homeowner first made a complaint on 20th June 2018 which was not acted upon. Against that background, the tribunal is of the opinion that the onus was on the property factor to implement their own complaints procedure, ensure regular communication with the homeowner and to provide as full an update as possible within the statutory limits in which the property factor was in. Having failed to do that, the tribunal determines that the property factor has failed to satisfy the Property Factor's duties.

Decision

72. The tribunal, having found the property factor to be in breach of section 2.5 of the Code and the Property Factor's duties, proposes a Property Factor Enforcement Order ("PFEO") to accompany this decision.

73. The property factor is ordered to 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.

74. The property factor is ordered to facilitate and meet the cost of mediation for parties to attempt to improve relations going forward.

75. The property factor is ordered to extend the offer of mediation to the homeowner.

76. The tribunal recognises that the homeowner has been inconvenienced by the acts and failures of the property factor and that inconvenience should be recognised. The tribunal orders the property factor to pay to the homeowner compensation in the sum of £150.

Appeals

77. 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 member, 13th August 2019