



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (“the Act”) and Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)

Chamber Ref: FTS/HPC/LA/20/2082

Re: Property at The Manse Kirk of the Holy Rood, Bowhouse Road, Grangemouth FK3 0EX (“the Property”)

Parties:

Mr Mory Marcel Sangare and Mrs Zeldia Sandrine Mozez residing at 60, Glentyne Drive, Tullibody, FK10 2UR (“the Applicants”)

Belvoir Falkirk, 38 Vicar Street, Falkirk, FK1 1JB (“the Respondent”)

Tribunal Members:

Karen Moore (Legal Member)

Ahsan Khan (Ordinary Member)

Decision

The Tribunal determined that the Respondent had failed to comply with the Letting Agent Code of Practice (“the Code”) at Section 2 of the Code at paragraphs 16 and 19 and had not failed to comply with the Code at Section 2 at paragraphs 17, 20, 21, 23 and 28; Section 3 at paragraphs 31, 32c, 37a and 37b, Section 4 at paragraph 38, Section 5 at paragraphs 75, 82 and 84, Section 6 at paragraphs 97, 98, 99 and 100 and Section 7 at paragraphs 108, 111 and 112.

1. By application received between 29 September 2020 and 22 December 2020 (“the Application”), the Applicants made an application to the First-tier Tribunal for Scotland

(Housing and Property Chamber) (“the Chamber”) for a determination in terms of Section 48(1) of the Act that the Respondent had failed to comply with the Letting Agent Code of Practice (“the Code”) as defined by Section 46 of the Act and as set out in The Letting Agent (Registration and Code of Practice) (Scotland) (Miscellaneous Amendments) Regulations 2017.

2. The Application comprised:

- (i) An application form setting out the complaint as failures to comply with Section 2 of the Code at paragraphs 16, 17, 19, 20, 21,23 and 28; Section 3 of the Code at paragraphs 31, 32c, 37a and 37b, Section 4 of the code at paragraph 38, Section 5 of the code at paragraphs 75, 82 and 84, Section 6 of the Code at paragraphs 97, 98, 99 and 100 and Section 7 of the Code at paragraphs 108,111 and 112
- (ii) Copy exchange of correspondence between the Parties dated 27 December 2019 and 13 January 2020.

3. On 23 December 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Hearing was fixed for 26 February 2021 at 10.00 by telephone conference call. The Application was intimated to the Respondent. The Hearing was intimated to both Parties. Prior to the Hearing, the Respondent intimated that it did not intend to lodge written submissions.

Hearing

4. A Hearing took place on 26 February 2021 at 10.00 a.m. by telephone conference call. Both Applicants took part. Ms. Gillian Inglis of the Respondent took part on behalf of the Respondent (“Belvoir”). Both Parties advised that they had no witnesses.

5. The Tribunal Chair outlined the role of the Tribunal and set out the way in which the Hearing would proceed with reference to the Rules and, in particular, Rule 2. which states:

Applicants’ Position

6. Mr Sangare of the Applicants set out the Applicants’ position and confirmed that the complaints all emanated from the unannounced visits by representatives or members of the Church of Scotland, the landlord of the Property (“the Church”).

7. He explained that the first visit was on 25 June 2019 when Mrs Momez was in France and he was at home with their 13-year-old daughter. She answered a knock at the door to two ladies from the Church who said that they had a new minister who wanted to view the house later that day. Mr Sangare stated that this surprised and angered him as due process had not been followed and so he refused them entry.
8. Mr. Sangare explained that he called Belvoir to complain about this. He told them that this visited both disturbed him and his daughter. It had made him angry and that he made it clear to Belvoir that he was not happy that, during the tenancy, complete strangers arrived wishing to view the property without due process. He explained that he was content to allow entry for other matters, but he would not allow viewing by a prospective new tenant until a notice was served.
9. Mr. Sangare stated that, having received a note from Church that they wanted to visit the Property and a further visit, he called Belvoir on 4 July 2019 to complain again and that he viewed this request as harassment.
10. Mrs. Momez stated that on another occasion around this time, when she was at home, a member of the Church accompanied by two other people, a couple, entered the locked garden area of the Property without prior notice or arrangement. She stated that the Church member and the couple could see that she was in the living room, but did not ring the bell or speak to her. On a further occasion, shortly after a visit from the minister, two ladies from the Church came to the Property and commented to Mrs. Momez that they had seen a strange looking person enter the back door of the Property. The Applicants' daughter was present and took this comment to refer to her. Mr Sangare stated that their daughter became traumatised by the unannounced visits and did not want to be alone in the Property in case people from the Church returned.
11. Mr. Sangare stated that following the visits from the Church, Belvoir constantly called his wife by phone to request access for the Church and that he called Belvoir on 26 July 2019 to ask that Belvoir stop calling. Belvoir did not do so and so acted in bad faith towards the Applicants.
12. He stated that Belvoir said that they were sorry if it appeared harassing and explained that the Church had wanted a prospective minister to see the area. Belvoir further advised that there was no intention by the Church to give notice to leave as it would take time to appoint a new minister. However, the Church then served notice to leave.
13. Mr. Sangare explained that he wrote direct to the Church to complain about violation of the law, harassment and racial targeting and that the Church responded by giving notice to leave. It was after the notice was given that the Church member and the couple entered the garden at the Property.

14. Mr Sangare advised the Tribunal that, by this time, his wife and daughter were becoming very stressed by the harassment and so he decided to give notice to end the tenancy. He stated that he gave notice terminating the tenancy on 28 September 2019.
15. Mr Sangare explained that his daughter is of an extremely sensitive nature and that she and his wife reacted badly to their treatment by the Church. He stated that he believed that Belvoir acted along with the Church in this alleged wrongful behaviour and did not stop the Church from harassing his family. He reiterated that although he complained to Belvoir about the conduct of the Church, Belvoir did nothing to prevent it recurring. Mr Sangare stated that Belvoir advised him that there was nothing they could do in respect of the Church's actions. Mr Sangare disputed this as Belvoir ought to have known and ought to have told the Church that the Church must follow its obligation to give notice of visits and ought to have told the Church that the Church was not entitled to have access for viewings until a notice to leave was given.
16. In response to questions from the Tribunal, Mr Sangare accepted that it was members or representatives of the Church who had attempted to gain access without notice and that it was not Belvoir who attempted to gain access.

Respondent's Position

17. In response, Ms. Inglis stated that Belvoir had been unaware of the Church's visit or any plans to visit until she received Mr Sangare's call on 25 June 2019. She said that she agreed that the Church should have given prior notice. She advised the Tribunal that she called the Church and explained to the Church that the tenant had the right to refuse access.
18. She explained that on 26 July 2019, the Church called Belvoir and asked if Belvoir could arrange access. Ms. Inglis then called Mrs Momez to ask for access but Mrs Momez refused. Ms. Inglis reported this back to the Church and explained that the Applicants would not allow access until a notice to leave was given.
19. She next found out from the Applicants that the Church's solicitors had given the Applicants notice to leave on 12 August 2019. She said that the Applicants had given their own notice to terminate the tenancy on 28 September 2019 and, although this was a later date than the notice given by the Church, the Church agreed to 28 September 2019 as the end date.
20. Ms. Inglis explained that access for the Church was then arranged for 7 September 2019. She stated that she emailed the Applicants to advise that as a legal notice to leave had been given, the Church could ask for access. She advised that the Applicants did not agree that the notice was valid but agreed to give access.

21. In response to questions from the Tribunal, Ms. Inglis agreed that she had not given the Applicants advice on the effect of the notice to leave and had not advised them that they could not be removed without a tribunal eviction order.
22. In response to questions from the Tribunal, Ms. Inglis stated that she had called Mrs. Mozez to ask for access on behalf of the Church once and refuted that there had been repeated calls. She stated that she had been unaware of any of the visits by members or representatives of the Church until advised of these by the Applicants and that she had no prior knowledge that the Church intended to give notice to leave until Mr. Sangare phoned and told her.

Heads of Complaint in respect of the Code

23. The Tribunal then dealt with the specific complaints in respect of the Code and asked the Applicants to explain the relevance of their position to the breaches detailed in the Application.
24. Section 2 of the Code, at paragraph 16 states: *“You must conduct your business in a way that complies with all relevant legislation.”* Mr. Sangare stated that this relates to the Church’s behaviour and breaches of the tenancy agreement and that Belvoir ought to have stopped the Church from acting in this way but Belvoir did nothing to stop the Church. Ms. Inglis reiterated that the actions were by the Church and that Belvoir had advised the Church that they had no right to have access without the Applicants’ permission.
25. Section 2 of the Code, at paragraph 17 states: *“You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).”* Mr. Sangare stated that this also related to the Church’s behaviour and breaches of the tenancy agreement and the way in which Belvoir acted by doing nothing to stop the Church. Mr. Sangare stated there was no honesty from Belvoir in its dealing and that Belvoir pushed for the Applicants to leave the Property. Ms. Inglis stated that Belvoir had acted properly, had not known of the Church’s intentions and had reported what the Church had told Belvoir to the Applicants.
26. Section 2 of the Code, at paragraph 19 states; *“You must not provide information that is deliberately or negligently misleading or false.”* Mr. Sangare stated that this also related to the Church’s behaviour and breaches of the tenancy agreement and the fact that Belvoir stated in its letter to the Applicants that the Church acted within its rights. Ms. Inglis again stated that Belvoir had acted properly and had acted on the instructions of the Church in respect of requesting access. She referred the Tribunal to Belvoir’s letter of 13 January 2020 which stated that it is not unlawful for landlords or agents to

ask for access to properties at any time. She stated that this was the correct position as parties could act outwith the tenancy agreement. She agreed that the Church had not acted properly in not seeking consent or giving notice.

27. Section 2 of the Code, at paragraph 20 states: *“You must apply your policies and procedures consistently and reasonably.”* and at paragraph 21 states *“You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.”* Mr. Sangare agreed with the Tribunal that these points are broadly the same and agreed that they relate to the manner in which Belvoir acted overall and not in relation to any specific policy, procedure or service. He agreed that his point is that Belvoir should be obliged to apply the law relating to tenancies properly and that the Tribunal should infer a breach of these parts of the Code from their failure to apply. He advised the Tribunal that there have been other tribunal findings against Belvoir. Ms Inglis opposed this point of view. She stated that the complaint was not specific enough to answer and explained that Belvoir is a franchise and that, as each franchise has its own policies, findings against other agencies in the franchise are not findings against Belvoir Falkirk.
28. Section 2 of the Code, at paragraph 28 states: *“You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.”* Mr. Sangare stated that this relates to the frequent calls to Mrs Mozez requesting access. Ms Inglis opposed this point of view and stated that she had not made repeated calls and that Belvoir’s records did not show repeated calls.
29. Section 3 of the Code deals with Engaging Landlords and at paragraph 32 and 37 relates to how a letting agent should deal with landlords. Mr. Sangare accepted that these parts of the Code are not relevant to the Applicants’ complaint. However, Mr. Sangare stated that in respect of paragraph 31 which states: *“If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.”*, Belvoir ought to have stopped acting for the Church and ought to have reported the Church. Ms Inglis position is that had the Church continued to be in breach of any obligations, Belvoir would have taken action but that action was not warranted at this time.
30. Section 4 of the Code deals with Lettings and at paragraph 38 states: *“Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading”* Mr. Sangare stated that Belvoir ought to have noted tribunal decision

against it on its marketing material. Ms. Inglis' position is that this is not relevant to the complaint and in, any event, there are no findings against Belvoir.

31. Section 5 of the Code deals with Management and Maintenance and relates to how a letting agent should deal with accessing properties on behalf of landlords. Mr. Sangare accepted that these parts of the Code are not relevant to the Applicants' complaint.
32. Section 6 of the Code deals with Ending the Tenancy and relates to how a letting agent should deal with tenancy terminations on behalf of landlords. Mr. Sangare accepted that these parts of the Code are not relevant to the Applicants' complaint. However, Mr. Sangare stated that in respect of paragraph 100 which states: "*You must not try to persuade or force the tenant to leave without following the correct legal process.*", Belvoir should not have sided with the Church. Ms Inglis reiterated that it was the Church who gave notice to leave without Belvoir knowing. In response to questions from the Tribunal, she agreed that Belvoir did not contact the Applicants and did not give advice on how to contest the notice or explain that the notice required to be followed by an eviction order. She explained that if Belvoir serves a notice to leave, Belvoir phones the tenant in advance to have a conversation about what happens in the process and agreed that Belvoir did not do so as the Church served notice.
33. Section 7 of the Code deals with Communications and resolving complaints and at paragraph 108 states: "*You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond.*" Mr Sangare stated that his complaint in this respect is that Belvoir ought to have treated his phone call on 25 June 2019 as a complaint against both Belvoir and the Church as Belvoir's behaviour was also unacceptable. He stated that Belvoir had been pushing for the Church to visit without notice by repeatedly phoning and, taking into account how heated the complaint was, should have treated the whole matter as a complaint against Belvoir at the earliest opportunity. Ms Inglis' position was that the complaint against Belvoir was the intimation on 27 December 2019 which was acknowledged on 3 January 2020 and replied to in full on 13 January 2020.
34. Section 7 of the Code at paragraph 111 states: "*You must not communicate with landlords or tenants in any way that is abusive*". Mr. Sangare accepted that this is the same complaint referred to under Section 2 of the Code, at paragraph 20.

35. Section 7 of the Code at paragraph 112 states: *“You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business”* Mr Sangare stated that his complaint in this respect relates to Belvoir’s conduct throughout. He accepted that Ms. Inglis had sent him a copy of Belvoir’s complaints procedure with her acknowledgment email of 3 January 2020 and so accepted that Belvoir has a complaints procedure.

Findings in Fact

36. The Tribunal accepted the Applicants’ and Belvoir’s evidence at the Hearing as truthful and that there was not an attempt to deceive by either party. The difference in viewpoint, in the main, arose from the parties’ differing interpretation of what occurred in relation to what is required by the Code. Where there were differences in fact, for instance in respect of the number of calls made by Belvoir to the Applicants, the Tribunal based its findings on probability, the burden of proof being the balance of probabilities.

37. From the Application and the Hearing, the Tribunal held the following findings in fact: -

- i) The Applicants had been tenants of the Property which is owned by the Church;
- ii) Belvoir was engaged as letting agent by the Church;
- iii) Notwithstanding Belvoir’s role as letting agent, members or representatives of the Church called at the Property on or around 25 June 2019 without prior arrangement with or the consent of the Applicants;
- iv) The Church required access for the purpose of a viewing and not for the purposes of maintenance or a management inspection;
- v) Belvoir was unaware of this visit until contacted and so advised by the Applicants on 25 June 2019;
- vi) Belvoir advised the Church that it had no right or power to carry out visits to the Property or to gain access to the Property for this purpose without prior arrangement with or consent of the Applicants;
- vii) Members or representatives of the Church called at the Property on two further occasions, 28 June 2019 and 26 July 2019, again without prior arrangement with or consent of the Applicants;

- viii) Again, Belvoir was unaware of these visits until contacted and so advised by the Applicants on and 4 July 2019 and 26 July 2019;
- ix) Again, Belvoir advised the Church that it had no right or power to carry out visits to the Property or to gain access to the Property for purpose of a viewing without prior arrangement with or consent of the Applicants;
- x) Belvoir advised the Church that it had no right to ask for access for the purpose of a viewing unless a notice to leave was in force;
- xi) The Church asked Belvoir to contact the Applicants to ask for access to the Property for a viewing;
- xii) Belvoir followed this instruction and contacted the Applicants by phone on at least one occasion to ask for access to the Property for a viewing;
- xiii) The Applicants refused this request for access;
- xiv) Notwithstanding the Belvoir's role as letting agent, the Church instructed its own solicitors to give notice to leave;
- xv) Notice to leave of 30 days was given on 13 August 2019;
- xvi) Belvoir was unaware that notice to leave had been given until contacted and so advised by the Applicants;
- xvii) The Applicants disputed the validity of the notice to leave and advised Belvoir of this;
- xviii) Belvoir's view was that the notice to leave was valid;
- xix) Belvoir did not give any advice to the Applicants in respect of the effect of the notice to leave and did not advise the Applicants to take their own advice;
- xx) The Applicants' gave notice of their own that they intended to leave the Property and terminate the tenancy on 28 September 2019;
- xxi) The Church agreed to the termination on 28 September 2019;
- xxii) Access was arranged by Belvoir by email to the Applicants for a viewing of the Property on 7 September 2019;
- xxiii) The Applicants and their family were genuinely aggrieved, angry and distressed at the actions of the Church;
- xxiv) The Applicants and their family genuinely believed that Belvoir acted in concert with the Church and so were aggrieved, angry and distressed at the actions of the Church;
- xxv) The Applicants wrote a letter of complaint to Belvoir on 27 December 2019;
- xxvi) Belvoir acknowledged the complaint by email on 3 January 2020 and sent a copy of its complaint procedure to the Applicants at that time;
- xxvii) Belvoir replied to the complaint by email on 13 January 2020;

xxviii) In the email of 13 January 2020, Belvoir stated *“With regards to the requests for access to the property, it is not against any regulation or law for a landlord or agent to request access to a let property at any time. A tenant is only obliged to agree to this under certain circumstances and outwith these circumstances cannot be forced, as was the case on these occasions.”*

Issue for the Tribunal

38. The issue for the Tribunal is whether or not the matters complained of by the Applicants and for which the Tribunal have found in fact amount to failures by Belvoir to comply with the Code as alleged by the Applicants.

Decision of Tribunal and Reasons for the Decision

39. Having made its findings in fact, the Tribunal considered each of the Applicants' heads of complaint.

40. Section 2 of the Code, at paragraph 16 states: *“You must conduct your business in a way that complies with all relevant legislation.”* The Tribunal took the view that this part of the Code relates to how the letting agent conducts its business. The Tribunal did not agree with the Applicants that this part of the Code is capable of being extended to compliance by a landlord. In any event, the tenancy agreement between the Applicants and the Church is not legislation but is a contract, albeit a contract based on legislation. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.

41. Section 2 of the Code, at paragraph 17 states: *“You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).”* The Tribunal took the view that this is an onerous obligation on the letting agent to ensure the fair treatment of both landlords and tenants in all its dealings. The Tribunal noted that the Applicants related this part of their complaint to the unannounced visits by the Church, but also noted that the Applicants whole complaint related to the overall conduct of the Church and Belvoir's handling of that conduct. The Tribunal accepted that the Church had acted on its own initiative in giving notice to leave to the Applicants and also accepted that Belvoir was unaware that this was the Church's intention. However, the Tribunal was concerned that Belvoir did not offer any advice to the Applicants in respect of the notice to leave, particularly as Belvoir had been made known that the Applicants disputed the validity of the notice to leave. The Tribunal appreciates that Belvoir acts on behalf of the Church and is aware that the wording of the standard notice to leave provides guidance. However, this did not

preclude Belvoir from offering guidance and assistance to the Applicants as to the effect of the notice to leave and did not preclude Belvoir from advising the Applicants that they should seek their own advice as they were not obliged to comply with the notice. Therefore, in this regard, the Tribunal found that Belvoir was not “*honest, open, transparent and fair*” and so found that Belvoir had failed to comply with this part of the Code.

42. Section 2 of the Code, at paragraph 19 states; “*You must not provide information that is deliberately or negligently misleading or false.*” The Tribunal accepted that the Church had acted on its own initiative in visiting the Property without permission or consent and accepted that Belvoir had no prior knowledge of these visits. The Tribunal also accepted that Belvoir had advised the Church that the Church had acted improperly. However, the Tribunal was concerned at the wording in Belvoir’s letter as detailed in Finding in Fact xxviii) of paragraph 37 above and concerned that this wording was not wholly truthful or accurate as it gives the impression that the Church could have been entitled to act as it did. This wording does not make it clear that there is a difference between the Church members or representatives carrying out a visit for access not permitted by the tenancy agreement and the Church later requesting a visit for access for a non-contractual purpose by consent. In this regard, the Tribunal agreed with the Applicants and found that Belvoir’s letter of 13 January 2020 was “*deliberately or negligently misleading or false*” and so found that Belvoir had failed to comply with this part of the Code.
43. Section 2 of the Code, at paragraph 20 states: “*You must apply your policies and procedures consistently and reasonably.*” and at paragraph 21 states “*You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.*” The Tribunal noted the Applicants’ position in regard to Belvoir’s overall actions but agreed with Ms Inglis that the complaint was not specific enough to answer or for the Tribunal to make the necessary inference. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.
44. Section 2 of the Code, at paragraph 28 states: “*You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.*” The Tribunal noted that the calls and contact caused distress to the Applicants and their family but took the view that the distress was caused by the Church and not by Belvoir. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.

45. The Tribunal noted that Mr. Sangare accepted that Section 3 of the Code at paragraphs 32 and 37 are not relevant to the Applicants' complaint. With regard to paragraph 31 which states: *"If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations."*, the Tribunal accepted Ms Inglis' position that had the Church continued to be in breach of any obligations, Belvoir would have taken action but that action was not warranted at this time. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.
46. With regard to Section 4 of the Code at paragraph 38 which states: *"Your advertising and marketing must be clear, accurate and not knowingly or negligently misleading"*, the Tribunal accepted Ms. Inglis' position that this part of the Code is not relevant as it does not relate to the complaint, and in, any event, there are no findings against Belvoir. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.
47. The Tribunal noted that Mr. Sangare accepted that Section 5 of the Code is not relevant to the Applicants' complaint. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.
48. The Tribunal noted that Mr. Sangare accepted that Section 6 of the Code at paragraphs 97, 98 and 99 are not relevant to the Applicants' complaint. In respect of paragraph 100 which states: *"You must not try to persuade or force the tenant to leave without following the correct legal process."*, the Tribunal accepted that it was the Church who gave notice to leave without Belvoir knowing. Whilst the Tribunal noted that Belvoir did not contact the Applicants and did not give advice on how to contest the notice nor did Belvoir explain that the notice required to be followed by an eviction order, there was no evidence that Belvoir try to persuade or force the Applicants to leave. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.
49. Section 7 of the Code deals with Communications and resolving complaints and at paragraph 108 states: *"You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond."* The Tribunal had regard to the Applicants' position but agreed with Ms Inglis that the complaint against Belvoir was the intimation on 27 December 2019 which was acknowledged on 3 January 2020 and replied to in full on

13 January 2020. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.

50. Section 7 of the Code at paragraph 111 states: *“You must not communicate with landlords or tenants in any way that is abusive”*. Mr. Sangare accepted that this is the same complaint referred to under Section 2 of the Code, at paragraph 20. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.

51. Section 7 of the Code at paragraph 112 states: *“You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business”* The Tribunal noted that Mr Sangare accepted that Ms. Inglis had sent him a copy of Belvoir’s complaints procedure with her acknowledgment email of 3 January 2020 and so accepted that Belvoir has a complaints procedure. Accordingly, on the evidence before it, the Tribunal found that Belvoir had not failed to comply with this part of the Code.

Letting Agent Enforcement Order.

52. The Tribunal, having found that Belvoir was in breach of Section 2 of the Code at paragraphs 16 and 19, had regard to Section 48(7) of the Act which states: *“Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.”* Accordingly, the Tribunal was obliged to make a letting agent enforcement order to rectify Belvoir’s failure.

53. The Tribunal then had regard to Section 48(8) of the Act which states: *“A letting agent enforcement order (a) must specify the period within which each step must be taken and (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.”*

54. With regard to Section 48(8) (a), the Tribunal considered that the steps to be taken by the Belvoir is to provide the Tribunal with written or documentary evidence that Belvoir has amended its procedures to ensure that it provides all tenants who receive a notice to leave

of their legal rights of the effect of that notice and is to that evidence within 28 days of the date of the order.

55. With regard to Section 48(8) (b), the Tribunal considered that the Applicants have suffered distress as a result of the whole matter which distress could have been alleviated to minor degree if Belvoir had complied with Section 2 of the Code at paragraphs 16 and 19 and so the Tribunal considers it appropriate that it award compensation of £200.00.

Right of Appeal

In terms of Section 46 of the Tribunal (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.

Legal Member/Chair

2 March 2021