Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/26/1873

Re: 17 Cobblecrook Gardens, Alva FK12 5BN ("the Property")

Parties: Mr Zachary Mills, Unit 301 Castle House, 1 Baker Street, Stirling FK8 1AL

("the Applicant")

Stirling Property Shop, 10 Baker Street, Stirling FK8 1BJ

("the Respondents")

Tribunal Members:

Rory Cowan (Legal Member) and Geraldine Wooley (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application should be refused.

- Background

By application dated 27 April 2026, the Applicant lodged an Application with the Tribunal seeking a determination into whether the Respondents had failed to comply with the Letting Agent Code of Practice (the Code).

In the Application, the Applicant alleged the Respondents had failed to comply with paragraphs 16, 17, 18, 19, 21, 26, 27, 28, 38, 41, 45, 46, 64, 72, 75, 82, 85, 86, 108, 110, 111, and 112 of the Code.

The Applicant complained that, as a result of the alleged breaches of the Code he had suffered loss and there was therefore a claim for compensation for losses incurred within the Application.

- The CMD

The Applicant appeared personally and represented himself. He was supported by a Graham Eddolls who took no part in the proceedings. The Respondents were represented by a Mr Marshall a property manager with the Respondents. A preliminary point was raised by the Tribunal with the Applicant relating to prior notification of the Application in terms of section 48(4) of the Housing (Scotland) Act 2014. The Applicant pointed to his email dated 8 April 2026 and timed at 4:36pm which included a 2 page letter headed “Final Notice for Resolution”. The Applicant confirmed that this was “Document 4” mentioned in his Inventory of Documents and described as “Notice of Application to Tribunal”. The Applicant confirmed that, whilst other emails had been sent to the Respondents prior to that, none mentioned the Letting Agent Code (or any alleged breaches of same) and only related to specific issues such as alleged disrepair of the Property. He indicated that he was not aware of the Letting Agent Code prior to preparing the Application. Mr Marshall confirmed that he was in agreement with what the Applicant had stated and stated that there were no documents that referenced the Letting Agent Code or any particular paragraphs of same or the reasons why it was suggested the respondents had breached same.

- Findings in Fact and Law

1) That the email dated 8 April 2026 and timed at 4:36pm was issued by the Applicant prior to preparing and lodging the Application.
2) That the email dated 8 April 2026 contains no reference to any particulars of the Letting Agent Code of Practice that the Applicant alleges that the Respondents failed to comply with.
3) No other correspondence issued by the Applicant to the Respondents prior to lodging the Application contains any reference to particulars of the Letting Agent Code of Practice and why it is claimed the Respondents had not complied with same.

- Reasons for Decision

The basis under which a tenant or landlord can seek a determination as to whether a letting agent has breached the Letting Agent Code of Practice (LACoP) is set out in section 48 of the Housing (Scotland) Act 2014. The full terms of which are as follows:

“(1) A tenant, a landlord or the Scottish Ministers may apply to the First-tier Tribunal for a determination that a relevant letting agent has failed to comply with the Letting Agent Code of Practice.

(2) A relevant letting agent is—

(a) in relation to an application by a tenant, a letting agent appointed by the landlord to carry out letting agency work in relation to the house occupied (or to be occupied) by the tenant,

(b) in relation to an application by a landlord, a letting agent appointed by the landlord,

(c) in relation to an application by the Scottish Ministers, any letting agent.

(3) An application under subsection (1) must set out the applicant's reasons for considering that the letting agent has failed to comply with the code of practice.

(4) No application may be made unless the applicant has notified the letting agent of the breach of the code of practice in question.

(5) The Tribunal may reject an application if it is not satisfied that the letting agent has been given a reasonable time in which to rectify the breach.

(6) Subject to subsection (5), the Tribunal must decide on an application under subsection (1) whether the letting agent has complied with the code of practice.

(7) 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.

(8) A letting agent enforcement order—

(a) must specify the period within which each step must be taken,

(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.

(9) References in this section to—

(a) a tenant include—

(i) a person who has entered into an agreement to let a house, and

(ii) a former tenant,

(b) a landlord include a former landlord."

One of the requirements is that prior to any application to the Tribunal is made, the letting agent must be given notification of the alleged breach of the LACoP by the applicant. That means that a letting agent should be notified of the paragraph of the LACoP they are alleged to have breached and why it is said that they have breached it. Where that is not done, section 48(4) makes it clear that any application seeking a determination under section 48 is not competent.

In this case, the Applicant founds upon the terms of his email dated 8 April 2026 timed at 4:36pm along with the attached letter. He fairly accepted that neither the email nor the letter mentioned the LACoP or any specific paragraphs the Respondents were alleged to have breached or anything which would allow the

Respondents to work out which paragraphs were put at issue by the Applicant. The closest the said correspondence came to this is set out in the penultimate paragraph of the attached letter, which is as follows:

"If I do not receive a satisfactory substantive response within 7 days of the date of this letter, I will proceed without further notice to refer the matter to the First-tier Tribunal for Scotland (Housing and Property Chamber), including in relation to the condition of the property, the failures in documentation and information, and the letting agent's handling of this matter. I will also place all relevant documents, photographs, and correspondence before the Tribunal. This letter is sent in the hope that the matter can be resolved promptly and without the need for formal proceedings."

As such, the Applicant had failed to comply with section 48(4) and it was not competent for the Tribunal to proceed to any determination on the question of whether or not there had been a breach of the LACoP or not. The requirement of prior notification is not merely a procedural nicety or a "box to be ticked" prior to raising an application with the Tribunal. It should be read along with section 48(5) which empowers the Tribunal to refuse any applications where the agent in question has not been given enough time to rectify the breach. Accordingly, the whole point of these provisions is to allow parties to identify disputes and to try and resolve them (if they can) prior to referring the matter to the Tribunal for determination. Accordingly, where an applicant fails to set out the parts of the LACoP they feel has not been complied with, a letting agent cannot consider their claim and, if they agree, take steps to remedy that. A Letting Agent Enforcement Order can only be issued where there are positive steps that can be taken to remedy any breach of the LACoP. Where there are no such steps that can be taken to remedy a breach, then there is no scope for such an order being made.

- Decision

The Applicant having failed to give prior notification in terms of section 48(4) of the Housing (Scotland) Act 2014, the Application cannot competently proceed and should be refused.

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.

Rory Cowan Legal Member
3 November 2026