



**DECISION AND STATEMENT OF REASONS OF MARTIN J. MCALLISTER,
LEGAL MEMBER OF THE FIRST-TIER TRIBUNAL WITH DELEGATED
POWERS OF THE CHAMBER PRESIDENT**

**Under Rule 8 of the First-tier Tribunal for Scotland Housing and Property
Chamber Rules of Procedure 2017 ("the Rules")**

in connection with

0/1, 1 Briarwood Gardens, Glasgow, G32 9LP ("the Property")

Case Reference: FTS/HPC/LA/24/3195

Elizabeth McArthur ("the Applicant")

Gordon Watson ("the Applicant's Representative")

Lowther Homes Limited ("the Respondent")

1. The Tribunal received an application from the Applicant's Representative on 16 July 2024 in terms of Section 48 (1) of the Housing (Scotland) Act 2014 ("the 2014 Act") and Rule 95 of the Rules in respect of the alleged failure of the Letting Agent to comply with the Letting Agent Code of Practice ("the Code").
2. The Applicant's Representative submitted a copy of a private residential tenancy agreement in respect of the Property dated 18 December 2020 which states the Landlord to be Lowther Homes Limited.
3. On 26 July 2024, the Tribunal issued a request for further information to the Applicant's Representative. He was asked to state why he considered the

Respondent was obliged to comply with the Code given that the tenancy agreement states it to be the landlord in respect of the Property and not the letting agent.

4. On 14 August 2024, the Applicant's Representative replied to the request for information. He stated *inter alia* that the Respondent was acting as a *de facto* letting agent for Wheatley Homes.

DECISION

5. The Legal Member considered the application in terms of Rule 5 and Rule 95 of the Rules and Section 48 of the 2014 Act. Rule 5 provides: - (1) An application is held to have been made on the date that it is lodged if, on that date, it is lodged in the manner as set out in rules 43, 47 to 50, 55, 59, 61, 65 to 70, 72, 75 to 91, 93 to 95, 98 to 101, 103 or 105 to 111, as appropriate. (2) The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must determine whether an application has been lodged in the required manner by assessing whether all mandatory requirements for lodgment have been met. (3) If it is determined that an application has not been lodged in the prescribed manner, the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, may request further documents and the application is to be held to be made on the date that the First-tier Tribunal receives the last of any outstanding documents necessary to meet the requirement manner for lodgment. “

6. **After consideration of the application the Legal Member considers that the application should be rejected in terms of Rule 8(1) (c) which states that an application must be rejected if the Tribunal has “good reason to believe that it would not be appropriate to accept the application.” The**

basis of the decision is that the Respondent is not a letting agent in respect of the Property.

REASONS FOR DECISION

7. The Applicant's application is in terms of Section 48 of the 2014 Act and Rule 95 of the Rules. Section 48 of the 2014 Act has the following provisions:

Applications to First-tier Tribunal to enforce code of practice

(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.

8. The short assured tenancy agreement states that the tenancy agreement is between the Applicant and the Respondent.

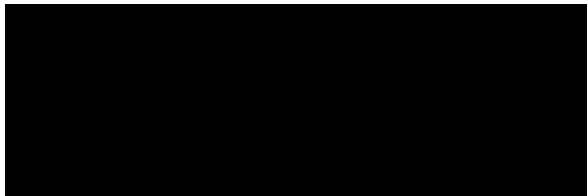
9. The relationship between the Respondent and Wheatley Homes is irrelevant. The Respondent is not a relevant letting agent appointed by the landlord to carry out letting agency work in respect of the Property. It is the landlord.

What you should do now

If you accept the Legal Member's decision, there is no need to reply.

If you disagree with this decision –

An applicant aggrieved by the decision of the Chamber President, or any Legal Member acting under delegated powers, 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. Information about the appeal procedure can be forwarded to you on request.



Martin J. McAllister, Legal Member
23 August 2024.