

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision under Section 48 (6) of the Housing (Scotland) Act 2014**

**The Parties:**

**Mr Jasbir Virhia, 53 Herries Road, Glasgow, G41 4AH  
("the Applicant")**

**AVJ Homes Ltd, 279 Castlemilk Road, Glasgow, G44 4LE ("the Respondent")**

**Chamber Ref: FTS/HPC/LA/23/3162**

**Tribunal Members:**

**Mr Martin J. McAllister, Solicitor, (Legal Member)  
Mr Gordon Laurie (Ordinary Member)  
(the "tribunal")**

**Decision**

**A The Respondent has failed to comply with the Letting Agent Code of Practice.**

**B The tribunal determines that a Letting Agent Enforcement Order be made requiring the Respondent to pay the sum of £300 to the Applicant in respect of compensation.**

**Background**

1. This is an application made by the Applicant under Rule 95 of First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended ("the Rules") to enforce the Letting Agent Code of Practice ("the Code").
2. The application was dated 2 September 2023 and was accepted for determination on 15 November 2023.
3. The Applicant was a landlord in respect of properties and the Respondent was the letting agent responsible for managing them for an eighteen month period from 16 February 2022 to 7 September 2023.

4. The application states that the Respondent has failed to comply with various sections of the Code: Overarching standards of practice 16-20, Sections 29 a, 29 f, 89,96 and 111.
5. The Respondent no longer manages properties for the Applicant.

### **The Case Management Discussion**

6. A case management discussion was conducted on 2 May 2024. The Applicant was present. The Respondent was represented by Mr Vijay Gindha, director of AVJ Homes Ltd.
7. Subsequent to the case management discussion, a Note was issued by the Tribunal and both parties submitted a number of documents and written representations in response to a Direction.

### **Hearing**

8. A Hearing was held in Glasgow Tribunal Centre on 1 October 2024. The Applicant was present. The Respondent was represented by Mr Vijay Gindha, director of AVJ Homes Ltd.

### **The Applicant's Arguments**

9. The application, representations submitted by the Applicant and his oral evidence, set out his overarching position in relation to what he considers were breaches of the Code. The Applicant's position is that he had concerns about finder's fees charged to him and that he did not agree to them. He has concerns about the costs of some contractors who were employed to carry out work and issues of what he described as "double dipping" where VAT was charged on top of invoices which already included VAT. He also had issues about commission being charged on work or services for his properties which were initiated by the Respondent and an issue about a missing electrical installation condition report. There were also issues about the turnover of tenants in properties managed by the Respondent. The Applicant considers that the Respondent communicated with him in an inappropriate manner.

### **The Law**

10. The Code was promulgated as a consequence of provisions in the Housing (Scotland) Act 2014 ("the 2014 Act").
11. Section 61 of the 2014 Act is relevant:

### **Meaning of letting agency work**

*(1) For the purposes of this Part, “letting agency work” means things done by a person in the course of that person's business in response to relevant instructions which are—*

*(a) carried out with a view to a landlord who is a relevant person entering into, or seeking to enter into a lease or occupancy arrangement by virtue of which an unconnected person may use the landlord's house as a dwelling, or*

*(b) for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the house) which is, or is to be, subject to a lease or arrangement mentioned in paragraph (a).*

*(2) In subsection (1)—*

*(a) “relevant instructions” are instructions received from a person in relation to the house which is, or is to be, subject to a lease or arrangement mentioned in subsection (1) (a), and*

*(b) “occupancy arrangement”, “unconnected person”, “relevant person” and “use as a dwelling” are to be construed in accordance with section 101 of the 2004 Act.*

*(3) The Scottish Ministers may by order—*

*(a) provide that “letting agency work” does not include things done—*

*(i) on behalf of a specified body, or*

*(ii) for the purpose of a scheme of a specified description, or*

*(b) otherwise modify the meaning of “letting agency work” for the time being in this section.*

*(4) A scheme falling within a description specified by the Scottish Ministers under subsection (3) (a) (ii) must be—*

*(a) operated by a body which does not carry on the scheme for profit, and*

*(b) for the purpose of assisting persons to enter into leases or occupancy agreements.*

## 12. Findings in Fact

12.1 The Respondent is a letting agency and an estate agency.

- 12.2 The Respondent provided letting agency services to the Applicant for part of his portfolio of properties between 16 February 2022 and 7 September 2023.
- 12.3 Part of the service provided to the Applicant by the Respondent involved finding tenants, carrying out vetting procedures and signing the private residential tenancy agreements on behalf of the Applicant.
- 12.4 The Applicant and the Respondent entered into a contract (Landlord Agreement) in respect of each property under management in respect of the services provided by the Respondent.
- 12.5 The Landlord Agreement provided for the Respondent to deduct from the rental income, any commissions.
- 12.6 The Respondent charged commissions on sums charged by contactors and service providers employed in relation to the Applicant's properties which the Respondent managed.
- 12.7 The Respondent did not provide information to the Applicant in respect of commissions charged.
- 12.8 The Respondent's current updated management agreements contain specific information in relation to commissions charged.
- 12.9 The Respondent introduced three properties with sitting tenants to the Applicant which the Applicant subsequently purchased for letting purposes.
- 12.10 The Respondent charged finder's fees in respect of the three properties which were deducted over a period from the rent collected.
- 12.11 The finder's fee for each property was £995 plus VAT.
- 12.12 At the point of acquisition by the Applicant of the three properties introduced to him, and for a period thereafter, he raised no issue about finder's fees.
- 12.13 The Respondent collected rent for the properties under management, deducted expenses, fees and commission and remitted the balance to the Applicant.
- 12.14 The Respondent instructed contractors and suppliers to provide services or to carry out work on the properties which it managed for the Applicant, received invoices in respect of such work or services and subsequently charged VAT to the Respondent on the total of the invoices presented to it.
- 12.15 An electrical contractor which the Applicant wanted to carry out electrical certification work was not registered with an approved scheme.
- 12.16 Two tenancies in properties owned by the Applicant and which had been arranged by the Respondent ended within a few months of commencement.
- 12.17 One of the properties referred to the Applicant by the Respondent, and for which a finder's fee was charged, had an expired EICR when the Respondent took ownership.

### 13. Findings in Fact and Law

- 13.1 In respect of the properties for which the Respondent charged finder's fees, it was not acting as a letting agent.
- 13.2 The Respondent has failed to comply with paragraphs 17 and 29 (a) of the Code.

## Reasons

### *Preliminary issue*

14. We considered it important to consider whether the Respondent was acting as a letting agent in respect of all the services it provided to the Applicant.
15. One of the concerns which the Applicant has was in relation to finder's fees. There was no dispute on the evidence. Mr Gindha described the transactions as being "off market." He said that the Respondent is an estate agency as well as being a letting agency. Mr Virhia described how he wanted to grow his portfolio of rental properties and was introduced to three properties managed by the Respondent which had sitting tenants. Mr Gindha said that these properties had not been marketed and he contrasted these with another property which the Applicant had bought after it had been marketed by the estate agency section of the Respondent's business. He said that no finder's fee had been paid in respect of that property.
16. Mr Gindha said that it was agreed that finder's fees would be paid and that, since Mr Virhia did not want to pay them up front ("in advance"), an arrangement was set up where the fees would be gradually recouped through the rent statements as rent for the particular properties was paid.
17. Mr Gindha said that the sellers of the properties were also charged fees by the Respondent in respect of the sales.
18. Mr Virhia said that he did not disagree with finder's fees and he accepted that they would have been shown in the rent statements which he received. He said that he did not know that the sellers of the properties were also being charged fees and that he would not have accepted the position had he known this. He said that the fact that the sellers were being charged fees had not been disclosed to him. He said that he became concerned when he discussed the matter with other people and he came to the view that there was something wrong with an agent charging both the seller and the purchaser for the same transaction. He said that he thought there was a conflict.
19. It seemed to the tribunal that the issue in respect of the finder's fees was one of contract and what needed to be determined is whether the introduction was part of letting agency work.
20. Put simply, what the Respondent did with each of the three properties was to introduce the Applicant to a seller. Solicitors for each party then completed the transactions. The work of the Respondent was not carried out with a view to the Applicant entering into, or seeking to enter into, a lease or occupancy arrangement by virtue of which an unconnected person could use the Applicant's house as a dwelling or for the purpose of managing a house (including in particular collecting rent, inspecting the house and making arrangements for the repair, maintenance, improvement or insurance of the

house) which is, or is to be, subject to a lease or arrangement. The introduction of the Applicant to a seller was one step removed from the definition of letting agent work contained in Section 61 of the 2014 Act. The tribunal accepted that, once the Applicant owned a property which he purchased in this way, the provisions of the 2014 Act would be engaged if he subsequently instructed the Respondent to carry out letting agency work.

21. In relation to finder's fees, the tribunal determined that the Respondent was carrying out estate agency work and that it had no jurisdiction to deal with any matters arising from them.
22. The Applicant stated that one of the properties which had been introduced to him by the Respondent had an expired EICR when he took ownership and that this was a breach of the Code on the part of the Respondent.
23. Mr Gindha accepted that the Respondent had managed the property prior to the Applicant's ownership. He said that there had been a delay between the property being introduced to the Applicant and it being purchased from the seller. He said that this was a matter the Applicant's solicitor should have identified when carrying out pre-purchase diligence.
24. The tribunal considered that this issue did not fall within the letting agent work covered by the Code. The EICR had expired prior to the Applicant's acquisition of the property and his subsequent engagement of the Respondent to carry out letting agent's duties on his behalf.

### **Alleged breaches of the Code**

*Paragraph 16 : You must conduct your business in a way that complies with all relevant legislation.*

25. Mr Virhia said that he did not consider that the Respondent had properly complied with VAT legislation. He described it as "double dipping." The Respondent instructed various contractors or service providers, received invoices and then issued its own VAT invoices charging VAT on top of the gross invoices of the contractors or service providers. He said that he had not sought advice on the matter from an accountant.
26. Mr Gindha said that he considered this to be the proper way to do things and he referred to an email which he had sent to the Applicant on 13 January 2023 in which he set out his reasons for dealing with VAT in the way which the Respondent did. He said that the Respondent had no financial gain in doing things in the way it did and that, if it was demonstrated that it was wrong, he would be happy to deal with matters differently and to approach HMRC for rebates. Mr Gindha said that, when the Applicant had raised the issue with him, he had sought advice from his own accountant.
27. The tribunal is not a specialist tax tribunal and the Applicant had provided no evidence on the matter. He acknowledged that he had not obtained advice from

his accountant. It was accepted by the tribunal that, if he was not registered for VAT, he would be unable to recover VAT on what he paid. Mr Gindha demonstrated in his oral evidence, and in the email which he referred to, that he considered that the Respondent was doing things properly but would happily change its practice if it was demonstrated that things were not being done properly.

28. We determined that there was no breach of this paragraph of the Code.

*Paragraph 17: You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).*

29. Mr Virhia was focused in his position with regard to this paragraph of the Code. He said that the Respondent charged commission on invoices it received from contractors and service providers. This meant that if, for example, a contractor charged £100 for some work, he would receive an invoice from the Respondent for £110. He also referred to the finder's fees which he also considered came under this paragraph of the Code.

30. Mr Gindha said that the Applicant would have been aware that commissions were charged. At paragraph 2 (3) of the Landlord Agreement it states " It is hereby agreed that we may deduct from the rental income any fees, commissions, charges and expenses payable or reimbursable by you under the terms of this agreement." He referred to rent statements which had been submitted and stated that it can be seen from these that the Respondent would have known about commissions. He said that a commission of 10% was usual but that it was discretionary. It was put to him that if, for example, a heating system had to be replaced at £3000 it would presumably attract commission of £300. He said that it would not and that commission would not be charged for such large amounts.

31. Mr Gindha accepted that the Landlord Agreement referred to commission but not the amount that would be charged or the methodology for calculation. He candidly said that the Applicant would not have known about the rate of commission and that the landlord contracts which he had entered into were "not completely transparent" in relation to commissions. He said that the Respondent's current landlord contract is explicit in this regard and that it had been amended after advice had been taken from the Scottish Association of Landlords.

32. The tribunal did not consider that there was evidence of the Respondent being dishonest or unfair in relation to commissions it charged but it was not transparent or open in the matter. It was to its credit that it had recognised the deficiencies in its management contracts and had changed them. For the reasons previously stated, the tribunal considered that it did not require to consider the matter of finder's fees. In terms of the Landlord Agreement, the Respondent was entitled to deduct commissions from rent receipts but it had not been transparent on how they were calculated or charged.

33. The tribunal determined that, in relation to the lack of transparency on commissions, the Respondent did not comply with paragraph 17 of the Code.

*Paragraph 18: You must provide information in a clear and easily accessible way.*

34. Mr Virhia said that he had not been happy at the selection, engagement and charges of contractors and had sought information on these matters from the Respondent. Mr Gindha said that the Landlord Agreement allowed for any works less than £120 plus VAT to be instructed without reference to a landlord. He said that, in other cases, quotations were received and put to landlords like Mr Virhia for authority to proceed. He said that, in relation to any quotations sent to Mr Virhia, he approved the works and they proceeded and he therefore had full information about the proposed works. Mr Virhia said that he was initially happy with the service and “wanted to grow the relationship.”
35. The written documentation lodged by parties show that a request had been made by the Applicant for copies of contractors’ invoices. Documents had been sent to the Applicant by the Respondent using Royal Mail but they had not arrived and had been re-sent my email. Mr Virhia accepted that the documentation had been posted because they were delivered to him sometime later in a damaged envelope and he said that the issue had been caused by Royal Mail.
36. From the documentation before the tribunal, it did not appear that there was significant delay in providing information when it had been requested.
37. The tribunal considered the evidence in respect of this alleged breach of the Code. It determined that there was no evidence that the Respondent had failed to comply with this paragraph of the Code.

*Paragraph 19: You must not provide information that is deliberately or negligently misleading or false.*

38. Mr Virhia said that this alleged breach of the Code is in relation to what he considered wrongful charging of VAT. Mr Gindha said that the issue was only challenged once the relationship started to break down and that, prior to that, Mr Virhia would have seen reference to the charging of VAT in the rent statements. Mr Virhia said that the issue probably fell into the negligent rather than the deliberately misleading category.
39. The tribunal had considered the VAT issue in paragraphs 25-28. It had no evidence before it to support the contention that, in relation to the VAT matter, the Respondent had provided information that was deliberately or negligently misleading or false.

*Paragraph 20: You must apply your policies and procedures consistently and reasonably.*



40. Mr Virhia said that this concerned two issues: the engagement of contractors and what he considered to be high turnover of tenants in two properties managed by the Respondent on his behalf.
41. In relation to turnover of tenants, Mr Virhia said that the Respondent had not done enough to retain tenants. He said that, on two occasions, tenants had left a couple of months after the commencement of the tenancy.
42. Mr Gindha said that tenants were properly vetted by the Respondent but that it could do nothing if a tenant wanted to leave because private residential tenancy agreements are not for a fixed period. He said that the tenancy agreement overrode everything and that sometimes what one wants from a tenancy is not what one gets. He said that one of the tenants had left because the area was not to her liking. He said that she found it "too lively." He said that another tenant left because of a leaky roof. Mr Virhia said that the particular issue of water ingress had been resolved but he acknowledged that this was achieved some time after the tenant had left the property.
43. Mr Virhia said that he had concerns about the contractors used by the Respondent. Mr Gindha said that an issue had arisen about Stewart Auld Plumbing and Gas. He said that this was a contractor the Applicant wanted the Respondent to use in respect of gas and electric safety certificates. The Respondent had asked for confirmation that this contractor had the proper accreditation to carry out an EICR. He said that, in terms of the Letting Agent Code of Practice, a letting agent was obliged to ensure that such contractors had the necessary accreditation to carry out such work.
44. The tribunal was referred to an email from Stewart Auld Plumbing and Gas dated 13 September 2022. It stated "We have already been through this with Tom and Jas (the Applicant and his brother) and as far as I am aware they have authorised this. This is not the first EICR we have done for him." This email was in response to an email from the Respondent on 12 September 2022 asking for evidence that the electrician was a member of SELECT, NICEIC or NAPIT.
45. On 15 September 2022, Mr Virhia emailed the Respondent in the following terms: "Just go ahead with all this documentation for Earl and rent out. Put note to file that we are self-auditing for compliance."
46. Mr Gindha said that he had obligations and responsibilities in terms of the Code and that he could not use an electrician who was not registered with one of the authorised bodies.
47. Mr Virhia accepted that the electrician in question had allowed his membership of an authorised body to lapse. He said that he had possibly been remiss in not carrying out due diligence and he said that "I will now do so." His evidence was that Stewart Auld Plumbing and Gas had been used by him for many years and that he was happy with the work. He then went on to say that it is his understanding that an electrician could do such certification work although not a member of an accredited registration team if that electrician signed that it was "taking the risk itself."

48. The tribunal did not consider that the Respondent had failed to reasonably apply its policies in relation to the turnover of tenants. Mr Ghinda's position with regard to the two tenancies in question was entirely reasonable.
49. In relation to the question of contractors, the tribunal did not have evidence that the Respondent had acted in any way which was inappropriate or in breach of the Code.
50. The tribunal was surprised that the Applicant who owned many properties was lacking in knowledge with regard to the obligations of a landlord to comply with the repairing standard in terms of the Housing (Scotland) Act 2006 and specifically in relation to the provision of EICRs.
51. The tribunal determined that there was no evidence that the letting agent had failed to comply with this paragraph of the Code.

*Paragraph 29 (a) In your dealings with potential landlord clients you must provide clear and up-to-date written information about the services you provide and the charges (inclusive of taxes) for them.*

52. Mr Virhia's position was that this paragraph was not complied with in connection with commission charged by the Respondent.
53. Mr Gindha had conceded that there was a lack of clarity with regard to the charging of commission.
54. The tribunal determined that, for the reasons outlined in paragraphs 29-33, there was not clear information about the charges made by the Respondent and that it had therefore not complied with this paragraph of the Code.

*Paragraph 29 (f) If you intend to act for clients who have competing interests or your personal interests conflict, or could possibly conflict, inform the clients as soon as you become aware of it.*

55. Mr Varhia's position is that the Respondent had not complied with this paragraph of the Code because it had charged finder's fees.
56. The tribunal had already determined that, in relation to finder's fees, the Respondent had not been acting as a letting agent but as an estate agent and it therefore found that there was no evidence of a failure to comply with this paragraph of the Code.

*Paragraph 89: When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instruction on how to proceed.*

57. Mr Virhia said that there was an issue with an infestation of rats at a property managed by the Respondent at 61 Bowman Street, Glasgow. He said that he was charged £750 in respect of pest control and that that he considered this to be excessive. He said that it is something which Glasgow City Council would have dealt with.

58. Mr Gindha said that the tenant had reported an issue with rats and that the Council would not deal with the matter because the rats were inside the property. He said that it was something which had to be quickly dealt with quickly as there was a duty of care to the tenant. Mr Gindha said that the Respondent had got a quotation from pest controllers for £500 which represented two visits. He said that the Respondent got authority from the Applicant to proceed. Mr Gindha said that it transpired that three visits were necessary and that the total cost was £744. He said that this was the share due by the Applicant and that the property factor for the building had also paid some costs relating to the matter.

59. Mr Virhia said that he could not remember if he had challenged the pest control invoice at the time.

60. Mr Virhia referred to a temporary socket which had been required when an electrician had done work at a property at 12 Myrtle Street, Glasgow. He said that the cost of this was £120 and that it was additional to the quote which he had authorised. He said that he saw no need for this additional socket.

61. Mr Gindha said that the cost was within the authorised expenditure allowed in terms of the management agreement. He said that he considered that, if the electrical contractor had judged that the work was necessary, it was not for him to question it as long as it seemed reasonable.

62. Mr Ghinda said that, in relation to the pest control issue, he was in the hands of the experts who were trying to resolve the issue.

63. The tribunal determined that there was insufficient evidence to support the contention that this paragraph of the Code had not been complied with.

*Paragraph 96: On request, you must disclose to landlords, in writing, whether you receive any commission, fee, rebate or other payment or benefit and any financial or other interest you receive from a contractor/third party you appoint.*

64. Mr Virhia said that he had asked the Respondent if there had been any such commission, fee, rebate or other benefit. He conceded that he had not submitted any documentation to confirm that he had made such a request.

65. The tribunal determined that there was no evidence that there was any commission, fee, rebate or other payment or benefit or any financial or other interest from any contractor/ third party appointed by the Respondent or that the Applicant had made a request for such information which had not been responded to.

66. The tribunal determined that there was insufficient evidence to support the contention that this paragraph of the Code had not been complied with.

*Paragraph 111: You must not communicate with landlords or tenants in any way that is abusive, intimidating, or threatening.*

67. Mr Virhia said that the Respondent had accused him of being a bully. Mr Gindha said that a number of members of staff had been upset by Mr Virhia.

68. We were referred to an email sent by the Respondent to the Applicant on 11 September 2023:

“We write to advise you as of 7 September 2023, we have ceased working for you, mainly due to the following:

- Harassment and bullish behaviour towards staff
- Asking AVJ Homes to use contractors who were not qualified to carry out safeties
- Failure to provide safeties on time
- Anxiety/panic attacks reported by staff members

Please note any communications from yourself will be deleted upon receipt. If you fail to comply, we will raise an interdict against you as a landlord.”

69. Mr Virhia said that the email had been threatening.

70. Parties said that the relationship had broken down. Mr Virhia said that he had got to the point that, when properties became vacant, he would remove them from the management of the Respondent. He said that he did not want to pay fees that would be due if he removed properties when tenancies were active. Mr Gindha said that the Respondent came to a point where it allowed the Applicant to remove properties without charging fees for removal.

71. The tribunal considered the email chain of communications between the Applicant and the Respondent for the period when the relationship was breaking down. There was no doubt that, in his communications with the Respondent, Mr Virhia was direct and somewhat robust. Perhaps some members of the Respondent’s staff might have found the tone of communication to be challenging but the tribunal did not consider that there was evidence of any inappropriate communications by the Applicant. The position of Mr Gindha was that members of his staff had been upset by telephone calls with Mr Virhia and that is why he had written the email of 11 September 2023.

72. The tribunal did not consider that the Respondent, in advising the Applicant that it would consider instructing a solicitor in connection with an interdict, was abusive, intimidating or threatening and that, accordingly there had been no failure to comply with this paragraph of the Code.

#### Disposal

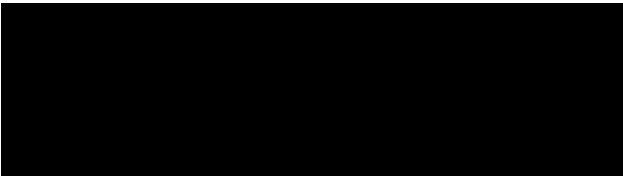
73. In terms of Section 48 (7) of the 2014 Act states that, where the Tribunal decides that the letting agent has failed to comply with the Code, it must make a letting agent enforcement order (“LAEO”).

74. The Respondent has failed to comply with paragraphs 17 and 29 (a) of the Code. Both breaches relate to the same issue: transparency and information in relation to charging of commission.

75. The tribunal determined that the Respondent should pay the sum of £300 to the Applicant as compensation for its failure to comply with the Code. It determined that it should be paid within 21 days of service of this decision and LAEO on the Respondent.

#### Appeals

**A homeowner or property factor 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.**



**Martin J. McAllister**  
**Legal Member**  
**9 October 2024**