



**Written Decision with Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) in respect of an application under Section 48(1) of the Housing (Scotland) Act 2014 (“the Act”)**

**Reference number:** FTS/HPC/LA/24/1048

**Re:** 6, Garthdee Farm Lane, Garthdee, Aberdeen, AB10 7GG (“the Property”)

**The Parties:**

Mfon Usua residing at the 12, Clochandlighter Terrace, Portlethen, AB12 4TR (“the Applicant”)

Vaniah Ltd., Hilton Convention Centre, 13, Smithfield Road, Aberdeen, AB24 4NR (“the Letting Agent”)

**Tribunal Members:**

Karen Moore (Chairperson) and Frances Wood (Ordinary Member)

**Decision**

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) refused the Application for the reasons set out below.

**Background**

1. By application received on 5 March 2024 (“the Application”) the Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) for a determination that the Letting Agent had failed to comply with the Code of Practice for Letting Agents (“the Code”).
2. The Application comprised the following documents: -(i) application form in the First-tier Tribunal standard application form indicating that the parts of the Code complained of are Lettings at paragraph 43, Ending the tenancy at paragraph 57, Communications and resolving complaints at paragraph 108 and Handling landlords’ and tenants’ money and insurance arrangements at paragraph 124 and (ii) copy correspondence between the Applicant and the Letting Agent. The Applicant later provided a copy of the contract between the Parties, a copy of the current private residential tenancy agreement for the Property and a copy of notification of the complaints to the Letting Agent.

**Case Management Discussions**

3. A Case Management Discussion (CMD) was held on 3 September 2024 at 14.00 by telephone conference call. The Applicant, Mr. Usua, was present on

the call and was unrepresented. The Letting Agent was not present and was not represented.

4. The Tribunal discussed the facts of the Application with Mr. Usua and identified that, with regard to the complaint and the Code breaches, the issues are as follows: (i) the Letting Agent disregarded Mr. Usua's instruction to make prospective tenants aware that he would continue to market the Property for sale; (ii) no due diligence had been carried out by the Letting Agent as expected by him and a guarantor had not been sought to mitigate rent arrears and (iii) the Letting Agent refused to reply to correspondence.
5. The Application had included a complaint that the Letting Agent was withholding any funds but Mr. Usua accepted that this was not the case and withdrew that part of his complaint.
6. With regard to the outcome sought by Mr. Usua, the Tribunal advised he must quantify and evidence his losses and show in what way the Letting Agent's breach of the Code caused the losses.
7. CMD was adjourned to a further CMD and a Direction was issued to the Parties. The Parties complied with the Direction.
8. A second CMD was held on 13 February 2025 at 10.00 by telephone conference call. The Applicant, Mr. Usua, was present on the call and was unrepresented. The Letting Agent was represented by Mr. Oduntodu. Prior to the second CMD, the Letting Agent submitted further written representations and productions.
9. The Tribunal discussed the facts of the Application and alleged Code breaches with the Parties and with reference to the documents lodged by them. Mr. Usua maintained his position as set out at the earlier CMD. Mr. Oduntodu refuted all of the points raised by Mr. Usua. The Tribunal advised that as the Parties' positions were polar opposites with no likelihood of compromise or settlement, a Hearing of evidence must be held.

## **Hearing.**

10. A Hearing of evidence was held on 4 June 2025 at 10.00 by Webex. The Applicant, Mr. Usua, was present on the call and was unrepresented. The Letting Agent was represented by Mr. Oduntodu.

11. With regard to the current status of the Property, Mr. Usua advised the Tribunal that the Property had been repossessed by the mortgage lender and the tenant, Mrs. O, had been removed from the Property.
12. In their evidence, the Parties agreed that the contract between them began on or around December 2022 with a written agreement a copy of which was lodged with the Tribunal and ended around October 2023.
13. The Tribunal heard evidence from the Parties, taking each Code breach complaint in turn.

## **Evidence**

*Code 43. You must give prospective tenants all relevant information about renting the property – for example, the type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required at the outset.*

14. With reference to the email chains submitted by both Parties, Mr. Usua's evidence was that the Letting Agent had not followed his instruction and had not advised the tenant, Mrs. O, that the Property would be marketed for sale. He stated that the outcome was that Mrs. O had refused to allow access to estate agents and potential purchasers. Mr. Usua maintained that the previous tenancy had been subject to this specific provision without issue.
15. Mr. Usua did not agree with Mr. Oduntodu's cross examination point that he had agreed to "pause" the marketing for sale and did not agree that he had taken Mr. Oduntodu's advice that marketing a large and unfurnished family home for rent at the same time as marketing it for sale was unwise as it would limit the market. Mr. Usua did not accept that the inference from an email and message chain between 28 June 2023 and 4 July 2023 showed that he had agreed to "pause" the marketing. Mr. Usua disputed giving telephone instructions to Mr. Oduntodu and disputed having changed his mind on marketing for sale alongside marketing for a tenant.
16. Mr Oduntodu's evidence was that he had advised Mr. Usua against marketing the property for sale and that Mr. Usua had agreed to this but subsequently changed his mind. Mr. Oduntodu stated that the change of mind occurred after the tenancy with Mrs. O was signed. Mr. Oduntodu referred to emails and messages between him and Mr. Usua from 28 June 2023 to 4 July 2023 which showed that he had strongly advised that marketing a tenancy on this basis was not viable for a letting agent. He stated that had this been Mr. Usua's instruction,

as additional fee would have been charged. Mr. Oduntodu referred specifically to his message on 4 July 2023 in which he stressed that his advice was not to market for sale at the same time as marketing for rent and to which Mr. Usua replied “noted”. Mr. Oduntodu said that this was followed by telephone calls between them in which Mr. Usua confirmed that he would pause the sale marketing and that the tenancy with Mrs. O was entered into after that.

17. Mr. Oduntodu agreed with Mr. Usua’s cross examination points that Mrs. O had not been advised of the continued marketing for sale and had not been advised of a specific tenancy condition to allow viewers. Mr. Oduntodu restated that this had not be Mr. Usua’s instruction at that time. He did not agree with Mr. Usua that he had edited the messages and email chains between him and Mr, Usua by “cut and paste” and did not agree that he had failed to follow Mr. Usua’s explicit instructions. Mr. Oduntodu pointed out that the emails which Mr. Usua stated were false had, in fact, been lodged by Mr. Usua as part of the Application. Mr. Oduntodu strongly denied having fabricated that telephone conversations had taken place between 4 and 7 July 2023 and again in August 2023 when Mrs. O’s tenancy began stated that he regretted not having followed up the calls in writing.

*Code 57. You must agree with the landlord what references you will take and checks you will make on their behalf.*

18. Mr. Usua’s evidence was that no due diligence had been carried out as expected by him. In particular, a guarantor had not been sought and so there had been nothing in place to mitigate rent arrears. Mr. Usua’s position was that guarantors had been obtained for his previous tenants and that a competent letting agent should require a guarantor as a matter of course without being asked to do so by the landlord. He stated that Mrs. O’s income was such that her ability to pay the rent was borderline and that, as part of her income was state benefits, it should have been discounted. He stated that state benefits should have been a “red flag” that she could not afford the rent.
19. In cross-examination by Mr. Oduntodu, Mr. Usua agreed that he had not specifically requested a guarantor as he considered that this should have been part of Mr. Oduntodu’s due diligence. He did not accept that Mrs. O had adequate affordability and did not accept that it was not lawful for Mr. Oduntodu, as a letting agent, to disregard Mrs. O’s reliance on benefits.
20. Mr. Oduntodu’s evidence was that he was adamant that sufficient referencing had been carried out. With reference to the documents lodged, he stated that a landlord check and an income check had been carried out and that affordability was not an issue. He referred to the evidence lodged which showed that the tenant had a salary and received state benefits. The reference from her previous landlord confirmed that there no issues with non-payment of rent.

21. In cross-examination by Mr. Usua, Mr. Oduntodu remained firm that he saw no reason to ask for a guarantor. He accepted that Mrs. O had accrued rent arrears and explained that this had occurred when benefits had been stopped temporarily. He stated Mrs. O had proposed a payment plan which Mr. Usua had rejected. Mr. Oduntodu maintained that child support and benefits are a stable income and that Mrs. O could afford the rent. Mr. Oduntodu stated that the checks he carried out covered a three month period which was standard and sufficient.

*Code 108. 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.*

22. With reference to the email chains submitted by him, Mr. Usua insisted that Mr. Oduntodu had not replied to him fully and promptly. In, Mr. Usua stated that emails of 28 and 29 June 2023 were not answered until 3 July 2023. A further email dated 17 October 2023 was not answered at all.

23. In cross-examination by Mr. Oduntodu, Mr. Usua did not accept that there had been telephone conversations and text messages between the dates of the June emails and 3 July 2023 and did not accept that a telephone call or text message was an adequate reply. His position was that an email should be used to reply to an email. He did not accept that a telephone call on 4 July 2023 answered an email of 3 July 2023. Mr. Usua did not accept that, if an urgent answer had been required, he could have contacted any of the Letting Agent staff or could have left voice messages. There was a system in place to deal with urgent inquiries including a Help Desk.

24. Mr. Oduntodu's evidence was that he refuted any failure to respond within reasonable timescales. He referred to several email and text message exchanges from June to September 2023 all of which had taken place within a few days of each other. He accepted not having responded to an email of 17 October 2023 and explained that by that time the relationship had 'broken down and Mr. Usua had terminated the contract.

25. In cross-examination by Mr. Usua, Mr. Oduntodu refuted that he had fabricated the text messages and the telephone calls. He denied that he had refused to reply to Mr. Usua at any point and again stated that Mr. Usua could have contacted any of the Letting Agent staff at any time.

26. With regard to the written contract between them, both Parties agreed that there no timescales for correspondence.

27. The Tribunal then dealt with the outcome sought by Mr. Usua, if successful.

28. Mr. Usua agreed that he had not submitted the supporting evidence as directed by the Tribunal. He stated that he had paid some fees to his lawyer but was not able to confirm an amount or state what the fees were for. He stated that he awaited a final accounting.

29. In response to cross-examination by Mr. Oduntodu, Mr. Usua agreed that the legal fees were related to the repossession of the Property by his mortgage lender and agreed that the proceedings and mortgage arrears pre-dated the contract with the Letting Agent.

### **Summing Up**

30. In summing up, Mr. Usua stated that he felt strongly that the Letting Agent had not done a good and professional job, particularly as they knew about his precarious financial position with his lender. He held the Letting Agent to be responsible for loss of rental income and ultimately repossession of his property.

31. In summing up, Mr. Oduntodu stated that the Letting Agent carried out their duties to a professional standard and to the industry norm. He stated that the tenancy to Mrs. O did not prevent a sale and that it had not prevented the repossession. Although there had been a period of reduced rental income, this had been due to a change in benefits and Mr. Oduntodu pointed out that Mr. Usua had not minimised his losses as he had not accepted Mrs. O's payment proposal.

### **Findings in Fact.**

32. From the written submissions, productions lodged and oral evidence at the Hearing, the Tribunal found the following facts established:

- i) The Parties are as set out in the Application;
- ii) The Applicant was the owner and landlord of the Property and the Respondent was the letting agent in terms of the Act and so is bound by the Code;
- iii) The written contract between the Parties began in December 2022 and came to an end around October 2023;
- iv) In December 2022, the Property was on the market for sale and was also subject to a tenancy;
- v) That tenancy came to an end in June 2023 and the Letting Agent was instructed to find a new tenant for the Property;
- vi) The Applicant's instruction at that time was to continue to market the Property for sale in tandem with marketing for a new tenancy;
- vii) The Letting Agent's strong professional advice was that this tandem

approach was not a viable course of action due to the potential difficulty in sourcing a long term a tenant if the Property was likely to be sold;

- viii) The Letting Agent advised that it would charge an additional tenancy marketing fee if the Property continued to be marketed for sale;
- ix) Applicant did not agree to pay an additional fee;
- x) The Applicant implied to the Letting Agent that he had taken the Letting Agent's advice and would not market for sale;
- xi) The Letting Agent secured a new tenant;
- xii) The Letting Agent did not tell the new tenant that the Property was on the market for sale;
- xiii) The Applicant had a secured mortgage on the Property;
- xiv) The Applicant was in default with mortgage payments before the contract with the Letting Agent;
- xv) The calling-up of the Applicant's secured mortgage had begun before the Letting Agent arranged the new tenancy;
- xvi) The written contract between the Parties did not provide for a guarantor to underwrite tenant default on rent payments;
- xvii) The Applicant did not give a specific instruction in respect of a guarantor;
- xviii) The written contract between the Parties did not set out timescales for responses to correspondence or other enquiries;
- xix) The Applicant did not give a specific instruction in respect of timescales for responses to correspondence or other enquiries;
- xx) The Letting Agent responded to the Applicant's enquiries within reasonable timescales.

### **Decision of the Tribunal with reasons.**

*Code 43. You must give prospective tenants all relevant information about renting the property – for example, the type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required at the outset.*

33. The Tribunal did not find any evidence that there had been a specific instruction by Mr. Usua to the Letting Agent that making a prospective tenant aware that the Property was on the market for sale was an essential term of the contract between them. Had this been a deal breaking essential term, Mr. Usua ought to have ensured that it was reflected in the contract terms.

In any event, the landlord's intention to sell is a statutory ground for an eviction order and the Scottish Government model tenancy agreement obliges tenants to allow access for the purpose of a sale by the landlord. Accordingly, there was no prejudice to Mr. Usua by the Letting Agent's approach.

Therefore, the Tribunal did not find any evidence that the Letting Agent was in breach of this part of the Code.

*Code 57. You must agree with the landlord what references you will take and checks you will make on their behalf.*

34. The Tribunal did not find any evidence that there had been a specific instruction by the Mr. Usua to the Letting Agent that a guarantee should be obtained or that additional finance checks should be made. The contract between the Parties sets out that the Letting Agent will carry out “thorough referencing and vetting of prospective tenants”, which is what the Letting Agent did. They obtained the range of references and financial enquiries which can reasonably be expected of a professional agent acting competently. Had prompt payment of the rent and security for potential default been an essential lease term, Mr. Usua ought to have ensured that this was reflected in the Letting Agent’s referencing and vetting duties and ought to have discussed a range of protections such as taking an increased deposit or advance rent with the Letting Agent. He did not do so.

Therefore, the Tribunal did not find any evidence that the Letting Agent was in breach of this part of the Code.

*Code 108. 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.*

35. The Tribunal did not find any evidence that the Letting Agent had failed to deal with enquiries and complaints in breach of this part of the Code. To the contrary, the Tribunal found that the Letting Agent very much complied with this part of the Code and replied within very short timescales. The Tribunal found Mr. Usua’s position that Mr. Oduntodu had both faked text and email messages and had fabricated phone calls wholly unfounded and lacking in credibility.

### **Outcome sought by the Applicant**

36. As the Tribunal did not find in Mr. Usua’s favour to any extent, the Tribunal had no requirement to consider his claim for compensation. However, had the Tribunal found differently, it would have been unable to make a compensation order as Mr. Usua had established neither loss nor entitlement.

37. The decision is unanimous.

### **Appeal**

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 to appeal within 30 days of the date the decision was sent to them.



# Karen Moore

Karen Moore, Chairperson

18 June 2025