

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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**Decision of the First-tier Tribunal for Scotland Housing and Property Chamber in relation to an application made under Sections 48(1) of the Housing (Scotland) Act 2014 and Paragraphs 17, 18, 90, 108 and 112 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016**

**Chamber Reference: FTS/HPC/LA/25/2617**

**The Parties:**

**Mr Perry O'Halloran, 46(1F2) Brunswick Street, Edinburgh EH7 5HY (“the Applicant”) and**

**D J Alexander Lettings Limited, incorporated in Scotland (SC429588) having their registered office at 11 Wemyss Place, Edinburgh EH3 6DH and having a place of business at The John Cotton Centre, 10 Sunnyside, Edinburgh EH7 5RA (“the Respondents”)**

**The Property: 46(1F2) Brunswick Street, Edinburgh EH7 5HY (“the property”)**

**Tribunal Members: George Clark (Legal Member/Chair) and Nick Allan (Ordinary Member)**

**Decision**

The Tribunal determined that the Respondent has not failed to comply with Paragraphs 17, 18, 90, 108 or 112 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016.

**Background**

1. By application dated 17 June 2025, the Applicant sought a Letting Agent Enforcement Order against the Respondents under Section 48(1) of the Housing (Scotland) Act 2014 and Paragraphs 17, 18, 90, 108 and 112 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 (“the Code”).
2. The Applicant stated that a Gas Safety check and Legionella Assessment were carried out at the Property on 14 April 2025. He was provided with a Gas Safety Certificate at the time but was not given a copy of the Legionella Assessment report. Some weeks later, he was informed that a Smart Gas engineer would be attending to inspect the water tank and, following that visit,

the letting agents contacted him to say the tank was not compliant with private rental regulations and that a two-day visit was required to replace the boiler and tank. The work turned out to be large-scale and fairly disruptive, involving the complete removal of the existing boiler and major exposed pipework additions and alterations in the hallway and kitchen. The Applicant was surprised by the scale of the work and asked for a copy of the Legionella Assessment report. This disclosed that all risk categories were marked as "Low", despite a comment that the cold-water storage tank was open-topped and the roof above it was broken, resulting in debris going into the tank. The tank provided the cold-water supply to the bathroom of the Property.

3. The Applicant queried why this services issue was not identified in prior years (he moved in in June 2022), why no lid was fitted to the tank before or during the tenancy, why the damage to the roof was not previously reported or repaired and why such a major health and safety concern was classified as "Low risk", with no action required. His final complaint was that his complaint to the letting agents was seemingly received as helpful feedback rather than as a service matter, with the subsequent response being framed as a miscommunication and a matter for internal learning without addressing the broader health and safety implications or offering meaningful redress.
4. The view of the Applicant was that he was not given timely or transparent information (a failure to comply with Paragraphs 17 and 18 of the Code), serious remedial work was carried out with no proper explanation or written notice (a failure to comply with Paragraph 90 of the Code), his concerns were deflected and not directly addressed (a failure to comply with Paragraph 108 of the Code) and he was never made aware of the letting agents' complaints procedure prior to his making a complaint (a failure to comply with Paragraph 112 of the Code).
5. The Applicant concluded that the cold-water storage tank had been exposed to contamination and he was unaware of that risk, which potentially exposed him to severe hygiene and health risks. He had experienced a prolonged and serious illness for a number of weeks in March 2025 that might have been related to water contamination, although this could not be confirmed. He was not informed of the risks despite a Legionella Assessment being carried out and only became aware after pressing the Respondents for details when the urgent and invasive works began. The lack of prior communication had caused him stress and anxiety. He had also experienced two days of significant disruption which required him to rearrange his schedule, with short notice and limited prior information about the scale of the work. He had lost trust in the Respondents' ability to communicate transparently and safeguard tenants' health. He wanted the Tribunal to order the Respondents to improve communication and training and to provide formal confirmation of the repairs and the condition of the tank area and the roof, and to consider awarding compensation for the distress, disruption and potential health impact resulting from their failure to identify and disclose the issue sooner.
6. On 18 January 2026, the Tribunal received written submissions from the Respondents. They stated that there is no statutory requirement to provide

tenants with a copy of a Legionella Risk Assessment. Their internal practice was, however, to issue all safety documentations as best practice. On this occasion, the Report was not sent due to individual human error, which was acknowledged and addressed as a training matter. The Applicant had been provided with information promptly upon request, including a full written explanation addressing each of his questions. There was no intention to withhold information, to mislead or to act without transparency and the Respondents did not consider that they had failed to comply with Paragraphs 17 and 18 of the Code.

7. The Respondents said that the Applicant was advised that a boiler replacement would take place. The correspondence submitted by him to the Tribunal highlighted the conversations between the Parties, dates for access and flexibility to accommodate the Applicant's request to be present. While the scale of works exceeded expectations, this was due to the nature of installing a new combi system. The works were completed appropriately, safely and within a reasonable timescale. The Respondents acknowledged that communication can always be improved and this had been taken on board through staff guidance and training, but they considered that the requirements of Paragraph 90 had been met.
8. The Respondents did not consider that they had failed to comply with Paragraph 108 of the Code. The Applicant's complaint had been acknowledged and responded to within 24 hours and a detailed response addressed each of the Applicant's specific questions. Apologies were given where communication fell short, and explanations were provided regarding the 2025 Legionella Risk Assessment and the boiler/system upgrade.
9. The Respondents stated that a written complaints procedure exists and is available upon request, in compliance with Paragraph 112 of the Code. The Applicant did not request a copy prior to raising his complaint, or when the Respondents responded to the complaint. As a matter of best practice, however, they have since begun issuing complaints procedure information when matters escalate, but there is no requirement under Paragraph 112 of the Code to issue the complaints procedure in advance of a complaint being raised.

### **Case Management Discussion**

10. A Case Management Discussion was held by means of a telephone conference call on the morning of 28 January 2026. The Applicant participated and the Respondents were represented by Mr Martin Urquhart.
11. The Applicant told the Tribunal that he had nothing to add to his written submissions in the application.

12. The Respondents advised the Tribunal that they only became aware of the water tank not having a lid and of the requirement for repairs to the roof when they received the Legionella Risk Assessment.
13. Both Parties confirmed that they had no further information that they wished to provide and that they did not regard a full evidential Hearing as necessary.

### **Reasons for Decision**

14. The Tribunal considered carefully all the evidence, written and oral, that had been presented by the Parties. The Tribunal's view was that there was no indication that the Respondents had been aware of the condition of the cold-water tank or of the fact that the roof area directly above it was in need of repair. It is not the responsibility of letting agents to inspect tenement roofs or water tanks in tenement attic spaces. Their role is to set up and manage the tenancy on behalf of the landlord. Whilst their duties will depend on the contract they have entered into with the landlord, they will often undertake the instruction of safety inspections that are required by law, including annual gas safety inspections, PAT testing, the obtaining of an Electrical Installation Condition Report every 5 years and the periodic instruction of a Legionella Risk Assessment. There is no legal requirement for landlords or letting agents to provide tenants with copies of Legionella Risk Assessment reports, although some letting agents do so as a matter of practice. The Tribunal did not, therefore, regard the fact that it was not sent to the Applicant as constituting a failure to comply with the Code.
15. In the present case, the Respondents arranged for a Legionella Risk Assessment, and they were entitled to rely on the specialists' report that the risk of water contamination from legionella bacteria was low. The report contained a comment that the cold-water supply tank was open-topped and that the roof directly above it was broken, with debris going into the tank. The Respondents (presumably after taking their landlord client's instructions) then took swift action to remedy the situation, by arranging for the replacement of the central heating boiler with a combi boiler, thus rendering redundant the water tank in the attic. The Applicant was advised that this work was taking place, its urgency was stressed and a date for commencement was agreed. The Tribunal was not prepared to hold that the fact that the work was more extensive than the Applicant expected resulted from a failure in the part of the letting agents. They do not hold themselves out as experts in plumbing and gas engineering, so could not be expected to know whether the level of disruption to the Applicant would meet his expectations. They made him aware of the work to be carried out and acted responsibly in ensuring the issue noted in the Legionella Assessment Report was dealt with quickly and effectively, thus removing the risk of water contamination.
16. The Tribunal's view was that there is no obligation on letting agents to advise tenants of their complaints policies and procedures unless they are requested to do so. The Code requires them to have a complaints procedure and to "make it available on request". There was no evidence that the Applicant had

ever asked for a copy of the procedure. The Applicant's complaint, when received, had been dealt with timeously.

17. Paragraph 17 of the Code states that letting agents must be honest, open, transparent and fair in their dealings with landlords and tenants and Paragraph 18 says that they must provide information in a clear and easily accessible way. The view of the Tribunal was that the Respondents were not obliged to provide a copy of the Legionella Risk Assessment. They had said that it was their practice to do so and that they had failed to follow that practice, but the Tribunal did not regard that as a failure to comply with the Code. There was no evidence that the Respondents had not been honest, open and transparent and fair or that they had failed to provide information in a clear and easily accessible way and **the Tribunal did not uphold the complaint under Paragraphs 17 or 18 of the Code.**
18. Paragraph 90 of the Code of Conduct states "Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures." **The Tribunal did not uphold the complaint under Paragraph 90 of the Code.** The Tribunal considered that, once the water tank issue had been identified, the matter had been dealt with as a matter of urgency and the works completed promptly.
19. Paragraph 108 of the Code requires letting agents to respond to enquiries and complaints within reasonable timescales and states that, overall, their aim should be to deal with enquiries and complaints as quickly and fully as possible. The Tribunal noted that the Applicant had first raised the matter to which this application relates on 16 June 2025. They sent a detailed response on the following day. Later that day, the Applicant advised them that this was now a formal complaint. On the same day, the Applicant submitted his application to the Tribunal. Accordingly, the Respondents could not be said to have failed to respond to his enquiries and complaints within reasonable timescales and **the Tribunal did not uphold the complaint under Paragraph 108 of the Code.**
20. Paragraph 112 of the Code requires that letting agents have a clear written complaints procedure, which they must make available on request. There was no evidence to suggest that the Respondents did not have such a procedure or that the Applicant had requested a copy, so **The Tribunal did not uphold the complaint under Paragraph 112 of the Code.**
21. The Tribunal's Decision was unanimous.

### **Right of Appeal**

**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.**

George Clark  
Legal Member/Chair  
28 January 2026.