

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: in respect of an application under section 48(1) of the Housing (Scotland) Act 2014

Chamber Reference: FTS/HPC/LA/24/3513 & FTS/HPC/LA/24/3514

Property address: 1-2, 9 Malloch Street, Glasgow, G20 7RP & 4-1, 11 Murano Crescent, Glasgow G20 7RP (“the Properties”)

The Parties

Dr Sabina Helena Huttner, Flat 1-2, 11 Murano Crescent, Glasgow G20 7RP (“the Landlord”)

G&S Properties, Exchange House, 50 Drymen Road, Bearsden, Glasgow, G61 2RH (“the Letting Agent”)

Tribunal Members

Ms H Forbes (Legal Member)
Ms S Brydon (Ordinary Member)

Decision

The First-tier Tribunal (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has not complied with paragraph 108 of the Code of Practice for Letting Agents (“the Code”) as required by the Housing (Scotland) Act 2014 (“the Act”) and issues a Letting Agent Enforcement Order (“LAEO”).

The decision is unanimous.

Background

1. This is an application made under section 48(1) of the Act. The Landlord alleges that the Letting Agent has failed to comply with paragraphs 108 and 117 of the Code.
2. A Case Management Discussion (“CMD”) took place by telephone conference on 19th March 2025. The Letting Agent was represented by Ms Sandra Adams. The Landlord was not in attendance. The Tribunal Clerk called the Landlord, who stated she did not wish to attend the CMD. The Tribunal considered the

terms of Rule 29. The Tribunal determined that the requirements of Rule 17(2) had been satisfied, and it was appropriate to proceed with the application in the absence of the Landlord.

3. The Tribunal observed there was a discrepancy between the notification letter and the application on the case file, in that the Landlord had stated alleged failures to comply with paragraphs 108 and 128 of the Letting Agent Code of Practice (“the Code”) in the notification letter, and paragraphs 108 and 117 in the application. While paragraph 108 would appear to be relevant, it seems that paragraph 128 does not apply to this situation. Furthermore, paragraph 117 is purely descriptive of the term ‘client money’. In its CMD note, the Tribunal invited the Landlord to consider whether she wished to make any application to amend the application. No response to that issue was received from the Landlord.
4. Both parties submitted further written representations prior to the hearing.

The Hearing

5. A hearing took place by telephone conference on 1st October 2025. The Letting Agent was represented by Ms Sandra Adams. The Landlord was not in attendance. The start of the hearing was delayed to allow the Landlord to attend. There was no attendance at that time. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Landlord.
6. The Tribunal indicated that it intended to hear submissions on the alleged failure to comply with paragraph 108 of the Code, for the reasons set out at paragraph 3 above.

Paragraph 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.

The Letting Agent’s position

7. Ms Adams gave some background to the situation. There was a contract between the parties for management of one of the Properties which commenced in or around May 2023. The Landlord resided in the other property. The Landlord informed the Letting Agent that she was moving to Germany, and would leave on 12th April 2023, and that both Properties would be let and managed by the Letting Agent. The Letting Agent advised the Landlord to register with HMRC as a non-residential landlord, providing the necessary paperwork. The Landlord did not act upon the advice of the Letting Agent, and the Letting Agent was then bound to withhold tax on the UK rental income from the Properties. Ms Adams explained that as soon as a person becomes a non-

resident landlord, the Letting Agent must retain the tax. If the Letting Agent does not do so, they could be held liable for payment of the tax by HMRC. Ms Adams said the form for a landlord to apply to HMRC in respect of non-resident landlord status is simple and is always granted by HMRC, in her experience. Ms Adams said the Letting Agent had tried to assist the Landlord in this matter.

8. The Landlord did not remain outwith the UK for a full six months, returning on 10th October 2023. Ms Adams said she was aware that the Landlord informed HMRC that she left the country on a later date than that previously stated by the Landlord. The Letting Agent sought advice from HMRC in October 2023 regarding the withheld tax. The Letting Agent had to chase up HMRC and received a response in July 2024. HMRC informed the Letting Agent that they had the option of returning the withheld tax to the Landlord or paying it to HMRC. At an internal meeting in July 2024, the Letting Agent decided to return the withheld tax to the Landlord. Ms Adams said if the Letting Agent had chosen to pay the tax to HMRC, the Landlord would have had to wait until the following April to recoup the tax.
9. By email dated 18th July 2024, the Letting Agent informed the Landlord that they would return the withheld tax by two BACS payments 'in the next couple of days.' Payment was not made to the Landlord until November 2024.
10. Ms Adams referred to the table submitted by the Letting Agent to show timeous response to emails from the Landlord. It was her position that the Letting Agent had not delayed in responding to correspondence. The Landlord had not contacted the Letting Agent after 18th July 2024 until 29th October 2025. It was put to Ms Adams by the Tribunal that, given the wording of the email of 18th July, a view may be taken that the onus was on the Letting Agent to make payment in the next couple of days, as stated, rather than on the Landlord to make further contact. The Tribunal pointed out that paragraph 108 requires a letting agent to deal with enquiries and complaints as well as respond to them. Ms Adams said she accepted the Letting Agent fell short in that regard. This was due to her becoming seriously ill. No one else in the company was able to make payment of the outstanding sum until Ms Adams returned to work in November 2024. However, Ms Adams said other ongoing payments were made during that time, and this matter, which involved an unusual payment, had slipped through the net. It could have been attended to, with her instruction, at an earlier stage, and would have been attended to if the Landlord had chased the matter up.
11. There was some discussion about the notice given by the Landlord regarding the Properties. Ms Adams said she was unsure which property the Landlord eventually resided in following her return to the UK. Ms Adams said the Letting Agent continued to assist the Landlord until 6th February 2024.
12. As the hearing was drawing to a close around 10.45, the Tribunal Clerk became aware someone was waiting to join the conference. It transpired that the Landlord had been confused about the start of the conference and had joined late. The Landlord said she had some new evidence to present in response to representations from the Letting Agent. It then transpired that the Landlord was

calling from Germany, where she was on leave. The Tribunal Clerk ascertained that Germany is not on the list of countries that allow oral evidence to be taken from witnesses located overseas, unless a specific application has been made through the Foreign, Commonwealth and Development Office for permission. The Tribunal decided to bring matters to a close at that stage.

13. The Tribunal issued a note of the evidence heard and a Direction to the Landlord to inform the Tribunal as to whether she wished to submit further representations in writing, or whether she wished a further hearing date to be assigned to allow oral evidence to be given.

Further procedure

14. By email dated 13th October 2025, the Landlord responded to the Tribunal's Direction stating that the hearing could proceed on the papers before the Tribunal and any other written representations or evidence with no oral input. The Landlord provided written representations.
15. By email dated 29th October 2026, the Letting Agent lodged written representations.
16. By email dated 3rd November 2026, the Letting Agent requested that a hearing be scheduled.
17. On 18th February 2026, parties were notified of a hearing scheduled to take place by telephone conference on 28th April 2026.
18. By email dated 18th April 2026, the Landlord informed the Tribunal that she was unable to attend the hearing as she is in Germany supporting her ageing parents. In response, the Tribunal informed the Landlord that the guidance on taking evidence from abroad has now changed, and she would be able to participate by telephone from Germany should she so wish.

The continued Hearing

19. The continued hearing took place by telephone conference on 28th April 2026. Ms Sandra Adams was in attendance on behalf of the Letting Agent. The Landlord was not in attendance.
20. The Tribunal considered the terms of Rule 29. The Tribunal determined that the requirements of Rule 24(1) had been satisfied, and it was appropriate to proceed with the application in the absence of the Landlord.
21. Ms Adams said she had submitted written representations to the Tribunal the previous day; however, they had been submitted to the case worker's individual email address and were not available to the Tribunal. Ms Adams made her representations orally. Ms Adams submitted that the Landlord had stated that she was returning to the UK in October 2023, but this had not been borne out by the facts, as the Landlord has been unable to attend several Tribunal hearings over the past 3-year period because she was living in Germany. Ms

Adams submitted that the Landlord was 'hedging her bets'. She has now admitted having difficulty getting insurance in Germany, and that was the reason she had not completed the tax form provided by the Letting Agent. Ms Adams said the Letting Agent's position was vindicated by this admission. The tax had been held correctly and in line with the law. The Letting Agent was required to remit the tax to HMRC or get their approval to return it to the Landlord. Eventually, the Letting Agent had received HMRC approval to return the funds to the Landlord. Ms Adams said the Letting Agent had tried to be helpful to the Landlord. Ms Adams said the Letting Agent had offered to have settlement negotiations with the Landlord, but the Landlord had refused, stating that she did not want any money and would prefer for the Tribunal to settle matters.

22. Ms Adams submitted that only paragraph 108 of the Code applied, as 128 was not relevant and 117 was purely descriptive. The Landlord had failed to provide any further information in this regard following the CMD. It was Ms Adams' position that the whole issue had only arisen because the Landlord was not truthful and did not want to complete the form. It was a simple form that could have been completed easily. It has taken the Landlord three years to admit that she was hedging her bets.

23. Responding to questions from the Tribunal, Ms Adams said the Letting Agent now has a procedure in place whereby another partner has authority to make payment if she is unavailable.

24. Ms Adams said, by way of mitigation, that if the Landlord had chased matters up sooner, payment would have been made to her sooner. The Letting Agent made a mistake. Ms Adams said the Tribunal should take into account that the Landlord had not been truthful by stating that she was returning in October 2023, which was not the case. Ms Adams said the Landlord has not given the full facts until now.

Findings in Fact and Law

25.

- (i) The Landlord was the heritable proprietor of the Properties. The Landlord lived in the Property at Malloch Street.
- (ii) The Letting Agent provided letting agent services to the Landlord in respect of the Property at Murano Crescent.
- (iii) In March 2023, the Landlord informed the Letting Agent that she was moving to Germany on 12th April 2023.
- (iv) From June 2023, the Letting Agent provided letting agent services in respect of both Properties.
- (v) The Letting Agent advised the Landlord to register with HMRC as a non-resident landlord.

- (vi) The Landlord did not register with HMRC as a non-resident landlord.
- (vii) The Letting Agent was obliged by HMRC rules to withhold tax from the rental income as no non-resident landlord form had been completed by the Landlord.
- (viii) The Landlord returned to the UK on 10th October 2023, before the end of the period of six months.
- (ix) In October 2023, the Letting Agent contacted HMRC for advice on how to deal with the withheld rent.
- (x) The Landlord instructed the Letting Agent to end both tenancies in December 2023.
- (xi) In March and May 2024, the Landlord emailed the Letting Agent to request an update in respect of the withheld tax.
- (xii) The Letting Agent had to chase HMRC up for a response which was provided in July 2024.
- (xiii) In July 2024, the Letting Agent was advised by HMRC that the tax could be returned to the Landlord or paid to HMRC.
- (xiv) On 18th July 2024, the Letting Agent informed the Landlord that the tax would be returned to her in the next couple of days.
- (xv) The tax was returned to the Landlord by the Letting Agent in November 2024.
- (xvi) The Letting Agent failed to comply with the Code by failing to deal with the Landlord's enquiry as quickly and fully as possible, and failing to keep the Landlord informed that more time was required to deal with the matter.

Determination and Reasons for Decision

26. The Tribunal considered that the Letting Agent had failed to comply with paragraph 108 of the Code, as it was incumbent upon the Letting Agent to return the withheld tax to the Landlord as soon as a response had been received from HMRC and a decision had been taken by the Letting Agent to return the funds. The Landlord was notified of this on 18th July 2024, but payment was not made until November 2024. Ms Adams explained that she was ill during this period and that she was the only person within the office who could undertake monetary transfers. Ms Adams also said that the payment could have been made if the Landlord had chased it up before October 2023. The Tribunal considered it was not the responsibility of the Landlord to chase up the transfer. The Landlord had been informed that the funds would be transferred in a couple of days. The Tribunal attributed no

fault to the Landlord for relying on this undertaking and failing to make any further enquiries until October 2023.

27. Although evidence was heard and submitted in respect of whether the Landlord was a non-resident landlord, whether the Letting Agent had followed the correct procedure, and the fact that the Landlord had chosen not to complete the requisite HMRC form, these matters did not appear to come within the complaint, which was clearly stated as a failure to comply with paragraphs 108 and 117. The Tribunal made no findings in respect of paragraph 117, as this paragraph merely defines 'client money'. The Landlord was invited to provide further clarification in respect of the complaint at an early stage in the process, and chose not to do so. The Tribunal, therefore, considered only the narrow issue of whether the Letting Agent had failed to comply with paragraph 108 of the Code.
28. The Tribunal observed that it appeared that the Letting Agent had followed the correct procedure in withholding the funds and seeking guidance from HMRC.
29. The Tribunal made no findings of dishonesty against the Landlord.

Letting Agent Enforcement Order (“LAEO”)

30. Having determined that the Letting Agent has failed to comply with the Code, the Tribunal must make a LAEO. The Tribunal is required by section 48(7) of the Act to require the Letting Agent to take such steps as it considers necessary to rectify the failure. Section 48(8) provides that payment of compensation may be made by the Letting Agent to the Landlord as the Tribunal considers appropriate for any loss suffered by the Landlord as a result of the failure to comply with the Code.
31. The Tribunal determined to make an LAEO as follows:

The Letting Agent must pay to the Landlord within 21 days of the issue of this Order the sum of £100 in respect of distress and inconvenience caused to the Landlord due to the failure of the Letting Agent to comply with the Code.

Right of 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.

Legal Member

28th April 2026
Date