Housing and Property Chamber
First-tier Tribunal for Scotland

**Decision of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations") and Rule 103 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the Rules").**

**Chamber Ref: FTS/HPC/PR/26/2771**

**Re: Property at 8/4 Lauriston Park, Edinburgh, Midlothian, EH3 9JA ("the Property")**

**Parties:**

**Mr Shane Bowden, 169 Park Close, Walton-on-Thames, Surrey, KT12 1EW ("the Applicant") represented by his father, Mr. John Bowden.**

**Dr Philippa Wheble, 62 Sketty Road, Uplands, Swansea, SA2 0JZ ("the Respondent")**

**Tribunal Members:**

**Karen Moore (Legal Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal"), having found that the Respondents did not comply with Regulation**

**3 of the Regulations, determined that an Order for Payment in the sum of ONE THOUSAND TWO HUNDRED POUNDS (£1,200.00) Sterling be granted.**

**Background**

1. By application received between 16 and 26 June 2026, ("the Application"), the Applicant applied to the Tribunal for an Order in terms of Regulation 10 of Tenancy Deposit Schemes (Scotland) Regulations 2011 ("the Regulations").

2. The Application comprised a copy of a tenancy agreement between the Parties and a joint tenant with an entry date of 26 March 2026, evidence of payment of a deposit of £900.00 paid by the Applicant, copy screenshots between the Applicant and the Respondents' letting agents regarding the return of the deposit and copy correspondence from the approved deposit schemes showing that the deposit had not been lodged.

3. The Application was accepted by the Tribunal and a Case Management Discussion (the "CMD") was fixed for 12 October 2026 at 14.00 by telephone conference and intimated to the Parties.

4. Prior to the CMD, the Respondent and her letting agent submitted written representations accepting that the deposit had not been lodged as required by the Regulations and explaining that the Respondent had engaged the letting agent to manage the tenancy and that it was the letting agent who failed to lodge the deposit with an approved scheme.

**CMD**

5. The CMD took place on 12 October 2026 at 14.00 by telephone conference. The Applicant did not take part and was represented by his father, Mr. John Bowden. The Respondent, Dr. Wheble, took part and was accompanied by Mr. Crombie of the letting agents.

6. The Tribunal asked if the Respondent accepted a breach of the Regulations which she did. The Tribunal explained that, in terms of the Regulations, the

Tribunal was bound to make an Order and, regardless of whether an agent had been engaged to manage the tenancy and deal with the deposit, the Order must be made against the landlord. Therefore, the only issue for the Tribunal was the amount of the Order to be made against Dr. Wheble. The Tribunal explained that Order is a penalty on the landlord and that loss need not be evidenced.

7. On behalf of his son, Mr. Bowden explained the high levels stress and anxiety which his son experienced when dealing with the letting agent and recovery of the deposit. As copy screenshots showed, Mr. Bowden stated that it was his son who discovered that the deposit had not been lodged, with the letting agent not being forthcoming and open about their error. He stated that the letting agent's approach was to delay refunding his son's deposit until a new joint tenant had been found and paid their deposit. Mr. Bowden pointed out that the joint tenant had paid their deposit on 29 May 2026 but his son was not refunded until 12 June 2026. He stressed that his son's personal life was difficult at that time and the issue with the deposit exacerbated the situation as Mr. Bowden junior had to chase the letting agents for both replies and the return of the deposit. He confirmed that his son sought the maximum penalty.

8. Dr. Wheble acknowledged the failings of the letting agent and explained that all that had occurred was not within her knowledge nor had the letting agent being totally open with her in their dealings. Dr. Wheble advised that she and the letting agent had spoken about this and other matters relating to the tenancy and that she had made her thoughts clear.

9. At the invitation of the Tribunal, Mr Crombie spoke on behalf of the of the letting agent. He explained that he had not been in their employ until after the deposit was refunded but accepted that the letting agent had been at fault by not lodging the deposit in terms of the Regulations and accepted that there had been a failure to deal with matters promptly. He accepted that the letting agent appeared to delay refunding the deposit to Mr Bowden junior but could

offer no explanation for this. Mr. Crombie confirmed that the deposit had been in the hands of the letting agent during the Applicant's tenancy.

10. With regard to the background, the Parties confirmed that, as set out in the Application and written representations, Mr. Bowden junior had been a joint tenant from 26th March 2026 and gave notice around 2 weeks into the tenancy. He vacated the Property on 11th May 2026 and his joint tenant remained in the Property on a new tenancy. Mr. Bowden's deposit was returned to him on 12 June 2026.

**Findings in Fact**

11. From the Application and the CMD, the Tribunal made the following findings in fact: -
    i) There had been a tenancy of the Property between the Parties and a third party from 26 March 2026;
    ii) A tenancy deposit of £900.00 was paid by the Applicant to the Respondent's letting agents on her behalf before the tenancy commenced;
    iii) The tenancy deposit was not lodged with an approved scheme within the statutory period and no information on the deposit was provided to the Applicant by the Respondent or her agents on her behalf;
    iv) The Applicant vacated the Property on 11 May 2026;
    v) The deposit was returned to the Applicant on 12 June 2026 and
    vi) Repayment of the deposit to the Applicant was delayed by the Respondent's letting agents causing unnecessary stress to the Applicant.

**The relevant law**

12. Rule 3 of the Regulations provides : *"1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy (a)pay the deposit to the scheme administrator of an approved scheme; and (b)provide the tenant with the*

*information required under regulation 42."* . Rule 10 provides: *" If satisfied that the landlord did not comply with any duty in regulation 3 the tribunal (a)must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit."*

**Decision**

13. Having made the Findings in Fact, the Tribunal had regard to Regulation 10(a) of the Regulations which states that, if satisfied that the landlord did not comply with any duty in Regulation 3, the Tribunal must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit.

14. In this case, the Respondent, Dr. Wheble, accepted that the Regulations had been breached. Therefore, The Tribunal was therefore obliged to make an Order.

15. The Tribunal is then required to consider the amount of the Order. The amount of any award is the subject of judicial discretion after careful consideration of the circumstances of the case as set out in the decision of the Inner House of the Court of Session in Tenzin v Russell 2015 Hous. LR.

16. In considering the appropriate level of payment order to be made in the circumstances, the Tribunal considered the need to proceed in a manner which is fair, proportionate and just, having regard to the seriousness of the breach (Sheriff Welsh in Jenson v Fappiano 2015 GWD 4-89).

17. The Tribunal had regard to the view expressed by Sheriff Ross in Rollet v Mackie ([2019] UT 45) that the level of penalty should reflect the level of culpability, stating *"The admission of failure tends to lessen fault: a denial would increase culpability".* As stated above, Dr. Wheble accepted that the Regulations had been breached and did so at the outset. Whilst the Applicant pointed out the failings of the letting agent, which were accepted by the letting agent, much of these were subsequent to the breach and not attributable to Dr. Wheble. Dr. Wheble had engaged professional letting agents and was

entitled to rely on them to comply with the legislation on her behalf. Regardless of those facts, the Applicant, Mr. Bowden, has a legal right to make an application to the Tribunal under the Regulations.

18. The purpose of the Regulations and the requirement to pay a tenancy deposit into an approved scheme is intended to protect the deposit and offers protection for both parties in the event of any dispute at the end of the tenancy. Regulation 10 is in place to penalise landlord who fail to ensure that their tenant's deposit is protected and is not subject to misuse. In this case, the tenancy deposit paid by Mr. Bowden should have been protected but it was not. Had it been protected, the release of the deposit would have been dealt with by an approved scheme and Mr. Bowden would not have had to pursue the refund causing him additional stress.

19. The Tribunal took the view that, whilst the letting agent had not served either Party well, as some of the apparent failings fell outwith the scope of the Regulations, the Parties might have recourse under the Letting Agent Code of Practice.

20. Taking all of the above considerations in respect of the Regulations into account, the Tribunal considered that an award around the mid-level of the penalty scale would be appropriate. It, therefore, determined that an order for £1,200.00, representing one and a third times the amount of the tenancy deposit paid, would be fair, proportionate and just, having regard to the seriousness of the breach

**Right of Appeal**

**In terms of Section 46 of the Tribunal (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.**

_____ **16 October 2026**

**Legal Member/Chair** **Date**

Karen Moore