



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48 of the Housing (Scotland) Act 2014**

**Reference number: FTS/HPC/LA/20/2136**

The Parties:

**Mrs Humaira Khan (“the Applicant”)**

**Saima Ahmed t/a Safe Letting (“the Respondent”)**

**Tribunal Members:**

**Alison Kelly (Legal Member), Elizabeth Williams (Ordinary Member)**

**Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Respondent had breached paragraph 18 of the letting Agent Code of Practice and ordered that the sum of £200 should be paid by the respondent to the Applicant in respect of the breach.**

**Background**

1. The Applicant lodged an application with the Tribunal on 10<sup>th</sup> October 2020 under Rule 95 of The First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2017 (“the Rules”), seeking enforcement of the Letting Agent Code of Practice (“the Code”).
2. Hearings took place on 8<sup>th</sup> February 2021, 19<sup>th</sup> March 2021, 19<sup>th</sup> April 2021, 4<sup>th</sup> June 2021, 2<sup>nd</sup> September 2021 and 8<sup>th</sup> October 2021. Hearing Notes were issued after each hearing and should be read in conjunction with this Decision.

**Summary of Evidence at Hearing on 2<sup>nd</sup> September 2021**

3. The Respondent said that she had been acting as agent for the late Mr Khan since 2014. She said that she entered in to an Agreement with him for the property at Gray Street in August 2016. She said that she had also entered in to an Agreement with him in relation to a flat in Berkley Street, Glasgow, and also a property at Oakfield Avenue, Glasgow.

4. Mr Campbell put the Agreement regarding Gray Street to Mrs Ahmed. She confirmed that she had signed the Agreement on behalf of Safe Lettings. She said that the late Mr Khan had instructed her to collect rent only. She said that as Agent she provided full services to other clients, but that the late Mr Khan always managed his portfolio himself. She said that it was the same arrangement for the flat in Berkley Street, rent collection only. She said that this was not an unusual arrangement.
5. The Respondent said that she would see the late Mr Khan when he gave her a property to deal with, but after that there would not be many face to face meetings. The late Mr Khan would phone to update her if he'd carried out any maintenance, and if he was travelling abroad he would let her know.
6. Mr Campbell asked the Respondent how the late Mr Khan signed the Agreement for Gray Street. The Respondent said that he asked her to drop it off in his porch. He said that he would then sign it and she could collect it from the porch several days later. She dropped the Agreement in the porch at his house, 1 Winton Drive, Glasgow. She did not see him sign it. She said that this was a usual arrangement with the late Mr Khan.
7. The Respondent said that she remembered going to see the late Mr Khan's wife about her own property portfolio and Mrs Khan gave her the envelope containing the signed Agreement.
8. The Respondent was asked if she possessed any other documents signed by the late Mr Khan. She said that she had the Agreement for the flat in Berkley Street. She said that when she received the signed Agreement for Gray Street she had no reason to believe the signature was not his. She agreed that the Agreement put the onus of management on Mr Khan. She said that she would be able to produce a copy of the Agreement for Berkley Street.
9. The Applicant's Representative, Mr Khan was given an opportunity to ask the Respondent questions. He highlighted that the Respondent had said in her evidence that the late Mr Khan's wife did not have anything to do with the Agreement being signed. He pointed out that this was a different story from the one given to the Tribunal previously when they were told that the Agreement had been given to the late Mr Khan's wife and she had returned it signed.
10. Mrs Khan, widow of the late Mr Khan gave evidence.
11. Mrs Khan confirmed that she was the widow of Muhammed Khan, of 1 Winton Drive, Glasgow. She said that her husband used to be the owner of the property at Gray Street. She said he employed the services of an agent, Mrs Ahmed. She said that she could recall Mrs Ahmed coming one day and leaving papers with her husband to sign. Mr Campbell asked her what would happen if Mrs Ahmed needed documents signed. Mrs Khan's answer was confusing. She said that one day her husband had gone outside and said that Mrs Ahmed was coming with a document and that her husband dealt directly

with Mrs Ahmed. She could not remember when that was, and she said that the last two years had been difficult. She was asked about Gray Street and she said that her husband once told her that Mrs Ahmed was not managing the property, she was only collecting rent. Mrs Khan said that she never saw the documents. They got signed and then Mrs Ahmed picked them up. She then said that she did see her husband sign the document. She said that Mrs Ahmed had been in the house. When asked if she could be mistaken about that she said “no, I am not 100 years old”.

### **Summary of Evidence at Hearing 8<sup>th</sup> October 2021**

12. The Respondent lodged the Agreement in relation to Berkley Street.
13. The day before the Hearing the Applicant’s Representative, Mr Khan, lodged another Agreement in relation to Berkley Street, this one between himself and Mrs Ahmed.
14. Mrs Khan, widow of the late Mr Khan, was called again to finish her evidence. There was a change in her demeanour. She said that she was puzzled and confused on the last occasion and did not know what was going on. She said that she could remember the Respondent leaving documents but did not know anything else. She said it was all a long time ago, her husband had passed away and there was sadness. She said that Mrs Ahmed came from time to time. If her husband was not in, she left documents. She could recall Mrs Ahmed coming in to the house, but she did not see the document. She could recall that Mrs Ahmed had been more than once, but she could not recall if she had attended and left papers for signing. She could not say that the contract for Gray Street had been signed in her presence as she had not seen what was being signed. She was asked if there were ever occasions when the Respondent had left documents for signing and collected them from the porch. She said documents were usually in an envelope. She could recall her husband leaving envelopes for Mrs Ahmed to collect.
15. Mr Khan was given an opportunity to ask the witness questions. He asked her about evidence she had previously given about the late Mr Khan and the Respondent sitting together and signing a document. She said that she did not know which document was on the table. Mr Khan asked how often the late Mr Khan would go out of the country. Mrs Khan said that once a year he would go away for 3 or 4 weeks. She was asked if this was to India or Saudi Arabia. She said that yes, Mr Khan would go away for 4 or 5 weeks in December as he did not like the cold. She said that as he got older he did not stay for so long.
16. Mr Khan had no further questions and the witness was allowed to hang up.
17. Mr Campbell had some further questions for the Respondent. He asked about the Agreement Mr Khan had lodged. It was a full-service agreement for Berkley Street and was dated 15<sup>th</sup> December 2014. The document which purported to be signed by the late Mr Khan was dated 5<sup>th</sup> February 2015. Mrs Ahmed said that she had another Agreement with the late Mr Khan in relation

to the property, made in February 2014, for rent collection only. She said that in December 2014 Mr Malik Khan (the Applicant's Representative) contacted her in December 2014 to say that he was the owner of Berkley Street and was aware that she was the letting agent. She said she was confused as the late Mr Khan was the only person she had dealt with. She knew him well. She thought there was a family feud going on. She said that Mr Malik Khan had been unpleasant and threatening, and said that she was paying the rent over to the wrong person. She believed that there were issues within the family. She thought that the late Mr Khan had transferred properties to his children but that he was to continue receiving the rent while he was still alive. She was caught in the middle. She said there were power of attorney documents saying the late Mr Khan was to get the rent. She could not get hold of the late Mr Khan. Malik Khan wanted her to take on full management of the property. The new Agreement was entered in to.

18. The late Mr Khan came back and everything changed again. He said that he was to get the rent paid to him. He was not happy. The further Agreement dated 5<sup>th</sup> February 2015 was entered in to.
19. The Respondent said that the signature on the document for Safe Lettings was that of an employee named Karen. The Respondent was not present when it was signed. She said that she was then dealing with the late Mr Khan, but that Malik Khan kept going to the property. She said that she continued to collect rent only until the end of 2016, when Malik Khan took over the property himself.
20. Mr Khan was given the opportunity to ask questions. Mr Khan asked Mrs Ahmed about the second agreement in relation to the Berkley Street property being the agreement purported to be signed by the late Mr Khan on the 5<sup>th</sup> February 2015. He asked her to confirm that it was for rent collection only. She said that the agreements were always for rent collection only with the late Mr Khan. Mr Khan asked her about the document she had referred to in her evidence but not produced being the document she said the late Mr Khan had signed in 2014 regarding the Berkley Street property. Mr Khan asked her if that was rent collection only and she replied yes. Mr Khan asked her why therefore there was a full management agreement with him being the document signed in November 2014. Mrs Ahmed said that Malik Khan had come to her saying that the property was his and that she was doing the wrong job. She also said that he upset the tenants to such a degree that he had no choice but to get her to do full management of the property. Mr Khan asked Mrs Ahmed why she was able to retrieve the new document from 2016 from her archives but not the original document from 2014. Mrs Ahmed replied that she didn't say that she couldn't get it. She had provided the 2016 document to prove the signature. She had not been asked about the 2014 document. Mr Khan asked Mrs Ahmed who she paid the rent for Berkley Street to after the agreement of February 2015. She confirmed that she had paid it to him, Malik Khan. She said that she had paid it to him until the late Mr Khan's solicitor got involved. Mr Khan said that he didn't agree. She said that she had paid the rent to Mr Malik Khan for a long time.

21. Mr Khan asked Mrs Ahmed why she had an agreement with the late Mr Khan if she wasn't paying the rent to him. Mr Khan asked Mrs Ahmed why the signatures were different on the documents provided by her to the ones his father had signed officially, being his passport and his Will. Mrs Ahmed said that she had never had the late Mr Khan's signature in front of her. He did not sign the document in front of her. She said that he had signed the February 2015 document in her office in front of her member of staff Karen.
22. The Tribunal considered matters and issued a hearing Note. In that note they concluded on the balance of probabilities that the signature on the Agreement for Gray Street was not the late Mr Khan's. A Hearing was fixed for evidence to be heard on the grounds of the Code which the Applicant alleged had been breached.

### Hearing 9<sup>th</sup> December 2021

23. The Tribunal hearing took place by teleconference. The Applicant was on the call, and was also represented by her brother, Malik Khan. The Respondent was on the call and was represented by Mr Campbell of Campbell McCartney, Solicitors.
24. Each side confirmed that they were not calling any witnesses.
25. The Tribunal explained the rules applicable to the Hearing. The Tribunal explained that as the preliminary matter in relation to the signature on the contract had been made it was now for the Applicant to establish her case in relation to the alleged breaches of the Code of Practice. The Tribunal decided to deal with the alleged breaches of the Code point by point. The Applicant's case was contained in the document lodged by the Applicant on 2nd March 2021, and headed "**Case against Mrs Saima Ahmed of Safe Lettings**". The Tribunal confirmed with each party that they had a copy of that document to hand.
26. **29 e) if a landlord is not already registered, inform them of the landlord registration requirements under the Antisocial Behaviour etc. (Scotland) Act 2004 and, where necessary, the requirements under the Housing (Scotland) Act 2006 relating to houses in multiple occupation;**
27. Mr Khan told the Tribunal that this paragraph had been breached. The Landlord Registration had been due for renewal in March 2019. Mrs Ahmed contact the Applicant for her date of birth. The Applicant declined to provide it as the Respondent was not giving her any information about the flat. The respondent went ahead and registered it but for the wrong flat number.
28. The Tribunal asked Mr Khan to confirm in what way the allegation related to the wording of the paragraph of the Code. He accepted that it did not.

29. Mr Campbell said that the Respondent did not dispute that she had registered the wrong flat number, but he did not consider that any case had been made for breach of that section of the Code.

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

31. Mr Khan said that the Respondent had kept the Applicant in the dark. She did not provide the Applicant with any details of the tenants or the condition of the flat.

32. Mr Khan referred to an email trail between the Applicant and the Respondent dated 15<sup>th</sup> and 16<sup>th</sup> July 2020. He said that the Applicant had been trying to get information about the flat from the Respondent. He said that although the Applicant had granted a Power of Attorney to their father to deal with the flat his father was ill and bedridden by then. He referred to the email sent by the Applicant on 15<sup>th</sup> July 2020 at 4.36, in which she said that her father was stuck in Hyderabad and no one was checking the flats. He referred to the reply sent by the Respondent on the same date at 4.38 when she said that she had always checked the flat but due to Covid 19 she couldn't. She said that the rent had been getting paid on time each month and that there was nothing to worry about or to check. He said that if the Respondent was checking the flat she would have known that the tenant had established a cannabis farm.

33. Mr Campbell said that it seemed that the Applicant was trying to put a number of different complaints under each paragraph of the Code. He said that there was a pre-existing agreement between the Respondent and Mr Khan Senior. He had heard what Mr Khan had said about his father's capacity, but did not think it was relevant to this paragraph of the Code.

34. Mr Campbell made reference to the email trail. He referred to the email sent by the Respondent on 23<sup>rd</sup> July 2020 at 6.58 in which she asked the Applicant to send her ID. The Applicant did not forward this ID until 17<sup>th</sup> August 2020. He said that he could well understand the Respondent's responses. He said the Applicant accepted that there had been some form of contractual arrangement between Safe Lettings and Mr Khan Senior and he said that the Respondent was bound in the relationship with Mr Khan Senior acting as attorney. He accepted that the Applicant made it clear that she had revoked the Power of Attorney, but she did not provide the ID until 17<sup>th</sup> August 2020 and could not be considered the client until then.

35. Mr Khan said that at the time the ID was asked for the respondent was in communications with the Applicant. The Respondent had asked for the Applicant's date of birth a year previously. He said that the Respondent had used delaying tactics. The Applicant was the landlord and wanted to know about the flat. Mr Khan Senior was too old to manage it and he was away from Glasgow.

**36.21. You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.**

37. Mr Khan said that every time the Respondent was asked about the flat and tenants she did not provide a satisfactory response. She always said that everything was ok. He referred to the email trail again. He said that there were also WhatsApp messages. These had not been lodged with the Tribunal.

38. Mr Campbell said that this touched on a broader issue than whether or not there was a violation of the Code. He also said the issues had been covered under paragraph 18 already. He said that the allegation was more about a failure to provide information that the broader obligation regarding standard of service. He said that if the Applicant was relying solely on the email trail the head of complaint had not been made out. He said that the Applicant had confused paragraphs 18 and 21 of the Code.

**39.27. You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.**

40. Mr Khan broke the complaint down in to five sections.

- a) Mr Khan said that no one had inspected the flat. The Applicant was not advised of the reasons for this. He said that the Respondent should be able to provide records of inspections etc. He said that covid was not an excuse as inspections came under essential services. He did not lead any evidence or produce any legislation or guidance to confirm this. He said that if the Respondent had carried out inspections she would have known about the cannabis farm.
- b) Mr Khan said that it was evident that no repair work had been carried out on the flat. He said that when they took possession of the flat there were all sorts of leaks and rotten windows. He took pictures and these are lodged in the case. The pictures were taken after the tenant had left. He got the key from the police. He said the boiler had not been serviced and was out of order. The fire alarm had no battery, which was a public safety issue. He described the flat as being a five bedroom flat on two levels, with three bedrooms, toilet and kitchen on the lower level and two bedrooms and a big bathroom on the upper floor.
- c) Mr Khan said that if the Respondent had been inspecting the property she would have seen the cannabis farm.
- d) Mr Khan said that the Respondent had not carried out any reference or credit checks on the tenants.
- e) Mr Khan said that the Respondent had never got any electrical, gas safety EPC, legionella inspections during the course of managing the flat.

41. Mr Campbell said that the Respondent maintained her position that her agreement with Mr Khan was for rent collection only. On that basis this paragraph of the Code was outwith the scope of that agreement. He said that he was mindful of the Tribunal's finding in relation to the signature on the

Agreement but he was focussing on the Respondent's understanding of her role.

42. The Respondent spoke at this point. She said that Mr Khan had said that Mr Khan Senior was unwell towards the end of his life. She did not consider this to be true. She said that he had always been completely on the ball. The flat was an HMO and Mr Khan was well known by the HMO department at the Council and dealt with them direct. He would always contact the Respondent to let her know when he was going to be abroad. He was regularly in touch with her. It was agreed that he always found the tenants and she got paid for collecting rent only. He was abroad during lockdown. She said that the police had told Malik Khan not to get involved after the tenant left. He ignored them and put a notice on the door. She said that her agreement was with Mr Khan Senior.
43. The Tribunal asked about her email of 15<sup>th</sup> July 2020 at 4.38 in which she said that she had always checked the flat. The Respondent said that what she meant was that she always inspects flats for other clients when she manages them. She said that the emails were not the full story as there had been WhatsApp messages as well.
44. Mr Khan was asked when his father was last at the flat. He said that his father was not able to fly easily and he didn't think he had ever visited it. He was asked if his father would have employed tradesmen or carried out repairs himself. He did not see why he was being asked the question as the whole dispute was about whether or not the contract was legitimate. He did say that logically his father would have carried out repairs himself.
45. The Tribunal noted that the tenancy had begun on 15<sup>th</sup> March 2018 and asked Mr Khan if his father's health had been better then. He said that his father had difficulties climbing stairs and wasn't able to think clearly. He said that he did not think his father would agree to pay as high a charge as 10% for rent collection only. He said that he was of the opinion that his father entered in to a full management agreement.
46. The Respondent spoke again. She said that it was a shame that Mr Khan kept referring to his father as old, he was not old in that sense. He visited all his properties and was only ill towards the very end. She said he was really sharp. She said that in December 2019 he had visited the flat and organised a repair. She said that he only fell ill when he went to India. She said that Malik Khan and his father didn't speak.
47. Mr Campbell said that the Applicant had not withdrawn the agency for her father to act until July 2020. She must have thought he was still capable until then.
48. **37. When either party ends the agreement, you must:**
  - a) **give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the**



**arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill.**

49. Mr Khan said that the Applicant requested Terms of Business in September 2020. He was never provided with a response. He said that the Applicant gave Power of Attorney on 21<sup>st</sup> April 2016. The document wasn't registered with the Office of the Public Guardian in Scotland. The Tribunal asked if he was trying to advance an argument that the Power of Attorney was invalid. He said that he was not.
50. The Tribunal asked the Applicant why she had allowed her father to manage the property if he wasn't fit to do so. She said that her father had forced her to. She did accept that the Power of Attorney was in force. Her father told her not to cancel it. Her father lived close to her in India. She saw him about once or twice per week. He became really sick in July/August 2020 and that was when she cancelled the Power of Attorney. The Tribunal asked what she had done to cancel it. She said that she had told the Respondent.
51. Mr Khan said that his father had spoken to the Respondent on the phone. She kept on breaking the locks at the property. He said that the Respondent went to the flat and changed the locks after the Agreement was terminated. She kept the deposit which equalled one month's rent. She paid the rent to Mr Khan Senior's wife, which was prohibited in the Power of Attorney. She never handed over any safety certificates.
52. The Respondent said that she had dealt with Mr Khan Senior in relation to the flat since 2016. It had always been rent collection only. She said that this was not uncommon. He had told her the flat belonged to his daughter and he had shown her the Power of Attorney.
53. The Respondent said that she had only visited the property once. She had gone with Mr Khan Senior in 2018 before the last tenant went in. It was not in a great condition. Mr Khan organised some repairs and rented it out. He found the tenant. He dealt with the HMO department. He went to the flat a lot. He phoned the Respondent every second day. She was not responsible for safety certificates. She spoke to Mr Khan Senior the week before he died. She never held any deposit for the property.
54. The Tribunal asked the Respondent if she had prepared the Tenancy Agreement. A copy of it was lodged with the Tribunal. The Respondent said that Mr Khan Senior asked for blank documents to be emailed to him. He prepared it and got it signed. She said that she did not check the documents he sent back because he had over 200 properties and knew what he was doing.

55. Mr Campbell said that the lease, at page 1, section 3, mentioned the services that the agent would deliver and it said rent collection only.
56. Mr Khan said that on page 6 of the lease it said that the agent was the point of contact for full management and repairs.
57. The Tribunal adjourned for a lunch break.
58. After the break Mr Campbell apologised and said that he had made a mistake regarding the tenancy agreement, and he agreed that it did say that the agent was the point of contact for full management and repairs.
59. The Respondent said that the words had probably been in the draft she emailed to Mr Khan Senior and that he had not removed them. He emailed a signed copy back to her. The Tribunal noted that the document purported to have been signed by Safe Lettings for the Landlord. There was no actual signature, but "Safe Lettings" was typed in the box. The Respondent said that the PRT style was pre populated. The Tribunal pointed out that it was a legal document, and the Tribunal should be able to rely on what it said. Then Respondent did not seem to grasp the point that if it was signed Safe Lettings, it would be assumed that Safe Lettings had signed it.
60. **54. You must agree with the landlord the criteria and process for managing and approving tenancy applications from prospective tenants.**
61. Mr Khan said that the Respondent never discussed this with the Applicant. The Tribunal pointed out that the Power of Attorney had not been revoked until August 2020.
62. Mr Campbell had no observations to make apart from the contention that the Power of Attorney was in place and his client was dealing with Mr Khan Senior.
63. **55. You must inform the landlord in writing of all applications made on the property as soon as possible, unless agreed otherwise with the landlord, along with all relevant information about the offer and the applicant.**
64. Mr Khan said that the Respondent had never discussed this with the Applicant.
65. Mr Campbell had no observations to make apart from the contention that the Power of Attorney was in place and his client was dealing with Mr Khan Senior.
66. **57. You must agree with the landlord what references you will take and checks you will make on their behalf.**

67. Mr Khan said that the Respondent had never discussed this with the Applicant.
68. Mr Campbell had no observations to make apart from the contention that the Power of Attorney was in place and his client was dealing with Mr Khan Senior.
69. **61. You must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord.**
70. Mr Khan said that the Respondent had not vetted the tenant and if she had he wanted to see proof.
71. Mr Campbell said that that was more a request for information than a complaint and that that the Power of Attorney was in place and his client was dealing with Mr Khan Senior.
72. The Respondent said that she had never put any tenants in to the flat.
73. Mr Khan reiterated that the amount of money being paid to the Respondent, 10% of the rent, would not have been for rent collection only but for full management.
74. The Respondent said that full management services normally cost around 12%, but that she would sometimes negotiate a flat fee.
75. **65. You must inform the landlord of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011**
76. Mr Khan said that the Respondent had not given information about the deposit.
77. The Respondent said that she had never dealt with a deposit.
78. **66. If you lodge tenancy deposits on a landlord's behalf, you must ensure compliance with the legislation.**
79. Mr Khan reiterated that no information had been given.
80. Mr Campbell said that this complaint was predicated on the Respondent dealing with the deposit and she said that she hadn't.
81. **68. If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets**

**other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct.**

82. Mr Khan said that no Inventory had been produced by the Respondent. He did accept that the flat was unfurnished.
83. Mr Campbell said that that was more a request for information than a complaint and that the Power of Attorney was in place and his client was dealing with Mr Khan Senior.
84. **74. If you carry out routine visits/inspections, you must record any issues identified and bring these to the tenant's and landlord's attention where appropriate (see also paragraphs 80 to 84 on property access and visits, and paragraphs 85 to 94 on repairs and maintenance).**
85. Mr Khan said that there had been a lot of damage done to the flat. The bedroom window was rotten. There was substantial other damage shown in the photos he had lodged. The Respondent did not inform them. She began taking bags of compost etc out of the flat. She hired a skip. He got this information from Constable Iain Campbell. A neighbour also informed him. He did not wish to name the neighbour.
86. Mr Campbell said that there was no evidence before the Tribunal to support any of the assertions. It was all second or third hand hearsay. The Respondent said that she had not done any of these things. A neighbour had told her that it was Malik Khan and his friends that had got the skip and removed rubbish.
87. The Tribunal asked Mr Khan how many flats were in the tenement. He said that there were three others. These were not owned by his father. He was asked if he knew any neighbours. He said that before the tenant moved out he had visited the property and put a notice on the door asking the tenant to contact the Applicant. He met one of the other residents when he was doing this. The resident knew his father very well. The Tribunal asked if any complaints had been made about the tenant by the neighbours. Mr Khan said that one neighbour was in communication with the Council. Mr Khan was asked if he contacted the Council for information about this. He said that it did, but on further questioning it appeared that he had contacted the Landlord Registration Department rather than the Anti Social Behaviour Unit.
88. The respondent said that there was a factor in charge of the block. They had her details. The tenement was a close knit community. If there had been an issue with the tenant someone would have contacted her.
89. **85. If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations ( e.g. electrical safety testing; annual gas safety inspections; Legionella risk**

**assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work.**

90. Mr Khan said that the Respondent didn't comply. She didn't provide certificates of updates.
91. Mr Campbell said the Power of Attorney was in place and his client was dealing with Mr Khan Senior. He said that the Respondent was a responsible agent and was fully aware of her responsibilities. He said that such a failing was so profound that it lent itself to her contention that it was Mr Khan Senior's responsibility. He said that it beggared belief that she would fail to do this if she was contracted to.
92. The Respondent said it was a very serious point and reiterated that she was not responsible. She said that Mr Khan Senior was always on top of these things and had his own tradesmen.
93. **86. You must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required, if you provide this service directly on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs.**
94. Mr Khan referred to his written document. He said that the Respondent had never produced any written records.
95. Mr Khan was asked when his father went to India, he said that he went in December 2019 and did not return to the UK before he died.
96. Mr Campbell said the Power of Attorney was in place and his client was dealing with Mr Khan Senior. He said there was no suggestion or evidence that the nature of that contractual relationship had changed when Mr Khan Senior left the country.
97. **101. Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.**
98. Mr Khan said that the Respondent did not do this. He said that the Respondent had given evidence that she spoke to his father the day before he died. He said that this was impossible as his father was in the emergency

ward and was on oxygen and had many machines connected to him. He was not aware of when the tenant had left.

99. Mr Campbell said the Power of Attorney was in place and his client was dealing with Mr Khan Senior. He said there was no suggestion or evidence that the nature of that contractual relationship had changed when Mr Khan Senior left the country. He also said that it was unlikely that a tenant involved in criminal activity would advise the landlord of when they were intending to move out, and arrange to have a check out meeting.
100. The Respondent said that she had no knowledge of when the tenant left. No one was in touch with her. She only found out when Mr Khan Senior's wife told her. She got the information from her husband in India.
101. The Tribunal asked Mr Khan what his relationship had been like with his father. He said that there had been some issues. His said that his father's relationship with his step mother was not good. He said that his father had sought his support and she had been unhappy about that. She did not co-operate with Mr Khan, she had never liked him. He said that his father used to meet him at the community centre. He was an old man and could be angry at times. Other community members could manipulate him. They would try to keep him away from his father. He said that all his father's properties were transferred in 2012 to either him, his sister or his step-mother. In 2013 Mr Khan took over his and his sister's properties.
102. The Respondent interjected to say that this was all lies and that the relationship between Mr Khan and his father was not good. She also seemed to be involved with the community centre. She said that the arrangement had been that the properties would be transferred but Mr Khan Senior would receive the rent on them until he died. She said that Mr Khan and his sister were unhappy with that.
103. **102. If you are responsible for managing the check-out process, you must ensure it is conducted thoroughly and, if appropriate, prepare a sufficiently detailed report (this may include a photographic record) that makes relevant links to the inventory/schedule of condition where one has been prepared before the tenancy began.**
104. Mr Khan said that no details of the check out were ever provided.
105. Mr Campbell referred to his earlier comments in that the Respondent did not consider that she was responsible for check out.
106. The Tribunal asked the Respondent if the tenant had paid the rent right up until he left. She replied that he had been four months in arrears. She was asked if she took any action regarding the arrears. She said that due to covid tenants were being given more time to pay their rent. She said that Mr Khan Senior told her that he had been in touch with the tenant and had been told he was struggling to pay the rent. Mr Khan was willing to accept that.

107. Mr Khan referred to the email trail in July 2020, and in particular to the email from the Respondent on 15<sup>th</sup> July 2020 at 4.38 where she states that “the rent has been paid on time each month as agreed to Mrs Khan”. He pointed out that the Respondent had just told the Tribunal that the tenant was four months in arrears of rent.
108. The Tribunal questioned the Respondent about this. Despite asking simple and direct questions the Tribunal did not get a straight or satisfactory answer from the Respondent.
109. This concluded the evidence in relation to the alleged breaches of the Code.
110. The Applicant had lodged a number of invoices and receipts in relation to repairs required at the property at the end of the tenancy. He did not have witnesses on standby to speak to them, and there was no time left in the day to hear more evidence. The Tribunal adjourned for a short period to allow Mr Campbell to speak to the Respondent about whether the invoices could be agreed. Mr Campbell took instructions and advised the Tribunal that the Respondent was not prepared to agree the invoices.
111. The Tribunal decided to hear submissions and reserved the right to the Applicant to call witnesses to speak to the invoices if the Tribunal found in her favour.
112. Mr Khan said that his case was contained in the written document he had submitted.
113. Mr Campbell said that the evidence would be clear in everyone’s mind and that it was less than ideal on both sides. He said that what was fundamental to the case was the nature of the agreement between the Respondent and Mr Khan Senior. The Respondent’s state of knowledge and belief was what was important. If she genuinely believed that the agreement was for rent collection only then that was the end of the matter. He said that there was obviously no evidence from Mr Khan Senior. He said that the nature of the agreement can be inferred from the fundamental point made by Mr Khan about the absence of safety certificates, which points to Mr Khan Senior assuming these responsibilities himself. He said that there may have been an issue in the broader Khan family but the late Mr Khan was not there to speak about it. He said that there was sufficient evidence to allow the Tribunal to say the agreement was for rent collection only. He said that there was no dispute about the existence of the power of attorney. He said that the evidence drove towards Mr Khan Senior having his own way of dealing with the property. He had disposed the property to his daughter in life, but in his mind he retained ownership of it. The reflection of that was that he continued to manage the property. He asked the Tribunal to accept that the true nature of the agreement was one of rent collection only.
114. The Tribunal adjourned to consider matters.

## Findings In Fact

1. The Applicant is the owner of the property at 2/L, 12 Gray Street, Glasgow, G12 8LL;
2. The Applicant lives in India and granted a Power of Attorney, dated 21<sup>st</sup> April 2016, to her father, Mr Mohammed Abdul Aziz Khan, to act on her behalf in respect of her property at Flat G-12, Gray Street, (2/L) Glasgow G-3;
3. The Power of Attorney was drawn up and signed in India;
4. The Power of Attorney was not registered with the Office of the Public Guardian in Scotland;
5. The Respondent dealt with the late Mr Khan in relation to the property, in accordance with the terms of the Power of Attorney;
6. The Respondent dealt with other properties on behalf of the late Mr Khan;
7. The Respondent was instructed by the late Mr Khan to deal with a property at Flat 2/1 38 Berkley Street, Glasgow G3 7DW;
8. The property at Berkley Street was owned by Mr Malik Khan, son of the late Mr Khan and brother of the Applicant;
9. In November 2014 Mr Malik Khan entered in to a full Management Agreement with the Respondent in relation to Berkley Street;
10. In February 2015 the late Mr Khan recommenced dealing with the Applicant in relation to Berkley Street;
11. The signature on the Full Premier Management Service Agreement between Safe Lettings and Mr Aziz Khan in relation to Flat 2/1 38 Berkley Street, Glasgow, G3 7DW, dated 5<sup>th</sup> February 2015, purported to be that of the late Mr Khan, is not his signature;
12. The signature on the Full Premier Management Service Agreement between Safe Lettings and Mr Aziz Khan in relation to 12 Gray Street, Glasgow, G3 7TX, dated 15<sup>th</sup> August 2016, purported to be that of the late Mr Khan, is not his signature;
13. The property at 12 Gray Street, Flat 2/1 Glasgow, G3 7TX was rented to Mr Amer Hussain on 15<sup>th</sup> March 2018;
14. There was a tenancy agreement between the tenant and Safe Lettings, on behalf of the Applicant, which stated in paragraph 2 that the Agent was the first point of contact for full management and repairs regarding full tenancy;
15. The late Mr Khan travelled to India in December 2019 and did not return to Scotland;
16. The late Mr Khan died in India on 28<sup>th</sup> October 2020.
17. The tenant did not pay rent from April 2020 onwards;
18. The tenant vacated the flat without giving notice sometime in the summer of 2020
19. The Applicant sent an email to the Respondent on 16<sup>th</sup> July 2021 at 6.48 advising that the Power of Attorney was revoked.

## Reasons For Decision

115. This case had seven hearings. The Tribunal heard from the Applicant, her brother Malik Khan, Mrs Khan, and the Respondent. Unfortunately, the Tribunal did not find the evidence of any of those parties to be wholly credible or reliable. There was clearly a history between the Khan family and the



Respondent. The Respondent had dealt with a number of properties over the years for members of the family.

116. The Respondent said that the late Mr Khan transferred ownership of his properties to the Applicant, Malik Khan and Mrs Khan in or around 2012 on the understanding that he would continue to receive the rent until he died. This was not disputed by the Applicant or Mr Khan.
117. The Applicant said that she was forced by her father to sign the Power of Attorney allowing him to manage Gray Street.
118. Malik Khan said that he and his father had their issues. He spoke of his father as being old and easily influenced by other members of the community. The Respondent disputed this. She said that Mr Khan was not old in the head and was very sharp.
119. The Tribunal considered that the late Mr Khan was very much in charge of the properties and expected to receive the rent in his lifetime. This can be inferred from the evidence that in February 2015 he took over the management again of the Berkley Street property. That Malik Khan was not happy about the situation can be inferred from the evidence that he entered in to an Agreement with the Respondent for Berkley Street in November 2014 while Mr Khan was out of the country. The emails which the Applicant sent to the Respondent in July 2020 were verging on hostile and unpleasant in tone.
120. The Tribunal had already held that the signature on the Agreement for Gray Street, dated 15<sup>th</sup> August 2016 was not that of the late Mr Khan. There was no evidence before the Tribunal to suggest who had signed it or in what circumstances. The difficulty thereafter is that there is no independent evidence of what the agreement was between the late Mr Khan and the Respondent. The Tribunal does not have sufficient evidence before it to draw a conclusion that the Respondent forged the document. That is a very serious allegation. No direct question was put to the Respondent suggesting that she had done so. It was the Respondent who lodged the Agreement and sought to rely on it. Neither the Applicant nor Mr Khan could give evidence about what agreement their father had entered in to with the Respondent. The Tenancy Agreement did contain a clause regarding the Respondent delivering on behalf of the landlord a Full Management Service including repairs. The difficulty that the Tribunal has with relying on that is the lack of any evidence that the late Mr Khan, who was acting in terms of the Power of Attorney, was dissatisfied with what was being done by the Respondent in relation to the property. He did not leave for India until December 2019, and the tenant had been in the property for over a year by then. The Respondent was clear that she had carried out rent collection only. Having heard all the evidence the Tribunal did not consider that it could conclude, on the balance of probabilities that the Respondent was responsible for any more than rent collection.
121. During the hearing Mr Khan conceded that he had not made out a case in relation to Paragraph 29(e) of the Code.

122. The Tribunal agreed with Mr Campbell that the Applicant had conflated the compliant under paragraph 21 with the complaint under paragraph 18.
123. The complaints under paragraphs 27, 54, 55, 57, 61, 65, 66, 68, 74, 85, 86, 101 and 102 were all predicated on their being a full service agreement between the late Mr Khan and the Respondent. On the basis that the Tribunal has been unable to conclude that there was such an agreement it cannot find that there has been any breach of those paragraphs.
124. The Tribunal was left to consider the complaints under paragraphs 18 and 37.
125. The Tribunal concluded that the Respondent was in breach of paragraph 18 to the extent that she did not give information to the Applicant in a clear and easily accessible way after the Applicant advised her that the Power of Attorney had been revoked. This is clear from the email trail from 15<sup>th</sup> July 2020 onwards. She was not clear about the rent arrears position.
126. The Tribunal concluded that the Respondent was not in breach of paragraph 37 in relation to the complaint made by the Applicant. The Applicant did not make out a case in relation to the wording of paragraph 37.
127. Given the Tribunal's decision,. There is no requirement for another day to hear evidence about the cost of repairing damage.
128. Having determined that the Respondent had breached paragraph 18 of the Code the Tribunal had to consider whether the Respondent should pay compensation and how much. The Tribunal considered that the breach did not result in any loss to the Applicant. However, the information provided was not accurate and in recognition of that the Tribunal decided to award the sum of £200.

**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.**