Housing and Property Chamber
First-tier Tribunal for Scotland

Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Sections 46 and 48 of the Housing (Scotland) Act 2014 and Paragraphs 16, 17, 18, 19, 31, 38 and 90 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016 ("the Regulations")

Chamber Ref: FTS/HPC/LA/21/0744

Property: 35 Hoggan Crescent, Dunfermline KY11 4PU ("the Property")

Parties

Mrs Orietta Pili, 35 Hoggan Crescent, Dunfermline KY11 4PU ("the Applicant")

and

Morgan Law Partnership, 33 East Port, Dunfermline KY11 7JE, registered Letting Agent Registration Number LARN1811015 ("the Respondents")

Tribunal Members: George Clark (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondents had not failed to comply with Paragraphs 16, 17, 18, 19, 31, 38 or 90 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016.

Background and Summary of Applicant's Written Representations

1. By application, received by the Tribunal on 24 March 2021, the Applicant sought an Order in respect of the Respondents' failure to comply with the Letting Agent Code of Practice made under the Letting Agent Code of

Practice (Scotland) Regulations 2016 ("the Code"). The Applicant's complaint was that the Respondents had failed to comply with paragraphs 16, 17, 18, 19, 31, 38 and 90 of the Code. The relevant sections of the various Paragraphs are set out below.

2. Paragraph 16 of the Code states that letting agents must conduct their business in a way that complies with all relevant legislation.

3. Paragraph 17 of the Code states that letting agents must be honest, open, transparent and fair in their dealings with landlords and tenants.

4. Paragraph 18 of the Code states that letting agents must provide information in a clear and easily accessible way.

5. Paragraph 19 of the Code states that letting agents must not provide information that is deliberately or negligently misleading or false.

6. Paragraph 31 of the Code states that if letting agents know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, they must not act on their behalf. In these circumstances, they must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.

7. Paragraph 38 of the Code states that letting agents' advertising and marketing must be clear, accurate and not knowingly or negligently misleading.

8. Paragraph 90 of the Code states that repairs must be dealt with promptly and appropriately having regard to their nature and urgency.

9. The Applicant stated that the marketing of the Property had been misleading because the Property's structural issues had not been made clear and it was not up to standard. Communication was not transparent, and the Respondents had lied on occasion. The Respondents had not informed the local authority of the disrepair of the Property. Repairs were carried out late or were not carried out at all. Living in a damp, mouldy house had damaged multiple pieces of furniture, including a double bed, a desk, a chest of drawers and a wardrobe, all items which had been bought in the last two years. The environment was also not healthy to live in. The Applicant's view was that the Respondents should comply with their legal obligations and provide assistance for the disrepair of the Property, which they had not done as at the date of the application, and, if the landlord still refused to proceed, they should report her to the local authority.

10. The application was accompanied by copies of a Private Residential Tenancy Agreement commencing on 30 September 2020, a Landlord Notification of

Repair letter, email exchanges between the Parties between 17 November 2020 and 19 May 2021, which included a number of internal photographs of the Property, and the Respondents' written response of 30 March 2021 to the Applicant's emailed complaint to them.

11. The relevant email exchanges prior to the date of the application can be summarised as follows:
    - 17 November 2020. The Respondents advised that they had instructed a roofing company to carry out some roof repairs.
    - 7 December. The Respondents said that they had asked their handyman to look at the windows.
    - 12 January 2021. The Applicant enquired about the person who was supposed to check the boiler, as she had not heard from anyone. She also reported another leak, this time in the ceiling of the smaller bedroom, and stated that the leak that had been repaired was still showing signs of water. She added that the freezer was not working properly.
    - 13 January. The Respondents advised that the landlord was looking at having a new fridge freezer delivered.
    - 15 January. The Respondents advised that the roofer had attended, and a quote was awaited.
    - 18 January. The Respondents told the Applicant that, as the fridge freezer ordered by the landlord was not available, he had ordered another one. The Respondents had asked Peter Cox, damp experts, to get in touch with the Applicant to arrange a damp survey.
    - 22 January. The Applicant advised the Respondents that Peter Cox had carried out their damp check and had said that it was a matter of ventilation and condensation. They had advised her not to hang wet clothes inside. She stated that clothes were only hung in the boiler cupboard and that the boiler was supposed to have been fixed by today by Heatcare.
    - 25 January. The Respondents advised that a roofer had been instructed. The Applicant asked them to remind the landlord that she required a dehumidifier.
    - 26 January. The Respondents advised that the landlord had told them the roofer would be starting on 6 February and that he had ordered a dehumidifier.
    - 29 January. The Applicant advised that Heatcare had just left and the Respondents answered that the company had said that the heating was now working as it should, the dehumidifier was being sourced and that the rent had been halved from 30 January.
    - 2 February. The Respondents advised that the landlord's son would be delivering the dehumidifier.
    - 3 February. The Applicant said she wanted the dehumidifier replaced as it was extremely noisy, and the tank and other parts were coated in grime. The Respondents answered that they were sorry about the

condition of the dehumidifier, but that they understood that it was working.

- 5 February. The Respondents told the Applicant that the roofer was unable to start on 6 February because of the weather. He hoped to start on 8th February, weather permitting. They also confirmed that the landlord had ordered another dehumidifier.
- 9 February. The Respondents told the Applicant that the landlord had advised then that the dehumidifier was very good and was the quietest and most powerful in the range. It could dry a room of up to 50 square metres.
- 15 February. The Respondents advised that delivery of the dehumidifier had been delayed by the weather. The Applicant told them that the roofer had been there for two hours and had done a "quick fix". She also said that the problem with the boiler had not been fixed.
- 16 February. The Respondents said that the roofer had been arranged directly by the landlord. They confirmed that the rent remained halved. The gas safety check had been done in July 2020.
- 17 February. The Applicant complained that the dehumidifier was very small and that, after research, she had ascertained that it was suitable for an area up to 18 square metres, not 50 square metres.
- 22 February. The Applicant attached the Notification of repair intimation to the landlord in respect of the failure to ensure the Property was wind and watertight. The Respondents asked the Applicant to tell them what repairs were outstanding. They said that everything she had mentioned to them had been fixed and that she must start ventilating the Property as per the Peter Cox report.

12. The emails between 23 February and 19 May 2021 began with the formal intimation of the Applicant's complaint. She stated that the marketing of the Property had been misleading, either negligently or deliberately as it was stated to be in good condition, yet only a month later, numerous severe issues began to arise. Communication with the Respondents had not been transparent, and it was always necessary to chase them for a reply. Often, questions and/or requests were completely ignored, and email replies were sometimes inappropriate and contained false statements. The person who had been following her case had stopped replying earlier in the month and another employee had falsely asserted that all necessary work had been carried out and that appropriate dehumidifiers had been delivered. This was accepted, but it was not powerful enough to dry the whole house. The employee had said that the Applicant had not made the Respondents aware of some of the issues, despite the fact that extensive correspondence regarding them was available. The Respondents had failed to report to the local authority that the Property was not up to standard after the landlord tried to avoid taking the proper steps multiple times, when the Code clearly states that they should have done. She had first reported the problems in November 2020. Some had been dealt with, although ineffectively, and some, such as a

fault with the heating system were ignored. It had only been fixed that day. The Respondents, when shown photographs and filmed evidence of the issues, had either denied or ignored their existence. The landlord had tried to provide the Applicant with unfit appliances and, had she not pushed for them to be changed, the Respondents would not have helped.

13. On 25 February, the Respondents acknowledged the email of the 23rd and said that they would get back to her as quickly as they could, although with some colleagues working remotely it could take a little longer than normal to respond to her. They sent their full response on 30 March, expressing the hope that the Parties could work together towards a resolution.

14. In their emailed letter of 30 March 2021, the Respondents stated that it was their understanding that the roof repairs were completed on or around 16 February. They understood that the Applicant reported water was leaking into the bedroom on 5 November 2020 and that Reid Roofers attended the Property within a matter of days. Due to the weather, however, the repairs were delayed, but were completed on 5 December. Further issues were reported on 12 January 2021 and the roofer was due to visit on 14 January but was unable to do so, due to bad weather. A further roofing company visited on 20 January, and on 25 January further repairs were instructed which were carried out on 6 February. The bad weather had led to delays, but the Respondents understood that all matters were now complete and asked the Respondent to confirm that she accepted the roof was now watertight.

15. The Respondents said that they understood that Heatcare, who are Gas Safe registered heating engineers had attended the Property on various occasions and that the heating was working. In response to the complaint that radiators were not positioned properly, the Respondents stated again that Heatcare had been out to the Property and the heating system was in good working order.

16. Tradesmen had fixed the window vents, but the landlord's contractor had advised that as this was not an emergency repair, they were unable to attend the Property until COVID-19 restrictions were lifted. The Respondents asked the Applicant to confirm in what way she still saw the Property as not being watertight and to send up to date photographs in this respect.

17. In response to the Applicant's request that issues of penetrating damp and mould should be addressed, the Respondents stated that Peter Cox had attended the Property and had provided certain advice regarding venting and heating. The Respondents understood that the roof had been repaired, a dehumidifier provided and with adequate heating and ventilation, the Property could be redecorated when tradesmen were allowed to enter it again.

Arrangements would be made when the present restrictions were lifted, which they anticipated would be in April 2021.

18. The Respondents then commented on the Applicant's complaint under the various Paragraphs of the Code of Practice. Reference was made to Paragraphs 72 and 95 of the Code, but as the application to the Tribunal did not ultimately include those Paragraphs, the Respondents' comments are not included in this Decision. They asked the Applicant to confirm in what way she felt that they had not complied with all relevant legislation (Paragraph 16) and in what way she felt they had breached Paragraph 17. From the notes on their system, it appeared that at all times their Property Manager and the Landlord had been very fair and had responded quickly to the Applicant and had updated her throughout the process. They asked her to confirm in what way they had breached the obligation to provide information in a clear and easily accessible way (Paragraph 18) or had provided information which was deliberately misleading or false (Paragraph 19). They considered that there had been no delays and that all email correspondence relating to any matters raised had been dealt with as soon as realistically possible in the circumstances (Paragraph 31). They asked the Applicant to confirm in what way she felt their advertising had breached Paragraph 38 of the Code and, in relation to Paragraph 90, they said that from their notes on the system, all repairs had been dealt with promptly.

19. On 5 April 2021, the Applicant replied to the Respondents' emailed letter of 30 March and attached to her reply a number of photographs. She stated that the repairs on the roof had not taken place until 12 February and were only a quick fix, not the extensive work that the roofer said was needed. As a result, new leaks were now visible in the kitchen and bedroom and the roof was still not watertight and, as at the date of the email. The issues had still not been solved. One of the radiators still leaked on some days, despite the repeated intervention of Heatcare. This made the system inefficient as there was not enough pressure for the water to circulate. As stated on multiple occasions, the windows were not watertight. Water leaks from their frames when it rains. Such window repairs were essential and, therefore, allowed during the COVID pandemic. Heatcare had told the Applicant that pipes on some radiators had been switched from one side to the other. Redecoration was not simply aesthetic in this Property. Walls were covered in mould behind the wallpaper. The dehumidifier was, as the landlord had been made aware, not powerful enough to dry the whole house.

20. On 28 April 2021, the Applicant again emailed the Respondents, addressing more fully the matters raised by them in their letter of 30 March. She stated that the Property did not meet the repairing standard as set out by the relevant legislation, constituting a breach of the obligation in Paragraph 16 of the Code of Practice. Moreover, they had failed in their obligation to transparency towards the client and had marketed the Property in a

misleading way (Paragraph 38). The Respondents had failed to properly acknowledge and address and solve these issues and had misleadingly marketed the Property to her. They had denied on multiple occasions the need for essential work on the Property or the possibility of providing much-needed appliances, sometimes blaming it on the COVID-19 situation when that did not get in the way of assisting her. She had not been made aware of the real state of the Property prior to signing the tenancy agreement and, despite the fact that repairs afterwards carried out were insufficient, they had denied that they were. On occasions, where her emails contained multiple queries often only some of them were addressed and photographic evidence had also been ignored (Paragraph 17 of the Code). When asking for updates on work she was waiting for, only generic replies were given to her with no clear indication of when and how she would be given the assistance she required. It usually took multiple attempts at receiving any information before it was set out clearly, an example being the communications regarding the installation of dehumidifiers. She had been sent to voicemail but, despite asking for information, had not been contacted back (Paragraph 18 of the Code).

21. The Inventory of the Property said that it was in a good state, but that ignored the state of the roof, the heating and the windows. The fridge was listed as “new”, despite having a broken shelf and a missing drawer in the freezer (Paragraph 19 of the Code).

22. The landlord was failing to meet her obligation to carry out essential repairs in order to keep the house up to the standards set by law. By deciding not to report this to the local authority, the Respondents had breached Paragraph 31 of the Code. The Respondents had advertised the Property as being in a good state, despite the severe issues which made it unfit to live in. One of the rooms required to be re-decorated at the landlord’s expense, but the Applicant had had to take care of it, as the budget provided was insufficient to cover the costs of both material and labour (Paragraph 38 of the Code).

23. On 29 April, the Respondents asked the Applicant if she would be happy for someone from their office attend the Property on the following morning, to carry out an inspection and take photographs. She replied that it would not be possible as both she and her son would be at work the following day and she would let the Respondents know a suitable time as soon as her work rota for the following week was available.

24. The Applicant also provided further written representations to the Tribunal with which she enclosed copies of further emails between the parties between 21 May and 6 June 2021 and a copy of an undated Roofing Report from Mr Thomas Lambie. The report stated that he had carried out work at the Property in February 2021. This involved repairing the whole roof, sealing up all joints, replacing the cracked downpipe and cleaning the gutters at the

back of the Property. The Applicant had requested a re-visit to check the roof as she had damp walls in her bedroom and, after assessing it on 16 April 2021, he had reassured her that there was no issue with the roof and that all problems were fixed. The dampness in the bedroom was at skirting level, so he had suggested that it could possibly be condensation. The emails advised the Applicant on 21 May, that a glazier might be in touch to arrange to visit the Property and, on 31 May, that the landlord's roofer would be attending later that day. In response, the Applicant said that the issue was a crack in the roof, directly above the fireplace. In an email of 1 June, the Respondents confirmed that when contractors were doing the harling work, they would also look at the chimney area and, on 8 June, the Respondents advised that the landlord had instructed the roofer to carry out works.

25. The view of the Applicant was that these emails demonstrated that, notwithstanding the roofing report, the Respondents must have known that there were issues with the roof, as they had now told her that there was a need for further repairs. As at 29 June, the glazier had not been in touch and, once again, the Respondents were not communicating openly and transparently with her and were failing to meet their obligation to ensure that the Property was in an optimal stated of repair, despite the Applicant having reported issues on numerous occasions over the past ten months.

26. On 10 June 2021, the Tribunal advised the parties of the date and time for a Hearing and the Respondents were invited to submit written representations by 1 July 2021.

Summary of Respondents' Written Representations

27. The Respondents provided written representations by email. They denied that they had in any way breached the Code of Practice. They set out their responses to the application under each Paragraph of the Code.

28. Under Paragraph 16 of the Code, they believed that they had at all times complied with all relevant legislation. The Applicant had been asked on 30 March 2021 to confirm in what way she felt that the Respondents had not complied with the legislation. She had responded on 28 April 2021 that the Property did not comply with the repairing standard and therefore constituted a breach of the Code. It was disputed that the Property does not meet the repairing standard but, in any event, that was not legislation that applies to the Respondents as letting agents. No evidence had been provided by the Applicant that the Respondents had ever failed to conduct their business in accordance with ant legislation that governed them as letting agents.

29. Under Paragraph 17 of the Code, the Respondents' property manager and the landlord had at all times been fair and had responded quickly and

reasonably to the Applicant. She had always been updated within a reasonable time on any information held by the landlord and the Respondents had always acted in accordance with advice given by contractors or specialists who had attended the Property.

30. Under Paragraph 18 of the Code, the Respondents believed that they had always provided clear and accessible information to the Applicant and denied that any calls by the Applicant had gone unanswered.

31. Under Paragraph 19 of the Code, the Respondents said that any information provided by them to the Applicant was provided either from the personal knowledge of the Respondents' employees of from information provided by the landlord. It had always been accurate to the best of the Respondents' knowledge and belief. No deliberately or negligently misleading or false information had been provided to the Applicant.

32. Under Section 31 of the Code, the Respondents stated that the landlord was not failing to meet her legal obligations. The landlord had never refused to comply or unreasonably delayed in complying with the law. In those circumstances there was no obligation on the Respondents to make such a report to the local authority. All of the repairs requested by the Applicant had been carried out insofar as the landlords were able to do so. The only exception was in relation to the windows, where it had not been possible to investigate the question of water ingress due to COVID-19 restrictions and the inability to find a suitable contractor willing to attend at the Property. Any delay in dealing with this complaint was outwith the control of either the landlord or the Respondents.

33. Under Section 38 of the Code, the advertising and marketing material of the Property had been clear and accurate. No knowingly or negligently misleading information had been included.

34. The Respondents did not make specific reference to Paragraph 90 of the Code but referred again to their response under Section 31 and repeated that all of the repairs had been dealt with promptly and appropriately insofar as it was in the power of the Respondents to do so.

35. The Respondents stated that if the Applicant believed that the Property does not meet the repairing standard she had a remedy available to her and that she had pursued this remedy in a separated application to the Tribunal, but the success or otherwise in dealing with the various issues raised by the Applicant gave rise to different considerations from the question of whether the Respondents had dealt with the matter in a competent and professional manner in accordance with the Code of Practice. It was submitted that the application was misconceived and sought to conflate two separate issues.

The Hearing

36. A Hearing was held by means of a telephone conference call on the morning of 2 August 2021. The Applicant participated in the Hearing. The Respondents were represented by their Mr Russell McPhate. The Applicant had the assistance of an Italian interpreter, Mr Giovanni Bonafin, and her son was with her as a supporter, and she confirmed that he would not be participating in the proceedings. The Legal Chair advised the Parties that they could take it that the Tribunal Members had read and were familiar with all the written representations that had been submitted by them and that they would not be asked to re-present all the evidence that they had already given in written form. The Tribunal proposed addressing in turn each of the Paragraphs of the Code of Practice set out in the application.

37. In respect of Paragraph 16 of the Code, the Applicant told the Tribunal that a neighbour had recently commented that the mould on the walls was not as bad as it had been prior to the tenancy and that the previous tenant had left because of the mould. The Applicant stated that this meant that the Respondents must have known about the issue. Mr McPhate responded that the Respondents had not been involved in any previous tenancy of the Property, and he understood that a member of the landlord's family had lived in it for some time until July 2020.

38. The Applicant's view was that all of the issues with the Property had been underestimated. It was the duty of the Respondents to tell the authorities about these recurring problems. The Respondents contended that the Applicant was conflating two different things and contended that the Respondents had complied with all the rules incumbent on them as letting agents. The Applicant had conflated these duties with the responsibility of the landlord to ensure the Property met the repairing standard. The Applicant had a separate Tribunal case ongoing against the landlord in this respect and an inspection of the Property was scheduled for 13 August. Mr McPhate told the Tribunal that his understanding was that the Property had been inspected before it was let out and, so far as the Respondents knew, it met the repairing standard at that time. The Applicant found it odd that, if that was the case, issues had become evident within a month. She confirmed to the Tribunal that she viewed the property and that she had not noticed any problems when she moved in. The Property had just been redecorated.

39. With regard to her complaint under Paragraph 17 of the Code of Practice, the Applicant cited the example of the fridge-freezer. The Respondents had told

her that the landlord needed to know its dimensions, which she had then confirmed. The appliance which arrived, however, was much smaller and, when she queried it, the Respondents told her that she must have given them the wrong measurements. Mr McPhate said that this was the first he had heard of this particular issue. The Applicant confirmed that a fridge of the correct size was delivered the following day. The Applicant then referred to the dehumidifier. The first one delivered had been 28 years old and the Applicant had sent it back. She understood a new one would be delivered by Currys but in fact it came from Argos.

40. The Applicant told the Tribunal that the complaints under Paragraphs 17 and 18 of the Code of Practice were clearly linked. After the Case Management Discussion in May in relation to her other case, the Respondents had contacted her to say that a roofer would call out. This was contradictory to their statements in the present case that there was no problem with the roof. The Respondents replied that they might not always have given the Applicant the answers she hoped to hear, but that they had always been clear in their responses. The roof issue to which the Applicant was referring as having arisen in her other case post-dated the present application, but it was in itself an example of their keeping tenants provided with information. The Applicant did not agree that it was a “new” problem.

41. Under Paragraph 29, the Applicant told the Tribunal that for her it was very clear. The Respondents had said they had carried out an inspection before letting the Property and that it met the repairing standard, which it did not. This had been deliberate misrepresentation. The Respondents stated that they had expected to be letting it out in early 2020, but that was postponed due to the COVID-19 outbreak and a member of the landlord’s family had occupied it for a period until July 2020. The Respondents then inspected it and it appeared fine, so there were no grounds for saying that they had provided information that was deliberately or negligently false. The Applicant contended that the inspection should not just comprise a walk round the Property and that it was for the Respondents to check the roof and check whether the windows were leaking. They had either failed to report issues following the inspection or had not carried out the inspection properly. She questioned the point of an inspection if it was no more thorough than what she could have seen herself.

42. The Parties agreed that the matters to be considered under Paragraph 31 of the Code of Practice were identical to those already discussed under Paragraph 16, so no further evidence was led. The Applicant also confirmed that the example she was giving in respect of her complaint under Paragraph 38 related to the fridge freezer and had already been discussed under Paragraph 17. The Inventory had stated it was new and was working well, but it had a broken drawer and a missing shelf. Mr McPhate told the Tribunal that the broken drawer and missing shelf had been clearly noted on the Inventory.

43. In relation to Paragraph 90 of the Code of Practice, the Applicant's complaint related to the time it had taken for repairs to be carried out and other reported issues dealt with by the Respondents. Some repairs, such as those required to the windows, had still not been carried out, despite having been raised in November 2020. Her view was that COVID-19 did not provide any excuse, as in November 2020 there had been no restrictions which would have prevented work being carried out in the Property.

44. The Respondents contended that, as far as they were concerned, any issues raised by the Applicant were immediately reported to the landlord, someone was sent out to look at the problem and if any work was required, it was instructed. The window contractors had, however, refused to attend the Property until restrictions were lifted on 6 May 2021. The had gone out sometime after 21 May, had provided a quote at the beginning of July and the landlord had accepted that quote. The work would be carried out as soon as the contactors were able to do it, but the Respondents had no control over that. The Applicant could not understand why it was not an emergency when water was coming in to the Property every time it rained.

45. When the Parties completed giving their evidence, the Tribunal asked them if they wished to make any closing remarks. The Applicant asked if her son, who had been present with her, as a supporter, throughout the Hearing, might make a statement, but the Legal Chair of the Tribunal ruled that, as her son would fall to be regarded as a witness, not a representative of the Applicant, it would be improper for him to give evidence when he had been present throughout the proceedings and had heard all the evidence already led at the Hearing. The Applicant accepted this ruling. The Parties then left the Hearing and the Tribunal considered its Decision.

Findings of Fact

a) The Applicant became a tenant of the Property on 30 September 2020.
b) Throughout the tenancy, the Respondents acted as letting agents for the landlord.
c) The Applicant raised a number of repairs issues with the Respondents between November 2020 and January 2021.
d) The Applicant sent a formal letter of complaint to the Respondents by email on 23 February 2021. The Respondents replied in detail on 30 March 2021.
e) On 24 March 2021, the Tribunal received the Applicant's application.

Reasons for the Decision

46. The Tribunal considered carefully all the evidence before it, both the written representations and the evidence presented by the Parties at the Hearing.

47. The Tribunal considered that it was not part of its function in the present case to determine whether or not the Property met the repairing standard at the time the tenancy was granted or at any time during the tenancy. The role of the Tribunal was to determine whether the Respondents had complied with the obligations imposed on them by the Code of Practice. The Tribunal noted that the Applicant had made a separate application for a Repairing Standard Enforcement Order to be made against the landlord. The Applicant had complained that the Respondents had failed to comply with a number of Paragraphs of the Code of Conduct and the Tribunal considered each of these in turn.

48. Paragraph 16 of the Code states that *letting agents must conduct their business in a way that complies with all relevant legislation.* The Applicant's view was that there was a duty on the Respondents to ensure that the property met the repairing standard and if it did not, to report that to the local authority. The Tribunal held that it is not the responsibility of letting agents to be satisfied that properties they are letting out on behalf of clients meet the repairing standard. That legal responsibility lies with the landlord under Section 14 of the Housing (Scotland) Act 2006. No evidence had been provided that the Respondents had failed to comply with any relevant legislation. Accordingly, **the Tribunal did not uphold the Applicant's complaint under Section 16 of the Code of Practice.**

49. Paragraph 17 of the Code states that *letting agents must be honest, open, transparent and fair in their dealings with landlords and tenants.* The Tribunal noted that there had been extensive communication by email between the Parties and looked at that closely. The Tribunal could find no evidence within it that supported the Applicant's complaint. The correspondence indicated that the Respondents had engaged with the Applicant in an open, transparent and fair way.

50. The Tribunal noted that the Respondents had carried out an inspection of the Property prior to the letting. The Applicant appeared to be of the view that such an inspection should be sufficiently detailed as to include an inspection of the roof and windows and that such an inspection would have disclosed the problems of which she later complained. The Applicant also suggested that the Respondents must have been aware of the problems of mould, as she understood from a neighbour that this had been the reason for a previous tenant leaving. The Applicant's case was that the Respondents had not been

honest and transparent in their dealings with her at the outset of the tenancy. The Respondents said in evidence that they had not been involved in any previous letting of the Property and had not, therefore, inspected it before the proposed commencement of the present tenancy. They had not noticed anything at that inspection which gave them cause for concern about the condition of the Property.

51. The Tribunal's view was that the Applicant was under a misapprehension as regards the purpose and extent of a pre-tenancy inspection. It is not a survey, and it is not necessarily carried out by anyone with professional surveying qualifications. It is a visual inspection to establish the general condition of the Property and its contents, so that this can be agreed with the incoming tenant and be compared to the check out inventory and any damage or missing items noted. The Respondents would not carry insurance cover to work at height and would not be expected to inspect the roof. Nor would they be expected to carry out any tests for rising or penetrating damp, as they are not experts in that field. If, at the inspection, they noted any items of disrepair, they would be expected to bring them to the attention of the landlord, but in the present case, they had not identified any issues and the Applicant confirmed that she had not spotted any problems either. The view of the Tribunal was, therefore, that there was no evidence of prior knowledge on the part of the Respondents of roof, window or damp problems and it appeared that nothing of concern had been picked up at the inspection. The Tribunal was satisfied that it appeared from the evidence led that a typical pre-tenancy inspection had been carried out by the Respondents and had not identified any of the problems of which the Applicant had subsequently complained. The Respondents, therefore, had no actual or constructive knowledge of the issues that the Applicant stated had later emerged.

52. At the Hearing, the Applicant stated that she had been asked to provide the dimensions of the fridge freezer and had done so, but that the appliance that arrived was the wrong size. The Tribunal had not seen any evidence concerning the dimensions of the fridge freezer, but noted that what appeared to have been a misunderstanding had been rectified within a few days and did not amount to a failure to comply with Paragraph 17 of the Code of Practice.

53. Accordingly, for the reasons set out in the preceding four paragraphs, **the Tribunal did not uphold the complaint under Section 17 of the Code of Conduct.**

54. Paragraph 18 of the Code states *that letting agents must provide information in a clear and easily accessible way.* **The Tribunal did not uphold the complaint under this Paragraph 18.** The contents of the many email communications sent by the Respondents to the Applicant and seen by the Tribunal appeared to the Tribunal to be clear and unambiguous.

55. Paragraph 19 of the Code states that *letting agents must not provide information that is deliberately or negligently misleading or false.* The substance of this complaint is in essence the same as that under Paragraph 17 and, the Tribunal having determined that the Respondents' pre-tenancy inspection appeared to be of the standard to be reasonably expected of letting agents, and that they had no actual or constructive knowledge of any defects, the information that they had provided to the Applicant had not been deliberately or negligently misleading or false. The Applicant had pointed out in her written representations that, shortly after a Case Management Discussion in May in connection with a separate application by her to the Tribunal, the Respondents had sought to arrange an appointment for a roofing contractor to call at the Property and said that, in her view, that was further evidence that the Respondents had been aware that there were problems with the roof. The Respondents at the Hearing had told the Tribunal that this was a different and later complaint in relation to the roof and it appeared to the Tribunal that this was correct, as there was reference in the relevant emails to a chimney and to harling, neither of which had been mentioned in email correspondence relative to the present application. Accordingly, **the Tribunal did not uphold the complaint under Paragraph 19 of the Code of Conduct.**

56. Paragraph 31 of the Code states that *if letting agents know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, they must not act on their behalf. In these circumstances, they must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.* The Respondents stated in evidence that they did not accept that the Property did not meet the repairing standard. Repair issues had been reported by the Applicant and the Respondents and/or their landlord client had taken steps to investigate them. The main complaint was about damp penetration and mould and the Respondents had obtained a report from a recognised and reputable damp specialist company. The Tribunal had not seen that report, but, although the Applicant did not agree with the conclusion, it was a matter of agreement between the Parties that Peter Cox had stated that the problem was condensation caused by inadequate ventilation and had advised her not to dry wet clothes in the Property. The Applicant stated in her written representations that she dried clothes in the cupboard in which the central heating boiler was located. The Tribunal was of the view that the Respondents were entitled to rely on the opinion expressed by the damp specialists and to conclude that the damp and mould problems were caused by inadequate ventilation and condensation caused by the Applicant drying clothes in the boiler cupboard and were not the result of the Property not meeting the repairing standard.

57. The Applicant had complained about the heating, but this had been attended to by Heatcare, although it appeared to have taken a number of visits to

resolve. Repair work had been done on the roof in February 2021, delayed by bad weather and the roofing contractor's report indicated that he had made the roof watertight, and that, following a later inspection on 16 April, he had been able to assure the Applicant that there was no issue with the roof and had suggested to her that as the dampness in the bedroom was at skirting level, the problem could be condensation. In these circumstances, the Respondents were entitled to assume that the roof was watertight and the heating in working order, so they had no reason to conclude that their landlord client was not meeting her legal obligation to ensure that the Property met the repairing standard.

58. In their written representations the Respondent stated "The landlord has never refused nor unreasonably delayed to comply with the law. In those circumstances there is no obligation on the Respondents to make such a report to the local authority. All of the repairs requested by the Applicant have been carried out insofar as the landlords are able to do so". The Tribunal was of the view that repairs were instructed within a reasonable timescale. The Tribunal's reasoning is set out on more detail in response to the complaint under Paragraph 90 of the Code.

59. For the reasons set out in the foregoing ~~two~~ three paragraphs, **the Tribunal did not uphold the complaint under Paragraph 31 of the Code of Conduct.**

60. Paragraph 38 of the Code states that *letting agents' advertising and marketing must be clear, accurate and not knowingly or negligently misleading.* The Tribunal had determined that the Respondents did not, when marketing the Property for rent, have actual or constructive knowledge of any of the defects of which the Applicant had later complained. Accordingly, they were justified in describing the Property in the way they did, and **the Tribunal did not uphold the complaint under Paragraph 38 of the Code**

61. Paragraph 90 of the Code states that *repairs must be dealt with promptly and appropriately having regard to their nature and urgency.* The Applicant first notified the Respondents of problems with the Property in November 2020. The Tribunal did not see the email or letter which set out the issues being raised, so had no way of knowing whether they were all reported at the same time, but it appeared from later correspondence that, by 12 January 2021, they were the need for roof repairs, problems with the central heating boiler, mould on internal walls and water penetration through the windows. The Tribunal Also on 12 January, the Applicant complained that the freezer was not working.

62. The Tribunal considered carefully the course of correspondence, insofar as it was included in the papers before it, following upon the Applicant first raising issues with the Respondent. The Tribunal did not know whether the papers

included all the emails that passed between the Parties. On 17 November, the Respondents advised that they had instructed a roofer to carry out some repairs. In their response to the Applicant's formal complaint, the Respondents said that, due to the weather, the repairs were delayed, but were completed on 5 December. Further issues were reported on 12 January 2021 and the roofer was due to visit on 14 January but was unable to do so, again due to bad weather. A further roofing company visited on 20 January, and on 25 January further repairs were instructed which were carried out on or about 15 February. The Applicant did not, at the Hearing, dispute the facts as set out by the Respondents. The emails seen by the Tribunal included one of 12 January 2021, in which the Applicant said that the area that had been repaired was still showing signs of water. On 15 January, the Respondents advised that a roofer had attended, and a quote was awaited and on 25 January, they confirmed that roofing work had been instructed. There was evidence that the work was then delayed by bad weather, but it was carried out on 15 February, although the Respondent described it as a "quick fix". The roofing contractor confirmed in writing that he had repaired the whole roof in February and that, on 16 April, the Applicant having requested a further visit, he had assessed the roof and had reassured the Applicant that there was no issue with it. On the basis of the evidence before it, the Tribunal decided that the email correspondence indicated that the Respondents had dealt with the reported problem promptly and appropriately.

63. In relation to the central heating, the Tribunal could not determine when and how often Heatcare had attended the Property or when they had been instructed. Their final visit seems to have been on 29 January 2021, as the Applicant confirmed they had just left, and the Respondents said that they had reported that the heating was working as it should. On the basis of the evidence before it, the Tribunal was unable to determine that the matter had not been dealt with by the Respondents promptly and appropriately.

64. The Tribunal did not have a copy of the Respondent's original email intimating the need for repairs, so could not ascertain whether the Applicant included in that email a separate issue of mould growth on the internal walls of the Property or whether she regarded it as a consequence of water penetration through the roof. The initial emphasis of the Respondents appears to have been on the roof, which was reasonable in the circumstances, and the Tribunal had already determined that the Respondents had dealt with that problem promptly and appropriately. On 18 January 2021, they advised the Applicant that they had instructed Peter Cox, who inspected the Property four days later. Peter Cox identified the problem as condensation caused by inadequate ventilation of the Property and advised the Applicant of this at the inspection. The Applicant did not agree with their assessment, but the Respondents were entitled to rely on the specialists' opinion and were not alerted to any further steps having to be taken. On the basis of the evidence before it, the Tribunal was unable to

determine that the matter had not been dealt with by the Respondents promptly and appropriately.

65. There appears to have been some confusion regarding the supply of a dehumidifier, which appears to have replaced disposable ones. The Tribunal had no evidence regarding when or by whom the disposable dehumidifiers were provided. The first mention of it in the emails seen by the Tribunal was on 22 January 2021. In that email, the Respondents said that they had contacted the landlord regarding dehumidifiers and on 25 January, the Applicant asked the Respondents to remind the landlord that dehumidifiers were urgently needed, as the disposable ones could not absorb all the moisture. The following day, the Respondents advised the Applicant that a dehumidifier had been ordered. It was delivered by the landlord's son on 2 or 3 February and, on the latter date, the Applicant demanded that it be replaced. The respondents confirmed on 5 February that a new dehumidifier had been ordered by the landlord. Its delivery was delayed by bad weather and it arrived on 17 February. On that date, the Applicant complained that it was too small and did not have the capacity to dry out the whole house. The Tribunal did not have sight of any later emails on the subject.

66. The view of the Tribunal was that, from 22 January onwards, the Respondents acted promptly and appropriately in relation to the dehumidifier. The Applicant was aware that it was being ordered by the landlord, not by the Respondents. When the Applicant reported the problem with the first dehumidifier, the Respondents responded very quickly and kept the Applicant informed as to progress.

67. The one issue that the Respondents accepted had not been resolved was the complaint that the windows admitted water when it rained. The Applicant was of the view that this should have been regarded as an emergency and that contractors could and should have attended the Property notwithstanding COVID-19 restrictions. The view of the Tribunal was that a decision on whether to treat a possible repair as an emergency and therefore enter a property whilst the restrictions were in force was one for the contractors and not one over which the Respondents as instructing letting agents could have any influence or control. The Applicant was incorrect in her statement that there were no restrictions in November 2020. It was then still the case that contractors were not permitted to effect internal repairs to houses other than in emergency situations. Accordingly, the Tribunal did not regard the Respondents as being responsible for the delay in having the matter attended to.

68. For the reasons set out in the foregoing seven paragraphs, **the Tribunal did not uphold the complaint under Paragraph 90 of the Code of Conduct.**

69. As the Tribunal has not upheld any element of the application, it does not propose making a Letting Agent Enforcement Order.

70. The Decision of the Tribunal was unanimous.

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.

Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

George Clark 2 August 2021

[redacted]

Legal Member