



STATEMENT OF DECISION

Housing (Scotland) Act 2014 Section 48 ('the Act')

Chamber Ref: FTS/HPC/LA/19/0018

Property at 11, 1F1 West Maitland Street, Edinburgh EH12 5DS

('the property')

PARTIES:

Mr Aeneas Murray residing at Boite 4, Flat 11, 1 Rue Simmonis, 1060 St Gilles, Brussels, Belgium

***Represented by Mr Alexander Murray (referred to as 'Mr Murray Senior'),
Chateau de Vinsac, 31480 Lagraulet-St Nicolas, France***

('the Applicant')

Letslet Property Management, 5 Clerk Street, Edinburgh EH8 9JH.

***Represented by Mr David Halliday, Solicitor, Halliday Campbell WS, Solicitors,
7b Tweeddale Court, 14 High Street, Edinburgh EH1 1TE***

('the Respondent')

TRIBUNAL MEMBERS:

Joseph C Hughes (Legal Member)

Janine Green (Ordinary Member)

DECISION:

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal'):

(a) determine that the Letting Agent failed to comply with the following standards, namely: 18, 32(j), 32(l), 32(m),32(o), 33, 57, 105, 106, 110 and 112 of the Letting Agent Code of Practice ('the Code') under Section 46 of the Housing (Scotland) Act 2014 ('the Act') and The Letting Agent Code of Practice (Scotland) Regulations 2016 ('the Regulations');

(b) having found the Respondent has failed to comply with the Code, the tribunal must issue a Letting Agent Enforcement Order ('LAEO') as required by the Code:

(i) the Respondent to lodge a copy of their current Terms of Business and their current written Complaints Policy with the Tribunal; and

(ii) the Respondent to pay the Applicant compensation of Five Hundred Pounds (£500) Sterling for the loss and inconvenience caused by the collective breaches of the Code, and to lodge written confirmation of payment thereafter with the Tribunal.

The Tribunal order that the steps and payment within the LAEO must be carried out and completed by the Respondent within the period of 30 days from the date of service of this Decision and the LAEO.

The decision of the tribunal is unanimous.

BACKGROUND:

This was an Application under section 48 of the Act and Rule 95 alleging various breaches of the Code of Practice for Letting Agents and seeking to enforce the Code against the Respondent.

The hearing first called on 17th April 2019. When the evidence commenced it quickly became apparent to Mr Halliday, the legal representative for the Respondent, that a substantial amount of the documentary productions was missing from his own bundle. Mr Halliday sought an adjournment which was not opposed by the Applicant's representative, Mr Murray Senior (the father of the Applicant). This hearing was adjourned. Further evidence was heard over three further days namely

17th and 18th June and 23rd September 2019. Each hearing called in Edinburgh. There was some delay in fixing the final hearing date due to the ongoing illness of the final witness for the Respondent and the availability of everyone involved in the case. The tribunal directed that a witness statement be lodged in advance of the final hearing in order to assist parties and the tribunal.

The Applicant did not personally attend any hearing of the case. His father represented him and presented the case. Mr Murray Senior called one witness, Mr David Waugh, a neighbour of the Applicant.

For the Respondent, Mr Halliday called three witnesses: (i) Ms Tracy Pan, (ii) Mr Moses Irungu and (iii) Mr Shola Akinosho.

The tribunal had regard to a substantial bundle of documents.

After hearing all the evidence, parties were invited the exchange draft submissions and lodge final written submissions by 4th October 2019. The tribunal members resumed their deliberations on 15th October 2019. The tribunal is grateful to both parties for their assistance throughout this case.

Whilst Mr Murray Senior was representing his son, the tribunal allowed him some latitude in respect of his presentation of the Applicant's case. Clearly the tribunal was not able to hear directly from the Applicant due to his non attendance. It was therefore challenging for the tribunal to properly assess the reliability and credibility of the Applicant as he was not present. The tribunal was however able to directly assess the witnesses called by Respondent. These witnesses were cross-examined by Mr Murray Senior.

FINDINGS IN FACT:

[1] LetsLet Property Management ('the Respondent') has traded from premises at Clerk Street, Edinburgh since 1st May 2007. It carries on the business of a letting agency.

[2] The Respondent has not previously been before the tribunal.

[3] The proprietor of LetsLet is Ms Tracy Pan.

[4] The manager responsible for the day-to-day running of the letting agency is Mr Shola Akinosho.

[5] Ms Pan and Mr Akinosho are in a personal relationship.

[6] Mr Akinosho holds the Propertymark Qualification Level 6 Award in Residential Letting and Property Management.

- [7] The Respondent employs three other members of staff who are all currently working towards Scottish Credit and Qualifications Framework at Level 6 minimum.
- [8] The staff is aware of the terms of the Code and regularly attends relevant training courses. The staff operates under the supervision of Ms Pan and Mr Akinosho.
- [9] The Respondent applied for registration in the Register of Letting Agents on 1st October 2018. Whilst this application was pending, they were not provided with a registration number and were therefore unable to provide this to others. By letter dated 24th April 2019, the Respondent was advised by Scottish Government, that their application had been approved with effect from 23rd April 2019 and their registration number was LARN 190461. The Respondent has disclosed their registration details as required thereafter.
- [10] As part of their work the Respondent enters into written tenancy agreements. They set out procedures for termination by landlord or tenant in accordance with the legislation.
- [11] The Respondent operates a key system whereby keys to properties under their management are kept locked in a secure cupboard and are coded. Keys are given to vetted contractors and tenants only. Appropriate written records are maintained.
- [12] The Respondent logs cash payments in a cash book. They operate separate client and firm accounts. They utilise accounting software which distinguishes between client's and firm's money.
- [13] Separate written Inventories are prepared at the commencement of each tenancy.
- [14] The Respondent is a member of 'My Deposits Scotland' which is one of the three approved schemes by the Government. Tenancy Deposits are lodged with My Deposits Scotland.
- [15] The Respondent and its staff are aware of their obligations to report to the appropriate authorities any suspicion that a client is engaged in any form of criminal activity. Staff reports any such suspicion to Mr Akinosho who is thereafter responsible for making any appropriate report to the authorities.
- [16] The Respondent enters into written agreements with landlord clients and provides them with copies of their 'Landlord Package'.
- [17] The Respondent admits that, at the time of the Application to the tribunal, they did not have a written complaints procedure. The Respondent had a standard procedure for dealing with complaints but they accept that procedure was not set down in writing.
- [18] The Respondent now has a written complaints procedure in place.

[19] The Respondent has amended their original Landlord Package and incorporated the written complaints procedure therein in order to comply with the Code.

[20] The first contact between parties was around August 2018 when the Applicant telephoned and spoke with Mr Akinosho. The Applicant explained that he had a flat to let out and was considering instructing the Respondent to act for him. The Applicant indicated that he was also speaking to other agencies. Mr Akinosho passed this enquiry onto Ms Pan.

[21] Ms Pan thereafter spoke to the Applicant and arranged to meet him. Ms Pan visited the Applicant at the property which had two bedrooms. Ms Pan suggested that the property could be marketed for rent at £1300 per month. Ms Pan explained to the Applicant some of the statutory duties incumbent upon him as a landlord - including the need to register and provide smoke and carbon monoxide detectors. The Applicant once again indicated that he was considering other potential agencies.

[22] Ms Pan noted during this visit that there was a keysafe/lockbox for a house key at the close door of the property. The Applicant told her that he occasionally let out the second bedroom to Airbnb guests.

[23] The Applicant subsequently contacted Mr Akinosho and confirmed that he had selected the Respondent to act for him. This information was passed over to Ms Pan who thereafter contacted the Applicant and arranged to deal with things for him. Ms Pan emailed the Applicant a copy of the agreement that would require to be signed by him.

[24] On 4th September 2018 Ms Pan and the Applicant met at the Respondent's offices. The Applicant signed the contract. The Applicant was given a copy of the signed contract and a copy of the Landlord Package documentation.

[25] The Respondent thereafter incurred expenses, on behalf of the Applicant, in relation to Gas and PAT testing, cleaning and some other matters. It was agreed with the Applicant that these costs would be deducted from the first monthly rental received from the new tenant.

[26] The Respondent then marketed the property. They were unable initially to secure a tenant. During the marketing period, the Applicant contacted both Ms Pan and Mr Akinosho, regularly by telephone, including during the weekend.

[27] It was the considered view of Ms Pan and Mr Akinosho that it would be appropriate to advise the Applicant to reduce the rent sought to £1200 and to let the flat to a tenant with the option of letting it out in full, or in part, using the Airbnb platform, which they knew the Applicant was already familiar with from previous discussions Ms Pan had had with the Applicant.

[28] At the end of September 2018 Ms Pan spoke with the Applicant and made the above suggestion to him. The Applicant agreed to this verbally over the phone. Nothing was recorded in writing in respect of this agreement.

[29] On receiving these updated instructions from the Applicant, Ms Pan then contacted Mr Moses Irungu who was an existing landlord client of the Respondent. The Respondent had previous working involvement with Mr Irungu and had secured references for Mr Irungu in respect of other properties they had marketed for him. . The Respondent had no reservations or concerns about Mr Irungu who successfully operated a number of Airbnb properties in Edinburgh. Some of these properties had been marketed by the Respondent. Ms Pan met Mr Irungu and his wife at the Applicant's property. She showed them around the property. Mr Irungu agreed to let the property at a monthly rent of £1200.

[30] Ms Pan's initial agreement with Mr Irungu was that he and his family would live within the property but would be able to let out one of the two bedrooms to short term Airbnb guests.

[31] On 5th October 2018, almost one month after the initial instructions from the Applicant to market the property, the Respondent entered into a written tenancy agreement with Mr Irungu for the Applicant's property. Both parties signed an Inventory and Condition Report which described the condition of the property and its contents and that time.

[32] Mr Irungu paid the Respondent £1200 rent in advance and a £1200 deposit. This deposit was lodged with My Deposits Scotland as required by legislation.

[33] The Applicant requested that the Respondent spread the repayment of the incurred expenses [at Para 25] over the first two rental payments received by the Respondent. The Applicant indicated that he was short of funds to pay his own rent in Brussels where he was currently residing. The Respondent accommodated this request in order to assist the Applicant in his predicament.

[34] Around 15th October 2018, the Respondent paid the Applicant £505.

[35] On 22nd October 2018 Mr David Waugh, a neighbour of the Applicant, telephoned the Respondent to complain that the current occupant of the Applicant's property had left rubbish in the common stair.

[36] Later that same day Mr Waugh emailed the Respondent, stating that the Applicant's property was being occupied by a prostitute.

[37] On being advised of this allegation, Ms Pan and another member of her staff quickly visited the property unannounced and removed the rubbish. The occupant of the Applicant's property was spoken to. It was a single female with a young child. Ms Pan, an experienced letting agent, was satisfied that the adult occupant was unlikely

to be a prostitute. Ms Pan returned to her offices and thereafter advised the Applicant of her findings.

[38] Around midnight, on 2nd November 2018, Mr Akinosho was contacted on his mobile by the Applicant who was distressed and agitated. Mr Akinosho answered the Applicant's call. He stated that his flat was being occupied by prostitutes.

[39] Mr Akinosho immediately contacted Mr Irungu by telephone to advise him of the Applicant's ongoing allegation.

[40] Mr Irungu, without delay, immediately visited the Applicant's property. Mr Irungu did not find any evidence to suggest that the occupants were prostitutes. He recalls finding the Airbnb guests holding a party and making unacceptable noise which would be an annoyance to neighbours. Mr Irungu stated that this conduct was contrary to the agreement he had with them and he there ejected the occupants from the property with immediate effect. Mr Irungu and his family were not residing in the property. He had in fact let the whole property out to Airbnb guests.

[41] Subsequently Mr Waugh sent a website link to Mr Akinosho. Mr Waugh believed the link related to the Applicant's property with a picture of at least one of the occupants advertising the range of services she was offering as prostitutes. Mr Waugh recognised the occupant from the website link photographs when a female presented herself at the door of Applicant's home in a state of almost complete undress when Mr Waugh was going to his own flat. Mr Waugh stated that he and his partner had noted a significant increase in the amount of visitors to the Applicant's home. The visitors were all male. Mr Akinosho was not provided with any further information in respect of the allegations relating to prostitution. He concluded that, based on the presented evidence, there was insufficient concrete evidence for him to properly conclude that any criminal activity was being carried out within the Applicant's property. Mr Akinosho concluded that there was insufficient evidence for him to accuse any of the occupants of operating as a prostitute or of committing criminal activity. Mr Akinosho did not therefore report the matter to the police in light of the information Mr Akinosho possessed at that early stage.

[42] After the occupants were removed by Mr Irungu from the Applicant's property, both the Applicant and Mr Murray Senior regularly telephoned Respondent. They spoke to Mr Akinosho and other staff members. Mr Akinosho confirmed that Mr Irungu had moved the occupants out of the property. The Applicant instructed the tenancy with Mr Irungu to be terminated with immediate effect.

[43] Mr Akinosho thereafter contacted Mr Irungu who agreed to relinquish the tenancy. He agreed to attend the Respondent's offices and return the keys after having the property cleaned. Mr Irungu therefore complied with the Applicant's instructions terminating the tenancy with immediate effect.

[44] The Applicant then instructed the Respondent to deliver the keys and certification in respect of the property to another letting agency. The Respondent complied with this request. The Applicant initially requested compensation for range of things including: deep cleaning the property, replacing a bed and mattress and the cost of new locks/keys. The Respondent, whilst shocked at recent events, did not consider they were responsible for these costs and therefore declined to pay these costs

[45] Mr Irungu had occupied the flat for around three weeks. Any obligation to return the property to the Applicant, in respect of its condition and cleanliness, is an obligation by Mr Irungu. It is not an obligation on the Respondent. The Respondent, in the particular circumstances of this case, arranged for the property to be cleaned at that time.

[46] The Applicant had thirty days, from the end of the lease with Mr Irungu, to make a claim to My Deposits Scotland for any alleged expense he had been put to, as a result of any breach of contract on the part of Mr Irungu. No claim was made. The Respondent, as the Applicant's agent, was well aware that the Applicant was seeking expenses/compensation but no actual claim was lodged by them on behalf of the Applicant.

[47] Mr Murray Senior had telephoned and emailed the Respondent about seeking compensation. Most of the emails from the Applicant were in practice authored by Mr Murray Senior.

[48] There was now a very clear dispute building up between Mr Murray Senior and the Respondent's staff. Mr Akinosho found Mr Murray Senior's telephone manner completely unacceptable and disrespectful.

[49] The property was cleaned after Mr Irungu left the property. In light of Ms Pan's visit to the property, the Respondent was satisfied that Mr Irungu had left the property in a condition which met his obligations as a tenant. The Respondent therefore refused all claims for compensation made by Mr Murray Senior.

[50] The Respondent had initially enquired about the deposit by Mr Murray Senior. The Respondent advised him that the deposit of £1200 was held by My Deposits Scotland.

[51] After the period during which the Applicant could have made a claim to My Deposits Scotland had elapsed, and since claims were being directed against the Respondent, Mr Irungu agreed in all the circumstances to the deposit being released to the Respondent on the understanding that the deposit was to be held by the Respondent in their client's account. The deposit sum of £1200 was accordingly released to the Respondent. This money was lodged within the Respondents' client's account, where it still continues to remain, apparently awaiting the outcome of this case. The Respondent did not obtain the consent of the Applicant to permit the

deposit money to be released from My Deposits Scotland. Any agreement sought by the Respondent was exclusively with Mr Irungu. No agreement was ever sought from the Applicant to follow this path.

[52] Thereafter Mr Akinosho took the view that he had fulfilled his professional obligations to the Applicant and declined to further communicate with the Applicant's father. Mr Akinosho formed the opinion that Mr Murray Senior's communications' to him and the staff were hostile and aggressive in tone.

[53] The Applicant currently owes the Respondent £660 by way of unpaid fees and expenses.

[54] The Respondent admits the following breaches of the Letting Agent Code of Practice:

Paragraph 32:

(j) - failed to state in the Terms of Business that the Respondent was subject to the Code;

(l) - failed to state in the Terms of Business the Respondent's procedures for handling complaints;

(m) - failed to state in the Terms of Business how an application could be made by the landlord or tenant to the Tribunal;

(o) - did not confirm the existence of professional indemnity insurance or that details were available on request.

Paragraph 33:

Insofar as the Respondent's Landlord Package document was not signed by the parties (though the contract was signed), the Respondent did not give the landlord a signed copy (though a copy was emailed).

Paragraph 57:

The Respondent agreed with the landlord what references were to be obtained for any tenant in accordance with the Code. The Respondent obtained references from a different source in respect of Mr Irungu which was in breach of their agreement with the Respondent.

Paragraph 110:

The Respondent did not make the Applicant aware of the Code.

Paragraph 112:

The Respondent did not have a written complaints procedure.

[55] The Respondent's new Terms of Business and written complaints procedure are now compliant with the Code.

[56] Clients of the Respondent are now made aware of the existence of the Code and any other matters which they require to disclose.

[57] The Applicant has fully withdrawn four alleged breaches of the Code namely 40, 68, 80 and 107. He has partially withdrawn 61 in respect of the obtaining of references.

[58] The Applicant has sought compensation. The Applicant incurred the expense of deep cleaning, replacing some furnishings and the cost of new locks and keys. The Applicant elected to carry out all this expense.

[59] The Respondent has paid expenses on behalf of the Applicant. It is not disputed by the Applicant that he is liable for these initial expenses.

[60] The Applicant instructed the Respondent, as his Agent, to terminate the lease to his property with Mr Irungu with immediate effect. Mr Akinosho thereafter invited Mr Irungu to comply with this request. Mr Irungu voluntarily agreed to relinquish the tenancy at the direct request of the Applicant. The Respondent has no liability for any additional rent sought by the Applicant in these circumstances.

[61] The Applicant, within his written submissions, accuses the Respondent of having profited from and having played a leading role in prostitution. The Applicant has alleged serious criminality on the part of the Respondent and others.

[62] The Respondent and Ms Pan are professional business people. They operate a business as Letting Agents and have done so at LetsLet for twelve years. Mr Akinosho is also a Lecturer in Edinburgh.

[63] The Respondent had no link with the alleged prostitutes residing in, and operating from, the Applicant's property.

REASONS FOR DECISION:

The tribunal initially heard from three witnesses for the Respondent. The tribunal found all these witnesses reliable and credible. The tribunal accept that the Applicant had consented to his property being let out to Airbnb guests. We accept the evidence presented to us by the Respondent that this was discussed directly with the Applicant. Mr Murray Senior challenged this discussion in his cross-examination of the witnesses. The tribunal was unable to fully ascertain the Applicant's evidence in respect of the alleged discussions he had with the Respondent in respect of Airbnb as he did not attend any hearing. The tribunal preferred the direct oral evidence of

the three witnesses. The tribunal accept the personal and professional integrity of the said three witnesses from the Respondent.

Mr Irungu was well known to the Respondent through his previous and ongoing business dealings letting out properties in Edinburgh. We note in particular the immediate action Mr Irungu took, late in the evening, when Mr Akinosho made him aware of the ongoing allegation of prostitutes operating from the Applicant's property. Mr Irungu attended the property and effectively removed all occupants from the property with immediate effect. Whilst the tribunal was not persuaded that Mr Irungu was complicit with any illegal activities being conducted within the Applicant's property, the tribunal consider that there may indeed have been prostitutes operating therein having regard to all the evidence presented to the tribunal. The tribunal is satisfied that there is no persuasive evidence to suggest that the Respondent, Ms Pan, Mr Akinosho or Mr Irungu, were involved in, or aware of, directly or indirectly, prostitutes operating from the Applicant's property.

The Applicant called Mr Waugh, a neighbour of the Applicant. The tribunal formed the view that this witness was credible and reliable. He was telling us the truth and we accept that he reasonably concluded from his sightings of the females, the strange 'goings on' at the property and from the pictures on the prostitute website link that prostitutes were in fact operating from the Applicant's property. Whilst we accept that identification evidence can be unreliable the tribunal concluded that Mr Waugh, and his partner, both experienced anti-social behaviour by the occupants within the Applicant's flat. Mr Waugh gave evidence about the state of undress of the female occupants and men loitering outside the common close and entering the Applicant's property. Mr Waugh stated in his evidence that he believed the pictures lodged from the website link was for prostitute services in Haymarket, Edinburgh, and that the images matched the females residing in the Appellant's property. The tribunal accept that, in all the circumstances of this case, it is reasonable to conclude that prostitutes may indeed have been operating from the Applicant's property but there is no satisfactory evidence before the tribunal to link the alleged prostitutes directly, or indirectly to the Respondent.

The tribunal allowed Mr Murray Senior latitude in seeking to present his son's case. The non attendance of Mr Aeneas Murray, who is the Applicant, presented the tribunal with evidential difficulties. In many aspects of the case only the Applicant could speak directly to issues. Mr Murray Senior was clearly unable to give direct evidence about conversations his son may or not have had with the Respondent for example. The evidence of the Applicant was critically important to the Applicant's case. The tribunal, whilst being presented with hearsay evidence through Mr Murray Senior, preferred the direct oral evidence presented on behalf of the Respondent. The tribunal was able to assess the reliability and credibility of the Respondent's witnesses for itself. The tribunal was unable to directly assess the reliability and credibility of the Applicant as he was not in attendance. Whilst Mr Murray Senior sought to present the Applicant's case, the tribunal place limited weight upon his

hearsay evidence. The reliability and credibility of the Applicant, Mr Aeneas Murray, was of critical importance in this case. The tribunal was unable to fully assess this in all the circumstances.

What initiated the dispute between the Applicant and the Respondent was the allegation that prostitutes were residing in his flat and operating from therein. This must have been extremely stressful for him to hear from his neighbour, Mr Waugh. The tribunal do not accept that the Respondent, or any witness called by them, initially had any knowledge, directly or indirectly, about the occupants' activities within the Applicant's property. There was no evidence of complicity. When any complaint or allegation was intimated to the Respondent, they acted appropriately. The property was visited to ascertain if there was any problem. When the issue escalated and a further complaint was lodged very late at night, the Respondent acted swiftly and successfully contacted Mr Irungu around midnight, who in turn immediately visited the property, and 'persuaded' the occupants to leave forthwith.

As a result of this dispute it would appear that the Applicant's father thereafter took charge of matters and entered into communication with the Respondent's office. Mr Murray Senior has assisted the Applicant in presenting multiple alleged breaches of the Code of Practice for Letting Agents. It clearly falls to the tribunal to consider these allegations and to examine if the Respondent has failed to comply. The tribunal must also consider if there is any requirement to issue a Letting Agent Enforcement Order.

The Applicant's Application alleges many breaches of the Code namely:

Overarching standards of practice:

16,17,18,19,21,26,28

Engaging landlords:

30, 32(g), 32(j), 32(l), 32(m), 32(o), 33

Lettings:

40, 43,57,61,68

Management and Maintenance:

75,76,80,81

Ending the tenancy:

97, 98, 99,102,105,106

Communications and resolving complaints:

107,108,110,111,112

Handling landlords and tenants' money, and insurance arrangements
118,137.

There are a total of thirty six alleged breaches of the Code.

The Respondent accepts eight breaches of the Code namely:

32(j), 32(l), 32(m), 32(o), 33, 57,110 and 112.

The Applicant withdrew four alleged breaches of the Code namely:

40, 68, 80 and 107.

There was a partial withdrawal of one alleged breach namely standard 61 [relating to identity checks]. The alleged breach is still maintained only in respect of references.

In respect of many of the alleged breaches, the tribunal formed the clear opinion that the Respondent was genuinely seeking to comply with the legislation. We accept that this Application, and the resulting tribunal hearing, will have brought home to the Respondent how important it is to comply with all the standards listed within the Code. To simply breach the Respondent for an error, failure or relatively minor departure from procedures or protocols would, in the opinion of the tribunal, be disproportionate and not in keeping with the overall spirit of the Code.

The tribunal record briefly their conclusions in respect of the outstanding active allegations of breach.

16. You must conduct your business in a way that complies with all relevant legislation.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence of the Respondent. The tribunal has found individual breaches of the Code but we do not consider it reasonable or appropriate to separately breach the Respondent for this standard.

17. You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants).

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence of the Respondent. Having

regard to the evidence and the spirit of the Code, the tribunal considered the Respondent endeavoured to be honest, open, transparent and fair in their dealings.

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

The tribunal is persuaded that there is a breach of this standard. There was an unreasonable delay in providing the Applicant with a copy of a contract.

19. You must not provide information that is deliberately or negligently misleading or false.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence of the Respondent. The tribunal could not find any material evidence to support this alleged breach.

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

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence of the Respondent. Once again assessing all the evidence and reflecting on the spirit of the Code we concluded that the Respondent endeavoured to act with reasonable care and skill in a timely way with regard to the overall service they provided.

26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.

The Respondent has admitted breach of standard 112 which covers not having a written complaints procedure. Standard 26 is more about 'responding'.

The tribunal is not persuaded that there is a material breach of this separate standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent.

28. You must not communicate with landlords or tenants on any way that is abusive, intimidating or threatening.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The tribunal considered the Applicant failed to present any evidence to support this alleged breach.

30. You must agree with the landlord what services you will provide and any other specific terms of engagement. This should include the minimum service standards they can expect and the target times for taking action in response to requests from them and their tenants.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The tribunal is satisfied from the documentary evidence that there is no breach of this standard.

32(g) How you will collect payment including timescales and methods and any charges for late payment

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. Whilst we do accept that no information was provided to the Applicant about charges for late payments we accept that the evidence from the Respondent that there was never any intention to make such charges. We consider it would be unfair and inappropriate to breach the Respondent for this standard having regard to all the evidence presented on behalf of the Respondent.

43. You must give all prospective tenants all relevant information about renting the property - for example, the type of tenancy; the rent; the deposit; other financial obligations such as council tax; any guarantor requirements and what pre-tenancy checks will be required at the outset

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. We are satisfied from the documentary productions that this standard is adequately addressed therein.

61 (Restricted to references) You must take all reasonable steps to confirm the applicant's identity and to verify references in line with your agreement with the landlord

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. Whilst the Respondent may have departed from adhering to their protocol for obtaining references, we accept that they knew Mr Irungu, a pastor, both professionally and personally. They had worked with Mr Irungu over several years. They also knew his family. A single reference was however obtained. The Respondent, through their direct knowledge and involvement with Mr Irungu, were able to confirm his identity and they considered him a suitable tenant in light of their current knowledge of him. Accordingly, we consider it would be unfair to breach the Respondent for this standard in light of their up to date knowledge of, and involvement with Mr Irungu.

75. Breaches of the tenancy agreement must be dealt with promptly and appropriately and in line with the tenancy agreement with the landlord

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the

Respondent. The tribunal is satisfied that the Respondent acted appropriately in respect of the matters covered within this standard.

76. You must have appropriate written procedures and processes in place for collecting and handling rent on the landlord's behalf. These must set out how the late payment of rent will be handled and the legal requirements on tax deductions.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The Applicant failed to satisfy the tribunal that this standard was materially breached.

81. You must take reasonable steps to ensure keys are only given to suitably authorised people.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The tribunal has no concerns about the arrangements for keys. We considered detailed evidence in respect of this issue and the tribunal accepts that the Respondent operates a robust policy in respect of keys.

97. The correct procedure for ending a tenancy depends on such factors as the type of tenancy and the reason it is ending. But in all the circumstances you must comply with relevant tenancy law and ensure you follow appropriate legal procedures when seeking to end a tenancy

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The Applicant requested that Mr Irungu leave the property immediately. Mr Irungu voluntarily complied with this request in light of all the circumstances. The Applicant therefore chose to bring Mr Irungu's tenancy to an immediate end. We have no concern about this alleged breach of standard in the particular circumstances of this case. Breach is not established.

98. You must have clear written procedures in place for managing the ending of the tenancy (including where the tenancy is brought to an end by the landlord, or by the tenant or joint tenant; the landlord intends to seek eviction and where a tenancy has been abandoned); the serving of appropriate legal notices; and giving the landlord and tenant all relevant information.

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. Having regard to all the documentary productions lodged the tribunal is not satisfied that this standard was breached.

99. You must apply your policy and procedures consistently and reasonably

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. We do not consider that any persuasive evidence was presented to the tribunal by the Applicant to justify a breach of this standard. It appeared to the tribunal that, having reflected upon their actions and conduct, the Respondent endeavoured to apply their policies and procedures consistently and reasonably. The Respondent did not materially depart from the spirit of the Code and we are therefore satisfied that the standard was not breached.

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

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. We do not consider that any persuasive evidence was presented by the Applicant to justify a breach of this standard. We considered the oral evidence and the detailed documentary productions lodged by the Respondent. We are satisfied that this standard is met.

105.Where you manage the tenancy deposit on behalf of a landlord you must take reasonable steps to come to an agreement with the tenant about deposit repayment. Where agreement is reached you must make a claim to the relevant Tenancy Deposit Scheme

The tribunal is persuaded that there is a material breach of this standard. We assessed all the evidence and we accept the evidence presented on behalf of the Applicant. The tribunal consider that the Respondent did not take reasonable steps to firstly come to an agreement with the Applicant about the deposit repayment. We consider there was obviously a clear dispute about the deposit. It was inappropriate to unilaterally come to an agreement with the tenant, Mr Irungu, which the Respondent must have known would not be acceptable to the Applicant. The Applicant was clearly seeking compensation and would not have agreed to the tenancy deposit being released in the way that it was. In the opinion of the tribunal the agreement referred to within this standard would require effectively both the tenant and the Landlord to agree. Such an agreement is a two way process. There was no joint agreement in this case. Any unilateral agreement with the tenant was not about coming to an agreement in respect of the deposit *repayment*. It was more about removing the deposit from the Deposit Scheme and thereafter placing the money within the Respondent's client's account. This does not amount to effecting repayment of the deposit.

106. In the event of a dispute, the agent and tenant will be required to follow the relevant scheme's rules for disputes.

The tribunal is persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Applicant. There was clearly a dispute in this case. The Respondent was aware that the Applicant wished to effectively claim money back from the deposit. The Respondent should not have released the deposit, albeit they lodged the funds within their client's account. The Code requires the agent and tenant to follow the relevant scheme's rules for disputes. The Respondent was acting as an agent for the Applicant. Removing the Applicant's tenancy deposit from the scheme effectively denied the Applicant of his rights to fully access the scheme's Dispute Resolution Service with independent, impartial, professional adjudicators.

108. You must respond to enquiries and complaints within reasonable timescales. Overall, your aim should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if you need more time to respond

The tribunal is not persuaded that there is a material breach of this specific standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The tribunal is satisfied that this standard was met and should not be breached.

111. You must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence presented on behalf of the Respondent. The tribunal concluded that there is no evidence to support this alleged breach. We do not accept that the Respondent's communications with the Applicant or his father (or anyone else) were abusive, intimidating or threatening. No evidence was presented to suggest such behaviours ever took place. Communications were professional at all times.

118. You have a robust and transparent written procedure for handing client money

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence of the Respondent. Extensive oral evidence was noted in this matter. The Respondent lodged additional documentary evidence to assist the tribunal. Mr Murray Senior forensically explored this during his cross examination. There is no evidence to support this alleged breach. The tribunal had no concerns about the way the Respondent handles client money.

137. You must notify the appropriate authorities, such as the Police or National Crime Agency, if you suspect any person using your services is engaged in money laundering, human trafficking or another criminal activity

The tribunal is not persuaded that there is a material breach of this standard. We assessed all the evidence and preferred the evidence of the Respondent. We accept the evidence of Mr Akinosho in particular to support our final assessment of the evidence. We accept that he assessed the 'evidence' presented to him, in respect of the alleged activities of the occupants within the property. We accept that he thereafter concluded that there was insufficient evidence to justify him making a formal complaint to the police about criminal activity. We noted that Mr Akinosho attended the property that night and formed the view that the occupants were anti-social primarily due the level of noise emanating from the property. He did not speak to any signs that the occupants were prostitutes from his relatively brief visit to the property.

The tribunal heard extensive evidence in respect of the alleged breaches and had regard to the substantial documentary productions lodged by both parties.

Breaches 32 and 33 relate to terms of business. The tribunal note that the Respondent's new terms of business and written complaints procedure are compliant with the Code.

We accept that the Respondent now ensures that all clients are made aware of the existence of the Code and other matters which require to be disclosed. Ms Pan is undergoing a course to qualify for registration in the Register of Letting Agents. Ms Pan and Mr Akinosho presented as honest and decent individuals who were genuinely striving to comply with the Code.

Ms Pan and Mr Akinosho demonstrated to the tribunal how seriously they had approached this hearing and the allegations being made against them.

Mr Murray Senior submitted that all witnesses for the Respondent are not credible. His written submissions seek to address why each witness should be regarded as not credible. Mr Murray Senior sought to elicit oral evidence to confirm the witnesses were not credible. The tribunal had the benefit of seeing and hearing each witness for themselves. The tribunal is not persuaded that any of the Respondent's witnesses is either not credible or not reliable. There was considerable tension during all of the Respondent's witnesses evidence. Mr Murray presented as an assertive, eloquent man. He was confident in his presentation of the case. During the hearing relationships between Mr Murray Senior and the Respondent's witnesses was fragile at best and at times hostile. Ms Pan and Mr Akinosho were particularly upset at the allegations being made against them. These allegations, made in the name of the Applicant, but effectively through his father, went to the very heart of the Respondent's character and reputation, both personally and professionally. The Applicant has alleged serious criminality.

The tribunal understand the frustration and concern both parties must have experienced flowing from the initial allegation that prostitutes were operating from the Applicant's property whilst he was living abroad. The Respondent stated that they had never experienced such an allegation in the past from any of the properties they were responsible for. We accept that the Applicant and his father, being outwith Scotland, would have felt somewhat vulnerable and powerless about the whole situation.

The tribunal concluded that Ms Pan and Mr Akinosho neither directly, nor indirectly, knew about, or permitted, Mr Irungu to allow prostitutes to operate from the Applicant's property. We do not consider there is any culpability on the part of Ms Pan and Mr Akinosho, in respect of whatever was, or was not, happening within the Applicant's property. The tribunal is not satisfied by the evidence that the Letting Agent has materially failed to act in the best interests of the Applicant.

The Applicant seeks compensation for £3571. The tribunal has determined that the various items he seeks compensation for (cleaning, furnishings, rent, locks/keys) were not caused by any failure on the part of the Respondent. Accordingly, the tribunal refuses the Applicant's motion to include an order for payment of compensation in respect of these items. The tribunal however, having regard to the breaches, is of the opinion that the Applicant is entitled to some compensation to reflect these breaches. The tribunal elected to award the Applicant the sum of £500 in total.

The tribunal note the serious approach adopted by the Respondent to this case. She and her witnesses presented their evidence in a stressful environment cross examined forensically by Mr Murray Senior.

Within the original Application, the Applicant sought to have the Respondent officially 'suspended, forced to pay his claim and prosecuted for breach of brother-keeping laws'.

The Applicant sought to argue a significant number of alleged breaches many of which the tribunal was not persuaded upon. Whilst Mr Murray Senior may have shown that some standards had not been fully met by the Respondent, the tribunal formed the firm view that, stepping back and assessing all of the evidence, any such perceived failure to fully comply with a standard, did not necessarily amount to establishing a breach. In all of our assessments we reflected upon the spirit of the Code. The tribunal concluded that it would not be appropriate to breach the Respondent in such circumstances.

Defending this Application required the Respondent to defend her company and her reputation. All the Respondent's witnesses were reliable and credible. The Applicant did not attend and give oral evidence. The tribunal was therefore unable to assess the reliability and credibility of the Applicant which was of fundamental importance in this particular case. The direct oral testimony presented on behalf of the

Respondent's witnesses was more persuasive than any hearsay evidence presented by Mr Murray Senior.

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. 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.

28th October 2019

'Joseph Christopher Hughes'

Legal Member

[Housing and Property Chamber]