



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

**Chamber Ref: FTS/HPC/LA/22/1232**

**Parties:**

**Mrs Alison Petra Humphrey, 3 Croftfoot Place, Dunipace, Stirlingshire, FK6 6Q, (“the Applicant”)**

**Garden Stirling Burnet, Solicitors, 22 Hardgate, Haddington, East Lothian, EH41 3JR (“the Letting Agent”)**

**Tribunal Members:**

**Shirley Evans (Legal Member and Chair) and Gerard Darroch (Ordinary Member)**

**Decision (in absence of the Respondent)**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that the Letting Agent has failed to comply with paragraphs 17, 21, 27, 90 and 93 of the Letting Agent Code of Practice under Section 46 of the Housing (Scotland) Act 2014 and issues a Letting Agent Enforcement Order.**

**Background**

1. This is an Application dated 28 April 2022 to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) for a determination that the Respondent as a Letting Agent has failed to comply with the Letting Agent Code of Practice brought in terms of Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the Regulations”) and under Section 48 of the Housing (Scotland) Act 2014.
2. The Applicant lodged a Landlord’s Rental package form with letters from the Respondent, a chronology of emails with the Respondent, inspection reports dated 20 January 2017, 15 May 2018, 26 May 2021 and 8 January 2022 in

relation to the Property at 18 Chesterhall Avenue, Macmerry (“the Property”), an adjudication decision from Letting Protection Scotland in relation to a tenancy deposit for the Property, an email and notification letter dated 30 December 2021 in which she set out her complaint to the Respondent specifying the breaches of the Code prior to raising the application, emails dated 3 February 2022 between the parties, letters dated 8 February and 2 March 2022 from the Respondent, an undated letter to the Respondent which the Applicant had listed as being dated 14 February 2022, invoices from Reflections and photographs from the former tenant’s Facebook page. The Respondent provided a copy of the tenancy agreement for the Property with the former tenant dated 9 and 11 January 2017 and a copy their Complaint’s Procedure. The Tribunal noted the contents of these documents.

### **Case Management Discussion**

3. The Tribunal proceeded with a Case Management Discussion on 21 July 2022. The Applicant was in attendance and represented herself. The Respondent was not in attendance having advised the Tribunal on 14 July 2022 that they were not lodging written representations and would accept the Tribunal’s decision in relation to the matters raised by the Applicant without further input.
4. The Application alleged the Respondent had breached paragraphs 17, 19, 21, 27, 89, 90, 93, 94, 101, 102, 104 and 108 of the Letting Agents Code of Practice (“the Code”) as contained within the Letting Agent Code of Practice (Scotland) Regulations 2016. The Application contained a full explanation setting out the reasons why the Applicant was of the opinion the Respondent had not complied with the Code.
5. The Tribunal noted from the Respondent’s letter dated 8 February 2022 that the Respondent accepted there had been a failure under paragraphs 90 and 93.
6. The Applicant’s main complaint was that there had been unauthorised changes to the Property, including changes to flooring, which had not been reported to her by the Respondent and when she had brought those changes to the Respondent’s attention the Respondent had made light of these. Secondly she was concerned that the Respondent had not reported to her that a business was being run from the Property when she had specifically made it clear that no business should be operated from the Property. Finally she was also concerned that the Respondent had not obtained 3 quotes for repairs when specifically instructed by her to do so. She also complained that

she had not been advised of the tenant's moving out date and that there had been unsatisfactory communication from the Respondent.

Paragraph 17 – You must be honest, open, transparent and fair in your dealings with landlords and tenants.

7. The Applicant referred to the pre tenancy inspection of the Property on 20 January 2017 as a point of reference. The next inspection of the Property was on 15 May 2018 carried out by an employee of the Respondent. This was sent to the Applicant on 31 May 2018 with a covering email that the Property was kept in fairly good condition and that the tenant wanted to remain in the tenancy and tackle or add to the property's benefits such as the garden. A repair to the dishwasher was noted. The Applicant's complaint was there was nothing in that email or report showing that the dining room was being used as a treatment room or that the flooring had been changed.
8. In response to questioning by the Tribunal as to how an inspection of the Property which recorded the condition and cleanliness of the Property would pick up that the flooring had been changed, the Applicant referred the Tribunal to photographs from the former tenant's Facebook page from August 2017 which showed laminate flooring in the dining room (referred to in the report as the reception room). She also referred to an exchange of emails from April 2017 with the Respondent in which she had specifically refused permission for the carpet in the dining room to be replaced with laminate flooring and in which the Respondent had indicated they would advise the tenant that permission was refused. By failing to point this out to her she felt the Respondent was not being open.
9. The Tribunal questioned her as to how it would be known to an inspector that a business was being carried out at the Property. She again referred to photographs from the tenant's Facebook page from August 2017 which showed the corner of a treatment bench and shelves with nail polishes. The Applicant had obtained the photographs from Facebook in about December 2021. The Tribunal questioned the Applicant as to how the Applicant knew that the tenant had not cleared away these items at the time of the inspection or that they were being used by the tenant herself as a display of nail polish or indeed a treatment bench was not that unusual. The Applicant accepted the evidence was purely circumstantial.
10. The Applicant referred to the next tenancy inspection on 26 May 2021 sent to her on 27 May 2021. This report contained a large number of photographs. The Applicant explained that there were a number of changes to the Property

which she had not been aware of including to the decoration (the use of wallpaper and dark colours), to the garden (synthetic turf, an outbuilding with electricity and “substandard” roof) to the flooring (carpets replaced with laminate flooring) and the removal of smoke and CO alarms. These had not been highlighted in the report or covering email from the Respondent. She was also concerned about the number of people living in the Property.

11. The Applicant explained she immediately brought these items to the attention of the Respondent on 27 May 2021 pointing out that she considered these to be breaches of the tenancy agreement. On 4 June 2021 the Respondent confirmed the household composition which had included children who stayed for part of the week on a shared parenting basis and a student daughter who had moved in temporarily during lockdown. The Respondent advised the tenants were apologetic about unauthorised changes and that they would write to the tenants about obtaining prior permission should they plan to make any further changes. The Applicant also asked how the Respondent proposed to deal with the unauthorised changes with the tenants with a view to getting them to return the changes to the original condition or agreeing a new inventory. The Respondent never got back to her. The Respondent had only warned the tenants but had not addressed how the changes would be dealt with at the end of the tenancy. She had asked to be present at the final inspection but had been denied that opportunity.
12. The Applicant felt the Respondent had not been open, honest and transparent by failing to bring to her attention these changes. It was glaringly obvious that the garden had been changed from the photographs. This had not been highlighted by the Respondent.
13. She also had to point out to the Respondent in her email of 8 June 2021 that the dining room was being used to carry on a business. The Respondent had replied on 8 June 2021 to advise they had spoken to the tenants and that a warning was being issued. There was further email correspondence on 8 June 2021 where the Applicant had raised a concern the Property was not insured if it was being used for a business.
14. The Tribunal questioned how the Respondent would know that the dining room was being used as a treatment room if there were no complaints from neighbours and when the tenant had been given advance notice of the inspection and may have removed any obvious signs of a business being carried out. The Applicant advised there had been no complaints to her or to the Respondent. However, the Applicant referred to photograph 75 in the inspection report and explained if you looked hard enough you could identify a treatment bench shown on the bottom of the photograph. She explained this

appeared to be the same treatment bench which the tenant and her baby were sitting on in a photograph from April 2021 on the tenant's Facebook page. That was evidence that the room was indeed being used as a business and that that should have been brought to her attention. The Applicant was of the opinion that photograph 75 had been taken in such a way as to deliberately conceal that the room was being used as a treatment room and that it should have been obvious to the inspector. This was the only photograph of the dining room included in the inspection report. She did not think that it was unreasonable for the Respondent to highlight this to her and by not doing so they had not been honest and open. She accepted that inspection was not carried out by the Respondent but by an independent inspector.

15. The Tribunal questioned the Applicant as to what more the Respondent could have done if changes had been made to the Property without their knowledge. She accepted there was nothing they could do to stop a tenant making unauthorised changes.
16. With further reference to her email of 4 June 2021 the Applicant requested that the Respondent arrange for seven repairs identified in the inspection report to be carried out. Further she specifically instructed the Respondent to obtain 3 quotes for the repair to the ceiling and en-suite shower.
17. She advised the Tribunal the Respondent only attended to one of the repairs, namely to the shower in the en-suite. The Applicant was also concerned that this had been carried out by a contractor whose work to the kitchen ceiling had previously been identified as poor in the inspection report. Their work had not been checked before the Respondent paid the contractor. She referred to an invoice from January 2021. The Applicant queried why the Respondent would use the same contractor again and did not think it reasonable for them to use the same contractor again.
18. The Tribunal queried whether it was reasonable to insist on 3 quotes especially for a minor repair. The Applicant felt the Respondent had not dealt with her fairly. She had been billed £112.20 for the repair. She advised that she had been quoted 2 figures; there was a much larger figure which had included taking a lot of the tiles away in the en-suite bathroom, but that quote had not been used. The smaller quote was used. They did not tell her that. She queried why the Respondent had just not kept her advised; if they had been unable to get three quotes, they should have advised her, but she heard nothing from the Respondent. There had been no *di minimus* figure agreed for repairs to proceed without her specific authority.

19. The Applicant also complained that the Respondent had not kept her advised with regards to when the tenants were intending to leave the Property. They had been given notice to quit the Property on 19 January 2022. She emailed the Respondent on 8 December 2021 to advise that it appeared the tenants were intending to move out before the end of December and asking to be kept advised as she wanted to be present at the final inspection to deal with the unauthorised changes. She did not receive a reply to that email and had to chase the Respondent for a reply on 27 December 2021; by then she had gleaned from the tenant's Facebook page they had moved out on 17 December 2021 and wanted clarification as to whether the keys had been returned and when the final inspection would take place. She received no reply to that email either.

20. The Applicant went onto explain that her fear was the Property was damaged or insecure. By not replying to her two previous emails she felt the Respondent had not been fair to her or to the tenants who then had to pay rent to 30 December. She felt the Respondent had done nothing and that if they had, they would have reverted to her. The Respondent replied on 30 December to advise they now had the keys and that the final inspection would be carried out on their return to the office after the festive break. The Applicant explained that on 30 December 2021 she gave notification of the breaches of the Code on the Respondent. She wondered whether she would have got any response from the Respondent on 30 December had she not sent the notification letter.

21. The Applicant again asked to be advised when the inspection was being carried out and was advised by the Respondent on 5 January 2022 that the company they were using would carry out the inspection on 8 January 2022 but were unable to give an exact time as they had a number of inspections to carry out. She explained as it transpired she was not in attendance at the final inspection which had been carried out early in the morning. The Property had been found to be insecure as a window had been left open.

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

22. The Applicant's complaint related to what she felt was the deliberate concealment that the Property was being used to run a business. She again referred to photograph 75. She felt this fact was deliberately or negligently withheld from her as none of the inspections identified that the dining room was being used as a treatment room. She relied on what she had said previously. Reference is made to paragraphs 13-14 above. The Tribunal queried why an independent inspector would deliberately conceal that by not disclosing it in her report. The Applicant stated she had no way of proving

that, but felt it called into question the integrity of the independent inspector employed by the Respondent.

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

23. The Applicant's complaint related to the failure by the Respondent to carry out all seven repairs requested in her email of 4 June 2021 and their failure to obtain 3 quotes. She relied on what she had said previously. Reference is made to paragraphs 16-18 above.

Paragraph 27- You must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that you become aware of, such as a repair or breach of the tenancy agreement.

24. The Applicant's complaint related to the Respondent's failure to advise her of the changes to the Property which should have been obvious to the Respondent from the inspection report dated 21 May 2021 and that the Property was being used as a business. These were breaches of the tenancy which the Respondent should have highlighted to her. She had to draw those breaches to the Respondent's attention. There had also been some difficulty in her getting sight of the EICR from 30 November 2021 which had not been provided to her until 15 February 2022. The EICR had identified some matters which were hazardous.

25. Before the Applicant took the Tribunal through the other aspects of her complaint she explained that she had to leave for work at 2pm. The Tribunal accordingly adjourned for 30 minutes for lunch to reconvene at 1pm.

26. After lunch the Tribunal heard from the Applicant in relation to her other complaints. The Tribunal did not consider the complaints under paragraphs 90 and 93 as these were accepted by the Respondent in their letter of 8 February 2022.

Paragraph 89- When notified by a tenant of any repairs needing attention, you must manage the repair in line with your agreement with the landlord. Where the work required is not covered by your agreement you should inform the landlord in writing of the work required and seek their instructions on how to proceed.

27. The Applicant's complaint related to the failure by the Respondent to carry out all seven repairs requested in her email of 4 June 2021 and their failure to obtain 3 quotes. She relied on what she had said previously. Reference is made to paragraphs 14-17 above.

28. The Tribunal questioned the Applicant to identify any repair that had been reported by the tenant which she could rely on. The Applicant was unable to do so and was content to move on.

Paragraph 94- You must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.

29. The Applicant's complaint related to the failure by the Respondent to pursue the contractor who had carried out the kitchen ceiling repair described in the inspection report of 21 May 2021 as "poor". The Applicant pointed to the Respondent's reference in their letter of 8 February 2021 that there had been no ongoing issues with the leak into the kitchen. She felt this was at odds with the inspection report.

30. The Tribunal referred the Applicant to the photograph in the inspection report which showed the repair to the kitchen ceiling which appeared to be a "patch" repair, which would normally involve filling back the damage, applying filler, stain block and two coats of paint. The Tribunal questioned whether there had been any further leak that had led to this repair. The Applicant advised there had not. The Tribunal questioned what more could be done other than taking down the whole ceiling in the kitchen to repair the damage caused by the leak which would be an extensive structural repair and not just a decorative repair which was never going to give a perfect finish.

Paragraph 101- Before they leave the property you must clearly inform the tenant of their responsibilities such as the standard of cleaning required; the closing of utility accounts and other administrative obligations, e.g. council tax, in line with their tenancy agreement. You must offer them the opportunity to be present at the check-out visit unless there is good reason not to. For example, evidence of violent behaviour.

31. The Applicant complained that the tenants had not been given an opportunity to attend at the final inspection; she had certainly not. She referred the Tribunal to the adjudication report from Letting Protection Scotland and an email from the Respondent dated 17 February 2022 both of which contained references to the tenant accepting responsibility for certain items of damage such as a socket that he could replace at his own expense. When questioned by the Tribunal as to whether those did in fact give any indication that the tenant had not been given an opportunity to attend at the check-out given that they had left the Property and given that the adjudication report indicated that the door chain had not been used or noticed by the tenant throughout the



tenancy, the Applicant stated she did not know for a fact that they had not been given that opportunity.

Paragraph 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.

32. The Applicant's complaint under this paragraph related to the fact that the final inspection report did not make reference to the check in report. She referred the Tribunal to an email of 5 January 2022 in which she had asked for confirmation from the Respondent that the inspector for the checkout had a copy of the check in report. The Applicant never received a reply to that email and simply got a copy of the checkout report.

Paragraph 104-You must give the tenant clear written information (this may be supported by photographic evidence) about any damage identified during the check-out process and the proposed repair costs with reference to the inventory and schedule of condition if one was prepared.

33. The Applicant withdrew her complaint under Paragraph 104.

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

34. The Tribunal noted that no specification of an alleged breach under this paragraph had been given to the Respondent in the notification letter of 30 December 2021. The Applicant explained the Respondent's breach under this paragraph was not apparent until after she had intimated her prior notification letter to the Respondent on 30 December 2021. She had ticked the box that she believed they had breached paragraph 108. She had to chase up this letter up on 3 February 2022. She made reference to the Respondent's Complaint's Procedure in relation to responding to an initial complaint within 5 working days and a period of 10 days to investigate the initial complaint.

### **Findings in Fact**

35. The Respondent was the Letting Agent for the Property.

36. On 9 and 11 January 2017 the Applicant entered into a Short Assured Tenancy with the former tenants of the Property with an entry date of 20 January 2017.

37. A pre tenancy inspection of the Property was carried out on 20 January 2017.
38. On 24 April 2017 the Applicant refused a request by the tenants to lay laminate flooring in the dining room and store the carpet in the attic.
39. An inspection of the Property was carried out on 15 May 2018 by an employee of the Respondent.
40. The inspection report was sent to the Applicant on 31 May 2018 by email. Neither the covering email or report made reference to a business being run from the dining room or that laminate flooring had been laid.
41. An inspection of the Property was carried out on 26 May 2021 by an independent inspector.
42. On 26 May 2021 the tenants were using the dining room to carry on a business in breach of the tenancy agreement.
43. The inspection report was sent to the Applicant on 27 May 2021 by email. Neither the covering email or report made reference to a business being run from Property or that changes to the Property had been made.
44. The report's photographs showed the tenants had made changes to the garden, decoration and flooring at the Property by 26 May 2021. These were made without prior approval of the Applicant in breach of the tenancy agreement.
45. On 27 May 2021 the Applicant emailed the Respondent with her concerns about the unauthorised changes in breach of the tenancy agreement and that alarms had been removed from the hall and from the garage. She requested the Respondent's view on these breaches.
46. On 27 May 2021 the Applicant sent a second email to the Respondent querying the number of people living in the Property and about there being no shower in the en-suite bathroom.
47. On 4 June 2021 the Applicant emailed to request the Respondent arrange for seven repairs identified in the inspection report to be carried out and instructed the Respondent to obtain 3 quotes for the repairs to the kitchen ceiling and en-suite.
48. On 4 June 2021 the Respondent confirmed the household composition and that the tenants were apologetic about unauthorised changes to the Property.

The Respondent confirmed they would write to the tenants about obtaining prior permission for any further changes. They also advised they would arrange for a repair to a window, had advised the tenants not to use the shower in the en-suite until repaired and that they would get quotes for the kitchen ceiling.

49. On 8 June 2021 the Applicant emailed the Respondent and stated that the Respondent seemed very "*laid back*" about the breaches relating to the changes to the Property. She also pointed out that the dining room appeared to be used to carry on a business and that this was also in breach of the tenancy agreement.
50. On 8 June 2021 the Respondent emailed to advise they had issued the tenants with a warning about the breaches to the tenancy agreement.
51. On 8 June 2021 the Applicant asked how the Respondent proposed to deal with the unauthorised changes with the tenants with a view to getting them to return the Property to the original condition or agreeing a new inventory.
52. On 8 June 2021 the Respondent replied they would ask the tenants to sign the inspection report to agree the condition of the Property.
53. On 8 June 2021 the Applicant re-iterated in a second email that she needed the Respondent to negotiate with the tenants about the unauthorised changes with a view to getting them to agree that they would return the Property to the original condition or agree a new inventory as she did not consider their signing the inspection report would be sufficient.
54. On 9 June 2021 the Respondent advised the Applicant their legal department had drafted a letter to the tenants who were asked to sign a copy acknowledging their agreement to its contents.
55. The Respondent only attended to one of the seven repairs requested by the Applicant in her email of 4 June 2021, namely to the shower in the en-suite. The Respondent did not attend to the remaining six repairs.
56. The repair to the leak at the en-suite shower was carried out by the same contractor whose work to the kitchen ceiling had previously been identified as "poor" in the inspection report of 26 May 2021. The leak had not re-occurred. The previous repair to the kitchen ceiling was a "patch" repair. The Respondent invoiced the Applicant £112.20 for the repair.

57. On the instruction of the Applicant the Respondent gave the tenants Notice to Quit with a termination date of 20 January 2022.
58. An EICR of the Property was carried out on 30 November 2021. This identified some hazardous items. The Respondent did not send a copy of the EICR to the Applicant. The Respondent did not attend to repair the hazardous items. The Applicant was sent a copy of the EICR by her new letting agents on 15 February 2022.
59. On 8 December 2021 the Applicant emailed the Respondent to advise she believed the tenants were intending to move out of the Property by the end of December and that she wanted to be present at the end of tenancy inspection. The Respondent did not reply to that email.
60. On 27 December 2021 the Applicant emailed the Respondent that she believed the tenants had vacated the Property on 17 December 2021 and enquired about the return of the keys and again asked to be in attendance at the tenancy inspection.
61. The Applicant had obtained information about the tenants' removal from the tenant's Facebook page in or about December 2021.
62. On 30 December 2021 the Applicant sent a pre notification letter to the Respondent specifying the breaches of the Code she believed the Respondent had failed to comply with. She gave no specification under paragraph 108 of the Code as to how she believed the Respondent had breached that part of the Code.
63. On 30 December 2021 the Respondent confirmed they had the keys and that the tenancy inspection would take place after the return to work after the festive holiday.
64. On 31 December 2021 the Respondent again asked to be advised when the inspection would take place as she wanted to attend the inspection.
65. On 5 January 2022 the Respondent advised the Applicant the inspection would be carried out by an independent inspector on 6 January 2022 but that they were uncertain about the time.
66. On 5 January 2022 the Applicant asked the Respondent to ensure the inspector had a copy of the pre-tenancy inspection report.

67. A final inspection of the Property was carried out on 6 January 2022 by an independent inspector. The final inspection report did not make reference to the check in report. The final inspection report was thorough and contained photographs.
68. The inspection report was sent to the Applicant on 7 January 2022 by email.
69. On 3 February 2022 the Applicant emailed the Respondent for a response to her complaints in her notification letter of 30 December 2021.
70. On 3 February 2022 the Respondent acknowledged receipt of the notification letter and explained they had not been able to trace the Applicant's original email.
71. On 8 February 2022 the Respondent sent a substantive response to the Applicant's complaint of 30 December 2021.
72. On 14 February 2022 the Applicant sent a lengthy letter in response to the Respondent reiterating her position. The Respondent acknowledged receipt on 15 February 2022.
73. Letting Protection Scotland ("LPS") adjudicated between the Applicant and the former tenants on the return of the tenancy deposit. LPS issued a report as to how the deposit was to be split between the Applicant and the former tenants on 3 March 2022. On 8 March 2022 the Respondent sent a copy of the LPS report to the Applicant.
74. On 8 March 2022 the Applicant requested a review of the LPS adjudication. On 28 March 2022 LPS rejected the Applicant's request for a review.

### **Statement of Reasons**

75. The Tribunal having considered the Applicant's evidence and the items before the Tribunal including the lengthy chronology of emails between the Applicant and the Respondent and the inspection reports the Tribunal found the Respondent had not breached paragraphs 19, 89, 94, 101, 102 or 104 of the Code. There was no evidence before the Tribunal to substantiate the alleged breaches under these paragraphs. Prior notification under paragraph 108 had not been given by the Applicant. The Tribunal found the Respondent had breached paragraphs 17, 21, 27, 90 and 93 of the Code.

### **Paragraph 17**

76. The Tribunal understood the Applicant was frustrated by what she perceived to be a lack of honesty and openness by the Respondent in terms of paragraph 17 of the Code. The Tribunal did not accept that the Respondent's inspection of 15 May 2018 should have identified that a business was being run from the dining room. Although the Applicant referred the Tribunal to photographs from the tenant's Facebook page from 2017 (which she appeared to have found in December 2021) including shelves with nail varnish there was no evidence before the Tribunal to show these items were present during the inspection some 4 years earlier.
77. The inspection report of 15 May 2018 did not highlight the change in the dining room flooring nor was it highlighted to the Applicant. The report and the covering email recorded the condition of the Property as good. The Tribunal was of the opinion that the Respondent had acted as a letting agent using a reasonable degree of care should have acted and had provided the Applicant with the report within a few days of it being carried out. There was nothing before the Tribunal to show they had not been honest, open, transparent or fair in not highlighting that change when the report simply recorded the condition of the Property.
78. The same could be said of the report dated 26 May 2021. Although the unauthorised changes were not highlighted by the Respondent that did not equate to the Respondent being dishonest. The report showed the condition of the Property. It was thorough. The Respondent dealt with the Applicant's concerns regarding the Property being used as a business by speaking to the tenants and issuing them with a warning within days. The Tribunal also noted the Respondent had asked their legal department to draft a letter regarding the unauthorised changes and how they would be dealt with at the end of the tenancy and had asked the tenants to acknowledge that. Overall the Tribunal was of the opinion that the Respondent had communicated well with Applicant throughout May and June 2021 in this regard and that they had taken swift action to deal with the tenants. The Tribunal was not persuaded that a failure to highlight the changes or that a business was being operated amounted to a breach on the part of the Respondent to be honest, open, transparent and fair with the Applicant as required by paragraph 17 of the Code.
79. With regard to the third aspect of the Applicant's complaint under paragraph 17 of the Code, the Applicant complained that she had asked for three quotes for the repair to the kitchen ceiling and for the shower. In their email of 4 June 2021 the Respondent advised they would get quotes. However they did not and more importantly they did not advise the Applicant they did not do so. Whilst the Tribunal appreciated that it may have been difficult for the

Respondent to obtain three quotes in the current climate for a small job as they advised in their letter of 8 February 2022 to the Respondent, the Tribunal was of the opinion that they should have been open with the Applicant from the start and advised her that it may be difficult for them to comply with her specific request. Rather they had proceeded to instruct the repair without three quotes and did not advise her of that. This failure appeared to the Tribunal to be connected to the Applicant's complaints under paragraphs 21, 27, 90 and 93. In the letter of 8 February 2022 the Respondent advised the Applicant's complaints under paragraphs 90 and 93 were accepted by their Lettings Team. These accepted breaches of paragraphs 90 and 93, which related to their handling of repairs, have a direct impact on the Applicant's complaint about the failure to get repairs' quotes and her complaint under paragraph 17. In failing to do so the Tribunal considered the Respondent had not been transparent or open with the Applicant.

80. With regard to the Respondent not keeping her advised about the date the tenants were moving out, the Tribunal had no evidence before it to persuade them that the Respondent had not been honest, transparent, open or fair. It appeared to the Tribunal that although the Respondent had not got back to the Applicant following on her emails of 8 and 27 December 2021 about the tenants moving out until 31 December 2021 that was different complaint altogether. The letter of 8 February 2022 from the Respondent indicated that the Respondent had not been aware when the tenants were intending to move out. It is therefore hard to see how the Respondent could have been in any position to advise the Applicant if they themselves did not have a definite move out date from the tenants.

#### Paragraph 19

81. The Applicant complained that the Respondent had deliberately concealed from her that the dining room was being used as a business. The Applicant called into question the integrity of the independent inspector employed by the Respondent. However there was no evidence before the Tribunal that showed the Respondent had provided information that was deliberately or negligently misleading or false.

#### Paragraph 21

82. The Respondent admitted failures in the way they had handled repairs in terms of paragraphs 90 and 93 in their letter of 8 February 2022. It naturally follows that if they have failed in that regard they must also have breached paragraph 21 of the Code in the overall provision of their service to the Applicant. The Tribunal is not satisfied that in their handling of repairs the

Respondent provided a service using a reasonable degree of care and skill and in a timely way for the reasons referred to in paragraph 80 above. They are accordingly in breach of paragraph 21.

#### Paragraph 27

83. The Tribunal accepted the Applicant's evidence that the Respondent had not sent her a copy of the EICR carried out on 30 November 2021 and which identified some matters which were hazardous. This complaint appeared to the Tribunal to be connected with the general failure to attend to repairs by the Respondent's Letting Team as referred to in paragraphs 80 and 83 above. They are accordingly in breach of paragraph 27.

#### Paragraph 89

84. There was no evidence before the Tribunal of any repairs notified by the tenant. The Respondent is accordingly not in breach of paragraph 89 of the Code.

#### Paragraphs 90 and 93

85. The Respondent rightly accepted they were in breach of paragraphs 90 and 93 of the Code in their letter of 8 February 2022. Had they not done so the Tribunal was satisfied on the evidence led by the Applicant that they were in breach of these paragraphs.

#### Paragraph 94

86. The Tribunal accepted the Applicant's evidence that the Respondent had not pursued the contractor who had carried out work to the kitchen ceiling at a cost of £112.20. Although the repair was described as "poor" the evidence showed that this was what was commonly known as a "patch" repair which would never give a perfect finish. It was a decorative repair only and not a structural repair. Other than taking down the whole kitchen ceiling or a substantial segment (depending on the construction) to repair the damage caused by the leak which would amount to an extensive structural repair, a perfect finish would not be achieved by this patch repair. There was no evidence to show that the Respondent had any need to question the quality of that patch repair. It would not generally be considered routine to post inspect works of such specification or value, especially if there had been no complaint from the tenant. The Respondent is accordingly not in breach of paragraph 94.

#### Paragraph 101



87. Neither the LPS report or the Respondent's email of 17 February 2022 showed that the tenants had not been given an opportunity to attend at the final inspection or that the Respondent had not advised them of their obligations when leaving the Property. The Tribunal previously had been referred to the warning given to the tenants on 8 June 2021 and had noted that a letter had been drafted by the legal department on 9 June 2021 reminding the tenants of their obligations. The Applicant accepted she did not know for a fact that they had not been given the opportunity to attend the final inspection. The Respondent is accordingly not in breach of paragraph 101.

#### Paragraph 102

88. The Applicant's complaint under this paragraph related to the fact that the final inspection report did not make reference to the check in report. She referred the Tribunal to an email of 5 January 2022 in which she had asked for confirmation from the Respondent that the inspector for the checkout had a copy of the check in report. The Applicant never received a reply to that email and simply got a copy of the checkout report. The Tribunal noted the final inspection was carried out by a third party. It was detailed and contained photographs. However there was no evidence before the Tribunal to persuade the Tribunal that the check in report had not been sent to the independent inspector. For all the Applicant knew the check in report had been sent to the inspector who had chosen not to refer to the check in report due to the level of detail in the report and the photographs provided. It was supposition on the Applicant's part that as no reference had been made to the check in report that the Respondent had not sent that to the inspector. The Tribunal was satisfied the final inspection was thorough and conducted in compliance with paragraph 102.

#### Paragraph 104.

89. The Applicant withdrew her complaint under Paragraph 104.

#### Paragraph 108

90. The Tribunal was not satisfied that proper notification had been given to the Respondent the breach under this paragraph. By the time the Applicant came to intimate her complaints on 30 December 2021 she had recent concerns about the Respondent not replying to her emails of 8 and 27 December 2021. She should have specified those concerns to substantiate her position at that stage.

## **Decision**

91. The Tribunal determined the Respondent has failed to comply with paragraphs 17, 21, 27, 90 and 93 of the Letting Agent Code of Practice and makes a Letting Agent Enforcement Order. The decision of the Tribunal was unanimous.

## **Right of Appeal**

**In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**



**Shirley Evans**

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**Legal Chair**

**10 August 2022**

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**Date**