



**Decision with Statement of Reasons of the First Tier Tribunal for Scotland
(Housing and Property Chamber) on an Application in terms of section 48(1)
of the Housing (Scotland) Act 2014**

Chamber Ref: FTS/HPC/LA/21/0802

Parties:

Ms Jane Barnes, 11H Stormont Street, Perth PH15NW (“the Applicant”)

Premier Properties , 45 King Street, Perth, PH2 8JB (“the Respondent”)

Tribunal Members:

Valerie Bremner (Legal Member) and Ahsan Khan (Ordinary Member)

Decision

The First Tier Tribunal determined that the Respondent had failed to comply with Paragraphs 17,68,69,71, 86,88 and 92 of the Letting Agent Code of Practice made under the Letting Agent Code of Practice (Scotland) Regulations 2016.The Tribunal makes a Letting Agent Enforcement Order setting out the steps it requires the Respondent to take by a date specified in the LAEO and this includes the payment of £300 in compensation to the Applicant.

The Tribunal determined that the Respondent had not failed to comply with Paragraphs 16,18,19,20,21,23,26,31,32,73,85,90,91,93,101,108 and 109 of the Code of Practice

The Decision of the Tribunal was unanimous.

Background

1. By application dated 24 March 2021 and received by the Tribunal on 30th March 2021,the Applicant sought an order in respect of the Respondent’s

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 complained that the Respondent had failed to comply with paragraphs 16, 17, 18, 19, 20, 21, 23, 26, 31, 32 (j), (k), and (l), 68, 69, 71, 73, 85, 86, 88, 90, 91, 92, 93, 101, 108 and 109 of the Code. A number of the matters complained of by the Applicant indicated alleged failure to comply with more than one paragraph of the code.

2. Both the Applicant and Respondent had lodged written representations in relation to the application. A Hearing was fixed by the Tribunal for 29th June 2021. Before that date the Tribunal had issued a Direction to parties instructing that certain matters be attended to by 22nd June 2021 but the Direction had not been issued until after that date. The Hearing did not proceed on 29 June 2021 and was adjourned to a later date, to take place by video conference on 20 August 2021. The Tribunal issued a second Direction to parties in relation to additional material that was required for the Hearing.
3. The Hearing on 20 August 2021 was due to take place by videoconference. On the morning of 20 August 2021 a nationwide issue with a large internet service provider meant that parties to the videoconference could not access the appropriate server to join the videoconference. This meant that the Hearing could not proceed by video conference. The issue was explained to the parties who had no objection to the hearing proceeding on 20 August 2021 by audio teleconference instead.
4. The Applicant had lodged a number of documents in advance of the Hearing. For the Applicant the Tribunal had sight of the Application, a Letting Agent Code of Practice Notification Letter, a track and trace proof of delivery document, a document headed 'Introduction', a series of emails between the Applicant and the Letting Agent with page numbers 1 to 61, a number of photographs, a tenancy agreement, a form "Legionella Facts and Responsibilities for Tenants and Landlords", Tenant Supporting Notes on the statutory terms of the Private Residential tenancy, Form J setting out in details the nature of the complaints and setting out a list of costs and compensation being requested, a separate document setting out the paragraphs of the Code in turn, with each alleged breach of the Code listed under the relevant paragraph of the Code, a document headed "Empty Homes Initiative", an application for an Empty Homes Initiative, a MyGovScotland document setting out what is meant by the "Repairing Standard" and the "Tolerable Standard", a SSC Scottish Hydro bill, a reference from the Applicant's current landlord, a document responding on behalf of the Applicant to written representations made on behalf of the Respondent and an email responding to the lodging of the Letting Agent's Complaints Handling Policy.
5. On behalf of the Respondent, the Respondent's Head of Lettings. Mr Murray Hall had lodged the relevant response to the Tribunal indicating that he wished to take part in the Hearing, a written document headed "overview of

complaints”, an energy performance certificate in relation to 11E Stormont St, Perth PH1 5NW, an electrical installation condition report, a check-in inventory for the property, a portable appliance testing report and a complaints handling policy.

6. At the commencement of the Hearing the Applicant Ms Barnes and Mr Hall on behalf of the Respondent confirmed that they each had sight of the documents lodged on behalf of both parties. Mr Hall confirmed that the Respondent had received a Letting Agent Code of Practice Notification letter before the Application was sent to the First Tier Tribunal but did not accept that any breaches of the Code had taken place.
7. The relevance of some of the documentation lodged by the Applicant to the alleged breaches of the code was raised by the Tribunal Chair as a preliminary issue before the hearing started. In particular the Tribunal Chair queried the relevance of the empty homes initiative document, the application for an empty homes initiative, the SSC Scottish Hydro bill and the reference from the current landlord. The applicant’s position on these documents was that in relation to the empty homes initiative documentation she wanted to highlight the fact that the property had been refurbished very soon after she had given up her tenancy and that this was in contrast with what she felt was an unwillingness to deal with issues she raised during the tenancy. As far as the electricity bill was concerned she was keen to present documentation regarding the amount of the bill over what was a short period of time and the reference from her current landlord she said was to confirm that she was a good tenant. Mr Hall on behalf of the Respondent explained that as far as the empty homes initiative documentation was concerned this related to a grant application made by the landlord for a grant to refurbish the property after the ending of the Applicant’s tenancy. He said this was not something that the Letting Agent had been involved in. After consideration the Tribunal Chair indicated that Ms Barnes would be permitted to refer to these documents for the purposes she had set out, but if further use was to be made of them the Tribunal might review the position.
8. The Tribunal Chair explained to parties how the Hearing would run and the applicable rules. The Hearing commenced with the Applicant Ms Barnes giving evidence in support of her application. Ms Barnes explained to the Tribunal in her evidence that she had come to Scotland with her daughter and after being in the country for some time had decided to live for a while in Perth. After staying in short term accommodation they had decided to find a property where they could live in the longer term. She had entered into a private residential tenancy at the property at 11 E. Stormont Street Perth with effect from 25 March 2020 with a monthly rent of £500 payable. In terms of the tenancy agreement Premier Properties Perth were named as the letting agent to manage all lettings services on behalf of the landlord and to be the first point of contact for the tenant. Clause 18 of the tenancy agreement referred to a repair timetable and indicated that the tenant in terms of the agreement undertook to notify Premier Properties Perth as soon as reasonably practicable of the need for any repairs or emergency.

Mr Hall on behalf of the Respondent accepted that the Respondent Premier Properties was the Letting Agent responsible for providing all lettings services as set out in the tenancy agreement.

9. Ms Barnes had a number of complaints regarding her tenancy at the property. Broadly speaking these related to the condition of the property when she took entry, the inventory process, issues with a lack of hot water, black particles in the bath taps, difficulties in setting up an account for utilities, alleged failure of the letting agent to deal with mail she was receiving for another person, having repairs dealt with and the complaints process. Ms Barnes gave evidence at the hearing and went through Form J which set out her complaints and she also referred to the document she had lodged with the Tribunal setting out her complaints in line with the paragraphs of the code.

10. Ms Barnes' first complaint related to Paragraph 16 of the code of practice in terms of section 2 of the code covering Overarching Standards of Practice. She complained in terms of paragraph 16 that Premier Properties had failed to conduct their business in a way that complied with all relevant legislation. She also referred to paragraphs 21, 23, 85 and 93 of the code of practice in respect of these issues. She indicated that she felt that the Respondent had failed to carry out the services provided to landlords or tenants using reasonable care and skill and in a timely way (paragraph 21 of the code). She indicated that there had been a failure by the Letting Agent to ensure that all staff and any subcontracting agents were aware of and complied with the code and legal requirements when letting residential property (paragraph 23). She also referred to paragraph 85 of the code and indicated that as a Letting Agent was responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing, annual gas safety inspection, Legionella risk assessments) on a landlord's behalf that appropriate systems and controls had to be in place to ensure that these were done to an appropriate standard within relevant timescales and that relevant records of the work required to be maintained. She also pointed to paragraph 93 of the code and indicated she felt that the Respondent had failed to inform her as the tenant of the reasons for delay in carrying out repair and maintenance work and the reason for this as soon as possible. She referred to the detailed exchange of emails which she had lodged and narrated a list of failings on the part of the Respondent. These included the failure to check the property after electricians had finished their work, the result of which was that bare electrical wires were visible in a light fitting and a bag of rubbish had been left behind. She further indicated that when she tried to set up an account for utilities she had difficulty in doing that because there had been a failure to close the utility account for the previous occupant and this was made worse by the non-payment of an outstanding energy bill. Ms Barnes pointed in particular to what she described as the failure on the part of the Letting Agent over the inventory process, before she moved in, when she first moved in and even when she vacated the property. She felt that Mr Murray Hall on behalf of the Respondent had disregarded her complaints and the

fact that she disagreed with his assessment of the property in the inventory. She pointed to the fact that in the inventory the electrical maintenance and assessment requirements for EICR and PAT had been left blank. Ms Barnes indicated that she had contacted Mr Hall setting out all the discrepancies in the inventory in writing via email on the day that she received it, March 25th, 2020, the start date for the tenancy. She indicated that Mr Hall had refused to make any alterations to the inventory based on her conflicting assessment of the state of the property. She indicated that she had been told that after a seven day period if this expired and no changes had been made that the tenant was deemed to be fully satisfied with the terms of the inventory. She also pointed to the fact that despite numerous requests from her by email Premier properties did not return the signed and amended copy of the inventory which she had sent to them.

11. Ms Barnes had emailed Mr Hall on the day that she paid the deposit and rent for the property and asked if the property was ready to move into and when there would be a “walk through” inspection. She had understood that because she and her daughter were not taking possession of the property until 25th March that would leave almost 3 weeks to do cleaning and required repairs. She felt that the property was not clean and certain elements were in a state of disrepair. In her evidence Ms Barnes described the property on moving in as filthy but not disgusting. When she asked regarding the property being ready to move into she was told that she would take occupation of the property in the same state as she had viewed it. She was advised by Mr Hall that the carpets had been cleaned about two months before. He also indicated that a “walk through” inspection would not be done and a photographic inventory would be carried out before she moved in and this would be given to her before she collected the keys.
12. Ms Barnes indicated that the fact she would be renting the property in the condition she had viewed it had not been mentioned to her when she viewed the property and if it had been she would have checked everything more closely such as the walls, the window frames, the inside of the oven, the fridge and what she described as the closets. She had mentioned the carpets because in her view they were obviously in need of cleaning. She had not realised when she had first viewed the property that the main bedroom carpet was worn right through to the plastic backing. She had asked for a copy of the receipt regarding the cleaning of the carpets because she felt they were very clearly not cleaned. Mr Hall had indicated that he didn't have a receipt as he had been told by the landlord that the cleaning had been carried out some time before Ms Barnes' tenancy started. When she saw the photographic inventory she saw that the condition and cleanliness for everything within the property was listed as 'good'. She said that she found this very hard to believe as it was simply untrue. Ms Barnes indicated that she had contacted Mr Hall on the same day that she had moved in to say that she disagreed with the inventory and giving her view of the condition of the property and that nothing had been cleaned. She was told to send photographs to justify her claims and she did that. Mr Hall's response to her sending the photographs was that he said he did not agree

that the property still needed to be cleaned. As she felt that the photographs were taken did not truly represent the condition of the property she asked him to come and view it in order to confirm what she and her daughter were claiming. He indicated that he would not attend and said that if she had highlighted these issues to him earlier he might have been able to do something but that it was now too late. Mr Hall told her that he could not attend the property due to the fact that by the time she moved into the property on 25th March 2020 Scotland was in “lock down” due to the Covid 19 pandemic. He was unable to speak with her on the phone because by that time he said he did not have the facility to call her from home where he was working. As a result of the condition of the property Ms Barnes said that she and her daughter had to spend many hours cleaning the property which meant they spent money on cleaning materials and used their time and energy over the entire time that they were at the property.

13. Ms Barnes also indicated that Mr Hall was not responsive to continued complaints by her about a lack of constant hot water and other troublesome issues at the property. She said that he was untruthful in relation to his lack of response and subsequent corrective actions. She said that he had refused to accept any responsibility or liability for the distress which was caused to her and her daughter by the substandard living conditions which she felt were due to Premier Properties mismanaging the property.
14. Miss Barnes indicated that she had signed a document on 25 March 2020 which was called ‘Legionella facts and responsibilities for tenants and Landlords’, which was given to her by Premier Properties. It clearly stated in the document that tenants required to make the landlord or letting agent aware if the hot water system was not working correctly so that swift and appropriate action could be taken. Ms Barnes indicated in her evidence that she had emailed Mr Hall of Premier properties on 2nd April 2020 explaining that from that morning they had no water. She said it had been working fine and she had used it for a couple of days when they moved in and asked that someone come and check the tank. At this time she also pointed out that there were bare wires in the ceiling light in one of the bedrooms and asking what the switch at the bottom of the cupboard in the living room was for. By email of 13th April Ms Barnes contacted Mr Hall and advised that a plumber had attended the property and had sorted out the hot water. At this stage she indicated there was an issue with black bits coming out of the taps in the bathroom. She said that this meant when she ran a bath it had black bits in it of various sizes. Due to a health issue she took more baths than others might do. In her evidence she advised that Mr Hall’s response to the black bits in the water was to say that she should clean the inside of the tap with an old toothbrush or something similar as this could be a build-up of mildew on the inside of the tap if it had not been run properly for a while. Ms Barnes responded to this email the same day to say that she and her daughter taken quite a few baths since they had moved in and the black bits kept on coming, but she said that she would try to clean out the taps but was concerned that the problem might be in the pipes but was unsure how to flush them out. On 15 April 2020 she reported further issues with water. She

said she had run a bath at 9 o'clock that morning and the water still wasn't running hot at 7pm that day. This issue she said continued throughout the tenancy and she referred to it in an email to Mr Hall on 24th April when she said that she wished to vacate the property.

15. Ms Barnes referred in her evidence to paragraph 108 of the Letting Agent code of practice which states that a letting agent must respond to enquiries and complaints within reasonable timescales and the overall the aim of the Letting Agent should be to deal with enquiries and complaints as quickly and fully as possible and to keep those making them informed if more time was needed to respond. Ms Barnes complained that Mr Hall did not respond to continued complaints about lack of constant hot water and other issues and felt that in addition to paragraph 108 of the code his failure to respond to complaints about the lack of constant hot water and other issues constituted a breach of paragraph 21, 26, and 32 of the code of practice.
16. Ms Barnes complained that the Respondent was also in breach of paragraphs 86 and 90 of the code of practice in that written procedures and processes for tenants and landlords to notify letting agent of any repairs and maintenance including common repairs and maintenance had to be put in place if these were provided directly on the landlord's behalf.
17. Ms Barnes referred to paragraph 86 of the code of practice where it sets out that the procedure should include target timescales for carrying out routine and emergency repairs. She referred to paragraph 90 of the code to the effect that repairs must be dealt with promptly and appropriately having regard to the nature and urgency and in line with written procedures. Paragraph 91 indicated that the Letting Agent must inform the tenant of the action that the agent intended to take on the repair and its likely timescales. Ms Barnes complained that at no point was she made aware of how repairs would be dealt with and never received any documentation to that effect. She also said that she had never seen a complaints policy and there was never at any time an indication of the avenues she should take if she was still unhappy with the service that was being provided regarding the property. She felt that the only acknowledgement she had ever received from the Letting Agent to the effect that things had not proceeded the way they should have, was an email from Mr Hall in December 2020 in which he said he appreciated her frustrations with the property. She reiterated in her evidence that there was no way for her to escalate her complaints.
18. Ms Barnes in her evidence referred to Clause 18 of the tenancy agreement which refers to a "repair timetable" and noted there were no suggested timelines for carrying out any repairs and referred to paragraphs 32 and 90 of the code of practice in relation to these issues. She also referred to clause 20 of the tenancy agreement which sets out that the tenant must be given at least 48 hours' notice for an authorised purpose including repairs. She referred to an email dated April 28th 2020 when Mr Hall had stated that he had given her no notice of a plumber coming round and that he had arranged for a plumber who she said had simply shown up at the door, and because

no one was home had left. She repeated that other than what was in the tenancy agreement she had not received any form of paperwork in relation to repairs.

19. In relation to paragraph 17 of the code relating to honesty, openness transparency and fairness in dealings with landlords and tenants, (including prospective and former landlords and tenants) Ms Barnes stressed that had she known before she moved in that the property was to be rented on the basis that it was in the same state that she had viewed it in she would have hesitated to take on the tenancy. She accepted that she had seen how dirty the carpets were when she viewed the property initially but was under the impression that these would be cleaned so that everything would be ready for them to move in. Ms Barnes was not happy with Mr Hall's response regarding the question of the state of the property, its cleanliness and the inventory and felt that he simply was discounting their situation because the photos she provided on the day that she moved in and did not adequately backup the concerns that she was expressing. She felt this was unfair and unreasonable and that if he was unable to attend at the property due to the lockdown, he should simply have accepted their assessment of matters, since that as she had made clear, her motivation was simply to have a clean and functioning home to move into. She felt that she had no option but to say that she and her daughter would clean the property because she felt that this was necessary in order to make it liveable for them. They were refused payment for the cleaning or a break on the rent for the first month which Ms Barnes indicated she felt was unfair because the issues regarding lack of cleanliness were not of their making. She described how the window frames were layered with so much dirt that they could hardly be identifiable as being constructed of wood. She said it was clear that most surfaces had not been wiped down for a long time and the inside of the built-in closet in the master bedroom room was so dirty that it took her and her daughter three days just to scrub the grime from the closet itself. She pointed out that it wouldn't have been usual for someone to look inside their wardrobes during an initial viewing of a property and she complained that Premier Properties had failed to carry out a proper inspection of the property as this would have revealed to them how badly some of the issues she had raised needed attention for any person moving into the property.
20. Ms Barnes returned to the issue of the visit of the plumber in her evidence and she confirmed that after she had emailed Mr Hall on 15th April his position was that a plumber had attended but no one was home. She had not been warned of such a visit and she was adamant that there had been no follow-up to this and no further visit from a plumber in relation to the lack of hot water. After this was raised by her the plumber had come round again and her position was that the plumber had told her that the booster switch for the hot water probably need to be replaced. Mr Hall's response was that the plumber told him that the hot water was working "fine".
21. Ms Barnes indicated that on April 24th, 2020, she emailed Premier Properties indicating that she and her daughter intended to vacate the

property and explaining the reasons why they were doing that. She made it clear she said that she had been unhappy with the management of the property and she also indicated that she had dropped off mail for another party which had been delivered to the property. She had dropped off a copy of the inventory which she had edited to reflect the true condition of the property when they moved into it. She asked Premier Properties to make a copy of it and return the original to them. This was not done. Ms Barnes indicated she had made a number of further requests for her copy of the inventory to be returned to her up to the last communication she had had with Premier Properties. She had at no time received the returned inventory and on 22nd May 2020 received an email from Mr Hall to say that he would look for the returned inventory to send back to her. Ms Barnes complained that even after the tenancy ended Mr Hall made no attempt or effort to negotiate regarding their grievances but simply denied culpability for their experience despite the email exchanges which were taking place over the whole period of the tenancy.

22. In terms of paragraph 18 of the code which indicated that information must be provided in a clear and easily accessible way, Ms Barnes complained that the issue of the inventory put her in an untenable situation as she was not permitted to do a “walk-through” inspection prior to moving in, although she requested it. When she took entry to the property and then challenged the wording used in the photographic inventory she said she was told it was too late to tackle any of the issues after she had moved in. She felt that this policy was confusing and was not excused or in any way justified by the fact that by the time she moved into the property Scotland was in “lockdown” during the Covid 19 pandemic.
23. Ms Barnes complained that she had received an unpaid electricity bill for £341.90 addressed to the occupant at the property and called the letting agent to advise them of this. She said that she was told on the phone that this would be sorted out by the owner and that she would receive no more bills and that they would confirm that this had been dealt with. She received no calls to confirm this and continued to receive bills. On 14th April 2020 she enquired in an email if the outstanding electricity bill had been taken care of. Mr Hall responded by email asking if she had set up an account with a utility company. Ms Barnes indicated that she was aware of this and had made arrangements with the utility company prior to occupancy but while a bill remained unpaid at the address she had not been aware that utility company would put a hold on the account and prevent it from being changed into her name. When they were still receiving bills addressed to the occupant which she dropped off at the letting agent’s office, she had to make a number of calls to the utility company explaining her situation in order to resolve the issue. She was not satisfied with the response from Mr Hall in relation to this as he had simply said that the fact that she had received someone else’s electricity bills did not stop her from setting up an account. Her experience was that it did affect her ability to set up her own account for utilities.

24. Ms Barnes complained in her evidence that it was never made clear to her how Premier Properties the letting agent would resolve the issues that she raised. There was no clarity as to how anything would get done. There were no timelines for resolution of the issues she raised in the complaints she put forward. She complained of lack of communication both in failing to respond to the issues she raised as problems and then in telephone discussions with Premier Properties office staff who failed to return her calls. She complained that even when she was told that issues would be sorted out and that calls would be made to confirm when this was done, these commitments were not honoured. Ms Barnes indicated in her evidence that this was the first time she had rented property long-term in Scotland and she had not known what to expect. However she discussed this with others in the community that she met and was assured that the service that was being received was “not right” and this had contributed to her decision to complain. She felt that no clear and easily accessible information was provided for her.
25. Ms Barnes complained that the Respondent had breached Paragraph 19 of the code of practice which indicates that a Letting Agent must not provide information is deliberately or negligently misleading or false. Ms Barnes again referred to the carpets in the property which she said were in a deplorable state with large obvious marks on the living room carpet. She said these marks came off when she and her daughter cleaned the carpet. She said that the bathroom carpet had various shades of mildew on it. She said that she could not see how the carpets and surfaces had been cleaned and if they had, then they clearly had not been cleaned properly. The position was the same for the windows and windowsills, the walls, closets and kitchen cupboards, the doors, the fridge, and the oven. Her position was that any inspection or determination of whether the property was in a clean state to allow the current state of cleanliness to be described as ‘good’ as per the inventory was simply inaccurate. She said that one wipe with a damp cloth would have shown any person how dirty everything in the property was.
26. Ms Barnes complained that paragraph 20 of the code of practice had not been followed. This indicates that policies and procedures have to be applied consistently and reasonably. She referred to the issue of bare wires in a ceiling lamp shade in the smaller bedroom. She said that she had shown this to someone who came over to the property to bring fuses and this person told her and her daughter not to touch the lampshade until someone had been to fix it. She indicated that she felt it was a basic procedure to check everything in the property to make sure that it was completely safe for a new tenant to move into and this had not been done before she and her daughter moved into the property.
27. Ms Barnes indicated that the policy of moving in and simply supplying a photographic inventory was unfair and unreasonable and operated in favour of homeowners. She felt that once Mr Hall was aware that there was disagreement with his assessment of the state and condition of the property there was never any urgency or timeline given for her to return the inventory

to the office. At no stage was he apparently in any hurry to sign the amended inventory or to discuss anything on it had been edited by Ms Barnes. She felt that once she was in the property and paying rent she had gone to the bottom of his 'to do list'.

28. Ms Barnes referred to paragraph 21 of the code which indicates that a letting agent must carry out the services provided to landlords or tenants using reasonable care and skill and in a timely way. Her evidence to the Tribunal was that Mr Hall had breached this part of the code in many different ways from the first day of her tenancy until after she had moved out.
29. Ms Barnes referred to the other staff at Premier Properties whom she described as incompetent and who did not do what they said they would do. She pointed out that she had emailed the owners of Premier Properties the Letting Agent Code of Practice Notification Letter and at no point had the owners contacted her to mediate or negotiate a resolution or indeed to become involved in the dispute at all. She was disappointed that they did not express any remorse or show any compassion or empathy toward her and her daughter.
30. Ms Barnes raised paragraph 26 of the code of practice which indicates that a Letting Agent must respond to enquiries and complaints within reasonable timescales and in line with the Letting Agents' written agreement. She explained to the Tribunal that the timescales in relation to enquiries and complaints varied between a response of the same day to no response and what she described as a fabricated response. She indicated there appeared to be no process follow-up to ensure that a problem or concern had been addressed to everyone's satisfaction.
31. Ms Barnes raised a complaint regarding paragraph 31 of the code of practice which states that if a letting agent knows that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying in complying with the law, the Letting Agent must not act on their behalf. In those circumstances the Letting Agent must inform the appropriate authorities such as the local authority that the landlord is failing to meet their obligations. Ms Barnes pointed to the fact that any request she said she made for an improvement of the living situation knowing that so many things needed replacing such as the hot water tank and the fridge, the answer she received from the Letting Agent was always an emphatic "no" with the explanation that the owner was not prepared to spend the money on these items. She pointed to the fact that after she and her daughter had moved out the owner appeared to have had the flat gutted and renovated from floor to ceiling. She felt that this was an indicator that the owner saw that the flat was dilapidated. She felt there was an onus on Mr Hall as the Letting Agent to tell the owner that the approach to refuse to replace things and the general condition of the property was not acceptable. She complained that he had simply taken the word of the landlord that the property had been cleaned. She said it was obvious from the pictures taken after the carpets were cleaned with the dark patches and marks removed by cleaning that the

carpets had not initially been cleaned. She felt that the Letting Agent had should have communicated to the landlord that there were things that really did require to be done to bring the property to an acceptable level and if that had been done had experience of living at the property would be very different.

32. Ms Barnes complained whilst still referring to paragraph 31 of the code of practice that she should have been permitted to give less than 28 days' notice to vacate the property. She indicated that she and her daughter had spent every day that they occupied the property cleaning it, since the day that they had moved in. She pointed to the stress that they had endured trying to make the best of the situation while dealing with a management service that simply went from bad to worse. Given these factors she felt it would have been appropriate for a shorter notice period to be agreed but she said that this was refused and that the owner of the property had declined to agree to a shorter period for termination of the tenancy agreement. Ms Barnes referred to the new tenancy which she had taken up in another property in the same building. She referred to the couple who owned the property as being open and accommodating and explained that they had been responsive in terms of their management from the start of the tenancy. She indicated that this highlighted the contrast between the service received from Premier Properties and competent property management which she said was what she was now experiencing.
33. Ms Barnes complained that the letting agent had failed to comply with paragraph 32 (j), (k), and (l), of the code of practice. Paragraph 32 refers to the Letting Agent's terms of business and indicates these must be written in plain language and alongside any other reasonable terms which the Letting Agent wishes to include, it is clearly set out that the Letting Agent is subject to the code and copy must be given to clients on request and this may be provided electronically. Paragraph 32 (k) indicates that the terms of business should set out how the Letting Agent will communicate with landlords and tenants and the timescales within which a letting agent could reasonably be expected to respond to enquiries. The terms of business should also set out procedures for handling complaints and disputes between the Letting Agent, the landlord and tenants and the timescales within which the Letting agent could reasonably be expected to respond. Ms Barnes complained that she never received any advice or instruction from the Letting Agent on her options for dispute resolution, nor was she ever directed or referred to any part of what she described as the contract which would have helped reach a satisfactory conclusion in respect of her complaints and concerns. She referred to the tenancy agreement which she said simply indicated that e mails would be considered read after 48 hours but there was nothing else in the tenancy agreement to give any indication of when a response might be expected. She pointed to the fact that Letting Agents in Scotland are required to have a clear written complaints procedure which outlines the stages and timescales that the complaint must go through. Ms Barnes explained that there were no such steps procedures or timelines set out in the rental agreement and when disputes arose she was

never referred to a senior person or an owner of the agency who would be personally invested in dealing with matters. When she sent the owners emails advising them of her grievances she received no response. Ms Barnes pointed also to the fact that terms of business ought to set out clearly how a landlord or tenant may apply to the Tribunal if they remain dissatisfied after the complaints process has been exhausted or if a complaint is not processed within a reasonable timescale through the complaints handling procedure. Ms Barnes indicated that although the Tribunal's address appears on the back of the tenancy agreement there was no mention of a complaints process in the tenancy agreement. She explained that due to the way in which she and her daughter experienced the services of Premier Properties that it came to the point where they did not report some things that were occurring within the property. She said that this was because they felt it would be pointless and would simply cause more conflict. She referred to being "super stressed" and described how her daughter had been in tears and really fed up at the point at which they had tried to clean the closets in the main bedroom as these were obviously not clean.

34. Ms Barnes referred to paragraph 68 of the code which requires the Letting Agent to produce an inventory if the Letting Agent is responsible for managing the check-in process. The paragraph sets out that the inventory may include a photographic record and must record all things in the property and the condition of these and the property, eg marks on the walls, carpets and other fixtures unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced both the Letting Agent and the tenant must both sign the inventory confirming it is correct.
35. Ms Barnes pointed to the fact that the inventory was never agreed upon and never signed by both parties as was required. She felt that this entitled her to request that the rent be reimbursed as they did not get what they paid for and she felt that a refund was appropriate.
36. Ms Barnes referred to paragraph 69 of the code which indicates that if a tenant is not present for the making of the inventory the Letting Agent should ask them to check it and to raise in writing any changes or additions within a specific reasonable timescale. Once agreed the inventory should be signed and returned. Ms Barnes pointed to the fact that changes to the inventory were made by her and presented to Premier properties the same day that she moved into the property. The concerns she raised were not accepted as there was no agreement on the inventory. Premier properties did not sign or return to her the amended inventory.
37. On the point of the agreed inventory Ms Barnes also referred to paragraph 71 of the code which suggests that the Letting Agent must provide the tenant with a signed copy of the inventory for their records. Ms Barnes pointed out that she made a number of requests to have her copy of the inventory returned to her and was then ultimately told that she did not need it as her deposit in full was being returned to her.

38. Ms Barnes had a number of complaints in relation to section 5 of the code in relation to management and maintenance of the property. She referred to paragraph 73 of the code which sets out that where a letting agent has said in their agreed terms of business with a landlord that they will fully or partly manage the property on their behalf, the Letting Agent must provide these services in line with relevant legal obligations, the relevant tenancy agreement, and sections of the code. Ms Barnes indicated that the service offered by Premier properties was wholly deficient and contravened legal obligations and the code itself.
39. Ms Barnes referred to paragraph 85 of the code which sets out that where the letting agent is responsible for pre-tenancy checks, making statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing annual gas safety inspections Legionella risk assessments) on a landlord's behalf, the Letting Agent must have appropriate systems and controls in place to ensure that these are done to an appropriate standard within relevant timescales and relevant records of the work required to be maintained. Ms Barnes indicated that she felt the pre-tenancy checks, repairs and maintenance obligations were not carried out to an appropriate standard or within a reasonable timeline. She said that relevant records were not kept and pointed to the fact that the inventory was incomplete as the electrical safety tests were not signed off on and there was a lack of signature in these areas. She referred again to the bare wires being exposed in the ceiling pendant in one of the bedrooms and a bag of rubbish left by plumbers or electricians which she found when she arrived at the property. She said it was clear that no-one done a "walk-through" of the property before she and her daughter took up occupation. She was unsure if the person who had shown her what the switch was for the heating element and explained the purpose of the switch in the living room, was in fact an electrician.
40. Ms Barnes referred to paragraph 86 of the code of practice which sets out that a Letting Agent must put in place appropriate written procedures and processes for tenants and landlords to notify the letting agent of any repairs and maintenance including common repairs and maintenance required if the Letting agent provides the service directly on the landlord's behalf. The procedure should include target timescales for carrying out routine and emergency repairs. Ms Barnes pointed to the fact that in the tenancy agreement it said that communication ought to be made by email which she attempted to do. She accepted that Mr Hall had sent over the plumber and electrician to deal with issues of the hot water tank and the bare wires in the bedroom ceiling light however when hot water was not working properly and other issues arose she felt that she had been dismissed by him or he had failed to respond. No target timescales were never mentioned other than the 48 hours in which an email would be acknowledged. She indicated that Premier Properties had failed to do this on a number of occasions. She repeated that at no point had she seen any form of written procedure for repairs.

41. Ms Barnes in her evidence complained of a breach of paragraph 88 of the code which states that a tenant must be given clear information about who will manage any repairs or maintenance as agreed with the landlord and set out in the tenancy agreement. This includes giving relevant contact details for the Letting Agent, the landlord or any third party and informing them of any specific arrangements for dealing with out of hours emergencies. Ms Barnes referred to the ongoing issue she had had with the water tank which she felt did not work properly and caused a lack of hot water. When she cited these problems as being one of the reasons for leaving the property Mr Hall denied having received any further notification from her regarding the issue of the hot water after the plumber had first attended the property on April 13th. Ms Barnes had sent him a copy of her e mail of April 15th, 2020, and her position was that he emailed again on 20th April changing his position to say that he had in fact contacted the plumber on the same day, the plumber had been round and found that no one was at the property. Ms Barnes indicated that Mr Hall had not bothered to advise her that the plumber would be attending. She pointed out that if his position on this as set out in his email of 20th April 2021 was correct then his record keeping fell below required standards.
42. Ms Barnes referred to paragraph 90 of the code of practice which sets out that repairs required to be dealt with promptly and appropriately having regard to their nature and urgency and in line with written procedures. In support of an alleged breach of paragraph 90 she pointed to a number of matters she had already referred to in relation to breaches of other paragraphs of the code. She also referred to paragraph 91 of the code of practice which indicates that a Letting Agent must inform the tenant of the action intended to be taken on a repair and its likely timescale. Again she referred to issues she had raised in respect of other code breaches in terms of paragraph 16,17 and 88.
43. Ms Barnes referred to paragraph 92 of the code where it says that when access is needed for repairs the Letting Agent must give the tenant reasonable notice of when access is required unless other arrangements have been agreed. Ms Barnes pointed out that Mr Hall had stated that he had given no notice at all when the plumber came to the property and found that no one was at home. In respect of her complaints regarding paragraph 92 she referred to the issues she had raised regarding paragraphs 16,26 and 85 of the code of practice.
44. Ms Barnes referred to paragraph 93 of the code which sets out that if there is any delay in carrying out the repair and maintenance work the landlord and tenants both must be informed as appropriate about this along with the reasons for it as soon as possible. Again she referred to the issues she had raised in terms of paragraph 16,17 86 and 88.
45. Ms Barnes complained that the Respondent had failed to adhere to certain paragraphs in the code of practice in terms of section 6, ending the tenancy. She referred to paragraph 101 of the code of practice which states that

before a tenant leaves the property the Letting Agent must clearly inform a tenant of their responsibilities such as the standard of cleaning required, the closing of utility accounts and other administrative obligations, eg. council tax, in line with the tenancy agreement. This paragraph also states that Letting Agents must offer the tenant the opportunity to be present at the checkout visit unless there is good reason not to. Ms Barnes pointed to the condition of the property when she and her daughter moved in. She said this must have been left in this way by a prior tenant, a previous owner, the current homeowner or the Letting Agent themselves. She indicated that it was the Letting Agent's responsibility to ensure that the property had been cleaned to a reasonable standard and if it had she and her daughter would not have encountered the level of filth that they did. She referred to the requirement for a proper "walk-through" checkout visit in respect of a previous tenant and if this had been done the property would not have been presented to Ms Barnes and her daughter in such an unacceptable condition. She indicated that she felt that Mr Hall could easily have chosen to meet with her at the property but this was not offered as it was suggested that the papers had to be signed at his office. In support of what she said was a breach of paragraph 101 of the code she referred to the fact that utilities had not been closed or paid up which presented problems when she tried to set up an account in her name for the energy bills at the property.

46. Ms Barnes referred to paragraph 108 of the code which sets out that a Letting agent must respond to enquiries and complaints within reasonable timescales. This paragraph states that the Letting Agent's aim overall should be to deal with enquiries and complaints quickly and as fully as possible and keep those making them informed if the Letting Agent needs more time to respond. Ms Barnes indicated that when it became clear to her that not only was the hot water tank not working properly but that it appeared to be using an inordinate amount of electricity to function, she felt that the tank itself was old and faulty and that he had failed to address her complaints regarding the size of the electricity bills she was receiving. She produced the bill she had required to pay for her tenancy at the property. In support of this breach of the code she also referred to issues raised in terms of paragraph 16, 17, 18, 19 and 85.
47. Ms Barnes also referred to section 70 of the code in relation to communications and resolving complaints. She referred to paragraph 109 which states that landlords and tenants must be provided with contact details including the Letting Agent's current telephone number. When she requested via email to speak with Mr Hall to discuss the state of the property on the day that she moved in, he refused to give his phone number as he was working from home due to the Covid 19 pandemic and had no facility to call from home. She felt that this meant that she was being restricted to email communication only or calling his office to leave messages for him.
48. Ms Barnes referred in detail to the costs which she incurred and was seeking to have reimbursed. This was the amount she paid in rent, the amount she paid for a carpet shampooing machine, the amount paid for cleaning

supplies and the amount of the electricity bill. She was seeking an acknowledgement of responsibility for the difficulties that she had faced, an apology, reimbursement for the costs which she had set out and compensation for the time spent cleaning the property which she and her daughter had done for three hours each day while they were in occupation of the property. She was limiting this to a period of 30 days at six hours per day at the rate of 7 pounds per hour.

49. Mr Hall on behalf of the Respondent did not pose any questions to Ms Barnes during her evidence. Ms Barnes called no other witnesses to give evidence to the Tribunal at the Hearing.
50. Mr Hall gave evidence on behalf of the Respondent. He explained that the property was a brand-new property for them and had never previously been managed by Premier Properties. The property owner was an existing landlord who Premier Properties had dealt with previously. His position as to the condition of the property was that it had been inspected and whilst was not in perfect condition, he said that it met the repairing standard and was fit for rental. He said in his evidence the condition of the property was not great.
51. Mr Hall said that the property had been inspected before it had been advertised for rent. He had accompanied parties at viewings and was quite happy with the condition of the property. He himself had no concerns regarding the cleaning. He said that there had been no mention by Ms Barnes regarding the requirement for cleaning before the tenancy began. He said he would have been more than happy to get a cleaner in if this had been mentioned earlier.
52. He explained that the photographic inventory had been done a day or two days before the tenancy began. It was normal procedure to carry out an inventory in this way and to take photographs and to note any damages. It was part of this role to ensure that things that should be mentioned were mentioned. A tenant has had seven days to alert Premier properties regarding anything amiss with the inventory and they could arrange any necessary repairs.
53. Mr Hall indicated that having been in the property he was satisfied that the property was clean enough. He said that the photographs sent by Ms Barnes to Premier Properties did not show anything needing done. He emphasised that the tenancy had commenced at the beginning of the "lockdown" restrictions in Scotland in March 2020. He described that experience as quite daunting. He recalled how the instruction had been given not to leave your home unless it was for essential reasons and that had not been safe to do that. He had chosen to go and live with his family in a rural area and there was no phone signal. This was why he had said to Ms Barnes that he could not take telephone calls at that time. He did indicate that other staff members were working from the office and could have taken note of any concerns had she telephoned. Some staff were furloughed but others were working.

54. As far as the issue concerning hot water raised by Ms Barnes was concerned, he confirmed that he had sent a plumber out within 24 hours of being notified of the problem. He also indicated that he had sent an electrician quickly when an issue had been reported in relation to visible wiring.
55. His position as regards matters raised on 15 April 2020 was that in respect of the issue of hot water being raised again, a plumber went out. He also indicated that as far as the condition of the property in terms of the electrics was concerned, £850 of electrical upgrades to the property had been made prior to the start of the tenancy.
56. As far as the wiring issue was concerned his position was that an electrician had failed to properly screw on a cap in a ceiling light fitting and had left a bag of rubbish in the communal hallway in error.
57. Regarding the issue of the utility bills Mr Hall indicated in his evidence that the utility account had been in the name of the landlord prior to the tenancy and it was a matter for the landlord to deal with any outstanding bill and to close their accounts. He felt there was nothing more Premier Properties could have done regarding the difficulties Ms Barnes had encountered in trying to set up the utility account.
58. He explained that in relation to the evidence given by Ms Barnes that the property had been completely refurbished after the tenancy. He said that although the property had been subject to a development after it was rented to Ms Barnes it could have been rented again in the condition that it was when rented by Ms Barnes, but the landlord had been given a grant by the local authority to improve the property. This was a matter for the landlord and any discussions around that grant had taken place with the landlord and not with Premier Properties.
59. He explained in his evidence that the electrician had come into the property when the inventory was finished. The PAT testing and EICR had been done before the tenancy started. His position was that when Ms Barnes raised issues with them he had not been nonresponsive but accepted that he had not always responded but had taken action. He said that he was sorry for the stress that she had referred to, but he explained that unless a landlord gives the Letting Agent the go-ahead to carry out a repair they cannot force the issue with the landlord. He confirmed that a Legionella Risk assessment had been carried out.
60. As far as information regarding repairs was concerned he referred to the repair timetable which was set out in the tenancy agreement and explained that as part of the Tenant pack Ms Barnes would have been given a sheet explaining how to report repairs at the time that the tenancy agreement was signed.

61. He confirmed that unless a tenant asked Premier Properties to do something in relation to the tenancy before the tenancy began, he would assume that in Ms Barnes' case having viewed the property twice that she was happy with the condition of the property.
62. It was put to him that the carpets in the property were filthy at the start of Ms Barnes' tenancy and his position was that when he had viewed the property, he said the carpets didn't look bad to him. He referred to the inventory which noted stained and marked carpets.
63. He said he had been advised by the landlord that the carpets had been cleaned, that they had been shampooed some time before the tenancy started and he had no reason not to believe that.
64. He confirmed when asked that he had received the photographs emailed into Premier Properties by Ms Barnes and having seen those he did not feel that cleaning was required. He accepted that people have different standards of cleaning and what one person might regard as clean another person would not.
65. He said in carrying out the Legionella Assessment he had run the taps through at the property and had not found any "black bits" appearing at that stage. He acknowledged that a couple of weeks into the tenancy Ms Barnes had reported black bits coming from the taps. He explained that this was a judgement call and he had spoken to a plumber and taken advice from him. The plumber had said that this was grime in the taps, that this could be flushed through and there was no health concern. He also explained that a plumber had attended within 48 hours of Ms Barnes indicating that she needed assistance in relation to a switch at the property. The plumber had reported back that he had shown her how to use the switch.
66. As far as the inventory was concerned, he accepted this had been returned by Ms Barnes and had been misplaced by him. When asked regarding a "walk through" inspection which Ms Barnes had requested, he said that this was not standard practice and Premier Properties had understood that the property was cleaned. He reiterated that he felt issues had been resolved in relation to the hot water with the sending of the plumber within 24 and 48 hours. He accepted that the carpets were stained, were not perfect but were in his view good enough to allow the property to be rented. He reiterated again that Ms Barnes had not mentioned that she was unhappy with the condition of the carpets when she saw them. He also confirmed that Premier Properties had attended to the issue of the bare wires reported by Ms Barnes.
67. Mr Hall confirmed that a hard copy of the initial inventory was supplied to Ms Barnes and a tenant had seven days to raise any issues from that time.
68. He felt that his communication with Miss Barnes had been good. He dealt with the issues she raised and not the Directors of Premier Properties. He

indicated during his evidence that he was the only person who was not on furlough but also said elsewhere in his evidence that other colleagues were answering calls.

69. He referred to the Code and the paragraphs highlighted by Ms Barnes. In respect of paragraph 31 he indicated there was nothing that he could see to suggest that the landlord was not acting within the law in respect of the property. It was put to him that the fridge freezer at the property was not working but his position was that it was simply an old appliance and had been checked and found to be working.
70. Mr Hall explained that after the start of the “lockdown” in March 2020 when he was working from home he was doing the best that he could and was adapting their procedures as best he could.
71. In relation to repair timescales he said that tenants were provided with a sheet in relation to how to report repairs online using the website and that Ms Barnes would have received this along with the other documents received at the start of tenancy. He said that the aim was to respond within 24 – 48 hours and that repairs were to be carried out within 24 hours in the case of emergency and 14 days in respect of non-emergencies. He appeared to be uncertain as to the exact period for non-emergency repairs and said that it was on the Premier Properties website. When it was suggested to him that Ms Barnes had not received information regarding how to report repairs with the tenant pack, he said it was highly unlikely that this would have been missing from her pack, that this was a standard pack which was put together by him personally.
72. Mr Hall confirmed that he had carried out the PAT testing and the result of the PAT testing should have been in the pack of papers given to Miss Barnes as a tenant. He accepted that he had made a mistake when he sent a plumber without advising Ms Barnes that the plumber was to be attending. Mr Hall said that he had assumed that the plumber would be able to gain access to the property at that time. When Ms Barnes put to him during his evidence that he failed to respond to her concerns following the unannounced visit of the plumber, he said that he had not ignored her concerns, he simply failed to respond. He appeared to be unclear as to when the plumber might have returned to the property after the visit when access could not be gained. Initially he said that this was it within a few days and then ultimately said that this could have been some 11 days later, around 24th April 2020.
73. As far as the complaints policy was concerned he had provided this to the Tribunal and said that this was not given out unless a person specifically said they wished to make a complaint. At no point during Ms Barnes’ tenancy had she indicated that she wished to make a complaint like the ones being made to the Tribunal. He said he first received intimation of her formal complaints in October 2020.

74. When asked regarding the inventory he explained that this was signed before it was given to a tenant, and he expected that the inventory would be returned to him. He said when asked that he had never been asked to return the final signed inventory by a tenant. He said it was regrettable that Ms Barnes' amended copy of the inventory had been lost. He explained when asked that he understood this was the only document lost in the office during this period of time.
75. Mr Hall in his evidence went through the various paragraphs of the code which Ms Barnes indicated had not been complied with. He said he believed that he had complied with paragraph 16 to conduct the business of a Letting Agent in a way that complied with all relevant legislation.
76. He stated that he had been honest open transparent and fair in his dealings with Ms Barnes as a tenant and as a prospective tenant. He believed he had complied with paragraph 18 to provide information in a clear and easily accessible way. He believed that he had complied with paragraph 19 of the code and had not provided information that was deliberately or negligently misleading or false. In terms of paragraph 20 of the code Mr Hall was of the view that he deployed policies and procedures consistently and reasonably. He reiterated that he felt he had complied with paragraph 21 of the code in carrying out services provided to Ms Barnes using reasonable care and skill and in a timely way. His evidence was that he had also complied with paragraph 23 of the code and ensured as far as he could that all staff and any subcontracting agents where used, complied with the code and the legal requirements on the letting of residential property. He referred to the issues around the bare wires in the ceiling light in one of the bedrooms and the leaving of a bag of rubbish and stated his view that the electrician had simply failed to screw on the light fully and had left a bag of rubbish behind in error.
77. Mr Hall indicated that he was of the view that he had responded to enquiries and complaints within reasonable timescales and in line with the written agreement. He also indicated that Premier Properties had complied with paragraph 31 of the code and he was satisfied that the property met the repairing standard so there was nothing to suggest that the landlord was not meeting their legal obligations or was refusing or unreasonably delaying in complying with the law which would have caused him to cease to act on behalf of the landlord or inform the appropriate authorities.
78. In his evidence Mr Hall indicated that he understood he had complied with paragraph 32 in relation to terms of business and that it had been clear to Ms Barnes how he would communicate and the timescales within which he could reasonably be expected to respond to enquiries. He indicated he did not believe he had failed to comply with paragraph 32(l) in that he had not provided the complaints procedure to Ms Barnes as she had not made a formal complaint during the period of her tenancy.

79. In his evidence Mr Hall was not clear as to whether he had first mentioned the ability of a tenant to apply to the Tribunal if they were dissatisfied after the complaints process had been exhausted or if a letting agent had not processed a complaint within a reasonable timescale through a complaints handling procedure. Ultimately he appeared to accept that in the context of communication between Premier Properties and Ms Barnes she had been the first to mention the First-Tier Tribunal.
80. He referred to paragraph 68 of the letting agent code in relation to the production of an inventory and believed that he had complied with this paragraph. He also confirmed that he understood that he complied with paragraph 69 of the code in that he had asked Ms Barnes to check the inventory and to raise any changes or additions within a specific reasonable timetable. In terms of paragraph 71 of the letting agent code he had not provided a final agreed copy of the inventory to Ms Barnes for her records and said in his evidence that he had never been asked to do that by a tenant.
81. He indicated that he believed he complied with paragraph 73 of the code to manage the property in line with relevant legal obligations. He said in his evidence he had complied with paragraph 85 in relation to pre tenancy checks, managing statutory repairs, maintenance and safety regulations. His position in evidence was that he complied with paragraph 86 of the code in that written procedures and processes were in place for tenants and landlords to notify of the need for any repairs and maintenance.
82. Mr Hall's evidence was that he complied with paragraph 88 of the code and had given clear information to the tenant about the management of repairs or maintenance and that relevant contact details had been given in respect of dealing with repairs and emergencies. He believed he had complied with paragraphs 90 and 91 in dealing with repairs promptly and appropriately having regard to their nature and urgency and in line with written procedures and had advised the tenant of the action that would be taken on the repair and its timescales.
83. Mr Hall indicated he had complied with paragraph 92 of the code and had given the tenant reasonable notice when access was required. He did accept in his evidence that on one occasion he had made a mistake and forgotten to advise Ms Barnes that a plumber would be attending the property.
84. Mr Hall indicated there had been no breach of paragraph 93 of the code in relation to any delay in carrying out repair and maintenance work and the obligation to inform tenants as appropriate along with the reason for any delay as soon as possible. Mr Hall's position was that there had not been any delays in dealing with reported repairs and maintenance. Mr Hall's position as regards paragraph 101 of the code was that Premier Properties had complied as far as they could in relation to their obligation to clearly inform a tenant of the responsibilities at the end of the tenancy such as the standard of cleaning required and the closing of utility accounts, given in

check out information. He had explained that he had been advised by the landlord that the property had been cleaned, the carpets had been shampooed. His understanding was that the landlord had the utility bill in their name prior to Ms Barnes' tenancy and his position was that he did not believe there was more he could have done in relation to these matters.

85. In relation to paragraph 108 of the code which relates to the response to enquiries and complaints within reasonable timescales Mr Hall indicated to the Tribunal he had believed he had complied with this paragraph. He explained that in terms of the evidence given by Ms Barnes and her requirement to take baths more frequently than perhaps others might do, this could mean that a bath would empty the hot water tank at the property each time it was taken. He explained that nothing had been flagged in the EICR regarding the hot water tank and it had been checked three times during the tenancy. He also explained that in his experience heating water using this type of energy was more expensive and he referred to different tariffs which might apply depending on when electricity was being used. He did not consider the bill presented by Ms Barnes which she had required to pay for electricity throughout the tenancy to be unreasonable.
86. Mr Hall indicated he believed he had complied with paragraph 109 of the code in that Ms Barnes had his contact details. When it was put to him that he had not been available by telephone due to his working from home his position was that other members of staff were answering the office phone and could respond to enquiries. He was asked regarding his experience, and he indicated that he had 9 years' experience in property and held a qualification from Landlord Accreditation Scotland.
87. Mr Hall did not lead any other witnesses on behalf of the Respondent and both parties then summed up their position to the Tribunal.
88. Ms Barnes reiterated her concerns and said that she would not have pursued her complaint to the Tribunal if Mr Hall had shown any contrition regarding her situation. She said that he had been dismissive with her, dismissive with the Tribunal and had made minimum effort and had relied on his verbal testimony. She said that his lack of effort reinforced his lack of accountability for these matters.
89. On behalf of the Respondent Mr Hall indicated that he had not wanted to come over as dismissive nor did he wish to exacerbate the situation. He denied that Premier Properties were in breach of any of the paragraphs of the code as set out by Ms Barnes in her evidence. He accepted the property had not been in perfect condition, but he felt it was in appropriate condition to be rented and that it complied with the repairing standard.

Findings in Fact

90. The Applicant entered into a private residential tenancy agreement at the property with effect from 25 March 2020 and this agreement was terminated on 22 May 2020.
91. In terms of the tenancy agreement the Respondent Premier Properties Perth were named as the Letting Agent which would manage all letting services on behalf of the landlord and would be the first point of contact for the tenant
92. Prior to indicating that she wished to enter into a tenancy at the property the Applicant had the opportunity to view the interior of the property physically on two separate occasions.
93. The Applicant was able to effect access on both occasions before the start of the tenancy and the second visit was in order to measure for items that she had to purchase.
94. By e mail of 6th March 2020 the Applicant queried with Mr Hall from the Respondent as to whether the property was ready to move into and whether carpets had been cleaned. She also queried whether a “walk through” inspection would take place. She was advised that the property would be received by her as a tenant in the same state as she had viewed it. She emailed to acknowledge this and appeared to accept this.
95. The Applicant was advised by Mr Hall that the carpets had been cleaned about two months previously, that a photographic inventory would be done before she moved in and that she could amend this during the first seven days if there was anything she wanted to change.
96. On 25th of March 2020 the Applicant attended at the offices of Premier Properties in Perth and signed a private residential tenancy agreement in respect of the property and collected the keys. At this time she also received a copy of a photographic inventory, Legionella statement, tenant guidance notes and a copy of the tenancy agreement. She received no other documents in relation to the tenancy at that time.
97. Later on 25th March 2020 the Applicant e-mailed Mr Hall of the Respondent taking issue with the inventory and sending a number of photographs of what she described as cleanliness issues with the property asking that she be telephoned on receipt of the email. One of these photographs was said to be a bag of rubbish left by the door inside the property.
98. On the same day Mr Hall e-mailed the Applicant indicating that he could not call her as he was working at home during “lockdown” and did not have phone facilities. In this email he also indicated that he did not agree that the property still required cleaning and that if she had concerns she should have raised them before and it was now too late to do so.

99. The photographic inventory supplied to the Applicant referred to various stains and indentations, marks, and a large area of fading on the lounge carpet and in bedrooms one and two at the property and on some of the walls. In the inventory the condition of the walls, wardrobes, windows, and curtains was described as “good” or “good overall”. In the cleaning condition section of the Inventory all entries for all aspects of the fixtures, fittings and property condition were described as “good”.
100. In a subsequent e mail sent to the Respondent, the Applicant explained that in her view every window, surface and light switch, wall, carpet and curtains within the property was not clean. She sent in a picture of the back wall of the wardrobe in the main bedroom where a circular patch that she said had been cleaned by her was visible as being of a slightly different colour. She reported further that the fridge had obvious moisture, was mouldy and had a smell. She requested that Mr Hall come and see the state of the property himself. He indicated he could not attend due to “lockdown”.
101. In the course of the tenancy the Applicant also reported issues with hot water, black bits coming from the bath taps, bare wires in a ceiling light, a bag of rubbish at the property, post being received for another party at the property, return of the amended inventory and difficulties in setting up a utilities account.
102. Mr Hall indicated by e mail to the Applicant that he was of the view that the property was in an acceptable condition and was clean apart from the fridge freezer needing a wipe down and a shelf needing a light dusting.
103. In an email sent by Mr Hall on 25th March 2020 in the course of further communication on cleanliness of the property Mr Hall indicated that the Applicant could clean the property but no compensation would be offered.
104. When issues were reported Mr Hall of the Respondent ‘s firm sent tradesmen to the property to effect repairs within a reasonable timescale and he gave advice by e mail.
105. The property complied with the repairing standard during the Applicant’s tenancy.
106. In April 2020 Mr Hall instructed a plumber to attend the property regarding an issue with hot water and in error he did not give the Applicant any notice of this visit.
107. At no time before or during the tenancy was the Applicant given information regarding the repairs procedure to be followed by tenants in reporting repairs to the Respondent Letting Agent. She had access only to the tenancy agreement in this regard.
108. The Applicant challenged the state of cleanliness of the property set out in the inventory on the day she received it. She returned the amended

inventory to the Respondent's office but did not receive it back at any time. The amended inventory was lost at some point during the tenancy by the Respondent.

109. The Respondent as a matter of practice does not return a signed agreed inventory to tenants and Mr Hall has never been asked to do so.
110. Issues around the cleanliness of the property at the start of the tenancy and the Respondent's reaction to the challenge to the inventory, the failure to return the inventory, the failure to provide repairs information and other issues reported caused distress, stress and inconvenience to the Applicant and contributed to her decision to terminate the tenancy.
111. Further correspondence by email between the applicant and Mr Hall on 3 December 2020 the Respondent acknowledged a letting agent notification letter sent to the Respondent by the Applicant and indicated that they did not believe they had breached the letting agent code of practice and did not agree to offer compensation at that time.

Reasons For Decision

112. The Tribunal considered carefully all the evidence before it both in terms of the representations made in writing by both parties and referred to in their evidence and the evidence resented by the Applicant and on behalf of the Respondent at the hearing.
113. The Tribunal noted that the application had proceeded under a large number of sections of the code but some of the facts which were relevant to various paragraphs of the code were the same.
114. The Applicant's concerns centred around the cleanliness of the property when she moved into it with her daughter, the accuracy or otherwise of the photographic inventory provided, the response to the concerns she raised regarding hot water, the fridge freezer at the property, black marks coming from the taps, the receipt of mail for another person at the property during the tenancy and the difficulties encountered when trying to set up an account for utilities due to the apparent failure to close the utility account and an outstanding bill.
115. The Applicant had submitted to the tribunal a full account of the history of her dealings with the Letting Agent and communications between them before during and after the termination of the tenancy. She provided the Tribunal with the documentation which she had received in the Tenant's pack when she had signed the tenancy agreement. In contrast Mr Hall on behalf of the Respondent had lodged few documents and appeared to prefer to rely on his oral testimony and recollection of events. He was unclear during his evidence as to the timescales on the Respondent's website for completion of nonemergency repairs and did not lodge with the Tribunal any documentation in respect of repairs. The Applicant was clear

as to the documentation she had received at the time of signing the agreement. She was adamant that she had not received any form of written information from the Letting Agent to advise as to how to deal with repairs and relied for information on a clause within the tenancy agreement. The Tribunal preferred the evidence of the Applicant as to the documentation she had received and felt it more likely that she would remember this clearly than the Respondent, given that she had outlined her position in full detail and lodged all documents she had received in respect of the tenancy. The Tribunal took the view that the appropriate procedures and processes for Ms Barnes to notify the letting agent of the requirement for repairs at the property had not been properly put in place in respect of her tenancy as she had simply not been given this information. It was obviously a source of some concern and stress for her that she had very little information upon which she could base her expectations in respect of repairs and whether the service she was getting was in accordance with the Respondent's procedures.

116. It was clear from the evidence of the Applicant that she did not accept the terms of the photographic inventory provided to her when she signed the tenancy agreement. She had returned this with amendments to the Respondent's office but this document appeared to have been mislaid and was never provided to the Applicant. Indeed Mr Hall's evidence was to the effect that this was not something he had ever been asked to do and it was not something that he had ever done. In terms of paragraph 71 of the code it is clear that a Letting Agent should agree an inventory with the tenant, and this should be signed and returned to the tenant for the records. Whilst the Tribunal accepted that the amended inventory returned by the Applicant to the Respondent's office was mislaid, it was clear from Mr Hall's evidence that it was not their practice ever to return an inventory to the tenant and the Tribunal found that this was a clear breach of the code. The Tribunal also considered that the same evidence led to a breach of paragraphs 68 and 69 of the code. The failure to return the inventory was a source of stress and concern to the Applicant throughout her tenancy as she made repeated attempts to have a copy of it returned to her without success.
117. Having considered the written representations referred to by parties and the evidence of parties at the Hearing the Tribunal was satisfied that the Respondent had attended promptly on the issues raised by the Applicant in respect of hot water, black bits coming out of the taps, and the bare wires reported at the start of the tenancy.
118. By far the most serious concern for the Applicant was the condition of the property when the tenancy commenced. There was no dispute that by the time the tenancy commenced she had physically been present in the property on two occasions, once when she viewed it and on another occasion briefly when she attended to measure up for items she intended to purchase. The Tribunal accepted that during these visits the Applicant would not have had an opportunity to inspect such items as wardrobes and appliances to any degree and their condition might not have been fully

apparent until she took up occupation at the property. However she had had an opportunity to consider the general condition of the property visually and had accepted that there would be no “walk through “ inspection and that the tenancy would proceed on the basis of a photographic inventory. She had not raised any concerns about cleanliness after the two visits to the property, only once asking regarding the position regarding cleaning which she appeared to accept when given an answer about the carpets having been previously cleaned. She submitted photographs regarding the condition of the property to the Respondent on the first day of tenancy. She was told at this point it was too late for her to raise these matters as the property was rented to her in the condition she viewed it.

119. The Tribunal found that the response by the Respondent when the Applicant challenged the condition of the property as set out in the inventory in relation to cleanliness to be unfair. The Applicant was flatly told she was too late to raise issues regarding cleanliness when in fact the inventory itself described cleanliness as ‘good’ and she had seven days to challenge and make amendments to the document. The response of Mr Hall to her challenge appeared to amount to a refusal to consider anything that she raised. The Tribunal accepted Mr Hall’s evidence that it would have been difficult for him to provide a cleaner for the property at the point at which Ms Barnes raised the issues given the government advice to leave home only for essential purposes. However the Tribunal took the view that he could have attempted to resolve matters in a more constructive fashion given the obvious concern raised by Ms Barnes. There appeared to be a complete absence of any attempt to consider the Applicant’s challenge to the inventory when this was in effect the only way she could seek to address these matters. The response of the Respondent when she raised this issue she described as dismissive and the Tribunal accepted that this matter had caused her stress and inconvenience throughout the tenancy.
120. The Applicant had first queried the condition of the property by email on 9th March and from the evidence available to the Tribunal she was advised the property would be in the condition she had viewed it in before she signed the tenancy agreement and having seen it twice. Although the Applicant had lodged photographs with the Tribunal showing various parts of the interior of the property when she commenced the tenancy, it was not possible to discern a great deal from these photographs in terms of cleanliness. The Applicant gave detailed evidence on this point and explained that she and her daughter had required to clean every day that they were in occupation of the property due to what she described as its filthy state. She described the property at the commencement of the tenancy has been filthy but not disgusting. She described having to clean until no more dirt was coming off the surfaces. She lodged a claim for compensation in respect of 180 hours of cleaning. In broad terms the Tribunal accepted her evidence that she felt that the property required cleaning when she took up occupation. It was not possible for the Tribunal to ascertain the state of cleanliness of the property from the evidence led at the Hearing and this differed sharply between the parties. As was said during the Tribunal what one person regards as clean

may be different from the viewpoint of another. The Tribunal accepted that Miss Barnes felt that the cleaning was necessary and makes no criticism of her in that regard. Indeed Mr Hall himself in his evidence accepted that the property was not perfect and he appeared simply to have taken the word of the property owner and landlord that the property had been cleaned and in particular the carpets had been cleaned some months before it was rented to Ms Barnes. The tribunal did not consider it possible on the evidence to make any findings in fact as to the cleanliness of the property at the start of the tenancy and did not find proved on the balance of probabilities any breaches of the code in relation to the property's condition as regards cleanliness.

121. The Tribunal did not find on the basis of the evidence before it any evidence to suggest that the hot water tank at the property was faulty. No code breaches were upheld in relation to the property condition as regards the hot water tank and its maintenance. The Tribunal found no basis on the evidence to award the Applicant the cost of the electricity bill or the rent paid during the tenancy.
122. The Tribunal then considered the application under each section of the Code of Practice.
123. Paragraph 16 states "You must conduct your business in a way that complies with all relevant legislation". The Tribunal held that aside from specific breaches of sections of the code which are dealt with in turn in this decision, on the evidence and representations considered by the Tribunal, relevant legislation was complied with by the Respondent in dealing with this tenancy. The Tribunal did not uphold the complaint under paragraph 16 of the code.
124. Paragraph 17 of the code states "You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)". Although the evidence led before the Tribunal indicated disagreement between the parties as to the condition of the property when Ms Barnes became a tenant, in respect of the Respondent's response to the issues she raised, the Tribunal found that the Respondent was largely honest, open, and transparent with the Applicant in dealings with her. There is one area where the Tribunal found that the Respondent had not dealt fairly with Ms Barnes. When she raised issues with the cleanliness of the property on the day that she moved in the Respondent's Mr Hall appeared to dismiss this as simply her raising concerns as to the cleanliness of the property when she had had two opportunities to inspect it before moving in. Mr Hall appeared not to appreciate that she was in effect raising issues with the accuracy of the inventory which she was entitled to do at that time. The Tribunal held that the Respondent's treatment of Ms Barnes in this regard was unfair in that they simply dismissed her concerns, indicating that it was too late for anything to be done and that she could clean if she wished to, when she had been told that she had a set period of time to raise discrepancies in the

inventory. The email dialogue seen by the Tribunal revealed a complete lack of constructive engagement with the issues raised by the Applicant on the part of the Respondent. The Tribunal found that the perceived lack of cleanliness of the property as compared to the description of the state of cleanliness in the inventory was a matter of great concern to the Applicant throughout the tenancy, was a main contributing factor in giving up the tenancy and the way that she was treated in relation to this issue caused her distress, stress and ongoing inconvenience. She clearly felt dismissed and not taken seriously when she was told that she could clean if she wished but there would be no compensation. In this regard the Tribunal upheld the complaint under paragraph 17 of the code of practice and found it appropriate to award compensation to the Applicant in relation to this breach.

125. Paragraph 18 of the code states “You must provide information in a clear and easily accessible way”. There was nothing in the evidence and representations before the Tribunal which the Tribunal found constituted a breach of this paragraph of the code. The tribunal did not uphold the complaint under paragraph 18 of the code.
126. Paragraph 19 of the code states “you must not provide information that is deliberately or negligently misleading or false”. The Tribunal carefully considered the evidence in relation to this paragraph of the code and did not find that there was a breach of this paragraph of the code. The Tribunal did not uphold a complaint under paragraph 19 of the code.
127. Paragraph 20 of the code states “you must apply your policies and procedures consistently and reasonably”. The evidence before the Tribunal indicated a consistent approach by the Respondent in dealing with issues and requests for repairs when made by the Applicant. The Tribunal did not find that this paragraph of the code was breached and accordingly did not uphold a complaint in terms of paragraph 20 of the code.
128. Paragraph 21 of the code states “you must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way”. Having considered the evidence the Tribunal did not find this paragraph of the code was breached. In particular when issues were raised by Ms Barnes it was apparent that even if she did not always receive an email response immediately, repairs were attended to and advice was given. The Tribunal did not uphold a complaint under paragraph 21 of the code.
129. Paragraph 23 of the code states “you must ensure all staff and any subcontracting agents are aware of and comply with the code and your legal requirements on the letting of residential property”. The issues around the section of the code were centred on an electrician having left bare wires in a ceiling rose at the property and a bag of rubbish. The bare wires were attended to when brought to the Respondent’s attention and the evidence pointed to this being inattention on the part of the tradesman concerned who

also failed to remove a bag of rubbish from the property. The Tribunal did not find that this amounted to a breach of this paragraph of the code by the Respondent. The Tribunal did not uphold a complaint under paragraph 23 of the code.

130. Paragraph 26 of the code states “you must respond to enquiries and complaints within reasonable timescales and in line with your written agreement”. Whilst the Tribunal had sight of the complaints policy lodged by the Respondent it did not have sight of any terms of business agreement between the Respondent and the landlord at the property. However the evidence before the Tribunal suggested that for the Respondent Mr Hall did respond to the raising of issues and concerns by the Applicant promptly or within a reasonable period of time. The Tribunal did not find there to be a breach of this paragraph of the code by the Respondent. The Tribunal did not uphold a complaint under paragraph 26 of the code.
131. Paragraph 31 of the code states “if you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delay in complying with the law you must not act on their behalf. In the circumstances you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations”. It was suggested that the condition of the property was substandard and that the landlord did not wish to upgrade the property or replace items such as the fridge freezer which the Applicant indicated needed replaced. She also referred to the fact that the property was upgraded after the ending of the tenancy. Whilst the Tribunal accepted that the property was not in the best condition, and that the fridge freezer was old, it also accepted that this piece of electrical equipment had not been flagged up in the EICR and it was a matter for the landlord to seek a grant from the local authority at any time to upgrade the property and this was not a matter which the Respondent could influence at all. The Tribunal did not find that the evidence suggested that the landlord was not meeting their legal obligations and accordingly the Tribunal did not find that there was a breach of this paragraph of the code. The Tribunal did not uphold a complaint under paragraph 31 of the code.
132. The Applicant had indicated that she was complaining in terms of paragraph 32(j),(k) and (l) of the code. In her representations the applicant had focused on parts of this paragraph which state as follows:-
133. “Your terms of business must be written in plain language and alongside any other reasonable terms you wish to include, must clearly set out...(j) that you are subject to this code and give your client a copy on request. This may be provided electronically.(k) how you will communicate (including the use of electronic communication) with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries,32(l) your procedures for handling complaints and disputes between you and your landlord and tenants in the timescales within which you could be reasonably expected to respond”.

134. In relation to Paragraph 32 of the code which refers to the Terms of Business and how this should be written, the Tribunal has noted above that this document was not produced by the Respondent and therefore it was not possible for the Tribunal to make an assessment regarding the terms of business and its contents. The Tribunal could not find any breach of this paragraph of the code. The Tribunal did not uphold a complaint in terms of paragraph 32 of the code.
135. Paragraph 68 of the code states “ If you are responsible for managing the check-in process, you must produce an inventory (which may include a photographic record) of all the things in the property (for example, furniture and equipment) and the condition of these and the property (for example marks on walls, carpets other fixtures) unless otherwise agreed in writing by the landlord. Where an inventory and schedule of condition is produced, you and the tenant must both sign the inventory confirming it is correct”. The Tribunal did consider evidence from both parties on this point and there was no dispute that the Respondent had produced an inventory. This was provided to the Applicant on the day that she took up the tenancy. She took issue with its contents immediately and reported her concerns by email. Ultimately she returned the amended inventory to the Respondent but it was never signed as correct and appears to have been lost during the tenancy. The fact that the inventory when it was returned was mislaid somewhere in the Respondent’s office prevented full compliance with this paragraph as the inventory was simply lost and not found. While this may amount to a partial technical breach the Tribunal was not minded to award any compensation given the circumstances.
136. The Tribunal therefore upheld the complaint under paragraph 68 of the code as far as it relates to the signing of the inventory by both parties to confirm that it is correct.
137. Paragraph 69 of the code states if the tenant is not present for the making of the inventory you should ask them to check it and raise in writing any changes or additions within a specified reasonable timescale. Once agreed the inventory should be signed and returned “. The evidence as to this paragraph was similar to that considered in relation to Paragraph 68. The Applicant had taken issue with the inventory immediately and had returned it to the Respondent’s office where at some stage it was mislaid. This meant that the requirement under paragraph 69 to sign and return the inventory to the Applicant could not be complied with. Again, the Tribunal found that this was a technical breach of part of paragraph 69 but in the circumstances whereby the inventory was mislaid the Tribunal did not feel it appropriate to award compensation in respect of this breach.
138. The Tribunal therefore upheld the complaint in relation to paragraph 69 of the code.
139. Paragraph 71 of the code states that, “You must provide the tenant with a signed copy of the inventory for their records.” The Tribunal heard evidence

from the Applicant that she asked for this a number of times and ultimately learned that the inventory could not be found. However, it was notable that in evidence Mr Hall indicated to the Tribunal that a signed inventory was never returned to a tenant and that he had never been asked to do this. The Tribunal found that this was a complete failure to comply with paragraph 71 of the code and it pointed to a gap in the appropriate procedure within the Respondent's business.

140. The Tribunal upheld the complaint under paragraph 71 of the code of practice and did regard this failure as worthy of an award of compensation to the Applicant.
141. Paragraph 73 of the code of practice states " if you have said in the agreed terms of business with a landlord that you will fully or partly manage the property on their behalf, you must provide these services in line with relevant legal obligations, the relevant tenancy agreement and sections of this code". The Tribunal considered this paragraph and noted as stated above that it did not have sight of the agreed terms of business with the landlord. However the evidence in relation to the way that the tenancy was managed did not support a breach of this paragraph and accordingly the Tribunal did not find a breach of this paragraph of the code. The Tribunal did not uphold the complaint under Paragraph 73 of the code.
142. Paragraph 85 of the code of practice states " If you are responsible for pre-tenancy checks, managing statutory repairs, maintenance obligations or safety regulations (e.g. electrical safety testing; annual gas safety inspections; Legionella risk assessments) on a landlord's behalf, you must have appropriate systems and controls in place to ensure these are done to an appropriate standard within relevant timescales. You must maintain relevant records of the work". The Tribunal considered the evidence in relation to this paragraph of the code of practice and accepted that appropriate pre-tenancy checks had been carried out to an appropriate standard in advance of the Applicant's tenancy and noted that the Respondent had produced records of these. The Tribunal did not find there was any breach of paragraph 85 of the code of practice and did not uphold the complaint in respect of this paragraph.
143. Paragraph 86 of the code of practice states "you must put in place appropriate written procedures and processes for tenants and landlords to notify you of any repairs and maintenance (including common repairs and maintenance) required if you provide this service directly on the landlord's behalf. Your procedure should include target timescales for carrying out routine and emergency repairs". The evidence before the Tribunal in relation to this paragraph from the Respondent and the evidence given by Mr Hall was to the effect that in the tenant pack tenants were given a sheet regarding repairs, which would direct them to the company's website to allow them to arrange repairs. He also said that the website gave information as to timescales. It was clear from the evidence which the Tribunal accepted that Ms Barnes the Applicant had not received such a sheet and was

completely unaware as to how to have repairs dealt with and the timescales that she could expect for these to be effected. The Tribunal considered this to be a failure in the provision of appropriate procedures and processes for repairs and upheld the complaint under section 86 of the code of practice and took the view that the failure merited an award of compensation.

144. Paragraph 88 of the code states, 'You must give the tenant clear information about who will manage any repairs or maintenance, as agreed with the landlord and set out in the tenancy agreement. This includes giving them relevant contact details (e.g. you, the landlord or any third party) and informing them of any specific arrangements for dealing with out-of-hours emergencies'. As stated above in relation to Paragraph 86 of the code, the Tribunal accepted that the Applicant in this case was not given information regarding repairs in her tenant pack and as such the Tribunal upheld the complaint in terms of Paragraph 88 of the code.
145. Paragraph 90 of the code states "Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures". The Tribunal did not have sight of the Respondent's repair procedures as these were not produced by the Respondent's representative Mr Hall however the evidence before the Tribunal in relation to repair issues raised by the Applicant indicated that repairs were dealt with promptly and appropriately. The Tribunal did not uphold the complaint under paragraph 90 of the code of practice.
146. Paragraph 91 of the code of practice states, "You must inform the tenant of the action you intend to take on the repair and its likely timescale". The evidence before the Tribunal indicated that when an issue was raised by the Applicant, she either received a very prompt email indicating that a tradesman would attend or even if no email was sent the matter was attended to anyway. There was no evidence before the Tribunal to suggest a breach of this paragraph of the code. The Tribunal did not uphold the complaint in terms of paragraph 91 of the code of practice
147. Paragraph 92 of the code states "Where access is needed for repairs you must give the tenant reasonable notice of when access is required unless other arrangements have been agreed. Section 184 of the Housing (Scotland) Act 2006 is also relevant here...". The evidence before the Tribunal in relation to this paragraph was not in dispute. Mr Hall for the Respondent accepted that there was an occasion in April 2020 when he asked a plumber to attend following a report by the Applicant in relation to lack of hot water at the property. The plumber attended and found no one home. Mr Hall accepted that he had failed to advise the Applicant of the visit and that this was an error on his part. The Tribunal found that there was a technical breach of Paragraph 92 in this regard. The Tribunal therefore upheld the complaint in respect of paragraph 92 of the code but did not feel it was appropriate to make an award of compensation in the circumstances.

148. Paragraph 93 of the code states “If there is any delay in carrying out the repair and maintenance work, you must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible”. The Tribunal considered this paragraph of the code but did not find that the evidence at the Hearing suggested that there had been any delays in the carrying out of repairs or maintenance work at the property during the Applicant’s tenancy. Accordingly, the Tribunal did not uphold the complaint in relation to paragraph 93 of the code.
149. Paragraph 101 of the code states “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”. The Applicant had raised this paragraph because of concerns she had set out in evidence before the Tribunal regarding the condition of the property when she took up the tenancy, the difficulties that she had in setting up a utility account and also the fact that she was receiving mail for another party during her tenancy. The evidence before the Tribunal was to the effect that the property had been empty when purchased by the landlord and that this was the first tenancy of the property to be managed by the Respondent. The Tribunal accepted this evidence and did not find there was any evidence of any failure on the part of the Respondent to inform any tenant of their responsibilities at the end of the tenancy. The Tribunal did not uphold the complaint in terms of paragraph 101 of the code.
150. Paragraph 108 of the code states “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 evidence before the Tribunal in relation to enquiries and complaints differed. The Applicant clearly felt enquiries were not being dealt with promptly and that concerns she was raising amounted to complaints which again were not resolved. The evidence given by Mr Hall on behalf of the Respondent suggested that enquiries were dealt with promptly and that Ms Barnes the Applicant had not actually made any complaints, until she had raised issues with the first-tier Tribunal. The Tribunal’s view of the evidence was that in terms of the issues raised by the Applicant during her tenancy she had received a response within a reasonable timescale. Accordingly the Tribunal did not uphold the complaint in terms of paragraph 108 of the code.
151. Paragraph 109 of the code states “You must provide landlords and tenants with your contact details including a current telephone number”. The Applicant raised this as a complaint because when she had asked Mr Hall to telephone her he had said after the start of the tenancy that he couldn’t, because he was working from home and could not telephone. His evidence ultimately to the Tribunal was that the Applicant could phone other members of staff and raise issues with them even if she could not speak directly to

him. The Applicant's position was that other members of staff did not get back to her when they said they would. The Tribunal accepted on the balance of probabilities that other members of staff were available by telephone and that in the circumstances which pertained during the Applicant's tenancy she had the ability to contact the Respondent by email or telephone. The Tribunal did not uphold the complaint in terms of paragraph 109 of the code.

152. Having determined that the Respondents had failed to comply with the code of practice the Tribunal was bound to issue a Letting Agent Enforcement Order and consider whether the Respondents should be required to pay compensation to the Applicant under section 48 (8) of the Housing (Scotland) Act 2014
153. For the reasons set out in its decisions in relation to paragraphs 68, 69, 88 and 92 of the code the Tribunal decided that no award of compensation should be made in respect of the Respondent's failure to comply with these paragraphs. The failure to comply with paragraph 92 in respect of failing to give notice of the attendance of a tradesman's visit appeared to the Tribunal to be an isolated error. In relation to paragraph 68 and 69 in relation to the signing and returning of an inventory in the circumstances of this particular tenancy the Tribunal accepted the evidence that the inventory had been mislaid and felt it was not appropriate to award compensation in respect of breaches of these paragraphs. The evidence did however disclose a more serious systemic failure which is referred to below in terms of code paragraph 71.
154. The Applicant sought compensation in the sum of £2505.82. This was comprised of the total amount paid for rent at the property, an amount for carpet shampooing machine, amount for cleaning supplies, the entire electricity bill paid during the period of the tenancy together with a sum to compensate the Applicant and her daughter for the time and energy spent cleaning the property. The Tribunal did not accept that the Applicant was entitled to these costs as it did not uphold any code breaches in relation to these matters.
155. The Tribunal did however accept that the Applicant had been caused unnecessary distress, stress, and inconvenience as a result of the Respondent's failures to comply with paragraph 17, 71 and 86 of the code of practice. It was clear from the evidence that the Applicant had felt dismissed when she raised issues regarding the condition of the property and had never received paperwork that she was meant to receive in respect of the repairs process and the Respondent's practice appeared not to return a signed inventory to tenants at any time. It was clear that the way she was dealt with when she challenged the condition of the property, the uncertainty as to how repairs were to be reported and the failure to return the inventory contributed to stress and inconvenience suffered by the Applicant and the Tribunal determined that the Respondent should pay the Applicant the sum of £100 in compensation for each of the breaches of paragraphs 17, 71, and

86 of the Code giving total compensation in the sum of £300, to be paid within 6 weeks of receipt of the decision and order.

156. The Respondent is required to provide the Tribunal within 6 weeks of receipt of the decision and order written evidence of procedures they have put in place to ensure that signed copies of inventories are returned to tenants during their tenancies. The Respondent is required to send each tenant of rented properties which they currently manage as Letting Agent a copy of their signed inventories and to provide evidence to the Tribunal within 6 weeks of receipt of the decision and order that this has been done.
157. The Respondent is required to provide the Tribunal within 6 weeks of receipt of the decision and order written evidence which confirms that all tenants in rented properties which the Respondent currently manages as a Letting Agent have been advised of how they should report any requirement for repairs at the rented property and the timescales within which these repairs will be effected.

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.

Legal Member /Chair

Date 20.8.21