

# Housing and Property Chamber First-tier Tribunal for Scotland

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**First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”)**

**Housing (Scotland) Act 2014 (“the Act”) Section 48**

**Statement of reasons for a decision in terms of regulation 95 of the First-tier Tribunal for Scotland, Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (“the regulations”)**

**Chamber Ref: FTS/HPC/LA/20/2535**

**Property: Flat 1, 8 Riverview Place, Glasgow, G5 8EB (“the property”)**

**The Parties: -**

Mr Peter Meyer, 81 Clarence Gardens, Glasgow, G11 7JW (“the applicant”)

Newton Letting, suite 2.1, 116 Elderslie Street, Glasgow, G3 7AW (“the respondent”)

**Tribunal Members: - Simone Sweeney (Legal Member) Elaine Munroe (Ordinary Member)**

## **Decision of the Tribunal**

The Tribunal unanimously determined that the respondent has failed to comply with sections 17, 21, 90, 91 and 93 of the Letting Agent Code of Practice (“the Code”) in terms of section 46 of the Act. Therefore, in terms of section 48 (7) of the Act, the Tribunal makes a Letting Agent Enforcement Order (“LAEO”) which should be read with this decision.

## **Background**

1. By application dated 6<sup>th</sup> December 2020, the applicant applied to the Tribunal for a determination on whether the respondent had failed to comply with sections 16, 17, 20, 21, 23, 24, 25, 28, 31, 90, 91, 93, 100, 108 and 111 of the Code imposed by section 46 of the Act.
2. The applicant rented the property through the respondent between 21<sup>st</sup> May 2019 and 20<sup>th</sup> November 2020. Two main issues had been raised by the applicant about the property during that time; (i) a leak in the boiler and; (ii) concern of vermin. The applicant alleged that neither of the issues were resolved by the time he left the property.
3. Also, the applicant alleged that the respondent had provided information to another letting agent during this time which was false or misleading and prevented the respondent from securing another tenancy. The applicant alleged that, in doing so, the respondent had reduced the applicant's chances of securing accommodation from this rival letting agent in the future.
4. The applicant formally intimated his complaint to the respondent by email dated, 20<sup>th</sup> November 2020. The respondent responded on the same date. Further email communications in relation to the complaint occurred on 27<sup>th</sup> November 2020.
5. Copies of these communications together with various other communications between the parties throughout the history of the tenancy were produced by the applicant in support of his application. The respondent had also lodged an inventory of productions with their written responses.
6. By decision dated 6<sup>th</sup> January 2021, a legal member with delegated powers of the Chamber President referred the application to the Tribunal for a hearing. A telephone hearing was assigned to take place on 8<sup>th</sup> March 2021 at 10am. At the request of the applicant this hearing was discharged and a fresh hearing assigned for 15<sup>th</sup> March 2021. Reference is made to the terms of the Tribunal's direction dated 10<sup>th</sup> February 2021.
7. The telephone hearing proceeded on Monday 15<sup>th</sup> March 2021 at 10am. In attendance was the applicant and, on behalf of the respondent, Mr Riccardo Giovanacci, managing director.

### **Hearing of 15<sup>th</sup> March 2021**

## **Evidence of the applicant**

8. Paragraph 16 of section 2 of the Code provides:-

*“You must conduct your business in a way that complies with all relevant legislation.”*

9. The applicant alleged that the respondent had failed to comply with paragraph 16 of the Code. The applicant provided the Tribunal with detail of the background to his complaint. It was explained that prior to his taking up the tenancy the applicant had rented another flat through the respondent. The applicant alleged that the respondent had entered the tenancy without his permission to undertake an inspection. The applicant was upset by this event. He had changed the locks of the flat to prevent the respondent ‘trespassing’ again. The applicant had brought an earlier application against the respondent in connection with the incident. The applicant believed that the respondent harboured a grudge against him for bringing the earlier application before a Tribunal. The applicant had taken up a tenancy at this property in May 2019. A number of issues occurred early on which caused the applicant to move on from the tenancy. In or around October 2019 the applicant identified a flat with another letting agent. The applicant was keen to secure the new flat and leave the property with the respondent. The letting agent accepted his application to rent the flat subject to a reference from the respondent. The letting agent contacted the respondent for a reference. The applicant alleged that the respondent told the letting agent that he had changed the locks at his earlier tenancy without the permission of the landlord and had pursued an application against the respondent before a Tribunal. The applicant alleged that this information was misleading as it didn’t provide a full account of why the locks were changed and the application brought. The applicant alleged that as a direct result of this reference, the letting agent rejected his application.
10. Amongst the papers was a series of emails between the applicant and the letting agent. An email dated 21<sup>st</sup> November 2019 (10.20am) from the letting agent to the applicant provided, insofar as is relevant:-

*“You will be aware that we are currently processing your tenant application for the above mentioned property. We were awaiting information from your previous landlord/letting agent and have now been made aware of additional information in that respect...we have been advised that the previous letting agent has reported that while rent was paid on time etc you have changed locks without consent and without providing the Letting Agent or Landlord with spare keys, and are taking them to the court through the First Tier Tribunal for Housing and Property and have refused access and inspection requests so that they cannot comment on the property condition.”*

11. The applicant confirmed that he responded to the letting agent on the same date. An email from the applicant, sent at 11.33am, was within the papers. Insofar as is relevant, it provided,

*“The agent insisted on doing an inspection on a day that I would be on holiday. He then attempted to enter the property in spite of me not allowing it. So I was right to change the locks and take him to the tribunal. I’ve had no such issues in 20 years of renting.”*

12. A further email from the letting agent at 1:38pm on the same date provided the following response,

*“I am sorry but our Landlord has asked us to reject your application. We did advise them of your comments and note the points you raise.”*

13. The Tribunal chair referred the applicant to the wording of paragraph 16. The applicant was asked, with regards to this allegation, to specify which relevant legislation he was alleging that the respondent had failed to comply. The response of the applicant was that he was unable to specify any relevant legislation. Essentially he ‘felt’ that the incident was ‘wrong’.
14. Paragraph 17 of the Code provides that a letting agent,

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

15. The applicant referred to the incident with the reference again as an example of how he said that the respondent had failed to comply with this part of the Code. He alleged that by failing to provide the letting agent with a full explanation as to why the applicant had changed the locks, the respondent was not being honest, open, transparent or fair.
16. Within the applicant’s inventory was a copy of the reference. It was explained that the respondent had been requested to complete a form for the letting agent by a third party, Let Alliance. The procedure involved is that the form is completed and then passed by the third party to the letting agent. A copy is not made available for the applicant not the respondent. The respondent had taken photographs of part of the completed form and attached the photographs to an email to the applicant on 14<sup>th</sup> October 2020 at 11.05am. The photographs showed that the monthly rental charge was £750; that rent had been paid on time and; that there had been no breach of the tenancy agreement by the applicant.
17. The applicant confirmed to the Tribunal that he had changed the locks at the earlier tenancy without seeking the permission of the landlord. The applicant did not suggest that there was anything within the letting agent’s email of 21<sup>st</sup> November at 10:20am which was incorrect. Rather that the letting agent had not been provided with the full background which gave rise to the locks being changed and the application being brought before a Tribunal. He confirmed that he had provided an explanation to the letting agent in his email of 21<sup>st</sup> November 2019 at 11.33am. The applicant accepted that the email from the letting agent of 21<sup>st</sup> November at 1:38pm provided no specification as to why the application was rejected.
18. The respondent provided two further examples of how the respondent had failed to comply with paragraph 17 (i) vermin and (ii) disrepair of ensuite bathroom.

**(i) Vermin at the property**

19. The applicant had reported an issue of vermin at the property in July 2019 but maintained that it was never resolved by the respondent. A series of emails between the applicant and the respondent were before the Tribunal. In an email to the respondent dated 20<sup>th</sup> July 2019, the applicant reported to the respondent sounds of 'squeaking and thrashing' behind the washing machine in the kitchen. The respondent arranged for the local authority's pest control department to investigate the issue. The applicant accepted that the local authority had inspected the property. Behind the washing machine in the kitchen, the inspector had found a 'chewed up' sponge. It was not possible to identify the vermin but poison had been left and eventually consumed by whatever was within the property. The applicant had made an audio recording of the vermin which he provided to the respondent. He advised the respondent in an email dated, 26<sup>th</sup> July 2019 that he could hear, 'a presumably dying mouse or mice' which, 'seems to be able to go from the kitchen to the bathroom.' The applicant could, 'also hear it scurrying through a wall in the living room.' The applicant submitted that the issue was not resolved. In a further email to the respondent dated, 4<sup>th</sup> August 2019, the applicant reported,

*"Screaming mice (or whatever) is just about my limit. This needs to get resolved. I appreciate that things are getting done but poison wasn't sufficient. The holes need to be found and closed."*

The applicant's evidence was that the vermin continued to be an issue throughout the life of the tenancy at the property. Further complaints were made to the respondent. Arrangements were made for a private contractor to treat the issue but without success.

**(ii) Disrepair at ensuite bathroom**

20. The second example was an issue of disrepair in the ensuite bathroom. When he had taken over the tenancy in 2019, the landlord had advised of her intention to replace the boiler. The boiler was located in a cupboard within the ensuite bathroom. A leak had developed in the boiler but the bathroom, heating and hot water systems remained in proper working order at this time.

21. The applicant explained that it was not until July 2020 that the landlord contacted him about replacing the boiler. The landlord advised that contractors had been instructed to commence the works. It was explained to the applicant that the contractors intended to lift the flooring throughout the property as underfloor heating was to be installed. The contractors insisted on the property being vacated whilst the works were on-going. It was anticipated that the works would last around 5 days. A series of text messages were produced by the applicant from July 2020. The messages revealed that the applicant had been reluctant to leave the tenancy whilst the works were on-going.
22. The series of text messages included the landlord explaining to the applicant that he required to vacate the property. Insofar as is relevant, the messages provided:-

*"...its only for 2-3 days, you would only need a few things with you. It isn't a case of a repair, the tanks need to be removed and due to COVID 19, company will not do work with anybody in the property, health and safety reasons."*

The reply from the applicant read, *"The it has to wait. I'm looking for a flat, when I find something that would be the ideal time to do this."*

The landlord replied, *"Please note that the longer the tanks are left in the present state, the more damage there is to the ensuite flooring."*

The applicant replied, *"I've explained the situation. I've been entirely reasonable the entire time I've lived here. It's the agent who has behaved unreasonably throughout, as the FTT judgement suggests and it's him who has caused these problems...Can you ask the builders if I can remain at the property, wearing a mask, in another room, with the door closed?"*

to which the landlord replied, *"The builders are quite clear that they will not undertake the work while the property is occupied. The flooring in every room will be up."*

23. Ultimately the applicant agreed to relocate to a hotel for 5 days to allow the works to proceed. He explained that when he returned the ensuite bathroom had been removed altogether. A new bathroom suite had not been fitted. This remained the position until he left the property in November 2020. Although he continued to be charged rent in full, the bathroom was unusable between July and November 2020. Essentially the bathroom was lying bare. During this time the applicant explained that the sound of the vermin was audible in the ensuite bathroom. He was concerned that the open bathroom was allowing the vermin to move freely within the bathroom and the master bedroom. For these reasons he was unable to use not only the ensuite bathroom but also the master bedroom for the months of July to November 2020.
24. The applicant was asked to specify why he said that this showed that the respondent had failed to comply with paragraph 17 of the Code. The applicant claimed that the respondent knew that the applicant was unable to use the bathroom during this time. By failing to reduce the rent or address the repairs, the respondent had failed to act fairly in its dealings with the applicant.
25. Paragraph 20 of section 2 of the Code provides that a letting agent must,

*“apply your policies and procedures consistently and reasonably.”*

26. By way of explanation as to how the respondent had failed to comply with this paragraph of the Code, the applicant referred again to the repairs to the ensuite bathroom. The applicant was doubtful that the extensive works were necessary. He was told by the landlord that all flooring throughout the property required to be lifted. He insisted this didn't occur. Only the radiators and the boiler were replaced. The applicant did not consider it was reasonable for him to be expected to vacate the property whilst the works went ahead. The Tribunal's ordinary member referred to the text messages from the landlord which indicated that it was the contractors who insisted that he vacate the property. The ordinary member suggested that the planned works brought a risk of injury in a variety of ways. The applicant disputed that there was any risk to his health and safety beyond the possibility of developing coronavirus. He referred to the text message where he had offered to wear a mask



whilst the contractors worked which he insisted would have reduced any risk to his health.

27. The applicant submitted that part of the reason for him wishing to remain in the property during the works was because he was concerned that the respondent's Mr Giovanacci may attempt to 'trespass' again whilst he was absent. The applicant accepted that there was no suggestion that Mr Giovanacci was likely to be involved in the repairs. Moreover he accepted that the text messages regarding the possibility of him vacating the property were from the landlord.
28. The applicant provided a second example of how he said that the respondent had failed to comply with paragraph 20. The applicant submitted that he was without the use of a third of the property between July and November 2020. In recognition of this, the applicant had requested a reduction of £200 per month in his rent. The respondent had initially offered to reduce the rent by £50 per month, eventually increasing the reduction to £150 per month. The applicant did not think it reasonable to pay 100% of the rent (£750 per month) when he had the use of only two thirds of the property.
29. The applicant was unable to point the Tribunal to any specific policies or procedures of the respondent with which he said they had failed to comply.
30. Paragraph 21 of the Code requires that the letting agent,

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

31. By way of example, the applicant referred to the fact that the respondent was aware that the landlord wanted the boiler in the ensuite bathroom to be replaced soon after the applicant entered into the tenancy agreement in May 2019. The respondent was aware that the landlord began works to the bathroom area in July 2020 and failed to complete the works, leaving the applicant without use of one third of the property for five months.
32. It was submitted that on the same date that the applicant provided notice to the respondent that he intended to terminate the tenancy, the respondent insisted that the repairs were to be completed. It was the applicant's evidence that the respondent

had deliberately delayed completing the works; could have taken action to complete the works timeously; but delayed or chose not to because the respondent harboured a grudge against the applicant for his previous application to the Tribunal.

33. Paragraph 23 of the Code provides that a letting agent :-

*“ must ensure all staff and any sub-contracting agents are aware of, and comply with, the Code and your legal requirements on the letting of residential property.”*

34. To illustrate how the respondent had failed to comply with paragraph 23, the applicant shared with the Tribunal what had occurred when he had vacated the property in July 2020 to allow the works to the ensuite bathroom to proceed.

35. The landlord had agreed to meet the cost of temporary accommodation for the applicant. The respondent took responsibility for the arrangements. The offer was made for the applicant to stay at ‘Airbnb’ accommodation close to the property but this was refused as it would have meant that the applicant was sharing a one bedroom flat with the female owner. After some negotiation, the landlord agreed to meet the cost of hotel which was local to the property.

36. The applicant referred to a series of emails between himself and the respondent’s employee, Charlene Adams. The emails formed numbers 20 to 22 of the applicant’s inventory of productions lodged on 25<sup>th</sup> February 2021. The first of those emails was dated 8<sup>th</sup> July 2020, from Charlene Adams. Insofar as is relevant, it provided:-

*“I have found a (sic) Airbnb in Partick and from the pictures it’s on Gardener Street just off Dumbarton Road.”*

A link to the relevant ‘Airbnb’ page was provided within the email.

37. A response from the applicant provided, insofar as is relevant:-

*“That’s a complete dive. What do you expect for £28/day?...That’s the only listing I’ve seen on this site that says “0 beds.” What does that even mean? There’s no bed?...”*

38. The response from Charlene Adams, insofar as is relevant, provided:-

*“Sorry you feel the property is a dive. I did not see any issues with it and also the host has received very good review. Gardener Street is a nice street and never had any issues with this area...”*

39. The applicant replied,

*“ The accommodation that you suggested was a tiny one bedroom flat, where the woman lives in the flat, and would be sleeping on the living room sofa while I’m sleeping in her bed. That’s obviously not suitable....Anyway, I would rather it not be an Air B & B. I think the reason the landlord wanted a Air B & B was so that I have access to a kitchen and whatever. I can go a few days eating out and I would rather have the security of a hotel over having to sleep in some strange woman’s bed....Jury’s Inn. Right across from the (sic) river from the flat, £62/night....Holiday Inn. Also near to the flat. £52/night.”*

40. The applicant explained that there was nothing about this offer which was reasonable. The accommodation was located in the West end of the city, his rented property was located in the city centre; it was entirely inappropriate for him to be expected to sleep in a one bedroom flat whilst the female owner slept on the sofa; The accommodation was £28 per night which was not commensurate with the cost of the rent he was being charged.

41. The applicant refused the offer. He provided three alternative hotels at approximately £50 to £60 per night. The respondent agreed to booking one of these hotels where the applicant stayed for five nights.

42. Paragraph 24 at section 2 of the Code provides that a letting agent,

*“must maintain appropriate records of your dealings with landlords, tenants, and prospective tenants. This is particularly important if you need to demonstrate how you have met the Code’s requirements.”*

43. To demonstrate how the respondent had failed to comply with this section of the Code, the applicant referred to the reference which the respondent had provided to the other letting agent. The applicant insisted that he had never received a copy of

the full reference despite requesting a copy from the respondent. He was advised that the respondent didn't hold a copy. The document within the applicant's inventory was not the complete reference. The applicant submitted that he had never made any request from the letting agent for a copy of the reference. The applicant submitted that, having failed to retain a copy of the reference provided to the letting agents, the respondent had failed to maintain appropriate records of its dealings with a tenant and could not show how it had met the requirements of the Code.

44. Paragraph 25 of the Code provides that a letting agent,

*"must ensure you handle all private information sensitively and in line with legal requirements."*

45. Again the applicant made reference to the reference provided to the letting agent to demonstrate how the respondent had failed to comply with paragraph 25. The applicant submitted that the terms of the reference were negative; that the terms of the reference caused the letting agent to withdraw its offer of alternative accommodation; that the respondent was aware that providing a negative reference would disadvantage the applicant; that the respondent's actions mean that the applicant is unlikely to be able to secure accommodation in the future from this particular letting agent and; that this means that the range of accommodation which is open to him in the future is now restricted.

46. The applicant was unable to show any evidence to suggest that the information shared with the letting agent had been shared with anyone else.

47. Paragraph 28 of the Code provides that,

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

48. The applicant was invited to show how the respondent had failed to comply with this paragraph of the Code. The applicant explained that he had experienced harassment and unreasonable behaviour from Mr Giovanacci.

49. The applicant referred to a series of emails between the parties between 20th and 21st November 2019. The emails were before the Tribunal. The background to the emails

concerned the applicant's intention to leave the property and move to the alternative accommodation which he had hoped to secure through the letting agent. By email of 20<sup>th</sup> November 2019, the applicant advised the respondent that he intended to vacate the property on 21<sup>st</sup> December 2019. The respondent accepted the email as the applicant's notice to leave. The following day, however, having discovered that the offer from the letting agent had been withdrawn, the applicant contacted the respondent again to rescind the notice. His email of 21<sup>st</sup> November 2019 at 1:42pm provided, insofar as is relevant,

*"I have to cancel the notice that I've given to you. Your negative reference caused me not to get the property."*

The respondent replied at 1:45pm,

*"The notice has been accepted and served. It will not be cancelled. With regards to the reference, I answered the questions honestly. This was nothing untrue (sic) that was passed over."*

The applicant responded at 1:47pm in the following terms,

*" I will not be moving out of the property on 21 December. This is a result of your behaviour. You have no losses. I will give you notice again when I find another property."*

50. The applicant submitted that the content of Mr Giovanacci's email was 'abusive, intimidating and threatening'. The applicant could not provide any specification or evidence of how the content of Mr Giovanacci's email was 'abusive, intimidating or threatening.'
51. The applicant provided another example of how the respondent had failed to comply with paragraph 28. He submitted that removing the ensuite bathroom in July 2020 and failing to replace it during the following five months he remained a tenant, was an example of conduct which was 'abusive, intimidating or threatening.'

52. Paragraph 31 of the Code at section 3 (Engaging landlords, Terms of business) provides,

*“If you know that a client is not meeting their legal obligations as a landlord and is refusing or unreasonably delaying complying with the law, you must not act on their behalf. In these circumstances, you must inform the appropriate authorities, such as the local authority, that the landlord is failing to meet their obligations.”*

53. The applicant submitted that the respondent knew that the landlord was refusing or unreasonably delaying to replace or repair the bathroom. By failing to do so, the applicant submitted that the landlord was failing to provide him with a house which was in a reasonable state of repair which he submitted was a failure to comply with the law. The applicant insisted that the letting agent ought to have acted in the way suggested by paragraph 31 and brought to the attention of the local authority that the landlord was failing to meet her obligations.

54. The applicant submitted that the respondent would hide behind the failures of the landlord. For example, offering the applicant cheap AirBnB accommodation was explained by the landlord wishing to keep the cost down; delays in replacing the ensuite bathroom was explained by issues experienced by the landlord and beyond the control of the letting agent.

55. Paragraph 90 of the Code at section 5 (Management and maintenance) provides that,

*“Repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with your written procedures.”*

56. The applicant conceded that he could not point to any of the respondent’s written procedures but he was satisfied that the ensuite bathroom ought to have been repaired or replaced and ought not to have remained in an unusable state for five months. The letting agent having failed to have accelerated the repair or provide the applicant with a reasonable rent rebate was a failure to comply with paragraph 90.

57. Paragraph 91 of the Code provides that the letting agent,

*“must inform the tenant of the action you intend to take on the repair and it’s likely timescale.”*

58. The applicant insisted that the respondent failed to communicate with him in relation to which repairs would take place and when. The applicant submitted that he had to make contact with the respondents for any information.

59. Paragraph 91 of the Code provides that,

*“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.”*

60. The applicant submitted that there was no communication from the respondent in relation to the works to the ensuite bathroom after it was removed in July 2020.

61. Paragraph 100 of the Code at section 6 (Ending the tenancy) provides that a letting agent,

*“must not try to persuade or force the tenant to leave without following the correct legal process.”*

62. The applicant alleged that the letting agent had deliberately failed to accelerate the repairs to the ensuite bathroom or eradicate the vermin in an effort to encourage the applicant to vacate the property. He insisted that this was retaliation on the part of the respondent for a previous application having been made to the Tribunal.

63. Paragraph 108 of the Code at section 7 (Communications and resolving complaints) provides that the letting agent,

*“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.”*

64. To illustrate how the respondent had failed to comply with this section of the Code, the applicant referred the Tribunal to a series of emails between the parties from 23<sup>rd</sup> September 2020 relating to the combined issue of the vermin and the ensuite

bathroom remaining in a state of disrepair. The applicant had sent an email to the respondent at 12:57pm in the following terms,

*“Why do I have to keep chasing this up? There’s a fly infestation in the property, perhaps as a result of all the dead rats in this opened up cavity in the property. When is this going to be fixed and why aren’t you updating me on progress?”*

65. The respondent had replied to the email on the same date at 1:03pm. The email, insofar as is relevant provided,

*“The insurance has given authorisation for the works...just waiting for a start date she has also advised that she will give £100 discount on October’s rent.”*

66. The applicant conceded that the respondent’s reply was within minutes. He confirmed that he was unable to take issue with the timescales of the respondent. Rather his issue was with the content; in this case the failure to deal with repairs and vermin.

67. Paragraph 111 of the Code requires letting agents,

*“must not communicate with landlords or tenants in any way that is abusive, intimidating or threatening.”*

68. The applicant referred to his previous examples to by way of evidence that the respondent had failed to comply with this part of the Code, specifically that the respondent had deliberately provided a negative reference to the letting agent which he alleged had prevented him securing another flat and; the content of Mr Giovanacci’s email of 21<sup>st</sup> November 2019 at 1:45pm (as set out above).

### **Evidence of the respondent**

69. On behalf of the respondent, Mr Giovanacci insisted that the respondent had complied with all parts of the Code.

70. With regards to the reference provided by the respondent to the letting agent, Mr Giovanacci explained that Let Alliance act as a reference checking company on



behalf of the letting agent. He was contacted by Let Alliance. He completed a pro forma form which he submitted. The process doesn't provide the person completing the form with a copy. For that reason, Mr Giovanacci took photographs of part of the form on his phone. These photographs were what was before the Tribunal within the applicant's inventory. Mr Giovanacci submitted that all the information he provided on the form was true and accurate. He verified that the rent was paid on time; that the locks were changed; the level of rent paid by the applicant; that there had been no breach of tenancy by the applicant. Mr Giovanacci confirmed that he did not provide the background to the locks being changed which the applicant felt was necessary. Mr Giovanacci provided only factual answers and to provide this detail may have included his opinions which was not relevant nor appropriate. At the time he completed the reference in October 2020, the Tribunal had not determined the previous application brought by the applicant.

71. In response to the applicant's comments about the ensuite bathroom, Mr Giovanacci submitted that the repairs were handled by the landlord. It was explained that the landlord had encountered a number of delays in getting the work started. She had been forced to self-isolate, required to make a claim through her insurance company, then had dealings with a loss adjustor, the contractor appointed to carry out the works and the property factor at the building before the works could begin. These discussions took a number of months. It was denied that there had been any unnecessary delay on the part of the landlord to complete the works. As there had been little involvement by the respondent in these works, there could be no criticism made of the respondent.
72. Mr Giovanacci denied any failure on the part of the respondent to comply with the terms of paragraph 16 of the Code and insisted that the respondent had conducted its business in a professional manner.
73. In relation to the allegation that the respondent had failed to comply with paragraph 17 of the Code, this, too was denied. Mr Giovanacci submitted that most communications with the applicant were by email. These emails (many of which were before the Tribunal in an inventory of productions from the respondent) 'speak

for themselves' in that they show the respondent to have been 'upfront' and replied to the applicant, timeously.

74. The respondent denied any failure to comply with paragraph 20 of the Code. The respondent insisted that it had applied all policies and procedures consistently and reasonably. Taking the example of the rent rebate offered to the applicant, Mr Giovanacci explained that a rebate of £50 was offered in September 2020 in recognition of the applicant not having use of the ensuite bathroom. This was increased to £150 the following month. The tenancy came to an end in November 2020 at which point the applicant owed £493 in unpaid rent which he never paid. Mr Giovanacci submitted that taking the unpaid rent together with the rent rebate of £200 meant that the applicant saved £693. Mr Giovanacci submitted that this rent rebate showed reasonableness on the part of the respondent.
75. Mr Giovanacci submitted that the respondent had complied with the requirements of paragraph 21 of the Code. The respondent had carried out all their services to the applicant using reasonable care and skill consistently in its dealings with the applicant. Mr Giovanacci admitted that the applicant was without use of the ensuite bathroom from July 2020 until the tenancy ended in November 2020. He admitted that the respondent was aware of this throughout this period. Mr Giovanacci admitted that the respondent was aware of the applicant's complaint of vermin at the tenancy from July 2019. The respondent would have liked the repairs to have been completed more quickly but restrictions caused by the pandemic made this more difficult. Mr Giovanacci accepted that the ensuite bathroom was removed in July 2020. He admitted that restrictions imposed by the pandemic were relaxed enough to allow repairs to go ahead by July 2020.
76. It was denied that there had been any failure on the part of the respondent to comply with paragraph 23 of the Code and that all staff and sub-contracting agents were aware of and complied with the Code and the legal requirements on the letting of residential property. Mr Giovanacci referred to the offer to move the applicant to temporary accommodation whilst works were carried out at the property. He explained that options were limited when the AirBnB accommodation was offered to the applicant. However Mr Giovanacci conceded that there was hotel

accommodation available, that this was offered and accepted by the applicant. Mr Giovanacci considered the offer of the AirBnB accommodation to be reasonable. He explained that the landlord set the price and available accommodation at £28 per night was limited. However the respondent accepted the applicant's refusal of the offer and alternative hotel accommodation was found.

77. Mr Giovanacci submitted that the respondent had complied with paragraph 24 of the Code and maintained appropriate records of its dealings with landlords and tenants. Mr Giovanacci admitted that he had not retained a full copy of the reference form he had submitted to the letting agent. He explained that the form was at the insistence of another letting agent. He did all that was required of him by completing the form. There was no requirement for the respondent to retain a copy. Rather it was for the applicant to approach the letting agent or Let Alliance for a copy. Had it been the case that the reference was provided by email, a copy of that email would have been sent to the applicant but Let Alliance's procedure did not allow for that.
78. The respondent insisted that it had complied with the requirements of paragraph 25 by handling all information in connection with the reference provided to the letting agent sensitively and in line with legal requirements. Mr Giovanacci submitted that the respondent had made the applicant aware that Let Alliance had requested a reference and provided the applicant with photographs of part of the form. The respondent had provided only facts and had offered no additional information or opinion.
79. The respondent submitted that it had complied with paragraph of the Code and had never communicated with the applicant in any way which was abusive, intimidating or threatening. Mr Giovanacci referred to all emails before the Tribunal which showed that all communications from himself and his colleagues to be nothing other than helpful, truthful and timely. The Tribunal put to Mr Giovanacci the comments from the applicant that the respondent harboured a grudge against him for making a previous application to the Tribunal. Mr Giovanacci admitted that he was unhappy with the applicant for submitting an application but insisted that this did not influence the way in which he communicated with the applicant in emails.

80. In relation to paragraph 31 of the Code, the respondent submitted that it had complied with its terms. In respect of the rent rebate and the AirBnB offer, these were outwith the control of the respondent. The landlord takes the lead on these matters. The landlord may ask the respondent its opinion but, ultimately, it is up to the landlord whether it accepts the respondent's advice. Mr Giovanacci submitted that he is not permitted to agree a rebate of rent without the permission of the landlord. The sums of £50, then £150 were made by the respondent on behalf of the landlord. Equally the offer of AirBnB accommodation in a one bedroom flat to be shared with the female owner who would sleep in the living room at a cost of £28 per night was dictated by the landlord. The budget was set by the landlord. The same was said of the repairs to the ensuite bathroom. The landlord was responsible for organising the repairs. The respondent had little, if any part, to play in that. Mr Giovanacci submitted that the landlord paid the insurance company an excess payment on 27<sup>th</sup> September 2020. He submitted that this showed willingness to proceed with the repairs. Mr Giovanacci insisted that the respondent 'did not get involved' with any of the insurers, loss adjustors, property factors or contractors which played a part in the repairs to the ensuite bathroom.
81. Mr Giovanacci insisted that there was no failure on the respondent to comply with the requirements of paragraph 90 of the Code as the landlord took responsibility to address the repairs to the ensuite bathroom.
82. With regard to the requirements of paragraph 91 (to inform the tenant of the action you intend to take on the repair and its likely timescale) the respondent admitted that it had an obligation, as a letting agent. Mr Giovanacci submitted that he had kept the applicant up to date as much as they could, notwithstanding the fact that the respondent was not involved in the repairs to the ensuite bathroom. Mr Giovanacci did not refer the Tribunal to any evidence of how the respondent had communicated with the applicant about how the repairs would proceed and the likely timescale. In any event, the respondent was satisfied that the applicant was in communication with the landlord about the repairs.
83. The respondent denied that it had failed to comply with the terms of paragraph 93 of the Code. Any delays in carrying out the works to the ensuite bathroom would have

been known to the landlord who was in communication with the applicant. In respect of the vermin issue, the respondent acted promptly. When the issue was brought to the attention of the respondent in 2019, action was taken; the local authority's pest control department was brought in to investigate matters. When a second report was received from the applicant, the respondent had instructed a private company to investigate and take action.

84. The respondent denied any failure to comply with paragraph 100 of the Code. Mr Giovanacci denied any suggestion that he had tried to persuade or force the applicant to leave without following the correct legal process. He denied any delay on the part of the respondent to act upon reports from the applicant. The respondent had acted promptly to the reports of vermin. The repairs issue, whilst out-with the control of the respondent, did take longer than Mr Giovanacci would have preferred. However this was due to issues beyond the control of the landlord who was responsible for the repairs and not intended to force the applicant to leave the property.
85. Mr Giovanacci submitted that the respondent had complied with the terms of paragraph 108 by responding to enquiries and complaints quickly. Mr Giovanacci referred to an email exchange between the parties on 23<sup>rd</sup> September 2020. The applicant had contacted the respondent at 12:57pm. A reply was forthcoming from the respondent at 1:03pm. Mr Giovanacci submitted that a response within 6 minutes was more than reasonable.
86. The respondent denied that it had failed to comply with paragraph 111 of the Code and insisted that all email communications before the Tribunal revealed that the respondent had attempted to help the applicant throughout. Mr Giovanacci insisted that the emails show no evidence of the respondent being abusive, intimidating or threatening towards the applicant.
87. Mr Giovanacci issued an apology to the applicant. He submitted that 'anyone should stay in their property without interference.' Mr Giovanacci admitted that there had been disagreements between the parties in the past but the respondent had always wanted to get the repairs completed and the complaint resolved. He advised that the landlord was of the opinion. Mr Giovanacci said that he was 'sorry' to the applicant.

He was also 'sorry' that the applicant had brought two complaints to the Tribunal. However, Mr Giovanacci was satisfied that the respondent was a good letting agent, there was no malice towards the applicant by himself or any of his staff and he recognised that for all its efforts, there are times when the respondent doesn't get things right.

### **Findings in fact**

1. That the applicant was a tenant at the property between May 2019 and November 2020.
2. That the respondent was in communication with the applicant throughout this time in relation to various matters concerning the management of the property.
3. That the applicant made the respondent aware of an issue of vermin at the property in July 2019.
4. That the respondent took responsibility to address the issue.
5. That the respondent arranged for the local authority's pest control department to visit the property to address the issue.
6. That the issue of vermin at the property continued.
7. That the applicant continued to report the issue to the respondent in 2020.
8. That in June 2020 the respondent arranged for a private company to investigate the issue of vermin at the property.
9. That the issue of vermin was on-going at the end of the tenancy in November 2020.
10. That in June 2019 the landlord made the applicant aware that she intended to replace the boiler in the ensuite bathroom.
11. That the respondent was aware of the landlord's intention to replace the boiler.
12. That the landlord made contact with the applicant by text message in July 2020 to make arrangements.
13. That in a text dated 7<sup>th</sup> July 2020 the landlord advised the applicant that the flooring in every room would require to be removed.
14. That the landlord advised the applicant that the builders required the property to be vacant to allow the works to be carried out.
15. That the applicant requested to remain at the property.

16. That the property required to be vacant to avoid any risk to the health and safety of the applicant or others coming onto the property whilst the works were carried out.
17. That the respondent offered the applicant accommodation in a one bedroom property with a lady owner at a cost of £28 per night.
18. That the respondent provides advice to the landlords on what is a reasonable price in any given circumstances.
19. That alternative hotel accommodation was identified by the applicant at a higher price.
20. That the cost of hotel accommodation was accepted by the landlord and arranged by the respondent.
21. That the applicant stayed in hotel accommodation for five nights.
22. That when the applicant returned to the property the boiler had been removed and the ensuite bathroom removed.
23. That the ensuite bathroom was unusable and remained in this state throughout the remainder of the tenancy.
24. That in order to commence the repairs, the landlord made a claim to her insurers, required to liaise with a loss adjustor, property factor and contractor.
25. That lockdown restrictions arising from the global pandemic did not impact on the repairs commencing between July and November 2020 as builders were permitted to work at this time.
26. That the respondent was aware of progress with the repairs.
27. That between July 2019 and July 2020 the applicant was aware of the sound of vermin in the kitchen of the property.
28. That between July and November 2020 the applicant was aware of the sound of vermin in the kitchen, ensuite bathroom and master bedroom of the property.
29. That between July and November 2020 the applicant was without use of the ensuite bathroom and master bedroom of the property.
30. That this amounted to one third of the property.
31. That this was all within the knowledge of the respondent.
32. That the rental charge for the property was £750 per calendar month.

33. That the applicant sought a reduction of the rental charge to reflect the fact that he was unable to use one third of the property.
34. That the letting agent offered a reduction in the rent of £50 for September 2020 and £150 for October 2020.
35. That the applicant intended to move to an alternative property in or around November 2019 and looked to the respondent to provide a reference.
36. That the respondent responded to a reference request from Let Alliance, a reference checking company acting on behalf of the letting agent.
37. That Let Alliance provided the respondent with a form to complete.
38. That the respondent had no opportunity to retain a copy of the form.
39. That the respondent had taken photographs of parts of the form, copies of which were within the applicant's inventory of productions.
40. That the letting agent advised the applicant that the respondent had confirmed that the rent was paid on time, that the applicant had changed locks at without consent and that the applicant had brought an application before the Tribunal.
41. That the applicant provided the letting agent with an explanation for the locks change by email of 21<sup>st</sup> November 2019.
42. That the letting agent refused the applicant's application by email of 21<sup>st</sup> November 2019.
43. That the email of 21<sup>st</sup> November 2019 confirmed that the applicant's explanation was shared with the landlord.

### **Reasons for decision**

44. The applicant alleged that the respondent had failed to conduct its business in a way that complies with all relevant legislation and, in doing so, failed to comply with paragraph 16 of the Code. There was no evidence before the Tribunal of any legislation with which the respondent had failed to comply. The Tribunal finds no failure on the part of the respondent to comply with paragraph 16 of the Code, therefore.
45. The applicant alleged a failure on the part of the respondent to comply with paragraph 17 by failing to be honest, open, transparent and fair in dealings with the



applicant. The examples cited were: (i) the reference to the letting agent; (ii) the failure to replace the ensuite bathroom timeously and (iii) failure to eradicate vermin at the property.

46. In respect of (i) the parties were in agreement over the information which had been provided to Let Alliance by the respondent. The applicant did not dispute that, in the past, he had changed locks without the consent of the landlord. The only issue for the applicant was that no explanation had been provided by the respondent to Let Alliance as to why he had changed the locks. The applicant had provided that explanation directly to the letting agent by email of 21<sup>st</sup> November 2019. The applicant did not dispute the letting agent's position that his explanation had been shared with the prospective landlord. When withdrawing its offer of alternative accommodation by email of 21<sup>st</sup> November 2019, the letting agent did not specify the reason for the application being withdrawn. There is no evidence before the Tribunal that the information provided by the respondent in the reference to Let Alliance was not honest, open, transparent or fair in its dealings with the applicant. Therefore the Tribunal finds no failure on the part of the respondent to comply with paragraph 17 of the Code in respect of example (i) provided by the applicant.
47. In respect of example (ii) the respondent was aware that the landlord intended to replace the ensuite bathroom. The landlord made contact with the applicant about the works in June 2020. The works began in July 2020. The ensuite bathroom remained unusable between July and November 2020. The evidence of Mr Giovanacci was that the respondent was aware the landlord experienced delays with the repairs for a variety of reasons which he narrated to the Tribunal (referred to above). That the respondent was also aware of the various parties with which the landlord required to engage which delayed the repairs (referred to above) and was satisfied that the landlord was engaging with the applicant about the repairs. The applicant's evidence was that he received no communication from the respondent of likely timescales of the repairs. There was no evidence from the respondent to contradict the applicant's evidence. There is no evidence before the Tribunal that the respondent communicated with the applicant about the delays which the landlord was experiencing with the repairs to the ensuite bathroom. On that basis the

Tribunal is not persuaded that the respondent has been open, transparent and fair with the applicant as required by paragraph 17 of the Code.

48. In respect of example (iii) there was no dispute between parties that there was vermin at the property throughout the tenancy nor that the existence of vermin meant that the applicant was without use of the ensuite bathroom or master bedroom between July and November 2020. Parties agreed that the respondent arranged for this to be investigated, twice. The Tribunal found that the respondent acted upon reports from the applicant insofar as arranging for the issue to be investigated. The Tribunal is not persuaded that there was a failure on the part of the respondent to be open, transparent and fair with the applicant as required by paragraph 17 of the Code in respect of (iii).
49. The applicant alleged that the respondent had failed to comply with paragraph 20 of the Code by failing to apply its policies and procedures consistently and reasonably. There was no evidence before the Tribunal of which policies and procedures the respondent had failed to apply, consistently and reasonably. Therefore the Tribunal does not find any failure on the part of the respondent to comply with paragraph 20 of the Code.
50. The applicant alleged that the respondent had failed to comply with paragraph 21 of the Code by failing to carry out the services to the applicant using reasonable care and skill and in a timely way. The example cited by the applicant was the failure to replace the ensuite bathroom timeously. The respondent insisted that the repairs to the bathroom were the responsibility of the landlord and it had no role to play. However the respondent admitted that it knew that the landlord was experiencing delays. There is no evidence before the Tribunal that the respondent made the applicant aware of these delays. The respondent was aware that there was an issue with vermin at the property throughout the tenancy. The respondent knew that the applicant was without the use of the ensuite bathroom and use of the master bedroom between July and November 2020. The respondent did not dispute the evidence of the applicant that this equated to one third of the property. It was accepted that the rental charge was £750 per calendar month. The respondent's evidence was that the respondent would provide advice to a landlord. There is no

evidence that the respondent provided advice to the landlord that the rent should be reduced by one third to reflect the fact that the applicant was unable to use the ensuite and master bedroom. For these reasons, the Tribunal is not satisfied that the respondent has carried out its services to the applicant with reasonable skill and care. Therefore the Tribunal determines that the respondent has failed to comply with paragraph 21 of the Code.

51. The applicant alleged that the respondent had failed to comply with paragraph 23 of the Code. The evidence on which the applicant relied were the email communications with the respondent's officer, Charlene Adams. Those emails provided no evidence to the Tribunal of a failure to comply with paragraph 23 of the Code.
52. The applicant alleged that the respondent had failed to comply with paragraph 24 of the Code. He referred to the reference provided to Let Alliance and the failure on the part of the respondent to retain a copy. The Tribunal accepts the evidence that Let Alliance did not provide a copy of the form to the respondent. In any event, both parties had lodged copy photographs of the form which had been retained by the respondent. Both parties agreed that Let Alliance ingathered the information for the letting agent. The letting agent contacted the applicant by email of 21<sup>st</sup> November 2019. The terms of the email are referred to above and accepted by the applicant. Information which had not been provided by the respondent was provided directly to the letting agent by the applicant on the same date. Whilst there was no opportunity to retain a copy of the form, the Tribunal accept that the respondent made efforts to do so by taking photographs. These photographs have been shared with the applicant. There is no dispute between the parties about the information provided by the respondent to Let Alliance. The Tribunal finds no evidence of a failure to comply with paragraph 24 on the part of the respondent.
53. The applicant alleged that the respondent had failed to comply with paragraph 25 of the Code. The applicant submits that the information provided by the respondent was mis-leading. Even if that were accepted by the Tribunal, and for the reasons already stated, it is not, there is no evidence before the Tribunal that the respondent

failed to handle the applicant's information sensitively and in line with legal requirements.

54. The applicant alleged that the respondent had failed to comply with paragraph 28 of the Code. The applicant provided two examples to support this allegation (i) email communications with Mr Giovanacci on 21<sup>st</sup> November 2019 and (ii) the failure of the respondent to have the ensuite bathroom repaired expeditiously.
55. The Oxford English dictionary definition of 'abusive' is, 'rude and offensive; criticising rudely and unfairly;' the definition of 'intimidate' is, 'to frighten or threaten someone so that they will do what you want;' the definition of 'threatening' is, 'expressing a threat of harm or violence.' Within the emails from Mr Giovanacci of 21<sup>st</sup> November 2019 there is no evidence before the Tribunal of abusive, intimidating or threatening conduct on the part of the respondent.
56. For the reasons hereinbefore referred to, the Tribunal is not satisfied that the respondent acted appropriately or professionally in its role where repairs to the ensuite bathroom were concerned. Further there is no evidence before the Tribunal that the respondent failed to comply with the requirements of paragraph 28 of the Code in relation to the repairs to the ensuite bathroom.
57. The applicant alleged that the respondent had failed to comply with paragraph 31 of the Code. The respondent knew that the landlord was experiencing delays in repairing the ensuite bathroom. The delay was the result of an insurance claim which was out-with the control of the landlord. There is no evidence that the landlord refused or unreasonably delayed to repair the ensuite bathroom. There is no evidence that the landlord failed to meet its legal obligations and that the respondent ought not to have acted on the landlord's behalf. Therefore the Tribunal finds no evidence that the respondent failed to comply with paragraph 31 of the Code.
58. The applicant alleged that the respondent had not complied with paragraph 90 of the Code by failing to deal with repairs promptly and appropriately having regard to their nature and urgency. Eradicating the vermin at the property was an urgent repair. The respondent failed to deal with the vermin. Mr Giovanacci did not dispute the evidence of the applicant that the vermin continued to be an issue by the end of

the tenancy in November 2020. Therefore the Tribunal is satisfied that the respondent has failed to comply with paragraph 90 of the Code.

59. The applicant alleged that the respondent had not complied with paragraph 91 of the Code by failing to inform the applicant of the action it intends to take on a repair and its likely timescale. There was no evidence before the Tribunal that the respondent had provided the applicant with timescales of the repairs to the ensuite bathroom notwithstanding its knowledge of the delays experienced by the landlord. Mr Giovanacci admitted that the respondent was bound by all sections of the Code. The Tribunal is satisfied that the respondent has failed to comply with paragraph 91 of the Code.
60. The applicant alleged that the respondent had not complied with paragraph 93 of the Code by failing to advise the applicant of any delay in carrying out the repairs to the ensuite bathroom. For the reasons hereinbefore referred to, the Tribunal determines that the respondent has failed to comply with the requirements of paragraph 93 of the Code.
61. The applicant alleged that the respondent had not complied with paragraph 100 of the Code. The applicant relied upon the respondent's failure to repair the ensuite bathroom in a timely fashion and failure to eradicate the vermin as evidence of him having been 'persuaded' or 'forced' to leave the property. The Oxford English dictionary definition of 'persuasion' is, 'to make someone do something by giving them reasons for doing it' and the definition of 'to force' is, 'to make someone do something they do not want to do.' The applicant's evidence was that he chose to leave the property; that he identified alternative accommodation in November 2019 and again in November 2020 and; that he brought an end to his tenancy at the property. There is no evidence before the Tribunal that the respondent 'persuaded' or 'forced' the applicant to leave the property.
62. The applicant alleged that the respondent had not complied with paragraph 108 of the Code. However in evidence the applicant conceded that the respondent never failed to reply to emails timeously. Therefore there is no evidence of a failure on the part of the respondent to comply with paragraph 108 of the Code.

63. The applicant alleged that the respondent had not complied with paragraph 111 of the Code. For the reasons hereinbefore provided, there is no evidence before the Tribunal that the respondent communicated with the applicant in any way that was abusive, intimidating or threatening.

### **Decision**

64. For the reasons provided, the Tribunal determines that the letting agent has failed to comply with paragraphs 17, 21, 90, 91 and 93 of the Code.

### **Letting agent enforcement order (“order”)**

65. Section 48 (7) provides that where the Tribunal decides that the letting agent has failed to comply with the Code, the Tribunal must issue an order requiring the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.

66. The applicant was a tenant between May 2019 and November 2020. There is no dispute between the parties that the property was affected by vermin throughout the tenancy. There was no dispute between the parties that the applicant was without use of one third of the property between July and November 2020. It is a matter of agreement that the rental charge was £750 per calendar month. One third of the monthly rental charge of £750 is £250. Taking account of the fact that the applicant was without the use of one third of the property for five months, the Tribunal determines that the monthly rental charge ought to have been deducted by one third for each of these five months. This is a total of £1250.

67. The Tribunal notes that reductions totalling £200 in rent were applied by the respondent for the months of September and October 2020.

68. In recognition of the respondent’s failings and the inconvenience and loss experienced by the applicant during this five month period, the Tribunal orders the respondent to pay to the applicant the sum of **£1050**. The sum reflects the rental charge reduced by one third for the period July to November 2020 and takes into account the reductions applied by the respondent.

69. The respondent must pay the sum to the applicant in full within 28 days of issue of this decision and order.
70. Also, within 28 days of issue of this decision and order, the respondent must provide to the Tribunal evidence of compliance with this order.

### **Appeals**

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

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Legal Chair, at Glasgow on 30<sup>th</sup> April 2021