

Amended 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/21/0670

Parties:

Ms Susanne Neil, 18/7/Falcon Avenue, Edinburgh,EH10 4AJ (“the Applicant”)

**Ben Property, 3 Manor Place, Edinburgh EH3 7DH,Registered Letting Agent
Registration Number 1809028 (“the Respondent”)**

Tribunal Members:

Valerie Bremner (Legal Member) and Nick Allan (Ordinary Member)

Decision

The First Tier Tribunal determined that the Respondent had failed to comply with Paragraphs 25,90,91 and 93 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

The Tribunal determined that the Respondent had not failed to comply with Paragraphs 19,23,24,26,27,38,94 and 108 of the Code of Practice

The Decision of the Tribunal was unanimous.

Background

1.By application to the Tribunal dated 17 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’s complaint was that the Respondent had failed to comply with paragraphs 19, 23, 24, 25, 26, 27, 38, 90, 91, 93, 94 and 108 of the Code. The relevant sections of the various paragraphs are set out below:

2. Paragraph 19 of the Code sets out that letting agents must not provide information that is deliberately or negligently misleading or false.
3. Paragraph 23 of the Code sets out that letting agents must ensure all staff and any subcontracting agents are aware of, and comply with, the Code and legal requirements on the letting of residential property.
4. Paragraph 24 of the Code sets out that letting agents must maintain appropriate records of their dealings with landlords, tenants, and prospective tenants. The Code also states that this is particularly important if the letting agent needs to demonstrate how they have met the Code requirements.
5. Paragraph 25 of the Code sets out that letting agents must ensure that they handle private information sensitively and in line with legal requirements.
6. Paragraph 26 of the Code sets out that letting agents must respond to enquiries and complaints within reasonable timescales and in line with their written agreement.
7. Paragraph 27 of the Code sets out that a letting agent must inform the appropriate person, the landlord or tenant (or both) promptly of any important issues or obligations on the use of the property that the letting agent becomes aware of, such as a repair or breach of the tenancy agreement.
8. Paragraph 38 of the Code sets out that a letting agent's advertising and marketing must be clear, accurate and not knowingly or negligently misleading.
9. Paragraph 90 of the Code sets out that repairs must be dealt with promptly and appropriately having regard to their nature and urgency and in line with the letting agent's written procedures.
10. Paragraph 91 of the Code sets out that a letting agent must inform the tenant of the action they intend to take on the repair and its likely timescale.
11. Paragraph 93 of the Code sets out that if there is any delay in carrying out the repair and maintenance work, the letting agent must inform the landlords, tenants or both as appropriate about this, along with the reason for it as soon as possible.
12. Paragraph 94 of the Code indicates that the letting agent must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided.
13. Paragraph 108 of the Code sets out that the letting agent must respond to enquiries and complaints within reasonable timescales. Overall the aim of the letting agent should be to deal with enquiries and complaints as quickly and fully as possible and keep those making them informed if the letting agent needs more time to respond.
14. The Applicant complained that the Respondent had sent an email to other owners in the building with misleading information as to why repairs were carried out without

prior consultation, that agency contractors were not adhering to minimum notice for access and did not comply with Covid 19 Regulations, that the Respondent did not keep correct records, in particular that two inspection reports contained false information and that a contractor included owners of another property in the building in an email thread to the Letting Agent. It was also raised that the Letting Agent had asked neighbours for contact details of other owners and that the Applicant's email address was shared with a previous tenant without her consent. In addition the Applicant complained that the Respondent did not recognise complaints and appeared not to understand enquiries which then had to be repeated several times. She complained further that the damp kitchen wall and faulty balcony gutters at the property had been a problem from the beginning of the tenancy yet the Respondent appeared not to have contacted the landlord on these matters. As a result the Applicant indicated that the issues had not been raised with other flat owners and repairs were not carried out. She said that this had resulted in her being unable to use the balcony and having to avoid the kitchen for health reasons despite having to pay full rent at the property. She further complained that the balcony at the property should not have been advertised or shown during the viewing as the Respondent she said knew this was unusable. She further complained that the damp to the kitchen wall was an ongoing problem at the time of the application to the Tribunal with no end in sight. In addition there had been no progress in relation to heating in the bathroom, windows were still not insulated with one window not opening during cold or wet periods, two not opening at all, and two windows on the balcony door having large gaps allowing draughts through. She further complained that five months for an initial complaint was not a reasonable timescale and that no progress had been made in terms of complaint resolution since September 2020.

15. The Application was accompanied by a Rightmove advertisement from July 2019, a tenancy agreement, correspondence and meeting notes between the Letting Agent and the tenant, a letting agent inspection letter, two inspection reports dated January and September 2020, photographs, correspondence between the letting agency, contractors and other flat owners, a roofing contractor quote dated September 2020, correspondence with the first-tier Tribunal, a Letting Agent Code of Practice notification letter and information regarding a GDPR issue from May 2021.

16. The Respondent had lodged a covering letter and timeline, an acceptance form, an inventory and check in report, supporting documents in the form of email correspondence, works orders instructed or sent during the tenancy, invoices for these works, landlord Period Statement for tenancy, landlord Period Statement for management of property back to 2011, quotations for works, photos and inventory amendments submitted by the tenant at the beginning of the tenancy, check out information for file, current arrears statement, customer complaints procedure, both current and previous versions, the letting agent privacy policy in relation to GDPR and data protection, tenant update prior to lockdown dated 16 April 2020, a further tenant update as lockdown started dated 23 April 2020 and a cold weather update dated 8 January 2021.

17. Email exchanges between the parties on the issue raised up to July 2021 can be summarised as follows:

- 10 October 2019 the Applicant e mailed the Respondent reporting that the gutters just above the balcony at the property were overgrown and water was flooding the balcony ledge and floor.
- On 17 October 2019 member of staff at the Respondent's office responded indicating that the firm of MK access would be coming to the property and that they would get in touch with the Applicant to organise a time.
- On 24 October 2019 the Applicant reported that without any call or email that people had appeared on the roof and cleaned the gutter. She reported that one of those in attendance asked if there had been any leaks inside the house. The Applicant reported that she had advised those who attended that there was a stain on the kitchen wall and the contractor asked if he could look at this and she permitted access to check this
- On 24th October a member of staff at the Respondent's office asked her to watch the water mark and she agreed to do that.
- on 4 November 2019 the Applicant reported that after the cleaning of the gutters when it rained water does not go down the drainpipe but goes straight onto the balcony which had not happened before.
- on 5 November 2019 a member of staff at the Respondent's office indicated that this was a communal repair and as such was "out of their hands" but they would advise the landlord so he could take it forward.
- on 23 January 2020 a member of staff at the Respondent's office emailed the Applicant to advise that there would be an inspection of the property on a particular date in January 2020 and this was acknowledged by the Applicant.
- On 9th February 2020 the Applicant emailed the Respondent's office to advise that a new water stain had appeared in the kitchen wall and attached a photograph of the mark to her email. On 12th February a member of staff at the Respondent's office acknowledged the email and said this would be passed over to another member of staff in the office who would contact the firm which had originally attended to deal with the guttering. The Applicant responded to this on the same date confirming the watermark in the kitchen was not connected to the balcony issue as the kitchen was on the opposite side of the property. A member of staff at the Respondent's office emailed on 12 February 2020 confirming that MK access would come and have a look at the issues and would be in touch to arrange access. The Applicant replied by email on the same date confirming that the new mark was very small in comparison to the mark already present when she moved in.
- On 13 February 2020 the Applicant emailed the Respondent indicating that MK access had attended the property and were due to send a report. On 21 February 2020 the Applicant reported to the Respondent's office that after another week of rain the old water marks on the wall in the kitchen were now a bit darker and there were further marks on ceiling.
- On 7 April 2020 the Applicant emailed again reiterating that when she taken occupation of the property in August 2019 there was a water stain on the kitchen wall and that she had sent regular updates and photographs in relation to the stain. She confirmed that contractors attended twice once in the autumn of 2019 once the beginning of 2020 and the contractors had advised on both of these occasions that this was a bigger problem caused by water coming through the roof which would get worse if not repaired. She also indicated that

the tradesperson who had attended in January 2020 to inspect the flat had seen the stains and said that the dark marks looked like mould. In this email the Applicant expressed that she had assumed that these matters would be dealt with and asked for confirmation of what the letting agent and landlord had done at that stage and when the water and mould issues would be resolved. She expressed concern that she could not use part of the kitchen because the paint was peeling off and mould presented a health hazard.

- On 8 April 2020 a member of staff at the Respondent's office confirmed that the gutters had been cleaned and they had believed that the problem had been solved. In that email it was said that on inspection of the flat the damp patch was flagged and MK access had been sent to assess the issue and that they had informed that the gutters had been cleaned. At this stage it was indicated that the staff member would contact MK access to gain to see if they could provide an insight as to why these issues were persisting and what could be done about them. In this email the staff member expressed regret that this had not been sorted out in a timely manner.
- On the same day 8 April 2020 Applicant responded highlighting the issue in the kitchen had nothing whatever to do with the cleaning of the gutters.
- On 12 September 2020 the Applicant e mailed various email addresses at the Respondent's office addressing concerns regarding damp and black mould and attaching correspondence from the beginning of April 2020. In this email the Applicant asked for information and set out the details of issues with the property with effect from 12 August 2019. In this email the Applicant set out issues for which she said she had paid for repairs herself. She reported a number of issues with windows at the property and noted a draught was coming through the large gaps in the bathroom window and reported continuous condensation when the temperatures drop. In addition she mentioned the lack of heating in the bathroom and issues which she had dealt with her at her own expense. She listed a number of issues in the bathroom. She referred to a number of issues in the kitchen. As far as the living room windows and balcony door were concerned she indicated that the living room windows would not open, top windows were not double glazed, the balcony doors not insulated and the large gaps between the door and doorframe caused draughts and condensation when temperatures dropped. She further explained that she required to replace the aerial as water was coming through the cable which damaged her television. She explained that the balcony was unusable due to faulty guttering resulting in rainwater coming onto the balcony "like waterfalls" damaging her plants and garden furniture. She explained that standing water on the balcony was a frequent occurrence. She referred to the fact that this had been reported repeatedly and was mentioned during the inspection in January 2020. She indicated that the member of staff who carried out the inspection had informed her that "it has always been like this". She referred to a broken plastic garden chair in the balcony which had sharp plastic edges which she had removed. In relation to the front bedroom she referred to issues with the windows and condensation. The furniture in the front bedroom was also referred to in the email and the Applicant indicated that the bed frame was broken and posed a risk to health and safety. She referred to the fact that photographs of the damaged bed frame were given to the member of staff during the inspection. The Applicant explained that she had the damaged bed

frame removed and bought a new bed and had incurred costs for the removal of the bed frame from her previous property and would remove the replacement at the end of the tenancy. The Applicant highlighted that there had been a reference to a small utility room in the advert for the property but that she could not find this within the property. She set out costs that she said she should not have incurred, costs before moving in and costs that she had required to pay since she had moved in. This email appeared to attract an automatic response from the accounts department at the Respondent's office on Saturday, 12 September 2020 but on 14 September 2020 the operations manager within the Respondent's office, Lena Cowie responded to the Applicant and indicated that she would be looking into the matter urgently. Within this email she apologised for the delays and indicated she would be "looking into why this has happened".

- Further email exchanges between Lena Cowie and the Applicant related to the issue of member of staff at the Respondent's office attending the property on 15 September 2020 to carry out an inspection.
- By e mail of 15th September 2020 the Applicant emailed the Respondent answering points that had been raised by Lena Cowie in an email dated 14 September 2020. The Applicant explained that she had reported issues regularly and had already sent photographs regarding pictures of damp in the kitchen. This email attracted a response from the Respondent indicating that the landlord had been advised in February 2020 of issues regarding the guttering and the landlord had advised that he was going to try to obtain contact details for other owners. In this email it was accepted that a member of staff at the Respondent's office had not followed up the failure of a contractor to send a quote. In relation to the updates the Respondent accepted in an email of 15th September that a member of staff had 'dropped the ball'. In this email Miss Cowie said that roofers had been asked to look into the guttering issues again for repairs so that the balcony could be fixed up and made usable. This e mail referred to a document sent by the Applicant at the beginning of the tenancy highlighting defects in the property and indicated that there was agreement from the Respondents that there were areas that required attention
- on 15 September Lena Cowie emailed the Applicant to advise that a quote had been received to address roof issues and the roofer had been instructed to proceed asap. This email also confirmed that the contractor had been asked to look into repairs to the guttering and fixing up the balcony while they were there as well as arranging for a plumber to attend the property.
- On 15 September 2020 the Applicant emailed the Respondent to indicate that neighbours had seen a contractor on the landing who had asked whether he could check the roof. These neighbours had asked the contractor to send them a quote for their part of the roof. They received a quote but also received an email trail with details concerning another flat.
- By email dated 16 September 2020 the Applicant required the Respondent to send her certain information including the name of the member of staff who had carried out the inspection in January 2020. The Applicant's position was that this person had advised that a black mark on the damp wall was black mould but this was not mentioned in the report and photographs of the wall had not been included. The Applicant referred to the fact that none of the issues raised

in the report of 12 August 2019 were included in the inspection report from January 2020.

- By email of 16 September 2020 the Respondent provided details of the member of staff who conducted the inspection of the property in January 2020. It was confirmed that the same person would be attending in September 2020. In this email the Respondent offered to speak to the Applicant to attempt to resolve matters.
- By further email on Wednesday, 16 September 2020 Lena Cowie at the Respondent's office advised the Applicant that roofers would be attending the property the following week and that they had tried to get this repair expedited as the weather was due to be good over the few days after the email.
- The Applicant made notes of an inspection of the property which took place on 17 September 2020. She noted in her notes that when she received the report that photographs which were taken were in part of her own equipment and furniture. No photographs were taken of the faulty balcony door or other issues raised. Most comments under photographs stated that items were in good condition even if photographs show otherwise. Again she flagged that the report was not signed or dated and the name of the inspector was not mentioned in the report.
- By email of 17 September 2020 the applicant advised that roofers had arrived and were working on the roof above the kitchen and had checked the damp and mould stains on the kitchen wall and ceiling. In this email the Applicant clarified that there were two issues - one relating to the balcony at the front of the house and other relating to the kitchen at the back. The issue with the balcony gutters was a separate issue from the mould in the kitchen. The Applicant's position in this email was that the mould issue posed a health risk and was therefore urgent. The Applicant noted also in this email that some of the other owners in the building had not been informed of the problem with the roof but repairs had started. The Applicant indicated that she assumed the landlord would be covering the costs for the kitchen roof as it appeared other owners had not had an opportunity to agree on an estimate and a contractor for the work. On 17 September 2020 a member of staff at the Respondent's office confirmed that the balcony guttering, steel doors and balcony itself were known to require attention. In this email Lena Cowie also confirmed that the landlord would be covering the cost of any roof works in the meantime and was going to make contact with other owners. It was suggested that given the nature of the complaint made by the Applicant the Respondent had felt it was appropriate not to wait any longer
- Further emails followed on 17th September regarding delays and the length of time the issue had been known about by the Respondent. Further on 18th September Lena Cowie from the Respondent emailed the Applicant advising that the landlord had confirmed he was happy for the Respondent to arrange for various areas requiring attention to be investigated and addressed. On the same day in a separate email confirmed that certain work had been completed and that after the area dried out it was to be treated and redecorated
- The Applicant complained that she not been given a copy of an inspection report dated 17 September 2020 and that other flat owners had been asked for payment for repair work that they had not been consulted about. By email of 22 September 2020 the inspection report was sent to the Applicant. In the email it

was confirmed that the same member of staff, a part-time employee had carried out the inspection at the property in January and September 2020. On 23 September 2020 the Respondent emailed the Applicant advising of a number of contractors who had been instructed to carry out repairs or redecoration of the property and these included a handyman, painter and decorator, a glazier and joiner and roofers.

- On 23 September 2020 the managing director of the Respondent Jamie Kerr engaged in a telephone discussion with the Applicant. The Applicant provided notes of this call and from the notes there appeared to be no agreement between the parties as to what had occurred and whose fault it was.
- By email of 2 October 2020 Lena Cowie advised the Applicant that quotes for redecoration of the kitchen and bathroom had been obtained, and were with the landlord for consideration
- On 5th October 2020 the Applicant wrote to the Respondent asking if they would remind the contractors of Covid 19 guidelines i.e. wearing masks and giving 24 hours' notice of arrival. In this email the Applicant also indicated that she looked forward to the black mould in the kitchen being removed.
- By email 9 October 2020 the Applicant advised the Respondent that black mould was still present and that the kitchen wall was to be tested the following week to see it was dry enough to be treated. She highlighted certain issues which she still regarded as being unresolved in particular the lack of balcony door insulation, lack of insulation of the sash windows and the lack of adequate heating in the bathroom
- By email of 9th October 2020 the Applicant emailed the Respondent confirming that she was withholding rental payments because she was in her words being forced to live in conditions that made her ill. She mentioned again the issue of black mould which had not been dealt with.
- By email of 9 October 2020 Mr Kerr the managing director at the Respondent emailed the Applicant and confirmed that the area in the kitchen was not mouldy but was simply stained from previous water ingress. In this email Mr Kerr admitted that the question of the quote from the roof should have been chased up but was missed which was said to be a mistake. It was suggested to her that it was strange that she had not followed this up sooner than September. In this email a gesture of goodwill was made to offer to pay £605 in relation to certain items which the Applicant was said to have required to pay.
- By email of 13 October 2020 Applicant emailed Mr Kerr the managing director to advise that the contractors had arrived at the property the previous day, had worked on the wall and would be returning to finish the kitchen.
- On 19 October 2021 Mr Kerr emailed the Applicant regarding her payment of rent and asked to confirm what she actually wanted. On 30 October 2020 the Applicant was advised that glaziers had been instructed to proceed with window repairs and would be in touch to arrange access.
- By email of 2nd November 2020 sent to the Applicant the Respondent sent a report from the tradesperson who had visited in relation to the windows. This suggested that the bathroom window was operating as it ought to operate and the rear bedroom window top sashes had been painted shut so would not open. As far as the kitchen window was concerned the sash on the left-hand side required to be re-puttied and re-roped.

- On 8 December 2020 the Applicant emailed the Respondent to confirm that water stains had reappeared in the kitchen wall. She also enclosed photographs and attached a photo of the balcony gutter. The same day the Respondent emailed back to the Applicant indicating that the roofers would be asked to be attend as soon as possible and inspect/clear the balcony gutter at the same time
- on 23 December 2020 Lena Cowie emailed the Applicant to say that she had chased the roofers for an update and in this email further information was requested regarding any further water ingress.
- On 23rd December 2020 the Applicant emailed again indicating that the stains on the kitchen appeared every time it rained.
- On 26 January 2021 Lena Cowie contacted the applicant to confirm that they had instructed a second roofer to assess the roof in order to approach other owners with comparable options. An update regarding the damp patch of the kitchen was requested
- on 27 January 2021 the Applicant responded indicating that the water marks on the kitchen wall were now well established with yellowish staining. In this email the Applicant reiterated that she had first reported the issue regarding the gutters of 10 October 2019. Additional problems had emerged with the gutters on 4 November 2019 and the following day she had been advised that by the Respondent that the gutter issues were a communal repair.
- By a further email on 27 January 2021 the Applicant sought to have confirmation of when the letting agent first informed the landlord and other owners of the issues the gutters above the balcony at the front of the house. She was advised that the landlord had been informed on 17 September 2020 when the inspection report had been sent along with all the other issues reported. By separate email also dated 27th January 2021 Lena Cowie confirmed to the Applicant that “Jamie”(Mr Kerr the managing director) had informed the landlord by telephone of the issues prior to September 2020 and that the landlord had been informed when another staff member “Sam” had initially been dealing with the gutter problems.
- On 23 March 2021 the Applicant e mailed the Respondent to advise that someone had attended at the property asking to see the damp patch on the ceiling. She was concerned that she had not been advised that anyone was scheduled to attend the property. The Respondent replied to this email indicating that the tradesperson had been asked to contact the Applicant prior to attending.
- on 24 March 2021 the Respondent advised the Applicant that a different roofing contractor had been asked to attend the property to quote. An explanation was given for the contractor who had attended without giving notice. It was suggested that this had been a mistake and that the contractors had understood the letting agent would advise the tenant regarding their visit. On 3rd May 2021 the applicant emailed the Respondents regarding the roofers visit. An appointment had been made for a roofer to attend on 26 March 2021 but the roofer did not attend and did not call to cancel the appointment. The Applicant indicated that the roofer had not been in touch again until 29 April 2021 and had indicated at that time that he had not attended due to Covid 19. An arrangement was made for the contractor to attend on 30 April 2021. The roofer did not attend on that date but then attended on 3rd May without giving notice

to the Applicant. She was concerned that she had rearranged work commitments and appointments on 26 March and 30th April to accommodate roofing appointments which had not taken place

- on 11 May 2021 the Respondent advised the Applicant that there would be an inspection of the property and asked that if maintenance was required that this could be noted on a list that would be provided at the inspection. On 14 May 2021 the Applicant emailed the Respondent to advise that following the visit of the landlord and the letting agent on 13 May 2021 a number of issues still required to be resolved. These related to the front bedroom window, the back bedroom windows, the bathroom window, the kitchen window windows and the balcony door. It was also suggested that a problem remained in the bathroom as regards the heating. The leaking gutters above the balcony were mentioned again and the Applicant indicated that the torrential and continuous waterfalls coming from two parts of the gutters had ruined her plants, flowers, garden furniture and fake grass. She also complained about the noise from the water splashing onto the floor and railing prevented her from sleeping and affected her work. She also indicated in the email that she rented a flat with a balcony to have outside space for her cat and that this would have been helpful for her to have through lockdown but the balcony was unusable. She mentioned the problem regarding the leaking roof above the kitchen. She reiterated that the failure to address issues had resulted in health issues for her.
- on 14 May 2021 Lena Cowie at the Respondent's office emailed the Applicant indicating that a number of contractors had been asked to visit the property to quote for window and door replacement and heating installation in the bathroom. In a further email dated 17th May the Applicant was advised that the landlord intended to visit the property with the glazier on 20 May and asking for confirmation as to whether this was convenient
- A date for the landlord to attend with the glazier was fixed for 25th of May 2021. On 3 June 2021 the Respondent provided the Applicant with an update in relation to matters relating to the roof of the windows and balcony door. As far as the roof and balcony guttering were concerned the Respondent indicated that they had three quotes to address water coming into the kitchen. It was further confirmed that the contractors had provided two quotes for window upgrades which had been sent to the landlord for his consideration. A plumber was to attend the property on 10 June to quote for replacing the bathroom sink and installing a heated towel rail in the bathroom by email of 7 June 2021 Lena Cowie confirmed that her understanding was balcony issue was separate to the roof repairs and would not be classed as a communal repair. She indicated that one of the roofing contractors MK Access had indicated that the guttering over the balcony was part of the roof and therefore would be a communal repair. She confirmed in this email that owners of properties had seen all the quotations and recommended works and that they were waiting to hear from the various property owners.
- Further emails were exchanged in relation to the balcony and guttering and it was confirmed by on 7 June 2021 balcony issues had not been mentioned to other owners because the Respondent's understanding was that the balcony was a separate matter which was not a communal repair. Only one roofer had included balcony and gutter repairs in an estimate and he had clarified to the Respondent that these were communal. The Applicant responded by email of

7th June confirming that none of the roofing contractors had said they had been asked to assess the balcony and gutters. the Respondent sent emails to the Applicant with job instruction sheets indicating that the tradesmen had been asked to look at the balcony and gutters. By email dated 16 June 2021 the Applicant was advised that the landlord had approved a quote for a basin to be replaced on the bathroom and a heated towel rail to be installed.

- on 7 July 2021 Lena Cowie at the Respondent's office asked the Applicant to confirm if there had been further water ingress in relation to the kitchen wall/ceiling.
- On 12 July 2021 the Applicant emailed Mr Kerr the managing director and confirmed that the balcony flooded regularly when it rained and that she frequently had to carry buckets of water from the balcony to the bathroom for disposal of excess water in order to prevent the water from coming into the living room through the gap between the balcony door and the door frame. She further confirmed that the noise of the torrential waterfalls coming from the faulty gutter and drainpipe prevented her from sleeping and working. She confirmed that water was coming off the drainpipe and onto the balcony even when it wasn't raining sometimes after the rain had stopped. She further confirmed that her plants pots and some furniture had been ruined repeatedly. As well as the kitchen was concerned she said the damp kitchen wall was worsening. In relation to the windows and the balcony door she confirmed the continuing difficulties with the opening of certain windows, the opening and closing of the balcony door when it had rained and the draught from the gaps in the balcony door and the bathroom window. In this email she set out deductions which she intended to make from payment of rent in relation to what she described as adverse living conditions
- By email of 12th July Mr Kerr of the Respondent responded to the issues raised by the Applicant and indicated that the roof and guttering repairs required agreement from all neighbours and some neighbours would wish to obtain their own quotes and that the Respondents had chased this up on 7th July 2021.

18. Both parties had lodged with the tribunal written representations. For the Applicant she submitted that her concerns had first been raised when she took possession of the property as the flat had not been cleaned and was in a state of disrepair. Given that she wanted to avoid additional costs by moving again she arranged to have what she regarded as the most urgent issues repaired for herself. She referred to the property being unsafe which made her ill. She complained regarding the lack of heating in the bathroom, lack of insulation, lack of ventilation in one of the bedrooms and continuous draught through an ill-fitting window in the bathroom. She referred to the flat being damp with mould problems in the kitchen. She referred to the fact that there ought to be six habitable areas in the flat, two bedrooms, a living room, balcony kitchen and bathroom but only one of these was useable being the living room. She referred to having to put in place bubble wrap in front of the balcony door and to the bathroom window. She referred to the living conditions and stress of dealing with the agency and how this had affected her health. She referred to sleepless nights and suffering from chilblains during the winter months due to a continuous draught coming through the balcony door. She indicated that the living room was the only habitable room in winter and therefore she required to use it for work. Her position was that the Respondent would send tradespeople to look at issues but that nothing was ever

repaired, that tradespersons who attended did not comply with Covid 19 rules and that tradespersons instructed to attend did not give the required notice periods. She further complained that the Respondents had sent the same tradespeople who had failed to fix the issue initially. She said that as the issues had been unresolved and the kitchen wall continued to be damp with black marks coming over the painted wall. She referred to the fact that the Respondent claimed it could not act because the roof and gutters were communal issues and yet pointed to the fact that on another occasion it engaged tradespersons to fix the roof without consulting owners and then sent them instructions for payment.

19. She complained that she felt the Respondents and those who attended on their behalf treated her like an imbecile having been advised that a wet patch on the wall might dry out if the wind blew in in the right direction, that roof repairs were trial and error and she was told that new watermarks could be old marks. In her email representations she referred to the difficulties with the windows at the property including the balcony door, and windows in a bedroom, bathroom, kitchen and living room. She reiterated her complaint regarding a lack of heating in the bathroom, the fact that she could not use the balcony. She referred to the water leaking through the ceiling and running down the kitchen wall and the fact that this was not properly repaired and the water kept coming through the roof. Her position was a damp wall resulted in mould. She said that the kitchen wall and balcony issue required the landlord to consult other owners and that this was done in a way that was unacceptable. When it came to the kitchen she complained that she was portrayed to other occupiers in the building as a bad tenant and said that no contact had been made with neighbours regarding the balcony guttering.

20. On behalf of the Respondents they had submitted representations regarding their position in all matters together with copies of email correspondence between themselves and the Applicant, emails to other owners within the building and email exchanges with the landlord. In their written representations the Respondent recognised that there had been failings and that mistakes had been made for which they apologised. Their position regarding the condition of the property when it was rented by the Applicant was that it was taken as seen and that she had the opportunity to view it properly. In relation to the stain on the kitchen wall they appeared to accept that this had not been adequately addressed by a junior member of staff who had apologised and the landlord had been contacted with the roofer's report highlighting the urgency of the situation. It appeared that the roofer was asked to quote but this was not followed up when the roofer failed to submit a quote. In the representations the Respondent accepted that as Letting Agent they should have taken steps to follow up with the landlord, chase the roofer and ensure that the Applicant was kept informed of progress throughout. They pointed out that when the situation was unfolding the national lockdown was in place and staff were working from home. They indicated that they would have resolved the matter sooner had the Applicant contacted them again more promptly when she escalated the matter to a more senior member of staff. Mr Kerr pointed to the fact that she had not contacted them for five months after April 2020. The position was that they sprang into action in September 2020 given the serious nature of her complaint. This he said had caused them to take action, to apologise and acknowledge the mistakes had been made before taking steps to rectify the situation.

21. In their representations the Respondent indicated they recognised that there were issues that needed addressed. They had gone ahead and instructed roof repairs with consent of the landlord given the nature of the Applicant's complaint and the reference to her ill health which meant that they felt they should not delay. With hindsight they realised that this should have waited until they had gone through the correct procedure of informing owners and obtaining further quotes.

22. Mr Kerr pointed to the fact that when roof repairs were completed internal remedial paperwork was instructed in the hope that the issue was resolved. They had responded immediately when it was reported again in December 2020 that the water stain had reappeared. On this occasion given that the repair was communal a number of estimates from different roofers were obtained. The Respondent accepted that these estimates took longer to obtain than they would have hoped and the costs for the roof repair were sent to owners on 10 May 2021. The position was that at the time they submitted a written representations in August 2021 they were still waiting to hear from owners but the Applicant had been kept informed.

23. With reference to the balcony and guttering they indicated that their priority had been the roof and penetrating damp to the kitchen wall but they had asked every roofer to investigate the balcony remedial works. The quotes which had been obtained for the roof repairs to be carried out included repairs to the guttering and it was for this that the approval of property owners was awaited. Their position was that the problems regarding the window and balcony door were reported in September 2020 over a year after the Applicant moved into the property. Their position in written representations was that the landlord had confirmed that he would completely overhaul the windows and upgrade the windows to double glazing once the roof work had been completed.

24. In relation to suggestions from the Applicant that GDPR had been breached the Respondent accepted responsibility for supplying her email address to a previous tenant and indicated that they had apologised for this mistake. The previous tenant concerned had been asked to delete the email and the member of staff who had copied her email address had since been trained in the relevant GDPR rules and procedures.

25. The Hearing

The initial hearing set down for 27th of August 2021 could not proceed and a new Hearing date was fixed for 29th of October. The tribunal issued two directions to parties requiring them to take certain steps in advance of the Hearing. In particular the Applicant and Respondent were asked to provide a document setting out each alleged breach of the code of practice, the material which the party relied on in support of their position and the relevant productions. Further the Applicant was requested to submit details of any compensation she was seeking and the Respondent was asked to submit the complaints procedure used by them. At the Hearing on 29 October the Applicant attended to represent herself and the Respondent was represented by the managing director Mr Jamie Kerr. Mr Kerr attended along with the landlord of the property Mr Charles Hunter. It was explained that Mr Hunter was not a party to the application and that as he was intending to give evidence on behalf of the Respondent he would not normally be permitted to be present throughout the Hearing. Mr Kerr indicated that the landlord Mr Hunter had been named the application and they had prepared on that basis and since matters involved Mr Hunter they wished him to be present during the hearing. The Applicant had no objection to Mr Hunter being present and said that she would be guided by the tribunal in this matter. The tribunal adjourned

to consider this request and noted that the parties had effectively set out their entire positions on the alleged code breaches in advance, there appeared to be little in dispute between them as to the facts and it was also correct that Mr Hunter had been named on the original application. The Tribunal allowed Mr Hunter to remain within the Hearing but indicated that as he was to give evidence in due course the Tribunal would take account of the fact that he had heard the other evidence when considering his evidence.

26. At the start of the Hearing Mr Kerr confirmed on behalf of the Respondent that the letting agent notification letter had been received by the Respondent and they had had time to consider its terms.

27. The Tribunal Chair asked the Respondent's representative Mr Kerr if any breaches of the code paragraphs as set out by the Applicant were accepted. Mr Kerr indicated that Ben Property accepted that when the Applicant had emailed them advising that what appeared to be a blue NHS vaccination letter had arrived for a previous tenant an assistant within the letting agents had passed on the Applicant's personal email address to the former tenant. It was accepted that permission should have been received in order to do this. Mr Kerr advised the tribunal that when the breach had been pointed out by the Applicant the former tenant had agreed to destroy the email address and the staff member concerned had been sent on a training course in order that there was compliance with the letting agent code in this regard. A second incident was referred to in which a communal email thread had been passed to a shared group in relation to communal repairs issues. Mr Kerr's position was that he did not regard this as a breach of GDPR in relation to personal data because the group had already been set up. No other breaches of the code were accepted on behalf of the Respondent.

28. The Applicant gave her evidence with reference to a document she had produced setting out the paragraph of the code of practice which she said had been breached and referring to the evidence which she said she had presented in relation to the alleged breach along with the relevant productions. She sought to adopt all of her written representations and productions in this regard. She started by referring to paragraph 19 of the letting agent code of practice and indicated that repairs were done without her knowledge. She referred to owners in the building being advised that the repairs to the roof were urgent and indicated that this was incorrect information which was been given. In relation to paragraph 24 of the code the Applicant complained that the Respondent did not keep correct records in that both inspection reports which she had seen contained false information. In relation to paragraph 25 of the code of practice she indicated that her view was that Respondents did not comply with legal requirements and had asked other owners for details of property owners within the building. She referred to an email dated 15 September 2020 timed at 1504 p.m. when Lena Cowie at the Respondent's office emailed other owners in this regard. She referred to paragraph 23 of the code of practice and indicated that most of the contractors sent to the property by the Respondent were not adhering to minimum notice requirements and Covid19 regulations. Her position was that instead of giving notice many of these contractors simply turned up at the property. In addition the Applicant's position was that some contractors had to be asked regarding the wearing of masks and some of them did not have masks. When she complained about this she was told she could refuse access to any tradespersons without masks. The Applicant said this was not one of the Respondent's frequently used contractors who

had done this. In relation to paragraph 26 of the code the Applicant complained that complaints were not recognised, enquiries were not understood and had to be repeated and this meant that matters were not resolved within reasonable timescales. The Applicant felt that the complaint regarding the roof and the balcony guttering was not resolved within a reasonable timescale. She said that she wrote a lengthy email with several issues which were outstanding and she did not regard it reasonable that some of these matters are still outstanding in October 2021

29. In the course of the hearing the Applicant indicated that she felt she had picked the wrong paragraph of the code in relation to paragraph 27 and was not insisting on this in terms of her application. The tribunal did not consider paragraph 27 further.

30. In relation to paragraph 38 of the code the Applicant complained that advertising and marketing was not accurate and was misleading. She indicated that the balcony should not have been advertised or shown during the viewing of the property, as the Respondent knew was unuseable. She also referred to the description of a utility room in the advertisement which she had answered in relation to the property and indicated that she was yet to find that room in the property.

31. In terms of paragraphs 90, 91, 93 and 94 the Applicant complained that the problems she reported regarding the damp kitchen wall as well as the balcony gutter and downpipe issues were still ongoing with no end in sight. She referred to the fact that the windows were not insulated some not opening properly or opening at all, to windows on the balcony door having large gaps allowing draughts through. The Applicant indicated that in relation to paragraph 94 in particular the leak in the kitchen wall had apparently been repaired but water kept coming in. She said the water was running down the walls. The contractor should have been asked to remedy this. She referred again to the balcony guttering and the lack of insulation and the windows some of which did not even open and some of which were over painted

32. In terms of paragraph 108 of the code the Applicant complained that enquiries and complaints had not been responded to within reasonable timescales. She pointed to her initial complaint and said that this was not a reasonable timescale and that no progress had been made in terms of complaint resolution since September 2020. The Applicant indicated that the Respondent was always concerned that they had addressed issues just because someone had attended. She said this did not solve the problem just by responding to an email and sending someone round. She said that she was primarily referring to the balcony and the balcony doors. She indicated she had to work in the living room, it should be a warm room and that she could not work in any other room as she could be overheard. She said that she had to type with gloves on and suffered from chilblains. She had had to put up curtains to keep the draught out and wear additional clothes. She referred to the water from the broken gutters making an incredible noise. She said it was impossible to sleep or to have normal phone calls due to the noise. She had required to replace items stored on the balcony due to the constant water. She indicated that she required to take medication some of which was for sleeping problems. She said the noise from the downpipe caused damp issues. She had problems with her sinuses. She said the damp issues made these worse. She required to take cough medication and had a prescription for frequent nasal infections. She referred to having to put bubble wrap on the door and in the bathroom because of the draughts.

33. The Applicant was not cross-examined by Mr Kerr on behalf the Respondent. He set out the Respondent's position with reference to a document which had been

submitted by the Applicant with the alleged code breaches and made reference to the material sent to support the alleged breaches. The Respondent had set out their position on this document in relation to each alleged breach of the code.

34. In relation to paragraph 19 of the code Mr Kerr referred to an emergency roof repair in September 2020. The Respondent had explained in their written representations as to why a roofer was sent out to perform an emergency repair without recourse to other owners at the property. The landlord and letting agent he said thought it best to do that until monies by way of contribution from others were paid.

35. In respect of paragraph 25 of the code Mr Kerr referred to a group email. He accepted that one of the team at the Respondent's office had emailed other owners asking for an up-to-date list of owners in an effort to get an agreement for the roof repair. Mr Kerr's position was that he did not consider that to be a breach in terms of the relevant legislation governing use of data.

36. In respect of paragraph 23 of the code Mr Kerr indicated that the Respondents did their best to give tenants 48 hours' notice of attendance for repairs. He said that he understood a contractor had missed an appointment and after that he happened to be passing the property and thought to help by attending at that time. As the Applicant had been working the roofer did not gain access. He accepted that on some occasions contractors were late but said that the Respondent tried to advise the tenant of any issues and they try to advise contractors to be punctual. As far as the contractor and his apprentice who were not wearing masks, Mr Kerr indicated that this had been followed up by the Respondent and that the contractors had advised that they were exempt from wearing masks. They were asked to supply proof of exemption and told to wear badges. An exemption letter was supplied. The Applicant had been given advice as to what to do in that situation if she was not comfortable, not to allow contractors access to the property.

37. In respect of paragraph 24 of the code Mr Kerr referred to the fact that inspection reports primarily reflect the impression of the inspector and for the most part contain photographs of the property. He referred to the fact that tenants are given additional sheets for comments they wish to make or any issues they wish to report. He did not accept that inspection reports contained false information.

38. In respect of paragraph 26 of the code Mr Kerr's position was that he did not believe that the Applicant had followed the complaints procedure completely. He also noted that after the first reporting of issues the Respondent had not heard back from the Applicant until September 2020 and at that stage had acted immediately.

39. In terms of paragraph 38 of the code Mr Kerr pointed to the fact that the Applicant had viewed the balcony when she viewed the property. The Respondent's position was that the balcony was useable. It had been addressed annually. He referred to the fact that this was an outdoor space. He said that when it was raining there would be water entering any outdoor space. He said this was considered at each inspection. He noted that there were plants and a chair which looked as though it had been used on the balcony. He reiterated that the problem with the gutters was said to be part of a communal roof repair and at the time of hearing the Respondent was awaiting owners paying their share for this repair. He said that these repairs related to skylight and guttering and one last share from an owner was still to come in. He said he did not believe that the Respondent had knowingly or negligently misled the Applicant in

relation to the balcony or utility room. He referred to an area with a washing machine in the kitchen at the property.

40. In relation to paragraph 90, 91, 93 and 94 of the code he referred to the fact that the repairs were communal and as a result the Respondent had no control over the timeline for repairs in these matters. He indicated that the landlord was willing to replace the windows when the roof repair was complete.

41. In relation to paragraph 108 of the code Mr Kerr's position was that the Respondent had kept in regular contact with the Applicant and dealt with repairs in a timely manner and kept in contact with her to advise on progress.

42. Mr Kerr requested that the tribunal have regard to all of the representations and productions lodged by the Respondent and all the information contained in the covering letter sent with these productions.

43. The Applicant asked questions of Mr Kerr. She put it to him that her evidence regarding tradespersons attending the property failing to take account of the Covid 19 regulations referred to the period up to and including January 2021 and noted that the incident he had referred to where contractors had provided an exemption certificate had occurred in October. Mr Kerr's position was that he would have had to have checked in relation to the example she gave if that was a period when restrictions applied. His position was that the Respondents complied with guidelines. He was asked regarding marketing and advertising the property in relation to a utility room. He described the room as perhaps a large pantry room which could be used for a chest freezer. He said that information in regard to the marketing properties was automatically sent to Right Move and it may be that they had put this in as a pantry but that RightMove had advertised it as a utility room. It was suggested to Mr Kerr that the windows and door could be fixed before the roof repair and he indicated that the landlord wished to have the roof fixed before the windows and door were replaced. It was put to Mr Kerr that this was potentially a cash flow issue but this was denied. It was suggested to him that the problem with the guttering was causing water to come onto the balcony. Mr Kerr accepted that this depended on the rain and there were some issues. He said he did not accept that the balcony was unuseable and referred again to the presence of plants and a seat on the balcony. He further said that they had made efforts to speed along the roof repair and that they had contacted other owners in an effort to do that, to obtain a full list of the property owners. He indicated that another owner was collecting monies for the roof repair and one share was awaited.

44. Mr Hunter the landlord of the property gave evidence in brief at the Hearing. He said that he became aware at the beginning of lockdown of a problem with the roof of the property. A repair was carried out as quickly as possible. He said his position had been to get it fixed as quickly as possible for the tenant. He was aware he said that there were still problems with the roof and was waiting for one owner. He said that any other issues regarding the property would be made known to him by the Respondent and he would say that these should be fixed as soon as possible. Mr Hunter's position was that the Respondent he did not think could have done any more. He said he wanted to wait for the windows. When asked why he wanted to wait to repair the windows until after the roof repairs he said that in construction one dealt with the roof first and then carried out the other work and he felt this was the sensible thing to do. He said that in his opinion the balcony was useable and he did not understand how the balcony was said not to be useable and the tenant was claiming

money for that. He said that when it was raining it was obvious that someone would get wet but when it was not raining the balcony was perfectly useable. Mr Hunter was cross examined in brief by the Applicant and indicated that he had been informed by the Respondent regarding the mark on the kitchen wall around February 2020. He seemed to remember that but he said he could not be sure. He was in regular contact with the Respondent he said and they managed other properties for him. His view was that they had a good system in place, He was asked if the quotation for the roof repairs included repairs required for the balcony guttering and downpipes. His position was that these were definitely included. The Applicant indicated that she wanted to be sure that this would be done.

45. At the end of the evidence of the parties each referred to their written representations. The Applicant requested that the tribunal consider all the evidence in her bundle and all items in the production list. She asked if she could clarify her position regarding her compensation claim regarding the balcony. She accepted that there were plants on the balcony. She indicated that when nothing happened with the guttering in October 2019 then the problem with the downpipe had started she said in the absence of repairs the guttering had started to leak badly and water would come in on one specific part of the balcony. She referred to buckets of water which she took to the bathroom to ensure that the water didn't come in under the door. She said she found the plants helped with the issue. She indicated that all the other balconies in the building had roofs. She referred to a table and chair on the balcony. When she originally moved into the property she simply put them outside thinking she could use the balcony. She said they were now weather-beaten. She said that she had not replaced the plant pots in winter but the soil and plants soaked up some of the water, reducing the water flow. This was her way of dealing with the excess water. The Applicant also referred the tribunal to her compensation claim and listed the various items for which she was seeking compensation.

46. In his final submissions Mr Kerr referred to everything he previously said in his written representations and productions. He remained of the view that he did not consider that the issue with the balcony was as bad as set out by the Applicant.

Findings in Fact

47. The applicant entered into a private residential tenancy at the property with the landlord Mr Charles Hunter with effect from 12 August 2019.

48. In the tenancy agreement the Respondent in this application was named as the letting agent who managed the property on behalf of the landlord.

49. In an advert on the Rightmove website seen by the Applicant before she rented the property it was described as having a small utility room

50. By email of 10 October 2019 the Applicant reported to the Respondent an issue with the guttering coming onto the balcony at the property whereby water was flooding onto the balcony ledge.

51. On 24 October 2019 contractors instructed by the Respondent attended at the property and cleaned the gutters.

52. On 4 November 2019 the Applicant advised the Respondent by email that since the gutters were cleaned water no longer travelled down the pipe but came straight onto the balcony.

53. On 5 November 2019 a member of staff the Respondent's office advised the Applicant this was a communal repair and was 'out of their hands' and that the landlord would be advised.

54. On 10 February 2020 the Applicant emailed the Respondent to say there was a new watermark in the kitchen and was advised that a roofing contractor who had previously attended to deal with the guttering would attend at the property.

55. On 13 February 2020 a roofing contractor did attend and a report was to be sent to the Respondent.

56. On 7 April 2020 the Applicant emailed the respondent again setting her concerns with a number of issues at the property.

57. On 8th April 2020 a member of staff the Respondent's office responded to the Applicant's email saying that they thought the matter with the gutters had been sorted out and apologised that matters had not been dealt with sooner.

58. A member of staff the Respondent's office had failed to chase up a quote from roofers which was to be submitted after an inspection on 13 February 2020.

59. Between 7th April and 12th September 2020 the Applicant heard nothing from the Respondents on the matters she had raised other than an email on 8th April to say that the roofers would be asked to provide an insight into why the issues with the damp patch and guttering were persisting.

60. On 12th September 2020 the applicant emailed the Respondent again setting out various issues which were of concern at the property. In this e mail the Applicant copied in the managing director at the Respondent's office.

61. In response to this email the operations manager at the Respondent's office took over dealing with the issues at the property including the issue with the guttering and the balcony.

62. Quotes were obtained and it was decided that remedial work should be carried out straight away due to the nature of the complaints.

63. An inspection of the property was carried out in September 2020 at which the Applicant was present. She did not agree with the assessment of the property as set out in the inspection record.

64. In September 2020 various trades persons were instructed by the Respondent to attend the property to deal with issues reported by the Applicant.

65. Repair of the roof was carried out in September 2020 and this repair was carried out without seeking agreement of other owners in the building.

66. In October 2020 the Respondent advised the Applicant that tradespersons had been instructed to carry out work in the kitchen and bathroom at the property.

67. In December 2020 the Applicant reported to the Respondent that water stains had reappeared in the kitchen and issues with the gutters at the balcony continued.

68. The Respondent emailed the Applicant very soon after this report of continued problems to indicate that a roofer had been asked to attend the property. Later in December the Respondent advised the Applicant that the first roofer was being chased in respect of a report of the visit. In January 2021 a second roofer was instructed to attend in order that other property owners could have quotes for the work.

69. In January 2021 the Applicant continued to report that there were ongoing problems with water staining in the wall in the kitchen and with water coming from the gutters on the balcony.

70. There was further email communication between the parties on the issue of the balcony and other matters requiring attention.

71. A roofer attended the property in May 2021 to provide a quote regarding work required on the roof.

72. In May 2021 an inspection of the property took place at the property and after the inspection the Applicant sent the Respondents an update of all the issues still requiring to be dealt with.

73. In May 2021 the Respondent advised that they had permission from the landlord to have quotes obtained for window and door replacement and heating in the bathroom.

74. In June 2021 a member of staff at the Respondent's office advised the Applicant that roofers had not been asked to quote for the balcony issue as it was understood to be a separate matter and not communal repair.

75. Further to the issue of the balcony a member of staff at the Respondent's office advised the Applicant that only one roofer had quoted for the balcony issue as being a communal repair but all roofers instructed to attend had been asked to consider that issue

76. In October 2021 a basin and towel rail were installed at the bathroom at the property.

77. As at the date of the hearing in relation to this application on 29 October 2021 final repairs have not yet been carried out in relation to the roof in order to deal with the water ingress to the kitchen and the problem with gutters which affects the balcony. Building owners have agreed to the repairs in principle but one share of the required sum is awaited.

78. The landlord has indicated a willingness to replace the balcony door and windows at the property but wishes to wait until the roof repairs have been carried out before this work takes place.

79. The Respondent shared the Applicant's personal email address which includes her name in an email to a former tenant without the consent of the Applicant. The Respondent apologised for this and asked the recipient of the email to destroy it.

80. During the Applicant's tenancy a contractor instructed by the Respondent shared email addresses of property owners in the building in an email exchange with the Respondent regarding repairs at the property.

81. During the Applicant's tenancy in an effort to move forward with communal repairs the Respondent emailed some property owners in the building to obtain contact details for other property owners.

82. At times during the Applicant's tenancy some tradespersons attending at the property at the request of the Respondent did not wear masks when in the property.

Reasons for Decision

83. The Tribunal considered carefully all the evidence before it both in terms of the productions lodged, representations made in writing by both parties and referred to in their evidence and the evidence presented by the Applicant and on behalf of the Respondent at the hearing.

84. 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.

85. The Applicant complained that the Respondent had provided information which was deliberately or negligently misleading or false in relation to repairs carried out to the roof at the building in September 2020 without prior consultation with other owners in the building. From emails lodged with the tribunal it was apparent that on 18 September 2020 property owners in the building were contacted by Lena Cowie from the Respondent's office explaining that due to a complaint made by the tenant of the property (the Applicant) on 14 September 2020 it was felt necessary to push forward with obtaining a quote as quickly as possible. It was explained that due to the nature of the tenant's complaint and given the fact that the cost was not too expensive and that the roofers were able to fit the job quickly before further bad weather which had been forecast for the following week, they had gone ahead without sending one or two quotes to owners in the first instance. This email was followed up with another email sent on 27 January 2021 to property owners at the building indicating that issues had persisted with the roof at the property and further investigations were required. In this email Lena Cowie on behalf of the Respondent explained that they had felt it necessary to proceed with that appears urgently as "the tenant was threatening to take us to the first-tier Tribunal". In their submissions to the tribunal the Respondent's position was that they considered the repairs were urgent and required for the Respondent's health. The tribunal considered the terms of the email sent by Lena Cowie on behalf of the Respondent and noted that in the email in September 2020 she gave one of the reasons for going ahead with the repair as being the nature of the Applicant's complaint. It is not clear what was meant by this but the applicant's complaint dated some two days earlier did include an indication that she would be making an application to the first-tier Tribunal. On the information before it the tribunal was therefore of the view that the emails could not be characterised as misleading but there was no doubt that these would have been unhelpful for the tenant in terms of her relations with neighbours in the building. The Applicant's position was that it was wrong to characterise these repairs as being urgent as the repairs had been required for some time. The Tribunal took the view it was not false to characterise these repairs as urgent given the complaint by the Applicant and also the nature of the repairs required.

86. The Applicant complained that most Ben property contractors were not adhering to minimum notice periods for access and did not comply with Covid 19 Regulations mainly in relation to mask wearing. She gave a number of examples of this. She referred to contractors turning up at the property without giving any notice and another not complying with Covid 19 Regulations in relation to the wearing of masks. The Applicant had sent a number of emails to the Respondent over the period of tenancy indicating that various trades persons had called the property seeking access without giving her the required period of notice. She was also concerned on two occasions when she emailed asking Ben Property to remind contractors regarding their obligations in terms of the Covid 19 rules. She was concerned that contractors were not adhering to a safe distance, wearing masks, adhering to handwashing guidance, and refraining from leaning on surfaces to avoid possible contamination. The Respondent's position was that contractors were aware of the requirement to give notice but some had in an effort to get jobs done called by unannounced in order to move ahead with required work. The Respondent's position was that tenants had been emailed in March 2020 to confirm that contractors would be mindful of the health advice given and had undertaken risk assessments and employ measures such as

using PPE and carrying out screening questions prior to visiting a property. There was no evidence before the tribunal that the Respondents were asking contractors to turn up unannounced and in relation to one recent occasion when tradespersons attended without wearing masks, the Respondent followed that up and produced a letter which suggested the particular tradespersons were exempt from wearing masks. The tribunal took the view that the Respondents had taken appropriate steps in relation to contractors and could not be held responsible for contractors who attended without giving notice despite having been advised to give such notice. In relation to the wearing of masks it would have been the case for a period during this tenancy that Coronavirus Regulations required the wearing of masks by persons within a workplace which included working within a person's home, but the Tribunal found that the attendance of the property of trades persons not wearing masks did not amount to a code breach on behalf of the Respondent as the obligation on a letting agent is to ensure that subcontracting agents are aware of and comply with the code and the legal requirements on the letting of residential property. The Tribunal observed that it would be well-nigh impossible in a situation where letting agents are not present for them to "police" the wearing of masks by those attending at properties to carry out work and it is those persons attending who are required to comply with the Regulations.

87. The Applicant complained that appropriate records of dealings with landlords tenants and prospective tenants had not been kept. The Applicant complained that records in relation to inspections of the property had not been properly kept in that these contained false information. She referred in particular to two inspection reports dated January and September 2020 which she had produced to the tribunal. The inspection report of January 2020 referred to the rooms being in good condition but indicated that the balcony at the property was in poor condition with water pouring down from the guttering and that this needed attention. The report referred to the kitchen as being in good condition but did indicate that there were mould marks on the wall of the bathroom. The report dated 17 September 2020 referred to work being underway to address kitchen damp issues and referred to various issues requiring attention. The report mentioned a lock on the front door requiring attention, in the kitchen there was a note regarding a hole in the floor, kitchen window sometimes just staying open, the door been broken and damp in the kitchen. The detailed notes regarding the bathroom suggested that the window didn't stay open there was beading disintegration and a broken tile. One of the bedrooms were said to have a damp smell from the room at the wall to the stair. In the other bedroom there was a comment regarding stonework being loose outside the window which could fall. The balcony was referred to as having steel window frames with protruding sharp nails. There was no other information included regarding the balcony from that inspection. The Applicant complained that she had pointed out many issues to the inspector at the time of the inspection in January 2020 and again had been present in September 2020. It was clear from the January 2020 inspection report in particular that this did not make reference to the issues referred to by the Applicant other than the issue at the balcony. It was suggested that the same inspector who worked part-time for the Respondent had prepared both reports. The Respondent's position was that these reports were not incorrect. The Respondent's position on these inspection reports was to the effect that these mainly contained photographs and were a reflection of the inspector's impression of the property. For issues which tenants wished to raise there

was a procedure in place for tenants to complete paperwork at the time of the inspection.

The Applicant had made detailed notes at the time of the inspection and in these she had noted the issues that she had raised with inspector. Her concern was that these items did not appear to have featured in the report. It was not clear from the information before the Tribunal if the Applicant had been given the opportunity to fill in the appropriate paperwork to raise the issues at the time of the January 2020 inspection. A good number of the issues that she raised in general in terms of her application did feature in the inspection report of September 2020. Having regard to the evidence before the tribunal in terms of written information and the evidence of the parties the tribunal could not determine if the information raised by the Applicant had been deliberately omitted from the reports or if as suggested by the Respondent, these issues would require to be raised in terms of separate paperwork by a tenant. It was clear from the submissions of the Respondent that they did not characterise inspection reports as being a vehicle for the Applicant to make complaints regarding the condition of the property but rather for the inspector to give a snapshot view of the condition with the tenant able to raise other issues separately. Given the disparity between the interpretation of the purpose and record of the inspection it was not possible for the tribunal to determine that the documents were incorrect as characterised by the Applicant

88. The Applicant complained that advertising and marketing the property had been inaccurate in two areas. She talked of the marketing particulars for the property referring to a small utility room and she had lodged the estate agent particulars to support her position. She described this as a cupboard rather than a room. The Respondent's position was that this had been used by previous tenants to house a freezer and might be better described as a pantry. The Respondent indicated when they put the particulars over to Rightmove the wording might have been changed. The Applicant complained that she was shown the balcony when she viewed the property before signing the tenancy agreement and that the property should not have been marketed as having a balcony because she said that the Respondents knew it was unuseable. Her position was that someone who had attended the property had told her that the balcony was 'has always been like this'. The Respondent's position was that the balcony was useable and had been addressed annually. They indicated that as it was an outdoor space when it was raining a person on the balcony would get wet. They referred to the ongoing problem with the gutters as being part of the communal roof repairs.

89. In the particulars for the property there was no picture of the small utility room which the Applicant described as being more of a cupboard. It was not possible for the tribunal to ascertain whether the reference to a small utility room was a misdescription of the area as described by the Applicant.

90. As far as the balcony was concerned the Tribunal was not persuaded on the balance of probabilities that the Respondents were aware that the balcony was unuseable at the start of the applicants tenancy. The Applicant's position was that it should not have advertised as having the amenity of a balcony. It was very clear from the representations and evidence given at the hearing that there were serious issues with the guttering at the property which caused water to come onto the balcony and this had been a problem which the Applicant had reported on many occasions during her tenancy. There was no direct evidence before the tribunal as to the condition of the balcony in relation to water coming from the gutters before the Applicant's tenancy.

On this basis the tribunal was not persuaded that the marketing of the property by the Respondents in relation to both balcony and the small utility room was inaccurate or knowingly or negligently misleading.

91. The Applicant complained that the Respondents did not handle private information sensitively and in line with legal requirements. In this regard the Respondent accepted responsibility for passing on the applicant's personal email address in May 2021 to a previous tenant without the Applicant's consent. When this had been brought to the Respondent's attention they had contacted the former tenant to whom the email address been sent and asked her to delete the email. Other examples were referred to by the Applicant which she said breached paragraph 25 of the code. She expressed concern generally regarding the way her personal details were handled and referred to a communal email thread in relation to communal repairs and the building in which email addresses of particular owners or their representatives were visible. She also referred to an email sent by member of staff of the Respondent asking other owners for addresses of others within the building. In relation to the communal email thread about repairs, the Respondent's position was that this was a group which exchanged information in relation to shared repairs and communal issues in relation to the building. They had not set up the group which already existed and they were engaging in discussions on behalf of the landlord. It was accepted that an email had been sent asking other owners for details of those within the building. It was explained that the Respondents were not property factors and did not have the up-to-date information. The tribunal considered these issues and took the view that other than the sharing of the Applicant's personal data with the former tenant which the Respondent accepted, that there was no apparent breach of GDPR in the way they had conducted themselves. They had taken part in email exchanges within a communal group which appeared already to have been formed and had made a legitimate request for email addresses of property owners in order to advance the position regarding communal repairs. In representations regarding email exchanges the Applicant had raised an issue of a roofing contractor having shared email addresses in an email thread regarding repairs at her property. This did not appear to have been carried out by any member of staff at the letting agent and was regarded by the tribunal as being a matter for which the roofing contractor bore responsibility.

92. The Applicant complained that the Respondent did not respond to enquiries and complaints within reasonable timescales and in line with their written agreement. In particular the Applicant complained that her email of 7 April 2020 setting out complaints in respect of a number of issues at the property was not treated properly as a complaint and issues were not resolved within reasonable timescales. The Respondent had lodged their complaints procedure and there appeared to be two different complaints procedures, one of which was a previous procedure no longer used. Complaints about the way a property or tenancy was being managed were to be addressed in one policy to the operations manager and in the other policy to the lettings negotiator. Grievances about the way maintenance issues were being handled were to be sent in the first instance to the maintenance manager at the Respondent's office. It was notable in both of these policies that the names of the relevant individuals who would be the operations manager or the lettings negotiator were not noted in the complaints procedure nor was there an email address given for complaints to be made. In her email of 7 April 2020 the Applicant referred to previous reports of issues that she had made and indicated that she had assumed that these matters would be dealt with without delay and asked for an update in relation to what had been done by

the Respondent and the landlord up to that date. This email had been sent to a member of staff "Sam" with whom the Applicant had been in previous correspondence. His position at the Respondent's office was not clear other than the fact that he was referred to by Mr Kerr as a junior member of staff. The Respondent's position was that the Applicant had not followed the procedure correctly and wasn't until September 2020 that they had received what they perceived to be a complaint and had acted immediately. The tribunal took the view on the basis of the documentation seen by it and the representations made that it might not be clear to the Applicant to whom she was meant to address a complaint, particularly during the period of the lockdown restrictions. That said while her email of 7 April 2020 demonstrated clearly that she was concerned about the failure to resolve matters she had already reported and was asking for an update, she herself referred to her e mail as an enquiry and it was written in very different terms to her subsequent email on 12th September which was treated as a complaint. The email of 7 April 2020 did elicit a response from Sam at the Respondent's office the following day, 8th April 2020 with an indication that roofing contractors would be contacted again the matters raised. In relation to this particular issue raised by the Applicant the tribunal did not find on the basis of the information and evidence before it that the Respondent had failed to respond to enquiries and complaints within reasonable timescales.

93. The Applicant had complained of a breach of paragraph 27 of the code but withdrew the complaint under that paragraph early on in the hearing.

94. The Applicant complained in terms of paragraph 108 of the code that the Respondents had failed to respond to enquiries and complaints within reasonable timescales and that the aim should be to deal with enquiries and complaints as quickly and as fully as possible, keeping those making them informed if more time is needed to respond. The material before the tribunal was the same in respect of this paragraph as has been referred to above and the tribunal took the view that the Respondent did respond to enquiries and complaints within reasonable timescales.

95. Other paragraphs of the code which formed the basis of the Applicant's complaint related to the carrying out of repairs and maintenance and in particular paragraphs 90,91 93 and 94 of the code. The Applicant complained in particular regarding the damp kitchen wall as well as the balcony gutter and downpipe issues which were still ongoing. In addition she complained that windows were still not insulated with one not opening during cold or wet periods to the opening at all and there being two windows on the balcony at the property having large gaps allowing draughts through. The fact that some repairs were still to be carried out after such a lengthy period of time was clearly a matter of concern to the Applicant and seemed to be the issue which featured in most of the concerns that she raised as regards breaches of the code. The tribunal had sight of all the emails which the Applicant had sent to the Respondents in relation to reporting of issues and requests for attention to matters that she raised. She first raised the issue with the balcony and the rain flooding the balcony in October 2019. A roofer was instructed by the Respondents to come and look at roof and this resulted in the gutters been cleaned. The Applicant had also complained regarding a watermark in the kitchen and was asked to keep an eye on it. Early in November 2019 the Applicant reported that since the gutters had been cleaned when the when it had rained the water was no longer going down the drainpipe but was going straight onto the balcony. In this email the Applicant acknowledged that this was not something for the landlord but asked that this be added to a list of maintenance issues for the building which would apparently dealt with once a year. The response to this on 5th of

November 2019 from a member of staff of the Respondent was simply to say that this was a communal repair and as such was “out of their hands”. This email indicated that the information would be passed on to the landlord. In February 2020 the Applicant reported a new water stain on the kitchen wall and sent in photographs to the Respondent. A response was received within three days indicating that this would be highlighted with the roofers and indicating a view that this was connected to the guttering at the balcony. The Applicant responded to indicate that the watermark in the kitchen was not connected to the balcony as this was on the opposite side of the flat. On 12 February the Applicant was advised that roofers would come and look at the issues. The Applicant continued to be in email contact with members of staff in the Respondent’s office over the period of February 2020. It was a matter of concession by the Respondents that in relation to the attendance of the roofers in February 2020 that they had not moved as fast as they could have done and that when the roofers did not send a quote for work that was required, that a staff member or a junior member of staff had not followed this up as quickly as he ought to have done. In any event the Applicant required to write again on 7 April 2020 as referred to above setting out her concerns with the issues that had not been dealt with.

96. Both parties had lodged a large amount of material in relation to the issues with the property. The area of dispute in relation to the balcony was whether it was completely unuseable as described by the Applicant. Both Mr Kerr for the Respondent and Mr Hunter the landlord argued that the balcony was not completely unuseable and that given that it was a balcony in a property in Edinburgh there are bound to be periods of time during the year when it would not be useable due to the weather. The issue for the Applicant appeared to be that with water coming onto the balcony either from the gutter, or after gutters were cleaned straight onto the balcony itself then she did not feel able to use it. The issues with the windows which she reported were addressed to the extent that the landlord had visited the property in September 2020 along with the glazier and had obtained quotes to replace windows and balcony door. It had been the contention of the Respondent that the landlord did not wish to go ahead with replacement of the windows and balcony door until the roof was fixed. This was confirmed by Mr Hunter in his evidence. His reason for this appeared to be that he felt that it made sense in terms of construction to deal with the roof first before the windows. Whatever the reason this is a choice that the landlord has made and the Respondent cannot be held responsible for the fact that this repair is yet to take place.

97. From material lodged by both parties it was apparent that there was some confusion as to whether the water staining in the kitchen and the water coming down onto the balcony were separate unconnected issues and whether the balcony was a communal issue or restricted to the property itself. The Applicant had repeatedly indicated by email that these were separate issues but ultimately in terms of the quote received from a roofer dated 15 September 2020 it was found that mortar above lead flashing in all four parts of the roof had failed and was falling off. The pointing between coping stones had failed and was allowing water to penetrate the roof and the report indicated that the cost of repairs was communal and that the repairs required were for both the left and right hand side of the building. The Respondent appear to have accepted in terms of this report that both the water ingress to the kitchen wall and the water coming onto the balcony were communal repairs. In spite of this in correspondence with Lena Cowie operations manager as late as 20 September 2020 the Respondent was indicating that they themselves had understood that the balcony issue was a matter which related only to the flat occupied by the Applicant and was

not communal. This is in contrast to an email sent to the Applicant as far back as November 2019 when she reported the water coming onto the balcony and was told this was a communal issue and was out of their hands. The fact that different members of staff appeared to respond to the Applicant's enquiries and on occasion gave contradictory information appeared to contribute to the ongoing difficulties with required repairs to the roof at both sides of the building which affected the kitchen and balcony. The Tribunal formed the view that the Respondents had not satisfactorily dealt with the repair issues raised by the Applicant in relation to the guttering early in 2020 and in particular had failed to follow up with a roofer who had attended at the property in February 2020 and had failed to follow up on the Applicant's e mail in April 2020. It appeared that proper attention had not been paid to these matters and although part of this period coincided with the start of the national lockdown in March 2020, the Respondent should have pursued the roofer to find out the nature of the work required when a quote did not arrive after February 2020, found out whether at that stage this was regarded as a communal repair and informed the Applicant of the action they intended to take and the likely timescale as well explaining the reasons for any delay. It was clear that during this period the issues persisted and resulted in the Applicant having to raise these again in detail in her email of 7 April 2020. In relation to the email to the Applicant on 5 November 2019 when she first reported issues with the guttering and was told this was communal and "out of their hands" and the failure to follow up the attendance of the roofer in February 2020 and the Applicant's email of 7 April 2020 the tribunal took the view that the Respondent was in breach of paragraphs 90, 91 and 93 of the code. The Applicant's position was that defective work by a roofer had added to the issues with the guttering and had not been pursued by the Respondent but there was nothing in the material before the tribunal which suggested that additional work had to be done due to inadequate work or service provided by any tradesperson instructed by the Respondent or any defects created by them.

98. The Tribunal accepted that from September 2020 when the Applicant indicated that she intended to take matters to the first-tier Tribunal that the Respondent responded to the issues raised by her in detail and instructed a number of different tradespersons to attend to matters at the property. As previously stated the Respondent appear to have accepted that the roof repairs were communal and the tribunal accepted that at least some of the delay in carrying these out after September 2020 was because of the process that was required for communal repairs and not at the instance of the Respondent. As at the date of the hearing the roof repairs were yet to be carried out. Since the Respondent had accepted the roofer's assessment that the water coming onto the balcony was connected to the required repairs to the roof this was also a matter which was the subject of a communal repair and as such was part of the delay in dealing with that matter, again something which cannot be considered to have occurred due to any fault on the part of the Respondent after September 2020. The position regarding the replacement of the windows and balcony door has been referred to above and was clearly a matter for the landlord who has chosen to wait to replace the windows until after the roof is repaired.

99. The Applicant lodged a claim for compensation in relation to medication which she said she required as a result of health issues through living in damp conditions with associated sleeping problems and noise pollution, purchases she required to make due to the gap in the balcony door which included curtains, gloves, bubblewrap and thermal clothing. She lodged a claim for loss of property and replacement purchases

due to the conditions on the balcony. These were described as plastic flowerpots and artificial grass. She also lodged a claim for loss of working time due to contractors not turning up and a loss of useable space in relation to the fact that she could not use the balcony. this was the largest part of a claim for compensation as she assessed this lack of amenity at £100 per month for the period of 22 months.

100. Given that the Tribunal found that the roof repairs were communal and were delayed as a result of the requirement to obtain funding for these repairs from previous owners of properties in the building the tribunal could not determine that loss of amenity in relation to the balcony was due to a breach of code on the part of the Respondent. However the tribunal did find that the Respondents did not deal appropriately with the issues raised by the Applicant in February 2020 and in relation to her email of April 2020 and this did contribute to the delay in dealing with the issues raised by her and required her to raise these issues on repeated occasions. These issues could have been dealt with more quickly had the Respondent not to use their words “dropped the ball” after February 2020, apparently taking no action to chase the roofer until the Applicant emailed again in April.

101. On that basis the tribunal takes the view that the Applicant is entitled to compensation for the failure on the part of the Respondent in relation to these matters and in terms of paragraphs 90,91 and 93 of the code and in relation to the undoubted inconvenience she suffered in having to raise these matters repeatedly before they started to be addressed properly in September 2020.

102. Similarly the measures which the Applicant said she required to take in relation to the draught at the property in relation to costs for curtains gloves bubblewrap and thermal clothing were matters which did not appear to be referable to any breach of the code on the part of the Respondent which was upheld by the Tribunal. The Tribunal accepted the delay in dealing with the windows and doors after they were reported as issues is for the most part due to the landlord choosing to wait to deal with these matters until the roof repair is carried out.

103. As the tribunal did not find any breach of the code in relation to the attendance of trades persons without giving minimum notice the tribunal could not consider the claim for compensation in relation to loss of wages.

104. The Tribunal then considered the application under each section of the Code of Practice.

105. Paragraph 19 of the Code sets out that letting agents must not provide information that is deliberately or negligently misleading or false. As set out above in relation to the communication with other property owners in the building regarding information as to why repairs were carried out without prior consultation the tribunal did not find that the Respondent had provided information which was deliberately or negligently misleading. The tribunal therefore did not uphold the complaint in terms of paragraph 19 of the code.

106. Paragraph 23 of the Code sets out that letting agents must ensure all staff and any subcontracting agents are aware of, and comply with, the Code and legal requirements on the letting of residential property. As referred to above the tribunal did not find that the Respondent was in breach of this paragraph of the code as the material before the tribunal suggested that the Respondent requested tradespersons to give the Applicant appropriate notice periods for any attendance to carry out repairs.

In addition the tribunal took the view that the Respondent took appropriate steps to ensure that contractors and tradespersons complied with the code as far as was possible. The tribunal therefore did not uphold the complaint in terms of paragraph 23 of the code.

107. Paragraph 24 of the Code sets out that letting agents must maintain appropriate records of their dealings with landlords, tenants, and prospective tenants. The Code also states that this is particularly important if the letting agent needs to demonstrate how they have met the Code requirements. This complaint related to inspection reports and as detailed above the tribunal did not find that these could be characterised as false or incorrect. It was apparent from the material before the tribunal and the evidence given that these reports had a particular purpose and are not intended to be a vehicle for tenants to raise issues which was to be done by a separate procedure. The tribunal therefore did not uphold the complaint in terms of paragraph 24 of the code.

108. Paragraph 25 of the Code sets out that letting agents must ensure that they handle private information sensitively and in line with legal requirements. The Respondent accepted a breach of this paragraph in terms of the sharing of the applicant's personal email address with a former tenant in May 2021. The tribunal was also asked to consider an email approach by member of staff of the Respondent to some property owners in the building seeking up-to-date addresses for other owners and also emails which were circulated giving addresses of a group of property owners in the building. The Tribunal did not consider that to take part in email communication in a group already setup by others or to seek up-to-date addresses in order to explore the communal roof repairs amounted to a breach of paragraph 25 of the code. The tribunal also considered the sharing of the property owners addresses by the roofing contractor in an e mail thread but noted this was done by a roofing contractor and did not consider that this was something for which the Respondent could be held responsible. The tribunal upheld the breach of paragraph 25 of the code only in so far as the disclosure of the Respondent's personal email address to a former tenant which was accepted by the Respondent. Given that the Respondent accepted responsibility for this at the outset, issued an apology to the Applicant and asked the former tenant with whom the personal email address had been shared to delete it and provided training for the member of staff who had been responsible for the data breach, the tribunal did not feel that it was appropriate to award compensation in respect of this breach of the code.

109. Paragraph 26 of the Code sets out that letting agents must respond to enquiries and complaints within reasonable timescales and in line with their written agreement. From the material available to the tribunal it appeared that the letting agents did respond to enquiries and complaints made in line with their complaints procedure promptly. The tribunal did not uphold the complaint in relation to paragraph 26 of the code.

110. The Applicant had raised in her application paragraph 27 of the code but withdrew her complaint under this paragraph early on in the Hearing. The tribunal did not therefore uphold the complaint in relation to paragraph 27 of the code.

111. Paragraph 38 of the code indicates that advertising and marketing must be clear, accurate and not knowingly or negligently misleading. The tribunal for reasons stated above did not accept that the Respondent knew the balcony at the property to be unusable at the time that the applicant rented the property and did not find that the

advertising description of what the Applicant described as a cupboard at the property to be a breach of the code on the basis of the information before it.

The tribunal did not uphold the complaint in relation to paragraph 38 of the code 112. Paragraph 90 of the code sets out the repairs must be dealt with promptly and appropriately having regard to the nature and urgency and in line with the letting agents written procedures. The tribunal considered that the failure to chase up the roofers report in February 2020 in relation to the issues reported by the Applicant was a breach of this paragraph of the code. In addition whilst the Applicant's email of 7 April 2020 was acknowledged and it was indicated that a roofer would be chased no meaningful action to deal with the issues appeared to be taken by the Respondent until the Applicant complained on 12 September 2020.

The tribunal upheld the complaint in relation to paragraph 90 of the code.

113. Paragraph 91 of the code indicates that the letting agent must inform the tenant of the action that they intend to take on the repair and its likely timescale. The tribunal took the view that in relation to the issues referred to above in relation to paragraph 90 of the code the Respondent had not taken sufficient action to deal with the issues referred to above reported by the Applicant and had failed to inform the Applicant of the likely timescale of any repairs at that time.

The tribunal upheld the complaint in relation to paragraph 91 of the code.

114. Paragraph 93 of the code indicates that if there is any delay in carrying out repair and maintenance work the letting agent must inform the landlords, tenants or both as appropriate about this along with the reason for it as soon as possible. Between February and September 2020 there was very little communication by the Respondent to the Applicant and no communication to explain delays in obtaining quotes regarding the repair work to the roof.

The tribunal upheld the complaint in relation to paragraph 93 of the code.

115. In respect of the breaches of paragraphs 90,91 and 93 of the code which relate to a period of time early in 2020 which continued until September 2020 the tribunal felt it appropriate to award compensation to the Applicant in relation to the stress and inconvenience which she suffered in respect of having to make repeated enquiries to the Respondents to chase up required repairs, which failures by the Respondent must have contributed to the overall delay in resolving the communal repairs required. The tribunal determined that compensation in the sum of £300 should be paid to the Applicant by the Respondent in the sum of £100 in respect of each of these breaches of the code

116. Paragraph 94 of the code states that the letting agent must pursue the contractor or supplier to remedy the defects in any inadequate work or service provided. There was nothing in the information before the tribunal to suggest that any contractor or supplier had carried out work which was defective or inadequate. The tribunal did not uphold the complaint in respect of paragraph 94 of the code.

117. Paragraph 108 of the code indicates that the letting agent must respond to enquiries and complaints within reasonable timescales and overall the aim of the letting agent should be to deal with enquiries and complaints quickly and fully as possible and keep those making them informed if you need more time to respond. The Tribunal found that the Respondent did respond to enquiries and complaints by the Applicant, but the issues related to their failure to follow up those enquiries and act when repairs were flagged up. This latter aspect is dealt with in paragraphs 90,91 and 93 of the code as set out above and does not come within paragraph 108 of the code.

Accordingly the tribunal did not uphold the complaint in terms of paragraph 108 of the code.

118. The tribunal therefore makes a Letting Agent Enforcement Order.

119. The Tribunal determines that the Respondent pay to the Applicant the sum of £100 in relation to each breach of paragraphs 90, 91 and 93 of the code, giving total compensation of £300 to be paid within 6 weeks of receipt of the order.

120. The Tribunal further requires that the Respondent lodge with the Tribunal within 6 weeks of receipt of this order a document setting out their procedures and staff training for dealing with repairs reported as required by tenants of properties where they act as letting agents, from the first report of the repair to its completion. This document should include procedures where staff identify a repair as communal and what training staff are given on how to recognise when a repair is communal.

Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by a 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 29.10.21