

Housing and Property Chamber
First-tier Tribunal for Scotland



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

Reference numbers: FTS/HPC/LA/20/0241 & FTS/HPC/20/0246

The Parties:

Mr John Brown, Inchyra Kippen Road, Fintry, Glasgow, G63 0PL (“the Applicant”)

Mr Allan Bate & Mr Kevin Valentine, Care of Stirling Property Shop, SPS Property Management Ltd, 20 Stewarton Road, Kilmarnock, KA3 4AD (“the Respondents”), and

Stirling Property Shop, SPS Property Management Ltd, 20 Stewarton Road, Kilmarnock, KA3 4AD, (“ SPS the Respondents”)

1. Tribunal Members:

Karen Kirk (Legal Member) and Leslie Forrest (Ordinary Member)

2. Process - Hearings on 4th December 2020 and 18th December 2020

Hearings took place in these Applications together. It had been determined previously that both Applications would be conjoined. The Applicant sought same in his applications in terms of Rule 12. Three hearings had been adjourned to allow preparation and procedural aspects and Tribunal directions to be progressed given the complexity of the Applications and the fact that the Respondents were unrepresented. Parties were directed to lodge a number of documents in regards their relationships between each other, communication between each other and the extent of the losses that the Applicant had indicated he had incurred in the applications and for which he sought compensation. These Directions and Notes to accompany the Hearings form part of the process. Due to the Covid- 19 pandemic the Hearings took place by teleconference.

3. Attendance

Kirstie Donnelly, Bannatyne Kirkwood France & Co Solicitors, 16 Royal Exchange Square, G1 3AG attended on behalf of the Applicant.

The Applicant was also in attendance.

Kevin Valentine and Allan Bate were in attendance individually and on behalf of the Respondents as the Applications were conjoined.

4. Decisions of the Tribunal in respect of both Applications.

Application 0241

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) having made enquiries as it saw fit for the purposes of determining whether the Letting Agency has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that;

1. Mr Alan Bate and Mr Kevin Valentine carried out Letting Agency work whilst unregistered in terms of section 61 of the 2014 Act and in doing so failed to comply with the Code of Practice at Paragraphs 17,18,21,27,29a)-c), 30,32a)-q),33,34,40,54,65,70,96,107,110,112,121,122a)-b),126 and 130
2. It was appropriate to order the payment of compensation in respect of those breaches of the code in terms of Section 48 of the 2014 Act by Mr Alan Bate and Mr Kevin Valentine to the Applicant for the sum of £10,000.

Application 0246

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that having made enquiries as it saw fit for the purposes of determining whether the Letting Agency has complied with the Code of Practice for Letting Agents as required by the Housing (Scotland) Act 2014 (“the 2014 Act”), determines unanimously that;

1. SPS Ltd from 3rd June 2019 failed to comply with the Code of Practice at Paragraphs 17,18,21,27,29a)-c), 30,32a)-q),33,34,124,125 and 126, and
2. It was appropriate to order the payment of compensation in respect of those breaches of the code in terms of Section 48 of the 2014 Act by SPS Ltd to the Applicant for the sum of £6000

5. Preliminary Matters

The Tribunal discussed the manner and procedure of the teleconference hearing and explained the process in particular to the Respondents. There was no objection raised in regards procedure by either party.

The Respondents confirmed that SPS was still a live company but was not trading and had sold its assets during June 2020. The Tribunal noted that as of the date of the final hearing, the company was still Live in Companies House showing both Mr Valentine and Mr Bate as Directors and had an active website advertising property to let.

6. Findings in Fact and Law

The Tribunal found the following:

The Parties

1. The Applicant was a builder and businessman who sought to rent out his home in 2019 whilst he carried out business abroad.
2. The Applicant's property was a large rural expensive property which he had not previously rented, and which was the Applicant's home.

3. The Applicant had not rented property before and sought the assistance of a letting Agency, Martin & Co in Stirling to assist with this at the beginning of 2019.
4. The Applicant met Mr Allan Bate who was the manager of the branch of Martin & Co and who visited the property and met the Applicant. The Applicant engaged the services of Martin and Co and worked directly with Mr Bate. The Property was marketed in February 2019 and there was little interest.
5. The Applicant and Mr Bate become friends and were interested in the business work of each other. In or around March 2019 Mr Bate left Martin and Co and became a referral agent for Pacitti Jones. The Applicant decided to end his business relationship with Martin & Co and moved to Pacitti Jones with the assistance of Mr Bate.
6. It was thought likely that Mr Bate would enter into an agreement to work with Pacitti Jones but this did not occur. Pacitti Jones had found prospective tenants for the Applicant's property but the Applicant had not been able to undertake necessary works timeously and the tenants rented alternative property in a neighbouring village.
7. The Applicant then sought the assistance of Mr Bate to assist him in finding a tenant and decided not to continue to work with Pacitti Jones. Mr Bate told the Applicant he would be undertaking exams and the necessary work to become properly registered as a letting agency with his former colleague Mr Valentine but he was not yet registered. The Applicant sought the assistance of Mr Bate.
8. In April 2019 Mr Bate was on holiday and asked his former colleague and new business associate Mr Kevin Valentine to assist the Applicant in marketing his home/property whilst he was on holiday. Mr Valentine phoned the Applicant and started to assist him to market his property. There was frequent what's app messages and contact between Mr Valentine and the Applicant. No terms of business were signed between parties.

The lease/Estate Agent Work

9. Mr Valentine assisted the Applicant in marketing his property to find a tenant on the Open Rent online portal. He sought the passport details of the Applicant and made the arrangements. The advertisement was placed on the Open Rent platform by Mr Valentine who had agreed to find a "work around" of the system to facilitate this in assisting the Applicant
10. Mr Valentine carried out an inventory of the Applicants home excluding a locked room he said he was told by the Applicant contained papers and clothes.
11. Mr Valentine informed the Applicant that there was a prospective tenant interested in the property, a Mr Sanjeev Arora.
12. Mr Valentine carried out a viewing of the property with the prospective tenant Mr Arora and reported to the Applicant it went well. Mr Valentine negotiated the rent and start date of the tenancy for the Applicant as the 17th May 2019. The rent was agreed at £1800 and Mr Valentine sent a message to the Applicant to inform him of this.

13. Mr Valentine on behalf of the Applicant sought references for the Mr Arora and received a NatWest bank statement, wage slip purporting to be from his current employers, copy passport and Thames Water utility bill. Mr Valentine took copies and reported to the Applicant who arranged to be present at his property on 17th May 2019.
14. On 17th May 2019 the Applicant, Mr Valentine and Mr Arora met at the property. The Applicant walked Mr Arora around the property. Mr Valentine signed the lease on behalf of the Applicant and Mr Arora also signed the lease. Mr Valentine left the Applicant and Mr Arora at the property.
15. Mr Valentine and Mr Bate in terms of Section 61 of the Housing (Scotland) Act 2014 carried out letting agency work before in the incorporation of SPS Ltd on 3rd June 2020

Concerns

16. On 18th May 2020 the Applicant gained entry to the property to continue to move his belongings as he had not cleared the property for rent and reported to Mr Valentine that the new tenant had moved furniture and a chair to gain access to the lofts in the property. Mr Valentine contacted Mr Arora and was told he had been investigating the property. Mr Valentine had sought to calm the Applicant's reported anxieties.
17. The Applicant became concerned regarding the property and the installation of grey blinds which he said were always closed and the poor maintenance of the property (specifically the garden which appeared to be untouched with long grass). He reported that to the Respondents.
18. The tenant made payments to Mr Valentines personal bank account of the rent of £1800 on 17th May and 17th June 2019. Mr Valentine made a payment of £1330 to the Applicant for the first month's rent. Mr Valentine deducted a £300 tenancy set up fee and an 8% management fee-these deductions had been agreed beforehand by the Parties despite no terms of business being in place. On 17th June 2019 Mr Valentine made a payment to the Applicant of £1638 from his bank account of the rent minus the 8% management fee. Mr Valentine also obtained a deposit of £1800 from the tenant and this was sent to Safe Deposits Scotland.
19. The Applicant continued to have concerns about his property. Mr Valentine was in negotiation with the tenant to arrange a first inspection of the property at the beginning of July 2019. The tenant was reluctant to make any arrangements in text messages between Mr Arora and Mr Valentine. The tenant offered 3rd August as a date for the inspection to go ahead.
20. On 3rd June 2019 SPS Ltd was incorporated under company number SC632233. Mr Valentine and Mr Bate are directors of this company. On 17th July 2019 SPS Ltd paid to the Applicant the rent minus the management fee and a payment was received by the Applicant from the SPS bank account. No terms of business were signed by parties following the incorporation of SPS. SPS became registered in terms of Section 44 of the 2014 Act. Prior to the incorporation of SPS the Respondents, Mr Bate and Mr

Valentine were acting together providing Letting Agency work whilst unregistered to do so in terms of Section 61 of the 2014 Act. After 3rd June 2019 SPS provided Letting Agency work to the Applicant.

21. Around 22nd July 2019 a meeting took place at SPS office in Alloa between the Applicant, Mr Valentine and Mr Bate. It was agreed that the concerns for the property remained and that as they were not able to arrange an inspection contact would be made with the police. The Applicant stated that he was concerned that the Tenants were operating a cannabis farm in the Property. The Applicant contacted the police that day. The following morning on 23rd July 2019 the police called Mr Bate and sought information on Mr Arora and thereafter attended SPS Ltd for keys to the property. On entry the police found that the property had been used to cultivate cannabis and had been converted and significantly damaged as a result.

Damage

22. The property had been damaged significantly following the commencement of the lease on 17th May 2019. There was damage to pipes in the property, to the under floor heating system and to the oak floors through the property. There was significant damage to the coving, floors, electric cables, blinds, facings and windows in the property.
23. The property was damaged by the drilling of holes throughout to install a ventilation system.
24. The carpets were damaged and the property required significant plastering.
25. The locked room in the property had been broken into. The Applicant had produced a list of items that were in the locked room including also a list of items and losses dated 4th October 2020. The list comprises a value of £158,395. The Applicant did not have Landlord Insurance in place nor insurance for his own belongings left in the property. The list contains no replacement values for items or goods within the property.
26. The Applicant recovered the property following the police raid on the 23rd July 2019. In August 2019 the Applicant obtained estimates to repair the damage. The Applicant has carried out significant repairs to the property himself. The Applicant has instructed an electrician. The house has not been returned to its previous condition yet.

Deposit

27. The Respondent SPS Ltd did not return the deposit to the Applicant timeously following return of same in full by Safe Deposit Scotland given the breach of the tenancy by the tenant, Mr Arora.
28. Safe Deposit Scotland returned the deposit in October 2020 and the Respondents retained same in their client account unnecessarily for a period until 15th November 2020.

29. The Applicant made numerous requests for the return of the deposit. The Respondents sought assurances from the Applicant that he would not be seeking any redress against SPS Ltd for the damage caused by the tenant to the property before releasing the Deposit. In October 2019 the parties were also seeking to meet to return personal belongings to each other.

30. The deposit was returned by the Respondents to the Applicant on 15th November 2020.

Breaches of the Letting Agency Code

31. The Tribunal determined that the following paragraphs of the Letting Agency Code in terms of Schedule 1 of The Letting Agency Code of Practice (Scotland) Regulations 2016 were breached by Mr Bate and Mr Valentine jointly and severally prior to the incorporation of SPS on 3rd June 2019 under application reference number 0241, namely;

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

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

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

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

29. In your dealings with potential landlord clients you must:

Services provided and fee charges

a) provide clear and up-to-date written information about the services you provide and the charges (inclusive of taxes) for them.

c) inform the landlord that they need to get consent or delegated authority from all owners, mortgage lenders or other relevant parties before letting the property and the need to ensure relevant insurance cover is in place.

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

32. Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:

Core services

a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service;

Duration

b) the duration of the agreement and the date it commences;

Authority to act

c) a statement about the basis of your authority to act on the landlord's behalf;

d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods;

e) situations in which you may act without checking with the landlord first, for

example urgent repairs;

Fees, charges and financial arrangements

f) your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee;

g) how you will collect payment including timescales and methods and any charges for late payment;

h) that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;

Tenancy deposits

i) if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes;

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Communication and complaints

j) that you are subject to this Code and give your clients a copy on request.

This may be provided electronically;

k) how you will communicate (including the use of electronic communication⁽³⁾ with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;

l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;

m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

Conflict of interest

n) a declaration of any conflict or potential conflict of interest;

Professional indemnity insurance

o) confirmation that you hold professional indemnity insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

Handling client money

p) if you hold client money, how you handle clients' money; confirmation that you hold client money protection insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

How to change or end the terms of business

q) clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances.

Termination charges and related terms must not be unreasonable or excessive.

33. You and the landlord must both sign and date your agreed terms of business and you must give the landlord a copy for their records. If you and the landlord agree, this can be done using electronic communication including an electronic signature.

34. In line with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013⁽⁵⁾, in most cases you must give landlords 14 calendar days in which to cancel if the agreement is signed away from your premises.

40. You must take all reasonable steps to ensure your letting agent registration number is included in all property advertisements or communications.

54. You must agree with the landlord the criteria and process for managing and

approving tenancy applications from prospective tenants.

65. You must inform the landlord of the statutory requirements on tenancy deposits under the Housing (Scotland) Act 2006 and the Tenancy Deposit Schemes (Scotland) Regulations 2011(8).

70. You must take reasonable steps to remind the tenant to sign and return the inventory. If the tenant does not, you must inform them, in writing, that you will nevertheless regard it as correct.

96. On request, you must disclose to landlords, in writing, whether you receive any commission, fee, rebate or other payment or benefit and any financial or other interest you receive from a contractor/third party you appoint.

107. You must take all reasonable steps to ensure your letting agent registration number is included in all relevant documents and communications in line with your legal requirements under the 2014 Act.

110. You must make landlords and tenants aware of the Code and give them a copy on request, electronically if you prefer.

112. You must have a clear written complaints procedure that states how to complain to your business and, as a minimum, make it available on request. It must include the series of steps that a complaint may go through, with reasonable timescales linked to those set out in your agreed terms of business.

121. You must ensure you hold client money in one or more separate and dedicated client bank accounts with a bank or building society authorised by the Financial Conduct Authority, separate from your main business or private accounts.

122. You must have written confirmation from any bank or building society where a client account is held that the following conditions apply:

(a) that all money standing to the credit of that account is client money; and
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(b) that the bank or building society is not entitled to combine the account with any other account or exercise any right to set-off or counterclaim against money in that account for any sum owed to the bank or building society on any other of your accounts it holds.

126. You must hold a client money protection insurance policy unless you can demonstrate equivalent or greater protection through another body or membership organisation. You must give further details (such as the name of your provider, your policy number and a summary of the policy) to them on request.

130. You must have, and maintain, adequate professional indemnity insurance that is appropriate for your agency's level of income and type of work unless you can demonstrate equivalent or greater protection through another body or membership organisation.

31. The Tribunal determined that the following paragraphs of the Letting Agency Code in terms of Schedule 1 of The Letting Agency Code of Practice (Scotland) Regulations 2016 were breached by SPS following their incorporation on 3rd June 2019 under application number 0242, namely:

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

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

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

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

29. In your dealings with potential landlord clients you must:

Services provided and fee charges

a) provide clear and up-to-date written information about the services you provide and the charges (inclusive of taxes) for them,

c) c) inform the landlord that they need to get consent or delegated authority from all owners, mortgage lenders or other relevant parties before letting the property and the need to ensure relevant insurance cover is in place.

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

32. Your terms of business must be written in plain language and, alongside any other reasonable terms you wish to include, must clearly set out:

Core services

a) the services you will provide to that landlord and the property they relate to. For example, tenant introduction, lettings service and full management service;

Duration

b) the duration of the agreement and the date it commences;

Authority to act

c) a statement about the basis of your authority to act on the landlord's behalf;

d) where applicable, a statement of any level of delegated authority, for example financial thresholds for instructing repairs to the property and the purchase of replacement goods;

e) situations in which you may act without checking with the landlord first, for example urgent repairs;

Fees, charges and financial arrangements

f) your management fees and charges (including taxes) for your services, and your processes for reviewing and increasing or decreasing this fee;

g) how you will collect payment including timescales and methods and any charges for late payment;

h) that where applicable, a statement setting out details of any financial interest in providing third-party services (for example, commission for using certain companies, products or services) is available from you on request;

Tenancy deposits

i) if a tenancy deposit is to be taken, who will lodge the deposit with one of the approved schemes;

10

Communication and complaints

j) that you are subject to this Code and give your clients a copy on request.

This may be provided electronically;

k) how you will communicate (including the use of electronic communication⁽³⁾ with landlords and tenants, and the timescales within which you could be reasonably expected to respond to enquiries;

l) your procedures for handling complaints and disputes between you and the landlord and tenants and the timescales within which you could be reasonably expected to respond;

m) how a landlord and tenant may apply to the Tribunal if they remain dissatisfied after your complaints process has been exhausted, or if you do not process the complaint within a reasonable timescale through your complaints handling procedure;

Conflict of interest

n) a declaration of any conflict or potential conflict of interest;

Professional indemnity insurance

o) confirmation that you hold professional indemnity insurance or equivalent protection through another body or membership organisation and that

further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

Handling client money

p) if you hold client money, how you handle clients' money; confirmation that you hold client money protection insurance or equivalent protection through another body or membership organisation and that further details (such as the name of your provider, your policy number and a summary of the policy) are available from you on request;

How to change or end the terms of business

q) clear information on how to change or end the agreement and any fees or charges (inclusive of taxes) that may apply and in what circumstances.

Termination charges and related terms must not be unreasonable or excessive.

33. You and the landlord must both sign and date your agreed terms of business and you must give the landlord a copy for their records. If you and the landlord agree, this can be done using electronic communication including an electronic signature(4).

34. In line with the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013(5), in most cases you must give landlords 14 calendar days in which to cancel if the agreement is signed away from your premises.

124. You must ensure clients' money is available to them on request and is given to them without unnecessary delay or penalties, unless agreed otherwise in writing (for example to take account of any money outstanding for agreed works undertaken).

125. You must pay or repay client money as soon as there is no longer any need to retain that money. Unless agreed otherwise in writing by the client, you should where feasible credit interest earned on any client account to the appropriate client.

126. You must hold a client money protection insurance policy unless you can demonstrate equivalent or greater protection through another body or membership organisation. You must give further details (such as the name of your provider, your policy number and a summary of the policy) to them on request.

7. Summary of Evidence

1. Mr John Brown

- a) The Applicant gave evidence that he initially knew the Respondent, Mr Bate as he had gone to Martin and Company to rent his property out as he was due to go to Australia for a year. He said Allan Bate was the manager there. He explained that he had instructed Martin and Company to market his property for let but had withdrawn such instruction when Mr Bate left that company and Mr Bate was assisting him after that. The Applicant said that there were no terms of business just texts between the Applicant and Mr Bate regarding the property. The Applicant referred to a What's App message lodged between himself and the Respondent, Mr Bate of 6th March 2019 where he told Mr Bate that he had " let Rosie know it's off the market over to you, thanks I will get the keys. " he explained that he had confirmed with Rosie who worked for Martin and Company that he was no longer working with them in regards his property.

- b) The Applicant further referred to a text message lodged of 25th March 2019 where the Applicant said that Mr Bate responded to his query about his property as he was keen to get it rented saying he had a very interested party and he was assisting the Applicant with trying to rent out his property. The Applicant further referred to messages between himself and Mr Bate on 5th April 2019 whilst he was abroad in Thailand that Gary, person who worked for him was carrying out work to assist him in letting out the property.
- c) On 10th April 2019 the Applicant referred to a text reply from Mr Bate which said he was assisting the Applicant in finding a tenant. The Applicant said he withdrew his business from Martin and company because Mr Bate he said assured him he would get someone to rent his property and that it would look better for his own interests in the eyes of Pacitti Jones if he was bringing a new client with him at the start of his business relationship with them. The Applicant confirmed that he understood the Respondent Mr Bate was leaving Martin and Company to go to Pacitti Jones. The Applicant had lodged a letter of 17th December 19 from Pacitti Jones which he said confirms Pacitti Jones never took on his property. The Applicant said that Mr Bate convinced him to go to Pacitti Jones. The Applicant said he was an easy going person and he didn't question it and went with him. The Respondent Mr Bate said that Pacitti Jones didn't give him a job and he then made a decision to go into business on his own accord.
- d) The Applicant said that Mr Bate had indicated that himself and a Mr Kevin Valentine were going into business together and that Mr Bate would sit the relevant exams. He was given he said no terms of business. He referred to text messages lodged from Mr Bate confirming he was sitting exams and he was in the process of applying for registration as a letting agent at the time of a text message referring to exams dated 29th April 2019.
- e) Thereafter the Applicant went on to explain he was then introduced to Mr Kevin Valentine. He said he was abroad when he got a text from Mr Bate saying Mr Valentine he would be in touch about finding a tenant for the Applicants property. The Applicant was referred to Production 2:1 and a message from Mr Valentine asking the Applicant to send him photo ID as he said Mr Valentine was placing an advert on his behalf with Open Rent. He said he got a further message to say that it was online but there was difficulty getting it on to RightMove and that Mr Valentine was assisting with that. The Applicant said there was no formal arrangement about his property and nothing on paper. The only discussion the Applicant said they had was that the management fee would be 8% of the monthly rental amount.
- f) The Applicant said he received a message from Mr Valentine on 26th April 2019 to say a viewing was arranged and that a family was flying up to see the Property. The

Applicant said that Kevin Valentine was conducting the viewing. The Applicant said that Mr Valentine updated him after the viewing by text that it was a good viewing. The Applicant said that he had asked re the fees and he was told it was £300 tenancy set up then 10% for management. The Applicant said that he had discussed way back the fees with Alan Bate and he did not know about £300 in first month.

- g) The Applicant then referred to a text message where Mr Valentine said the new tenant to his property had agreed a rent of £1800 and the credit score was all well. The Applicant said his understanding was that they would check out fully the reference the same as any estate agent would do and that he was not led to believe anything else. The Applicant said that Mr Bate assured him that Mr Valentine would check out the references for the tenant and that he never got access to the references until the end of the tenancy. He said after the tenancy ended he saw copy passports, bank statements and a utility bill. He said he did not get a copy of these before the tenancy started.
- h) The Applicant went on further to explain that the date of entry was 17th May 2019 for the new tenant and that he was present. The Applicant said that Mr Valentine was also present and that he started showing the new tenant around the house. The Applicant said he showed him the heating etc but he got the impression the tenant wanted himself and Mr Valentine to get away quickly. The Applicant said he felt uneasy about the tenant and felt that there was something about him he didn't like and he didn't seem interested in the house.
- i) The Applicant went on to explain that after Mr Valentine left he started loading **stuff** some of his own belongings in the van to take to the flat he was living in as he had not managed to take all his belongings as he had had a lot to do as the property was a 6 bedroom house and he could only take a certain amount to the flat. He said he left some items of property and belongings in a locked room in the property and he made clear that no one gets access to that room. The Applicant said that he said there was a lot of money's worth in the room. The Applicant said he spoke to the tenant outside who told him he was up here finding new premises for a car parts company and that he told Mr Valentine this and he said he didn't know that was the line of business the tenant was in.
- j) The Applicant said on 18th May 2019 he came back to the property as he still had stuff to take out and that Mr Valentine had phoned the tenant to say he was coming back and he said that's the last time and make sure it's the morning. The Applicant said he let himself into the property and that no one was there but that there was a piece of

furniture moved to gain access to the loft and the other loft had a chair under it. He referred to picture he had taken. The Applicant said he reported what he found to Mr Valentine who had reassured him, saying that the tenant was entitled to go into the loft. The Applicant said he had concerns and that he also sent another message to Mr Valentine when the grass became overgrown.

- k) The Applicant said the tenant was not tending the grass and that they had put grey blinds up everywhere which were always closed and that the property was in darkness. The Applicant said he sent a message to Mr Valentine that his property was a mess and he was told the tenant was coming back from holiday and that a property inspection would be arranged. The Applicant said that he was told by Mr Valentine that the tenant was very private he would get back with a date for the inspection but he didn't.
- l) The Applicant referred to his bank statement lodged and payments from Mr Valentine for the rent for the May and June and then a payment from Stirling Property Shop for the rental period 17th July to 16th August was made. He said the first rental payment had a deduction for a £300 startup fee and the payment was made from Mr Valentines account on 17th May of £1330. The Applicant said he received all payments of £1800 less £162 for the management fees so £1638 on 17th June and he said he could not see any letting agency registration number. The Applicant said when the Respondents became Stirling Property Shop on 3rd June 2019 he was not told and did not get a copy of any terms of business. He said further he always knew that Mr Bate and Mr Valentine would set up themselves but nothing changed and he did not receive a copy of the Letting Agency Code or was told about it. On 17th July 2020 £1638 was then received he said from Stirling Property Shop's account.
- m) The Applicant said he kept saying to the Respondent that he suspected the tenant was growing cannabis as the blinds were shut. He said he was told Mr Valentine had a text message from the tenant that he would not allow any access and he would need a court order because an inspection was sought. Mr Valentine told the Applicant he said that the tenant had sent a text message that the tenant wasn't wanting to allow entry and he would not pay his rent. The Applicant said he instructed the Respondents to get the tenant out of his house but that the Respondents fobbed him off. The Applicant said the Respondents told him it would be illegal for him to enter the house and he said they didn't contact the police and he contacted the police.
- n) The Applicant said the tenancy was then recovered due to drug use and he gave evidence of the extent of damage caused by the tenant to the property. The Applicant gave detailed evidence referring to photographs lodged of the extent of the damage caused by the tenant. He said there was damage to pipes, under floor heating and the oak floors. The Applicant went on to describe damage to coving, floors, electric cables,

blinds, facings and windows. The Applicant said there were holes everywhere as the tenant had used them to create a ventilation system, carpets were damaged and the property required plastering.

- o) The Applicant said that his personal safe-which was located in the locked room referred to above- was broken into and the tenant had taped it back up. In the safe the Applicant said was his father's gold watch, personal items, and birth certificates. The Applicant said in the room was all his personal belongings, his tools and his business stock. He said he had Magna stock of around 2 square metres. The Applicant said there was £58k of original stock with a retail value £125k in the room. He stated that the Respondents had both been well aware that at some point of time he would need to get access as he could not keep everything at his flat.
- p) He explained that his business magna flow stock supplies are fuel saving devices with magnets and they reduce emissions for fuel and he referred to an accountant valuation of same which had been lodged. The Applicant referred to a list of items he had lodged and had prepared giving the value of what the items had originally cost.
- q) The Applicant said the total reinstatement cost of the damage was quoted as £65,968.42 but that he did most of the work himself as he had no money. The Applicant said he had had to employ a local electrical contractor as the tenant had fused all the motors in the property as they put a surge in to bypass the electricity meter. The Applicant said the electrician carried out this fuse box work and electricals inside for £4500 and referred to a quote lodged.
- r) The Applicant said after the tenancy ended he could not get his deposit back from the Respondents and he asked his solicitor to get payment and that to do so he had incurred legal fees of £240. The Applicant said 3 months after the end of the tenancy was when he finally received the money. When the Applicant had requested return of the deposit the Respondents stated that they wanted him to agree to end all legal issues regarding the tenancy and he refused. He said the personal belonging he wanted back was ladders they had as he was doing repairs for one of their tenants and they also had 52 of the magnets in their car as Mr Bate had reckoned he could sell them for him. The Applicant said he gave them his bank details on 31st October and he got the return of the deposit on 18th November 2019
- s) The Applicant said at the end of the tenancy he was so angry that he considered the Respondents did not do due diligence on the tenant and when he saw the reference documents he googled the car parts business of the tenant and the company was not registered. The Applicant said he couldn't even speak to the Respondents and had went to doctor suffering from depression. He said the situation was absolutely horrendous and he was devastated at the loss of the gold watch and his mother's ashes which were also in the locked room and taken.

- t) In cross examination the Applicant confirmed he had not taken out landlord insurance and said he was in Australia and Thailand and it was the last thing on his mind to get. The Applicant said there had been a previous fire at the property but that this didn't put him off getting a quote for landlord insurance. The Applicant was referred to terms of business which had not been lodged and which he said he did not receive. The Applicant said he had concerns regarding the tenant but said he was fobbed off with Kevin Valentine who said it's alright you will be fine. The Applicant said he was given no advice in the week before the end of the tenancy. The Applicant said he had no time to get an inventory done of the property in the locked room and it was a locked room with no entry. The Applicant said he does feel responsible and he had sent a happy type message to the Respondents on the night of finding the house damaged and he said he was lucky he was a builder. He said at that point he did not know the amount of stuff missing and was trying to hide what had happened.
- u) The Applicant said as he was in Australia he only knew Allan Bate in regards his property having never done it before and he had bought a flat through him before.

2. *Mr Bate and Mr Valentine individually and for SPS Ltd*

Mr Bate and Mr Valentine split their evidence into 5 sections and each gave evidence together doing so for themselves individually and for SPS Ltd. There was no objection to this.

- a) Mr Bate advised he first met John Brown when he was a branch manager of Martin and Co in Stirling in late December 2018 or early January 2019. He said Mr Brown had made a standard letting enquiry for his own property and as he was involved with new business enquiries he arranged to visit him. Mr Bate said he then completed a standard appraisal to which there was various documents such as a valuation, safety certificates and responsibilities of landlord document. Mr Bate said Mr Brown agreed to proceed as he was moving to the far east and to Australia for a minimum period of a year and was looking to find a tenant. A blank terms of business was left in a pack he said. Mr Bate told the Tribunal he built a good rapport with Mr Brown, it was a long appraisal about 2 hours and they agreed terms of business to get the property on the market. Mr Bate referred to relevant documents lodged in this regard. Mr Bate said on agreeing those terms and on signing the contract you confirm and Mr Brown did that you have obtained consent from your mortgage lender. Mr Bate said the property was then advertised on all renting portals when Mr Brown left in Feb 2019. He said Mr Brown left without insurance and when he returned in May 2019 Mr Brown did not have insurance still.
- b) Mr Bate told the Tribunal that he has 15 years' experience in letting property and that in his view the property was a niche letting because of the size and value of it and the range of tenants for a niche property is fairly limited. Mr Bate said that on 4th March 2019 he resigned from Martin and Co due to alleged fraud and he had a discussion with Mr Brown around that time and that he was in discussion with Pacitti Jones to become a director of their franchise. Mr Bate said he had been speaking to others as potential clients. Mr Bate said through his contacts he began acting as a referral agent for Pacitti Jones and received a referral fee. Mr Bate said Mr Brown wanted to take

his business form Martin & Co to Pacitti Jones and that he collected the keys from Martin and Co for Mr Brown and gave them to Pacitti Jones.

- c) He stated that he was the “go between” with Pacitti Jones and John Brown was not involved. He said he gave a copy of the Martin and Co terms of business to Pacitti Jones and was not involved in the matter any further. Mr Bate said he would have left everything in the hands of Pacitti Jones and his evidence was that they would have visited and put the property online, completed the advert and viewings. Mr Bate said there was then a tenant found and entry was subject to a few things being sorted and picked up by the prospective tenants but as Mr Browns contractor did not complete them in time those tenants rented another Pacitti Jones property instead. Mr Bate referred to evidence lodged regarding work being carried out to the property in a text message of 5th April 2019.
- d) Mr Bate told the Tribunal that he had discussions with Pacitti Jones and he could not agree to terms to enter the franchise and he informed Mr Brown around 15th April 2019 of this and he referred to what’s app messages. Mr Bate told the Tribunal he regarded MR Brown as friend over the 3 or 4 months after meeting each other he had got to know him well, they would chat on a regular basis and he had a business for saving fuel and he had left him stock to assist in selling. Mr Bate explained Mr Brown was aware he was now looking to start a new business with Mr Kevin Valentine who had also left Martin and Co. Mr Bate said Mr Brown was still abroad and unsure of his plans and that he could in theory assist him in finding a tenant on open rent, assist in getting advert and when they were registered agents they could take over the management of the property he said. Mr Bate referred to a message from Mr Brown on 10th April 2019 confirming he wanted to do without Pacitti Jones.
- e) Mr Bate said that he was then on holiday and he introduced Mr Brown to Mr Valentine he said. On 15th April 2019 Mr Valentine said Mr Bate asked him to speak to Mr Brown as he wanted help to find a tenant for his property. Mr Valentine said as they were not set up as a letting agent at that time he contacted the open rent medium whereby a private landlord can get access to popular portals through one advertisement for Mr Brown. He said on 18th April 2019 he asked Mr Brown for identification for that and Mr Brown supplied his passport. Mr Valentine said in response to the advert he got a call from a potential tenant. Mr Valentine then advised Mr Brown this tenant worked for a motor manufacturer and had missed out on a property in Glasgow and he was relocating up here and that business was branching out. Mr Valentine told the Tribunal that Mr Brown was very keen to get someone as a tenant as he had just changed the boiler and he needed someone in as soon as possible. The potential tenant arranged to view the property on 1st May 2019 with Mr Valentine present the Tribunal was told. Mr Valentine told the Tribunal he conducted the viewing and conceded in evidence that he was carrying out letting agency work.
- f) Mr Valentine said he asked the tenant for references and he produced everything requested. Mr Valentine said the tenant had a utility bill, he had a copy of bank statements, he had pay slips, he had a passport and he also produced an Equifax credit report. The tenant he said had been at his current address since February 2014. Mr Valentine referred to documents lodged consisting of a passport, payslip, Thames water utility bill, ongoing monetary action, bank account details and bank account transactions. Mr Valentine said he had a call with Mr Brown on 7th May and it was agreed the move in date would be 17th May 2019 as Mr Brown wanted to get a tenant and he wanted to be there on that date. Mr Valentine told the Tribunal in regards reference checks he did everything any letting agent would do. Mr Valentine said on 17th May 2019 Mr Brown did a walk around with the tenant and the tenant was given

the keys. Mr Valentine said he completed the tenancy agreement documentation with the tenant.

- g) Mr Valentine said he felt Mr Brown was not a normal landlord as when the tenant and Mr Valentine arrived he was having tea and a biscuit in the property at the time of the handover. Mr Valentine said Mr Brown was also still removing his belongings from the garage. Mr Valentine said that Mr Brown did the walk round with the new tenant and that he himself mentioned that the locked room was locked and tenant was not allowed access. Mr Valentine said that after the tenant had keys and had signed the lease Mr Brown let himself in and there was a bit of a concern as at that point he let himself in illegally in his view and that in his experience can create difficulties. Mr Valentine said that Mr Brown alerted him to having seen something suspicious and Mr Valentine asked the tenant about that and he didn't give any information other than he had been looking around the property. Mr Valentine told the Tribunal Mr Brown was suspicious and he was not clear why he had left his own belongings in the property. Mr Bate referred to an inventory document completed by Mr Valentine as there was no key for the locked room there was no record of the contents of the locked room behind the garage. Mr Valentine told the Tribunal he was unaware of what was in the locked room and recalled being told it was clothes and paperwork by Mr Brown. Mr Bate told the Tribunal that after the police involvement at the property there was a what's app message between Mr Brown and Mr Valentine where Mr Brown still gives no mention of any value in the locked room.
- h) Mr Bate and Mr Valentine told the Tribunal that when they first assisted Mr Brown they were not trading and were still building up to start the letting business at the start of July 2019. Mr Bate said that Mr Brown at the stage of the management of the tenancy going to SPS LTD did not want to enter into terms of business and Mr Bate did not push it with Mr Brown due to their friendship. Mr Bate said he provided Mr Brown with a terms of business when SPS Ltd was registered and he then discussed it a few times with Mr Brown who said he would get it to him but never did. Mr Bate said SPS Ltd took a temporary office space in Alloa and as they had built a friendship with Mr Brown he almost on a daily basis would come into the office to see them. Mr Bate said he recalled he spoke about the terms of business with Mr Brown on 12th July 2019 and he had printed a duplicate copy of the SPS property management terms of business for Mr Brown but he never signed it.
- i) Mr Bate said that Mr Valentine had made contact with the tenant to arrange a 1st inspection and it was blocked three times by tenant. Mr Bate said there was then agreement for 5th August 2019 for an inspection. Mr Bate also said that Mr Brown was feeding back concerns about the property being in darkness with all the blinds shut. Mr Bate said that Mr Brown did not understand the law as a landlord on the basis that if there is no access agreed then you had to go to the tribunal to do that. Mr Bate said there were a number of discussions between the parties about the concerns for the property and that around 15th August they brought everything to the table regarding the property. Mr Bate said they then agreed to get police involved and Mr Brown stated he had a friend of a friend who worked in the local police station so decided he would advise of the suspicions on Monday morning. Mr Bate said first thing on Tuesday morning PC Barr phoned him from the local station regarding the property and asked him to fill in a form tell them everything they had on the tenant. Mr Bate said the police then arrived for keys for the property and found the property had been used to cultivate drugs. Mr Bate then said they did not hear a huge amount about the property of from Mr Brown after that.
- j) Mr Bate said the initial communication other than light hearted text messages from Mr Brown was from Mr Brown's solicitor and they got a letter dated 28th August intimating

a claim of negligence. Mr Bate said on the return of the deposit that it was not their intention to withhold funds however they allowed the issue of the property to overlap on the deposit refund. Mr Bate told the Tribunal that he and Mr Valentine accepted that to be a breach of the code

3. Submissions

a) For the Applicant

1. The Applicant's solicitor invited the Tribunal to find that the Respondents had breached Letting Agency Code of Practice and that the Applicant had suffered loss as a result. It was further submitted that the Respondents had acted as a Letting Agency without proper registration prior to incorporation and were in breach of Section 44 of the 2014 Act, that being that the Respondents had acted as letting agents and breached section 44(1) carrying out letting agency work as things done in the course of a business which are carried out with the landlord entering into a lease. The Applicant's solicitor submitted there had been various breaches of the code and compensation was sought by the Applicant to reflect the loss suffered as the result of the respondent's failure to comply with the code.
3. The Applicant's solicitor referred the Tribunal to the evidence heard from the Respondents that they had accepted instructions in respect of the property and they both conceded this was letting agency work and that at that stage they were not registered to carry out said work. The solicitor submitted further that the Respondent Mr Valentine was using the Open Rent Portal, conducted a viewing, signed the lease and compiled an inventory for the property. She submitted that this work was all extensive letting agency work carried out in a personal capacity as the agency was not incorporated until 3rd June 2020.
4. The Applicants solicitor submitted that there was no agreement as to what reference checks were carried out and no terms of business. She submitted the Equifax report referred to despite the directions of the Tribunal to provide additional information regarding references was not lodged and nor were any emails to the employer and landlord. The submission for the landlord was that the necessary checks were not made and the Respondents did not carry out with due skill or care and so breached the code.
5. The Applicant referred to the earlier Directions of the Tribunal to produce a list of alleged breaches that the Applicant relied upon and she sought to incorporate same in her submissions. She submitted that SPS once incorporated Mr Brown was not informed of this and only knew about this when his bank account began receiving the rent from SPS and not Mr Valentine. The Applicant's solicitor submitted that the losses incurred were as a result of the various breaches of the code in terms of the Applicant's list of breaches. The Applicant's solicitor referred to the loss suffered as £160,564 on the basis of the Applicant's compliance with the earlier Direction of the Tribunal to lodge vouching the Applicant's solicitor submitted that the list lodged in compliance

with the Direction contained many personal items which were lost or stolen in the property and the Applicant could not provide receipts. This list contained no replacement values and also contained items not present in the inventory on the property prepared by Mr Valentine and lodged.

6. The Applicant's solicitor submitted that Mr Brown provided evidence of how the situation had a detrimental effect on his magna flow business and mental health. She submitted the Applicant was honest and credible in his evidence and that had reference checks been carried out with due skill and care then the losses would not have been incurred. She further submitted the most significant breaches occurred prior to the incorporation of SPS. The Applicant's solicitor submitted that the Tribunal had discretion but the compensation should be based on the loss suffered overall although it is not a contractual claim but an award of overall loss based on evidence. She submitted that the breaches and loss sustained was a severe case.

The Applicant's solicitor also submitted the Applicant sought expenses on the basis that there had been a number of procedural hearings and Directions issued and there had been attempts to agree evidence that the Respondent did not take the opportunity of. As the Respondents had conceded to some breaches of the code during evidence the Applicant's solicitor submitted that the Respondents behaviour was unreasonable and expenses should be awarded in favour of the Applicant.

b) For the Respondents

1. Procedurally the Respondents were given an adjournment before making their submissions in view of them not being legally qualified. The Respondents submitted that they were not unreasonable in terms of their conducting of the case and submitted that they have been open and honest and opposed the request for expenses. The Respondents submitted that they got the matter of the deposit wrong and conceded to a breach of the code. In regards their conduct they submitted they were in no way negligent and that the end result for the damage and loss was caused by high level criminals. They submitted that the referencing accepted by them was standard and above board and that they acted with full care and attendance which they said the police assured them of when they were investigating the tenant.
2. The Respondents in submissions questioned the honesty of the Applicant and the value of the alleged losses was £2000 on the actual evidence lodged over and above the lists of items the Applicant said were in the locked room. The Respondents conceded that they carried out letting agency work in submissions but submitted that they see no correlation to the level of compensation sought

The Respondents submitted that the Applicant's self-responsibility was a huge question and so was the decision to have high value items in locked room with every opportunity to remove them or to have insurance.

Reasons for the Decision

Background

The Tribunal heard extensive evidence over the course of 2 days from the parties. This was in addition to the discussions in adjourned Hearings before evidence where the Tribunal in terms of their overriding objective sought to focus the issues, ensure the Tribunal had the correct information and to allow the fair determination of the Application in the interests of justice. The hearing notes for these adjourned hearings form part of the process. The Tribunal had the benefit of the evidence and all the adjourned hearings in full. There were no other witnesses relied upon by any party other than the parties themselves and there was a number of documents lodged by the parties to the benefit of the Tribunal. Some of these documents had been lodged in response to the Tribunals Directions at the earlier hearings. The Applications related to the professional relationship between firstly the Respondent Mr Allan Bate and the Applicant and thereafter also with Mr Kevin Valentine. The account of the commencement of said relationship to assist in the letting of the property by Mr Bate and Mr Valentine was credible and the Tribunal relied upon same. The Applicant in contrast sought to distance himself from anything other than a professional relationship with the Respondents and this was not credible or reliable in light of the evidence. The Tribunal noted the content and language in many messages between the parties lodged. The Tribunal also noted that in October 2019 parties after the incident were returning personal belongings to each other. The Applicant appeared to have from the outset from the evidence given to have had little if any experience as a landlord and was naïve as to the pitfalls of same. The Applicant was seeking to rent out his home, had not properly prepared same for tenants, was renting an uncleared property, was still removing personal items after the tenancy commenced and the property was an expensive and vast rental in substantial grounds. The Tribunal was satisfied that the Applicant had not properly considered the risks nor had he taken out any form of insurance in regards to said risks. Nevertheless the Tribunal was also satisfied that Mr Bate and Mr Valentine had collectively between them considerable experience in the letting agency field and that despite that after both leaving Martin & Co they undertook before they became registered as a Letting Agency, Letting Agency work for the Applicant. The Tribunal was also satisfied that a number of breaches of the code took place from the outset of the relationship and before SPS Ltd was incorporated on 3rd June 2019 which were extensive as the Tribunal has listed and set out.

The Tribunal noted from the evidence of Mr Allan Bate in the most part and the messages already mentioned by the Tribunal that the parties enjoyed a friendship and that the Applicant sought Mr Bate's assistance in his own business. In addition the Respondents regarded the Applicant as a skilled builder who could assist them going forward in their business. It was clear parties were close and were mutually assisting each other although the Applicant in his evidence sought to minimise this. However within that mutually beneficial professional

relationship the Respondents together carried out letting agency work in terms of Section 61 of the 2014 Act as in assisting the Applicant to find a tenant, marketing the property for him through Open Rent and then managing the tenant and the commencement of the Tenancy. The code sets out overarching principles and the Tribunal was satisfied that the Respondents before the incorporation of SPS Ltd breached the following paragraphs contained within Schedule 1 of the Letting Agent Code of Practice (Scotland) Regulations 2016

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

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

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

The Tenancy dated 17th May 2019

The Tribunal on commencement of the Tenancy was satisfied on the evidence that Mr Valentine agreed to and found the tenant Mr Sanjeev Arora for the Applicant. Mr Valentine was credible in his evidence that he undertook to place the advert for the Applicant and he conducted a viewing and inventory of the property. It was not in dispute the extent of the work carried out by Mr Valentine for the Applicant and the fact he signed the tenancy for the Applicant after carrying out reference checks. It was clearly a matter of dispute between the parties about the extent of the reference checks on the tenant Mr Arora. The Respondents were clear they carried out industry standard practice when making the relevant checks of Mr Arora and had lodged the copy documentation that had been obtained. The Applicant was clear in his view due diligence had not been carried out and the proper skill and care was not carried out.

The Code of Practice has a number of paragraphs pertaining to the reference checks and the relevant paragraph in terms of the main dispute here for the Tribunal was paragraph 61 that *"You must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord"*. The Tribunal had regard to the extent of the information obtained by the Respondents from Mr Arora and the evidence they gave which was credible and supported by the documents which they lodged that they had taken reasonable steps. The Applicant in contrast considered that the Respondents had breached the code commenting that they had not carried out due diligence on Mr Arora and the submission on his behalf was that reasonable skill and care was not taken. The Tribunal considers the Code is clear that reasonable steps are to be taken to confirm identity and verify references and that on balance in terms of the evidence before it these steps were undertaken. The Tribunal noted that the Respondents had obtained a bank statement, wage slip, utility bill and passport. The Applicant had not sought that the Respondents carry out credit checks or third party additional scrutiny and the documents submitted had been reasonably checked by the Respondents. The Tribunal was satisfied that paragraph 61 was not breached but considered that in terms of the Tenancy the following paragraph was breached:

57. You must agree with the landlord what references you will take and checks you will make on their behalf.

Tenancy Breaches

The Tribunal was satisfied that the Applicant continued to be concerned about his property following commencement of the tenancy until the police raid on 23rd July 2019. The Applicant considered that the Respondents failed to act on those concerns. The Tribunal noted that the Respondents sought to carry out an inspection with the Tenant and had been unsuccessful. Correspondence between Mr Arora and Mr Valentine showed attempts to set up an inspection in or around 7th July 2019 so attempts had been made to try to gain access to the property in line with the code. The code at paragraph 137 states that a letting agency must:

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

On balance the Respondents were suspicious when the attempts to gain access to the property failed in July 2019 and the property remained in darkness and unkempt. The Tribunal did not consider that the paragraph was breached on the basis that there was little known by the Respondents of any suspicious actions of the Tenant other than that reported by the Applicant and although with hindsight it is clear there were indicators it was not a breach of the code for the Respondents to not have alerted authorities earlier given the attempts they had made to gain access.

Deposit

The Tribunal accepted that the Respondent conceded they withheld the deposit when returned by Safe Deposit Scotland rather than to make payment to the Applicant forthwith. The documentary evidence establishes the breach and the Tribunal determined same.

Losses

The Tribunal directed the Applicant to lodge vouching for the losses he averred he sustained at an earlier stage in the Applications. In particular the value of the stock and possessions in the locked room was in dispute during the Hearing and the Tribunal had previously sought evidence of the belongings and stock lost. The Applicant lodged what vouching he had and his position was that the breaches of the code he alleged the Respondents had made resulted in those losses. The Applications against the Respondents sought compensation of £170k for the loss of personal items and £56k for damage to the property. No evidence was led other than the evidence of the Applicant about what was in the locked room. No one who gave evidence other than the Applicant had seen what was in the room, no inventory had been carried out of those contents. The Applicant had the Respondents said told Mr Valentine that the room contained clothes and paperwork. There was a deficiency in the evidence in terms of the contents of the locked room for the Applicant and also the presence of the magna flow stock the Applicant said was contained within. The Applicant had lodged accountant information regarding the value of the stock and retail value but nothing other than his evidence about its presence in a locked room was presented. In the absence of a lack of insurance and an inventory of that room the Tribunal determined that it was difficult to establish on balance the loss of the items listed by the Applicant. It was also noted that that list contained the cost of the items not the replacement value.

However Section 48 of the Act is clear that compensation may be authorised for any losses incurred “as a result” of the breach of the Code. An Application in terms of seeking such compensation is not in the Tribunal’s view the same as a contractual claim and on the basis that the Tribunal did not determine there to be sufficient evidence of the belongings in the locked room the Tribunal determined that in terms of the overriding objective that

compensation for the locked room contents was neither established nor a loss resulting from the breach of the code on the basis that the Applicant had not taken reasonable steps to clear the property, have an inventory of the room carried out by the Respondents or provided any sufficient evidence of its contents in the Tribunal's view. It was also noted the Tribunal found in fact there to be no breach of the code in terms of the checks carried out on Mr Arora.

However the Tribunal noted the seriousness both of the breaches of the code found to be established as well as the vast number of the breaches and accordingly also noted the evidence of the damage to the property in terms of the photographs and the monetary values of the damage lodged by the Applicant in his additional vouching, for example his electrical costs and the estimated reinstatement value. On that basis the Tribunal determined that awards of compensation were appropriate to be made by the Respondents in terms of Section 48 for both applications to reflect the seriousness of the breaches despite the concerns the Tribunal had about the evidence in regards the Applicant's loss, evidence and the fact that criminal damage by a third party directly caused the damage. The Tribunal determined in doing so that the purpose of the Code and the type of Application before it was not in the Tribunal's discretion one that would be a substitute for landlord insurance, property insurance, business stock insurance or to indemnify in situations such as this when criminal activity of third parties directly caused the damage. Accordingly the awards reflect the real seriousness of the breaches but cannot be seen in the Tribunal's view to indemnify for the actions of a third party. The Tribunal had every sympathy for all parties on the fact that the Applicant and his property were victims to serious criminal activity.

Expenses

The Applicant sought the expenses of the Applications on the basis of the fact that the Respondents were unreasonable in their conduct of the Applications and that they could have limited the scope, time and expense of the Hearing by agreeing to the Breaches of the code which they did earlier and conceding they carried out letting agency work before 3rd June 2019. However the Tribunal considered this carefully and given the overriding objective and the fact that the Respondents were in a complicated case unrepresented that their conduct was not unreasonable and that expenses should be refused.

Right of Appeal

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

