

Housing and Property Chamber
First-tier Tribunal for Scotland



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(6) of the Housing (Scotland) Act 2014

Chamber Ref: FTS/HPC/LA/18/3267

Parties:

**Mr Dominic Harbourne, 12 Lanhill View, Chippenham, Wiltshire SN14 6XS
("the Applicant")**

**Donna Hanlon trading as Hanlon Clark, 10 Main Street, Strathaven ML10 6AJ
("the Respondent")**

Tribunal Members:

Rory Cowan (Legal Member) and James Battye (Ordinary Member)

Decision (in absence of the Respondent)

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the Respondent has failed to comply with paragraphs 17, 21, 26, 32, 33 37a), 108, 110, 112, 120, 124 and 125 of the Letting Agent Code of Practice.

- **Background**

On 16 December 2018, the Applicant lodged an Application with the Tribunal seeking a determination into whether the Respondent had failed to comply with the Letting Agent Code of Practice (the Code).

In the Application, the Applicant alleged the Respondent had failed to comply with paragraphs 17, 18, 20, 21, 26, 32, 33, 37a), 107, 108, 110, 112, 120, 121, 124 and 125 of the Code.

The Applicant complained that, as a result of the alleged breaches of the Code he had suffered loss. In particular that he had not been paid rent by the Respondents for his property at 40 Logan Street, G72 0NS for the period 1 April 2018 to 8 October 2018 in the sum of £2,127.50. Further, that in relation to the same tenancy, a deposit had been taken from the tenant in the sum of £325, which he claimed had not been

lodged with an approved tenancy deposit scheme. There was also a claim for “compensation for losses incurred” mentioned in the Application.

During the hearing the Applicant sought to include a claim for interest on the unpaid amounts. This had not been intimated previously and, in particular, it had not been intimated to the Respondent. As such, the Applicant was asked if he wished to amend the Application to include such a claim under explanation that, if he did, the hearing would have to be discharged and the amended claim intimated upon the Respondent. The Applicant thereafter withdrew such a claim for interest preferring to proceed with the hearing instead.

Prior to raising the Application, the Applicant served a Letting Agent Code of Practice Notification letter on the Respondent.

Following receipt of the Application, a hearing was fixed for 7 March 2019. Unfortunately, that date was not intimated on the Respondents and the hearing on 7 March 2019 was discharged and a further date fixed for 7 May 2019. A Direction in terms of section 16 of Schedule 1 to the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 was served on the Respondents. That Notice of Direction gave the Respondent until 25 March 2019 to lodge the required documents. The Direction and intimation of the hearing on 7 May 2019 was intimated to the Respondent by recorded delivery letter dated 20 March 2019, which were delivered on 21 March 2019 and both signed for by someone recorded as “HANLON”.

- The Hearing

The Applicant appeared personally at the hearing. The Respondent did not appear nor was she represented. Further, notwithstanding the terms of the Notice of Direction and the terms of Regulation 2 of The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016, the Respondent did not lodge or provide the Tribunal with copies of the required documents. A report of that failure will be passed to the appropriate authorities for consideration for prosecution.

The Contract Between the Parties

The Applicant stated that he had entered into a verbal contract during a telephone call with a previous letting agent he described as “Hemming Hanlon Clark” (HHC) in or around 2012. Following that, on or around 2016, there had been a split of HHC and thereafter the Respondent managed his property under the same terms and rates. The Applicant’s understanding of the position was that he was to receive a fully managed service in that the Respondents would look after his property in terms of maintenance, collect rent, arrange safety certificates, market the property for let, set up tenancies and deal with his obligations in relation to any security deposit taken. In return he had agreed a management commission of 10% plus value added tax of the monthly rent as well as what he described as “set up” fees which were 50% of one month’s rent (plus value added tax) for the property for the finding of a tenant and the arrangement of the tenancy, inventory preparation and so on. The Applicant confirmed that the contractual relationship was ended by him on 2 October 2018 by email following the various issues detailed hereinafter.

The Complaints

1. The Applicant complained that the Respondent had breached paragraph 17 of the Code, which is as follows:

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

The Applicant's evidence was that the Respondent had retained rent from him for his property and he had received no explanation for that. There had been an acknowledgement by the Respondents of this in an email dated 4 October 2018 (after he had terminated the contract between them) and an offer to pay “double rent every month for the same date until the arrears are paid...”. Notwithstanding, no outstanding rent was paid by the Respondent and the sum of £2,127.50 remained outstanding from the Respondent.

2. The Applicant complained that the Respondent had breached paragraph 18 of the Code, which is as follows:

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

The Applicant's evidence in support of this claim was that the Respondent had failed to provide him with rent statements for his property since 16 July 2017, this was despite various written requests.

3. The Applicant complained that the Respondent had breached paragraph 20 of the Code, which is as follows:

“20. You must apply your policies and procedures consistently and reasonably.”

The Applicant's position was that, by not providing landlord statements and not paying money due to him, where they had previously done so, the Respondent was in breach of their policies. The Applicant conceded that he had not seen any such policies but took the view that the failure to pay and provide statements was inconsistent with previous behaviour and therefore must breach the Respondent's policies. No policies were pointed to or provided.

4. The Applicant complained that the Respondent had breached paragraph 21 of the Code, which is as follows:

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

The Applicant's evidence in this regard was that he founded upon the fact that no rental statements were provided after 16 July 2017, no payments were made of rent received and that the Respondents failed to respond to correspondence and his complaint to them about the situation within a reasonable period of time.

5. The Applicant complained that the Respondent had breached paragraph 26 of the Code, which is as follows:

“26. You must respond to enquiries and complaints within reasonable timescales and in line with your written agreement.”

The Applicant's evidence was that he had attempted to contact the Respondents regarding payment of his arrears, obtaining statements and intimated a formal complaint. He produced 6 emails 19 February 2018, 16 March 2018, 24 April 2018, 3 May 2018, 6 September 2018 and 2 October 2018 that had been sent to the Respondents about payment of rent and requesting information. The evidence was that it was not until 1 May 2018 that there was any response from the Respondent and that simply confirmed payment of 2 months' worth of arrears. Thereafter, it was only after the Applicant intimated the termination of the contract by email on 2 October 2018, that he received further contact from the Respondent on 4 October 2018 and 5 October 2018. By email of 6 September 2018 the Applicant intimated an “official complaint” and asked the Respondent to “instigate your complaint process”. There was no response to that email.

6. The Applicant complained that the Respondent had breached paragraph 32 of the Code, which is as follows:

“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;

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) 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."

The Applicant's position and evidence in this regard was simply that, although the Respondents had been engaged by him and although certain fees had been agreed, nothing by way of written terms of business had been provided by the Respondents at all. Everything, with the exception of rent statements (which ceased after 16 July 2017) was verbal. As such, the Applicant's position was that none of the requirements of paragraph 32 had therefore been met.

7. The Applicant complained that the Respondent had breached paragraph 33 of the Code, which is as follows:

"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."

The applicant simply stated that the breach of this paragraph of the Code flowed from the fact that there were no written terms of business at all and therefore nothing had been signed by either party.

8. The Applicant complained that the Respondent had breached paragraph 37a) of the Code, which is as follows:

"37. When either party ends the agreement, you must:

a) give the landlord written confirmation you are no longer acting for them. It must set out the date the agreement ends; any fees or charges owed by the landlord and any funds owed to them; and the arrangements including timescales for returning the property to the landlord – for example, the handover of keys, relevant certificates and other necessary documents. Unless otherwise agreed, you must return any funds

due to the landlord (less any outstanding debts) automatically at the point of settlement of the final bill."

The Applicant's evidence was that he terminated the contractual relationship with the Respondents by email of 2 October 2018. The email stated as follows:

"Unfortunately, I have receive (sic) no response to my complaint below for almost 4 weeks.

I find this completely unacceptable and have come to the decision to terminate our relationship with your company.

As such I need you to hand over all keys and documents (certificates and AST) to Chris Cockburn of Let It (or his representative) and to arrange transfer of the tenant's deposit."

In an email dated 4 October 2018, the Respondent replied:

"I have just read through the complaint letter and totally understand the situation has been ongoing for quite some time and unacceptable would you be happy if I set you up a standing order for double rent every month for the same date until the arrears are paid I will forward confirmation of the standing order to you, this would mean you would not be relying on me paying it manually the standing order would just come through automatically it would be for me to ensure the rent had been received and if there were any repairs or maintenance etc we would just agree to take off the running total, (sic)

If we do this until we are up to date and at this point you felt you would still want to have another agent take over then I would be happy to do so as it would mean I had failed again (sic)

Please let me know if this is acceptable (sic)"

Following that email, the Respondent contacted the Applicant by email of 5 October 2018 indicating she had been visited by a new letting agent and asking if she was to hand over the "keys etc". The Applicant responded on 6 October 2018 indicating that he considered their agreement terminated and instructed the Respondents to hand over all documents to his new letting agents. He further requested a "copy of your procedure for handling disputes and complaints". The Applicant stated that, approximately 1 week later the Respondent did hand a copy of the keys for his property to his new agents, but that no other original documents such as the tenancy agreement and safety certificates were provided. The Applicant did state that he already had copies and was able to furnish his new agents with such copies to allow them to manage the tenancy. The Applicant's position was that, following the email of 5 October 2018, there was no further contact once he confirmed that he did not want to retain the services of the Respondent and no payments were made to him in relation to the outstanding rent due or in relation to the transfer of the deposit for the underlying tenancy.

9. The Applicant complained that the Respondent had breached paragraph 107 of the Code, which is as follows:

“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.”

Simply put the Applicant’s evidence was that nowhere on the emails between the parties or in any communication was the Respondent’s Letting Agent Registration Number (LARN) displayed.

10. The Applicant complained that the Respondent had breached paragraph 108 of the Code, which is as follows:

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

The Applicant reiterated his position as described above in relation to his complaint under paragraph 26 of the Code. In summary, his position was that the Respondent had failed to respond to his complaints over a protracted period from at least 19 February 2018. There had been a belated acknowledgement of his complaints on 4 October 2018 following the termination of the relationship (see the complaint under paragraph 37a) above, but that this was an attempt to encourage him to stay on with the Respondents rather than any attempt to deal with the issues of complaint. In any event, the Applicant took the view that this delay was not reasonable.

11. The Applicant complained that the Respondent had breached paragraph 110 of the Code, which is as follows:

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

The Applicant’s evidence was that the Respondents did not advise him at all of the existence of the Code. It was his new letting agents who alerted him to its existence.

12. The Applicant complained that the Respondent had breached paragraph 112 of the Code, which is as follows:

“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.”

The Applicant’s evidence was that on 6 October 2018 he had specifically requested a copy of the Respondent’s “Procedure for handling disputes and complaints”. The Respondent did not respond to the email of 6 October. This

followed the Applicant intimating by email of 6 September 2018 what he described as an “official complaint” and the Respondent to “instigate your complaint process”.

13. The Applicant complained that the Respondent had breached paragraph 120 of the Code, which is as follows:

“120. You must be able to account immediately to them for all money held on behalf of clients.”

The Applicant’s evidence was in fairly short compass and he referred back to what had been discussed in relation to other alleged breaches of the Code, in that despite repeated requests the Respondent had simply been unable to account to him for funds they had received on his behalf. This appeared to be acknowledged by the Respondent in her email of 4 October 2018.

14. The Applicant complained that the Respondent had breached paragraph 121 of the Code, which is as follows:

“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.”

No evidence was submitted by the Applicant in support of this claim. The Applicant assumed that that Respondent does not have a separate client account given her conduct and had hoped that she would attend the hearing to confirm this one way or another.”

15. The Applicant complained that the Respondent had breached paragraph 124 of the Code, which is as follows:

“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).”

The Applicant again reiterated a lot of what he had said before and simply put stated that the Respondents had not paid him rent for his property when he had asked for it to be paid.

16. The Applicant complained that the Respondent had breached paragraph 125 of the Code, which is as follows:

“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.”

The Applicant’s evidence was to found upon what he had stated before in relation to the failure to pay to him the rent money he was due. He further

stated that there had been no suggestion the rent money was being retained for any purpose related to his property.

- Findings in Fact and Law

The Tribunal makes the following finding in fact and law:

1. The Respondent has failed to comply with paragraphs 17, 21, 26, 32, 33 37a), 108, 110, 112, 120, 124 and 125 of the Letting Agent Code of Practice.

- Reasons for Decision

The Tribunal was happy to accept the evidence of the Applicant where it could. His evidence was given in a measured way without exaggeration. The evidence was supported by documents and where they were available, they were presented in a fair and balanced way. As the Respondent was not in attendance, there was no alternative position put to the Tribunal to consider. The Tribunal was therefore of the view that the Applicant was both credible and reliable.

1. Paragraph 17 of the Code

It is clear that the Respondent failed to pay rental due to the Applicant. There was no explanation given for this failure and general failures by the Respondent to reply to the Applicant's communication with her. Further, by email of 4 October 2018, the Respondent appears to acknowledge both failures. The Tribunal formed the view that, as a result of her failure to pay money when due and to communicate with the Applicant, she failed in her duty under paragraph 17 of the Code.

2. Paragraph 18 of the Code

Whilst having considerable sympathy with the Applicant for the predicament he found himself in, the Tribunal formed the view that they could not make a finding of breach of this part of the Code. In short, the Applicant's complaint under this paragraph was that the Respondent had failed to provide rent statements. The Tribunal's view was that this paragraph of the Code is not aimed at such failures and, as such, the complaint, so far as it is directed to this paragraph of the Code, was inappropriate.

3. Paragraph 20 of the Code

The Tribunal formed the view that they could not make a finding of breach under this paragraph of the Code. There was no evidence of what policies the Respondent had and had therefore deviated from. The Tribunal took the view that the Applicant's assumptions from past behaviour of the Respondent were not sufficient to make a finding under this paragraph of the Code.

4. Paragraph 21 of the Code

The Respondent's failure to make payments of the rent to the Applicant and her failure to issue statements to the Applicant as well as her delays in responding to the Applicant's enquires and complaints is a breach of this paragraph of the Code, in that the Respondent has therefore failed to carry out the services she was contracted to provide with reasonable skill and care and in a timely manner.

5. Paragraph 26 of the Code

The Tribunal took the view that the Respondent's delays and failures in dealing with complaints intimated by the Applicant and to respond to his enquiries was a breach of this paragraph of the Code. The evidence was that from at least 19 February 2018 the Applicant had been chasing the Respondent to pay rent that was due to him. It was not until 1 May 2018 that some payments were made. Following that, email correspondence remained unanswered until at the earliest 4 October 2018 and that only arose following the Applicant terminating the contract with the Respondent. The aim of the response of 4 October 2018 was not to properly address the outstanding issues but to try and encourage the Applicant to retain her agency by offering to pay him the money due to him over a period of some months. These delays and/or failures are not reasonable and are in breach of this paragraph of the Code.

6. Paragraph 32 of the Code

The requirements set out by paragraph 32 of the Code are wide ranging. The Tribunal accepted the Applicant's evidence that he had received no written terms at all and as such, the Respondent could not have complied with any of the requirements of this paragraph. The Respondent is therefore in breach of this paragraph of the Code. Indeed, it is worthy of note that, the Direction issued in this regard was not responded to by the Respondent.

7. Paragraph 33 of the Code

It flows from the decision that the Respondents had issued no written terms of business that they are also in breach of this paragraph of the Code.

8. Paragraph 37(a) of the Code

The Tribunal accepted the evidence of the Applicant which was supported by email correspondence lodged. The contractual relationship was terminated by the Applicant by email of 2 October 2018. Thereafter, the Respondent replied on 4 October 2018, which as detailed above was an attempt to retain the Applicant's agency. Whilst it was accepted by the Applicant that he did receive the keys for his property, the Tribunal accepts his evidence that he did not receive the documents such as the tenancy agreement or safety certificates from the Respondents. The Tribunal also accepts the Applicant's evidence that the Respondent did not set out in writing the date the agreement came to an end, the fees due or any timescales for the return of his property to him. Further, the Tribunal accepts the evidence of the Applicant that the Respondent did not transfer the deposit into his name and that the

deposit had not been paid into an approved tenancy deposit scheme meaning that the Applicant required to “replace” those funds by paying the sum of £325 in such a scheme. The Respondent is therefore in breach of this paragraph of the Code.

9. Paragraph 107 of the Code

The Tribunal did not find the Respondent in breach of this paragraph of the Code. The Respondents are not registered as letting agents as required by the terms of the Housing (Scotland) Act 2014. They therefore do not have a LARN number to display. The Tribunal made its own enquiries and it is understood that not only is the Respondent not registered, but that she has not made an application to be admitted to the register of letting agents and as such, a copy of this decision and the Letting Agent Enforcement Order issued will be issued to the Scottish Ministers in line with Rule 26(12) of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (as amended).

10. Paragraph 108 of the Code

The Tribunal accepted the evidence of the Applicant in relation to the Respondent's failure to respond to his enquiries and complaints as detailed in relation to the decision relative to paragraph 26 of the Code. The Applicant's position was supported by email correspondence. As such, the Tribunal determined that the Respondent was in breach of this paragraph of the Code.

11. Paragraph 110 of the Code

The Tribunal accepted the Applicant's evidence that the Respondent had not made him aware of the Code.

12. Paragraph 112 of the Code

The Tribunal accepted the Applicant's evidence as supported by email correspondence that he had asked for firstly that his email of 6 September 2018 be treated as a complaint and asked for details of the Respondent's complaint process. Thereafter, in his email of 6 October 2018, the Applicant made a specific request for the Respondent's complaint procedure. It was accepted by the Tribunal that the Respondent failed to provide such information or even attempt to deal with the Applicant's complaint. The Respondent therefore failed to comply with her obligation under this paragraph of the Code and in particular, failed to make a copy of her complaints procedure available to the Applicant despite his request.

13. Paragraph 120 of the Code

The Tribunal accepted the evidence of the Applicant in relation to the failure of the Respondent to account to him for monies due by them to him. This was supported by email correspondence from the Respondent herself (in particular the email of 4 October 2018). There was nothing to suggest that there had been non-payment by the underlying tenant (if there had been the Respondent would have had a duty under paragraph 78 of the Code to inform the Applicant of such late/non-payment).

The Tribunal therefore determined that the Respondent was in breach of this paragraph of the Code.

14. Paragraph 121 of the Code

The Tribunal was unable to make a finding that the Respondent was in breach of this paragraph of the Code. They could not rely upon an assumption by the Applicant that this was the case as a basis for such a finding. It is however noted that, details of such a client account were requested in the Tribunal's earlier Direction which was ignored by the Respondent.

15. Paragraphs 124 and 125 of the Code

The Tribunal accepted the Applicant's evidence as supported by the email correspondence lodged by him. The failure to pay monies due by the Respondent to the Applicant without any lawful basis for retaining it is a breach of both these paragraphs of the Code.

- Decision

The Tribunal found that the Respondent has failed to comply with paragraphs 17, 21, 26, 32, 33 37(a), 108, 110, 112, 120, 124 and 125 of the Letting Agent Code of Practice. The decision was unanimous. The Tribunal is therefore required by section 48(7) of the Housing (Scotland) Act 2014 to make a Letting Agent Enforcement Order (LAEO). In terms of section 48(8), that Order must specify the period within which each step must be taken and may provide that the Respondent pay compensation to the Applicant for any loss he has suffered as a result of the failure to comply with the paragraph of the Code in question.

Order

The Tribunal determines that the Respondent ought to carry out the following within 21 days of intimation of this decision and the LAEO:

1. Lodge with the Tribunal a copy of the Respondent's written procedures for the following:
 - a) Collecting and handling rent on the behalf of landlords;
 - b) The handling of complaints;
 - c) The handling of client money; and
 - d) Debt recovery.
2. A style terms of business for the Respondent's Letting Agency Work which compiles with the all current legislative requirements including those set out in the Letting Agent Code of Practice.
3. That the Respondent write to the Applicant setting out to him all the required information as detailed in paragraph 37(a) of the Letting Agent Code of

Practice. A copy of the letter so sent should be lodged with the Tribunal administration.

4. That the Respondent deliver all property of the Applicant's they hold (and provide written confirmation of the date and manner of delivery to Tribunal administration) including principal documents relative to the Applicant's property at 40 Logan Street, Glasgow G72 0NS, as follows:
 - a) Any Tenancy Agreement relative to that property;
 - b) Any gas safety certificates for that property
 - c) Any Electrical Installation Condition Reports (including Portable Appliance Tests) for that property.
 - d) Legionella Risk Assessments relative to that Property

Compensation

The Applicant submitted that he has suffered loss as a result of the Respondent's failure to follow the Code. He stated that he had suffered distress, inconvenience and had spent a lot of time chasing the Respondent in relation to non-payment and pursuing complaints that had been ignored by her. The time had been expended by phoning and emailing the Respondent as well as putting together what information he could to try and establish the position regarding payments. He also felt he had to take the decision because of the Respondent's failures to terminate her agency and instruct new letting agents to manage his property.

The Application also included an unquantified claim for "compensation for losses incurred". The Applicant was asked to clarify this part of his claim. In response he stated that the claim was "debt recovery costs" and that he had quantified it in terms of "HMRC guidelines". These, he said were £40 per payment and there were 7 of them. The Tribunal took the Applicant to mean late payment charges under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended). The Tribunal took the view that such charges were inappropriate in the context of this Application (they relate to business to business transactions). Further, they had not been quantified or notified in the Application itself. As such the Application was not amended to reflect this claim.

Notwithstanding, the Tribunal accepted that the Applicant has been put to considerable distress and inconvenience dealing with the Respondent and trying to obtain payment from her. Further, as a result of her failure to pay the deposit taken for the Applicant's property into an approved tenancy deposit scheme the Applicant has had to pay a sum into a scheme (albeit late) to replace that sum. Further, the Applicant has still not been paid (as at the date of the hearing) 7 months' worth of outstanding rental. In the circumstances, the Tribunal decided to award compensation in the following amounts:

1. An order that the Respondent pay to the Applicant the sum of £2,127.50 being the sum due by way of rent (after deduction of costs) for the periods 1 April 2018 to 8 October 2018.

2. An order that the Respondent pay to the Applicant the sum of £325 being the sum collected from the Applicant's tenant by way of security deposit and not lodged with an approved tenancy deposit scheme or remitted to the Applicant.
3. An order that the Respondent pay to the Applicant the further cumulative sum of £500 to compensate the Applicant for the distress, inconvenience and the considerable time and effort expended by the Applicant as a result of the Respondent's failure to comply with her duties under the Code of Practice.

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.

R Cowan

Legal Member/Chair

Date 16 May 2019