



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland  
(Housing and Property Chamber)**

**Chamber Ref: FTS/HPC/PR/23/2993**

**Re: Property at 5 Crosshill Road, Bishopton, PA7 5QJ (“the Property”)**

**Parties:**

**Mr Elekwachi Ukwu, Mrs Chinyelugo Ukwu, 8/5 72 Lancefield Quay, Glasgow,  
G3 8JF (“the Applicants”)**

**Mr David Tait (SBA), Mrs Kelly Ann Tait (SBA), UNKNOWN, UNKNOWN (“the  
Respondent”)**

**Tribunal Members:**

**Virgil Crawford (Legal Member) and Ahsan Khan (Ordinary Member)**

**Decision (in absence of the Respondents)**

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

**BACKGROUND**

1. By lease dated 29<sup>th</sup> July 2020, the Respondents let the Property to the Applicants. The start date of the tenancy was 3<sup>rd</sup> August 2020.
2. A tenancy deposit of £1,695.00 was paid in terms of the lease.
3. The tenancy deposit was lodged with an approved scheme, Letting Protection Services Scotland (LPSS) on 3<sup>rd</sup> August 2020.

4. There was no dispute that the Applicants received the required statutory notifications in relation to the lodging of the deposit with LPSS.
5. Belvoir letting agents managed the Property on behalf of the Respondents.
6. During April 2023 Belvoir issued an instruction to LPSS that they wished the deposits for numerous tenancies managed by them to be transferred from LPSS to Safe Deposits Scotland (SDS).
7. On 18 April 2023 LPSS transferred the sum of £154,955.00 to SDS, as requested by Belvoir. The funds transferred related to the deposits of more than 200 properties, including the Property the subject of this case.
8. On 18<sup>th</sup> April 2023, SDS issued a statutory notice confirming receipt of the deposit funds and other information making it clear that the deposit was held by them and related to this Property.
9. The Respondents did not advise the Applicants that the deposit funds had been transferred from LPSS to SDS. This was a breach of Reg 43 of Tenancy Deposit Schemes (Scotland) Regulations 2011 (the TDS Regs).
10. The Applicants terminated the tenancy. Notice of their intention to terminate the tenancy was provided in March 2023. The tenancy ended during June 2023.
11. Following termination of the tenancy, the Applicants lodged an application with the Tribunal seeking that a penalty be imposed upon the Respondents due to their failure to comply with the TDS Regs.
12. A Case Management Discussion was assigned to call by teleconference on 18<sup>th</sup> December 2023 at 2pm. Subsequently, a Hearing was assigned to take place on 8<sup>th</sup> March 2024 at 10am.

## **THE CASE MANAGEMENT DISCUSSION**

13. At the commencement of the Case Management Discussion the first named Applicant, who was representing both Applicants, (hereinafter referred to as Mr Ukwu) sought permission to record the proceedings. Permission to do so was refused. In issuing a written note thereafter the Tribunal commented as followings: -

### **“Request to Record Proceedings**

9. The first Applicant sought permission to record the Tribunal proceedings. Permission to do so was refused.

10. The first Applicant asked to be permitted to record the proceeding claiming this was a necessary, reasonable adjustment having regard to mental health conditions affecting him. He forwarded an email to the Tribunal at 14:01 hours on 18 December 2023, immediately before the Tribunal convened. He forwarded a medical report in support of his request.

11. In his email, he advised

**“I have suffered from stress, anxiety and depression for several years and was diagnosed with depression, anxiety and stress in November 2014. I struggle to concentrate and to remember during proceedings, meetings and conversations and require an app that records and transcribes notes of the recording simultaneously to enable me to understand and participate fully in the proceedings. In addition to the above medical condition, I am currently suffering from a fever and headaches”.**

His email went on to say

**“I have previously been granted permission to record proceedings by the First Tier Tribunal based in the attached document and can confirm that I have not received any treatment since the letter was written”.**

12. The medical report submitted in support of this Application was a General Practitioners letter dated 4 November 2022, more than 13 months prior to the Case Management Discussion. It referred to numerous telephone consultations with several different GP’s which referred to self reported medical conditions. The letter stated

**“during meetings he cannot concentrate properly and prefers to use recording software that transcribes the meetings so he can review conversations later.”**

13. The letter from General Practitioner:-

- Is not on soul and conscience.
- Refers to self reported medical conditions.
- States, in clear terms, any request to record proceedings is a preference of the First Named Applicant rather than a medical necessity.
- Is significantly out of date.

14. When enquiry was made by the Tribunal as to whether any psychiatric involvement had taken place or any psychiatric report was available the first Applicant indicated there had been no psychiatric appointments, simply claiming that it was difficult to obtain one since COVID.

15. *Even when discussing this particular point at the commencement of the Case Management Discussion, it was clear the first Applicant was able to articulate his position, was able to understand what was being said to him by the Tribunal Chairman and able to respond. It appears the request to record was for the purposes of reviewing matters at a later stage, as outlined within the General Practitioners letter.*
16. *The Tribunal prepares a written note of its discussions and decision. In the circumstances, the Tribunal did not consider there was sufficient information before it to conclude that the prohibition of recording of proceedings should be departed from or that this was a necessary reasonable adjustment, as opposed to a preference of first Applicant.*
17. *For completeness, Tribunal Chairman was not involved in any previous cases involving the First Named Applicant and is unaware of any previous decision to allow the recording of proceedings by him. In any event, the Tribunal was not bound by decisions taken by a differently constituted Tribunal dealing with a different case on a different date.”*
14. The Respondents did not participate in the case management discussion. From documentation submitted by the Applicants, however, it was clear that the Property, and the deposit, was being managed by Belvoir. The Applicants had lodged correspondence between themselves and Belvoir which made this clear. There was some doubt in relation to the current address of the Respondents also. There was also an issue as to whether the deposit was unprotected for a period of time during the transfer from LPSS to SDS and, if so, the length of time for which it was not protected.
15. In the circumstances, the Tribunal adjourned proceedings to enable the proceedings to be intimated on Belvoir on behalf of the Applicants and to obtain further information or evidence which may assist the Tribunal in determining the facts in issue.
16. A Hearing was assigned. The Tribunal, separately, issued a request for evidence to Belvoir. The request for evidence was in the following terms: -
- “The following organisation, namely:-*
- Belvoir Property Management**  
**Silk Street**  
**Paisley**  
**PA1 1HG**
- is required to provide the following information:-*
1. *The current address or addresses of the Respondents*

2. *An explanation of the reason for the Applicants' Tenancy Deposit being withdrawn from Letting Protection Service (LPS)*
3. *Confirmation of the date upon which the deposit funds were received from LPS*
4. *Confirmation of the date the deposit funds were lodged with Safe Deposits Scotland (SDS)*
5. *A copy of all information provided to SDS to enable / ensure the deposit to be identified as relating to the Applicants and the Property*
6. *A copy of any notice forwarded to the Applicants intimating the deposit funds being lodged with SDS or, alternatively, a reason for the failure to provide the required information to the Applicants.*
7. *A copy of any information or submissions made to SDS at the termination of the tenancy requesting the deposit funds to be returned to the Respondents"*

## **EVENTS PRIOR TO THE HEARING**

17. Prior to the Hearing Mr Ukwu forwarded an email to the Tribunal seeking to have the Case Management Discussion note which had been issued by the Tribunal amended. It was his view that it did not properly reflect what had transpired at the Tribunal. In particular, he was of the view that part of the note which suggested he ultimately consented to an adjournment of the Case Management Discussion was incorrect. His e mail, however, goes on to state that he did consent to an adjournment and explains why he did so. He was of the view that the note failed to record the considerable distress he suffered during the proceedings and that he repeatedly complained about difficulty he had following the proceedings. His letter suggests the note fails to properly reflect the terms of a letter from his GP, despite the note quoting verbatim from that letter.
18. The Tribunal did not amend the written note issued. The written note is a document issued by the Tribunal and accurately reflects the material matters arising at the Case Management Discussion. It is not for a party of the proceedings to dictate what should be within a Case Management Discussion note nor the way in which it should be worded.
19. Separately, Mr Ukwu prepared written requests seeking to have the Tribunal issue notices of direction, and copied these, using the Tribunal's logo to LPSS, Safe Deposits Scotland and Belvoir. These requests used incorrect documentation which related to a different type of tribunal proceedings.

20. Although the copy of the request which was forwarded to LPSS was not a formal document issued by the Tribunal and did not constitute a formal request for the provision of any information by LPSS, LPSS responded to it, sending a response to the Tribunal and also to Mr Ukwu. Mr Ukwu thereafter forwarded further submissions to the Tribunal which included information and documentation provided by LPSS in response to the purported notice of direction.
21. Mr Ukwu also forwarded correspondence to the Tribunal criticising the decision to refuse him permission to record proceedings. In relation to that particular aspect of the case, he forwarded a letter from Renfrewshire Health and Social Care Partnership which indicated he had been referred to a community psychiatric nurse for further assessment. This letter was dated 21 April 2023. It referred to an appointment which took place on 9 March 2023.
22. Prior to the Hearing, Mr Hill of LPSS requested permission to attend the Hearing. The Tribunal clarified that he could attend as an observer only as LPSS was not a party to the case.

## **THE HEARING**

23. The Hearing was conducted by teleconference on 8<sup>th</sup> March 2024. Again, Mr Ukwu appeared on behalf of both Applicants. The Respondents were not in attendance. Mr Ukwu immediately questioned why representatives from Belvoir were in attendance. The Tribunal Chairman clarified they were in attendance as observers only. Similarly, Mr Hill, a representative of LPSS attended by teleconference, again as an observer.
24. The Mr Ukwu again, at the commencement of the Hearing, sought permission to record the proceedings using a specific application which, apparently, using artificial intelligence, would transcribe the oral proceedings as they were happening. Mr Ukwu again indicated that this was a reasonable adjustment required as a result of his mental health issues.
25. The Tribunal had previously decided this matter at the Case Management Discussion on 18<sup>th</sup> December 2023. The only additional piece of information provided to the tribunal – other than emailed submissions criticising the previous decision – was the letter previously referred to from a nurse suggesting that, almost one year previously, Mr Ukwu had been referred to a community psychiatric nurse for assessment. Mr Ukwu again referred to the letter from his general practitioner, dated 4<sup>th</sup> November 2022 and emphasised that this supported his application to record proceedings.

26. When asked by the Tribunal Chairman whether he accepted the accuracy of the terms of the letter from his general practitioner he confirmed that he did. When referred to the part of the letter which stated:-

***“During meetings he cannot concentrate properly and prefers to use recording software that transcribes meetings so he can review conversations later”***

he avoided giving a straight forward answer, again referring to the part of the letter which stated that his general practitioner supported his request to record proceedings. The general practitioner’s letter, however, did not state that the recording of proceedings was necessary to enable Mr Ukwu to follow proceedings. The letter was a general letter which did not relate to any specific proceedings nor type of proceedings. The letter made it clear that the recording of proceedings was a preference of Mr Ukwu to enable him to review matters later, rather than something which was necessary to enable him to effectively participate in proceedings.

27. The Tribunal made a decision on this matter at the Case Management Discussion on 18<sup>th</sup> December 2023. Despite the persistent attempts by Mr Ukwu to have the Tribunal change its position, there was no information provided to the Tribunal to indicate a change of circumstances. There was no material information before the Tribunal which was not available to it at the Case Management Discussion when its decision on the same matter was previously made. In the circumstances, there was no basis for the Tribunal varying the decision previously made and permission to record the proceedings was refused.

28. Mr Ukwu suggested the Tribunal Chairman was failing to recognise mental health issues as a disability. That is not the case. The Tribunal decided that, on the basis of the information available, deviating from the general rule that Parties must not record proceedings, was not a reasonable adjustment which was required to enable Mr Ukwu to participate in the proceedings.

29. As the Hearing progressed, it was perfectly clear that Mr Ukwu was able to follow the proceedings. He was able to understand questions put to him. He was able to provide lengthy answers to various questions. He forcefully argued various matters he wished to raise, argued they were relevant and provided reasons for his views. He appeared to have no difficulty recollecting any part of the case nor any part of the submissions made by him nor information previously provided to him by Belvoir or to him and the Tribunal and by LPSS.

30. The Tribunal moved on to consider the merits of the case. The Hearing thereafter was somewhat difficult, mainly due to the manner in which Mr Ukwu attempted to direct the proceedings and to have the Tribunal deal with the case in the way he wished. He repeatedly failed to answer direct questions. He repeatedly interrupted the Tribunal Chairman when questions were being asked of him. He failed to focus his own submissions on the case before the Tribunal, that being a claim that the Respondents had failed to comply with the TDS Regs, instead focussing submissions on what he considered to be failings on the part of Belvoir, LPSS and SDS.
31. The information before the Tribunal, provided by Mr Ukwu himself, by Belvoir in communications between Belvoir and Mr Ukwu, which had been submitted to the tribunal by Mr Ukwu, by Belvoir in response to the evidence request issued previously and by LPSS, which had been provided to the Tribunal in response to the purported notice of direction and, separately, by Mr Ukwu when he received a copy of the response from LPSS, confirmed the following: -
- a) The commencement date of the tenancy was 3<sup>rd</sup> August 2020.
  - b) A tenancy deposit of £1,695.00 was paid. That was lodged timeously with an approved scheme, LPSS.
  - c) During March 2023 the Applicants intimated their intention to terminate the tenancy.
  - d) During April 2023 Belvoir decided, presumably, for business reasons, to transfer all deposits held by LPSS to SDS. An instruction was issued to LPSS accordingly.
  - e) On 18 April 2023 LPSS transferred the sum of £154,955.00 directly to SDS.
  - f) SDS subsequently issued a notice to the Applicants, in compliance with the TDS Regs, confirming they now held the deposit relating to the Property.
  - g) The Respondents did not notify Mr Ukwu that the tenancy deposit had been transferred from LPSS to SDS.
  - h) The tenancy ended during June 2023.
  - i) Mr Ukwu subsequently corresponded with Belvoir. There was a dispute in relation to the deposit.
  - j) At the conclusion of the tenancy Mr Ukwu corresponded with SDS in relation to the dispute resolution service operated by them. The existence of this correspondence confirms the funds were being held by SDS as, otherwise, they would not be invoking the dispute resolution process.
  - k) Mr Ukwu advised that he was not willing to participate in the dispute resolution process, providing his own reasons for his refusal to engage with that process.
32. Mr Ukwu was quite clear in his submissions to the Tribunal that he did not believe the information which had been provided to him.



- He did not believe that Belvoir were entitled to ask for the deposit to be transferred from LPSS to SPS. The TDS Regs, however, make it perfectly clear that landlords are entitled to instruct the transfer of a tenancy deposit to another scheme and the relevant scheme requires to comply with that (TDS reg 23).
- Mr Ukwu did not dispute there had been a block transfer of funds from LPSS to SDS but did not believe his deposit funds were part of that block transfer.
- Mr Ukwu did not believe his deposit funds were transferred directly from LPSS to SDS, despite the documents and evidence provided by LPSS to that effect.
- Mr Ukwu believed the funds were transferred to Belvoir rather than to SDS.
- Mr Ukwu stated that it was his belief that the deposit funds were unprotected thereafter – i.e from 5 April 2023 until the end of the tenancy. Apart from one piece of information, which was subsequently corrected, that LPSS had returned the deposit funds to Belvoir, he had no evidence to support his belief, simply challenging the information which had been provided to the Tribunal.
- He did not believe SDS ever received the deposit, despite a statutory notice having been issued by SDS on 18 April 2023 confirming they were in receipt of the deposit funds relating to the Property.
- He denied that he had ever received the statutory notice which had been issued by SDS.
- He disputed the funds were held by SDS, despite him having submitted correspondence to the Tribunal showing his interaction with SDS at the end of the tenancy about the dispute resolution process and stating he had refused to participate in this process. This correspondence provided by Mr Ukwu himself shows that the funds were held by an approved scheme and he was aware of that.

33. He wished the Tribunal to issue a notice of direction seeking further information from Belvoir, LPSS and SDS. He did not appear to accept that a notice of direction can only be issued to parties in a case. Neither Belvoir, LPSS nor SDS were parties to the case, although they clearly had an involvement in the issues arising.

34. The Tribunal explained that a request for evidence can be issued. The Tribunal, however, had already issued a request for evidence to Belvoir which had resulted in information being provided. Mr Ukwu indicated that he had not received a copy of the request for evidence which had been issued. While the Tribunal rules do not require that parties to a case receive copies of requests for evidence made by the Tribunal, (First tier Tribunal for Scotland Housing and

Property Chamber (Procedure) Regulations 2017 Reg 21) the Tribunal arranged for a copy to be provided to Mr Ukwu in the course of the Hearing. A fifteen minute adjournment was made for Mr Ukwu to consider the terms of the evidence request. On resumption he criticised the terms of the request for evidence and indicated that, in his view, further evidence is required, and the Hearing should be continued for this to be provided.

35. The Tribunal indicated that it required to focus upon the case before it and the facts in dispute in the case. In this case the application was for an alleged breach of the TDS Regs and the claim was directed against the landlords. The information provided suggested that, with one exception which will be referred to below, the TDS Regs had been complied with. Mr Ukwu vehemently denied that, claiming there had been “collusion to conceal the fact all three (Belvoir, LPSS and SDS) breached duties” and “they were working together to make up an illusion of a transfer” from LPSS to SDS and it was important that the Tribunal investigated this. He did not accept nor believe any of the information provided by any of those organisations. It seemed clear that, in relation to all matters, he was of the view that his ipse dixit was sufficient and the Tribunal should proceed accordingly, despite the available information, including his own e mail exchange with SDS at the end of the tenancy.
36. When asked the remedy he was seeking, he advised he was asking the Tribunal to impose the maximum penalty on the landlords for failing to comply with the TDS Regs, that being a sum of £5,085.00. Beyond his general complaints in relation the TDS scheme organisers and Belvoir, there did not appear to be any rational justification for his suggestion that the maximum penalty should be imposed, even if there had been a breach of Reg 3 of the TDS Regs.
37. The Tribunal concluded that the information before it clearly established that the deposit funds were transferred from LPSS to SDS on 18 April 2023 and there was no break in the deposit being protected.
38. The Tribunal found, however, there had been a breach of Reg 43 of the TDS Regs as the Respondents had not advised the Applicants of the deposit funds being transferred from LPSS to SDS.
39. When confirming the decision of the Tribunal, initially the Tribunal Chairman misspoke and said the Tribunal would not impose a penalty but immediately corrected this to explain that the TDS Regs provide, at Reg 10, for the imposition of a penalty only if Reg 3 of the TDS Regs is breached. Reg 3, however, makes no reference to Reg 43. In the circumstances, the TDS Regs do not provide for a penalty to be imposed for such a breach.

40. Mr Ukwu stated he intended to appeal the decision of the Tribunal. He stated he intended to complain about the Tribunal itself. He was advised it was his right to do so.

## **FINDINGS IN FACT**

41. The Tribunal found the following facts to be established: -
- a. The Respondents let the Property to the Applicants. The commencement date of the tenancy was 3<sup>rd</sup> August 2020.
  - b. A tenancy deposit of £1,695.00 was paid. That was lodged timeously with an approved scheme, LPSS.
  - c. During March 2023 the Applicants intimated their intention to terminate the tenancy.
  - d. During April 2023 Belvoir decided to transfer all deposits held by LPSS to SDS. An instruction was issued to LPSS accordingly.
  - e. On 18 April 2023 LPSS transferred the sum of £154,955.00 directly to SDS.
  - f. SDS subsequently issued a notice to the Applicants, in compliance with the TDS Regs, confirming they now held the deposit relating to the Property.
  - g. The Respondents did not notify Mr Ukwu that the tenancy deposit had been transferred from LPSS to SDS.
  - h. The tenancy ended during June 2023.
  - i. Mr Ukwu subsequently corresponded with Belvoir. There was a dispute in relation to the deposit.
  - j. Mr Ukwu corresponded with SDS in relation to the dispute resolution process at the end of the tenancy. He produced copies of his e mail correspondence to the Tribunal. Mr Ukwu was aware that the tenancy deposit was held by SDS.
  - k. Mr Ukwu produced copies of e mails in which he stated that he was not willing to participate in the dispute resolution process operated by the tenancy deposit scheme, providing his own reasons for his refusal to engage with that process.

## **REASONS FOR DECISION**

### **Recording of Proceedings**

42. In relation to the refusal to permit recordings of the proceedings, the Tribunal's position has been set out above. The recording of Tribunal proceedings is generally prohibited. The Tribunal may authorise recording of proceedings but, if there is to be a departure from normal practice, there would require to be a good reason for that. While Mr Ukwu suggested that the recording of

proceedings was a reasonable adjustment having regard to his mental health issues, the information provided to the Tribunal did not support that suggestion. While Mr Ukwu, both in written submissions to the Tribunal and in oral submissions at the hearing suggested that the Tribunal was refusing to accept mental health issues as a disability, the Tribunal made it clear that was not the case. The Tribunal fully accepts that mental health issues can amount to a disability. The question for the Tribunal, however, was whether the recording of proceedings was a necessary or reasonable adjustment having regard to any disability that did exist. On the basis of the medical information provided by Mr Ukwu himself, it is clear that the desire to record proceedings was a preference of his rather than a necessary adjustment and the purpose of the recording of the proceedings was to enable him to review matters at a later stage, rather than to assist him in the conduct of the proceedings as they were taking place.

43. While accepting that the terms of the letter from his general practitioner were accurate, he essentially invited the Tribunal to ignore the most relevant part of the letter relating to his submission relating to his request to record the proceedings – i.e. the part stating it was a preference of his to review proceedings at a later stage – and to instead rely upon the part of the letter which stated, in general terms, that the GP supported his request.
44. The information before the Tribunal both at the Case Management Discussion and as at the Hearing was not sufficient to indicate that it was necessary that normal practice be departed from.
45. Separately, as the Case Management Discussion progressed on 18<sup>th</sup> December 2023 (presided over by the legal member only) and as the Hearing progressed on 8<sup>th</sup> March 2024, it became perfectly clear that Mr Ukwu was able to conduct the proceedings without recording them. He was fully aware of the case he had presented. He was fully able to understand questions put to him by the Tribunal. He was well able to challenge documentary information provided to the Tribunal.

### **The TDS Regs**

46. The TDS Regs provide as follows:-

**3.—**

**(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—**  
**(a) pay the deposit to the scheme administrator of an approved scheme; and**

**(b) provide the tenant with the information required under [regulation 42](#).**

[

**(1A) Paragraph (1) does not apply—**

**(a) where the tenancy comes to an end by virtue of [section 48](#) or [50](#) of the [Private Housing \(Tenancies\) \(Scotland\) Act 2016](#), and**

**(b) the full amount of the tenancy deposit received by the landlord is returned to the tenant by the landlord, within 30 working days of the beginning of the tenancy.**

**]<sup>1</sup>**

**(2) The landlord must ensure that any tenancy deposit paid in connection with a relevant tenancy is held by an approved scheme from the date it is first paid to a tenancy deposit scheme under paragraph (1)(a) until it is repaid in accordance with these Regulations following the end of the tenancy.**

[

**(2A) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments, paragraphs (1) and (2) apply as if—**

**(a) the references to deposit were to each instalment of the deposit, and**

**(b) the reference to the beginning of the tenancy were to the date when any instalment of the deposit is received by the landlord.**

**]<sup>2</sup>**

**(3) A “relevant tenancy” for the purposes of paragraphs (1) and (2) means any tenancy or occupancy arrangement—**

**(a) in respect of which the landlord is a relevant person; and**

**(b) by virtue of which a house is occupied by an unconnected person,**

**unless the use of the house is of a type described in [section 83\(6\)](#) (application for registration) of the 2004 Act.**

**(4) In this regulation, the expressions “relevant person” and “unconnected person” have the meanings conferred by [section 83\(8\)](#) of the 2004 Act.**

**10.**

**If satisfied that the landlord did not comply with any duty in [regulation 3](#) the [First-tier Tribunal]<sup>1</sup> —**

**(a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and**

**(b) may, as the [First-tier Tribunal]<sup>1</sup> considers appropriate in the circumstances of the application, order the landlord to—**

- (i) pay the tenancy deposit to an approved scheme; or**
- (ii) provide the tenant with the information required under [regulation 42](#).**

**23.—**

**(1) A landlord may apply for repayment of a tenancy deposit from an approved scheme for the purpose of transferring it to another approved scheme.**

**(2) On receipt of such an application, the scheme administrator must—**

**(a) if so requested, pay the tenancy deposit to the other approved scheme on the landlord's behalf; or**

**(b) in any other case, repay the tenancy deposit to the landlord.**

**(3) The scheme administrator must notify the tenant in writing of the date on which the deposit was paid to the other approved scheme or repaid to the landlord.**

**42.— Landlord's duty to provide information to the tenant**

**(1) The landlord must provide the tenant with the information in paragraph (2) within the timescales specified in paragraph (3).**

**(2) The information is—**

**(a) confirmation of the amount of the tenancy deposit paid by the tenant and the date on which it was received by the landlord;**

**(b) the date on which the tenancy deposit was paid to the scheme administrator;**

**(c) the address of the property to which the tenancy deposit relates;**

**(d) a statement that the landlord is, or has applied to be, entered on the register maintained by the local authority under [section 82](#) (registers) of the 2004 Act;**

**(e) the name and contact details of the scheme administrator of the tenancy deposit scheme to which the tenancy deposit was paid; and**

**(f) the circumstances in which all or part of the tenancy deposit may be retained at the end of the tenancy, with reference to the terms of the tenancy agreement.**

**(3) The information in paragraph (2) must be provided—**

- (a) where the tenancy deposit is paid in compliance with [regulation 3\(1\)](#), within the timescale set out in that regulation; or*
- (b) in any other case, within 30 working days of payment of the deposit to the tenancy deposit scheme.*

- [
- (4) Where the landlord and the tenant agree that the tenancy deposit is to be paid in instalments—*
- (a) paragraphs (2) and (3) apply as if the references to deposit were to each instalment of the deposit, and*
- (b) in relation to the information provided under paragraph (2)(a), confirmation of the cumulative amount of the tenancy deposit paid by the tenant in respect of each instalment after the first instalment.*

**43. Duty to provide updated information**

*Where information required to be provided by the scheme administrator under [regulation 22](#) or by the landlord under [regulation 42](#) becomes inaccurate the person required to provide that information must ensure that revised information is provided.*

**Breach of the TDS Regs**

47. In relation to the merits of the case itself, while Mr Ukwu was of the view that there was collusion between Belvoir, LPSS and SDS, the investigation of alleged collusion or any other possible arrangement between the various organisations referred to was not a function for the Tribunal, certainly not in the context of this particular case. This case was an application by the Applicants against the Respondents. It alleged that there had been a breach of the TDS Regs by the Respondents. The information before the Tribunal made it clear that TDS Regs, with one exception, had been complied with. The bald assertion by Mr Ukwu that he did not believe the information and that there was “collusion” between Belvoir, LPSS and SDS (but not the Respondents) and “they were working together to make up an illusion of a transfer” was not supported by any other available evidence in the case. Mr Ukwu was expecting the Tribunal to accept his opinion, despite the clear evidence before the Tribunal to the contrary. Quite simply, it was clear there was no foundation for the beliefs held by Mr Ukwu.

48. In relation to the specifics of this case, while Mr Ukwu had suggested that he did not believe the tenancy deposit was transferred directly for LPSS to SDS and that, according to him, his deposit was unprotected from April 2023 until the end of the tenancy, there was

clear documentary evidence which contradicted that and there was no evidence whatsoever, other than Mr Ukwu's own comments, to suggest otherwise.

49. While Mr Ukwu was requesting that the Hearing be adjourned (despite his previous assertions after the Case Management Discussion was adjourned that he did not consent to that) the Tribunal was of the view that, having regard to the significant information before it in relation to what had happened with the tenancy deposit funds, there was nothing to be gained by adjourning the proceedings further. Indeed, to adjourn the proceedings to indulge Mr Ukwu's desire to obtain further evidence to establish his belief that there has been collusion between organisations which are not, in fact, a party to the proceedings would be an abuse of the tribunal process.

50. While the Tribunal concluded that there appears to have been a breach of Reg 43 of the TDS Regs, neither Reg 3 nor Reg 10 include regulation 43 within its terms. In the circumstances, in relation to the imposition of a penalty for a failure to comply with Reg 43, the TDS Regs do not permit that.

51. In any event, having regard to the fact that a statutory notice had been issued by SDS, the failure of the Respondents to confirm the funds were now held by SDS rather than LPSS (a fact of which the Respondents themselves would have been unaware) would not be a significant breach of the TDS Regs and, even if the Tribunal was able to lawfully impose a penalty, any penalty imposed would have been de minimus.

## **DECISION**

There has been no failure to comply with Regulation 3 of the TDS Regs.

Regulation 43 of the TDS Regs was not complied with by the Respondents when the deposit funds were transferred from LPSS to SDS.

No penalty is imposed as the TDS Regs do not provide for the imposition of a penalty for a breach of Regulation 43

## **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.

V Crawford

8 March 2024