



**Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 48(1) of the Housing (Scotland) Act 2014 (“the Act”) and Rule 95 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”)**

**Chamber Ref: FTS/HPC/LA/20/1410**

Re: Property at 46, Parkdyke, Stirling, FK7 9LS (“the Property”)

**Parties:**

Mr. Adam Kindreich, 3 rua Nossa Senhora do Carmo, Bemposta, Almoester, Alvaiazere, 3250-024, Portugal (“the Applicant”)

Slater, Hogg & Howison, 44-46, Port Street, Stirling, FK8 2LJ (“the Respondent”) per their representative, Mr. T. McEntegart of TLT LLP, 140, West George Street, Glasgow, G2 2HG (“the Respondent’s Representative”)

**Tribunal Members:**

Karen Moore (Legal Member)  
Frances Wood (Ordinary Member)

**Decision**

The Tribunal determined that the Respondent had not failed to comply with the Letting Agent Code of Practice at Section 2 paragraphs 17, 19, 21 and 24; Section 3 of the Code at paragraphs 29g and 32n and Section 7 of the Code at paragraph 108 and had failed to comply with the Letting Agent Code of Practice at Section 3 of the Code at paragraph 33 and Section 7 of the Code at paragraph 107.

**Background**

1. By application received between 18 June 2020 and 7 August 2020 (“the Application”), the Applicant made an application to the First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Chamber”) for a determination in terms of Section 48(1) of the Act that the Respondent had failed to comply with the Letting Agent Code of Practice (“the Code”) as defined by Section 46 of the Act and as set out in The Letting Agent (Registration and Code of Practice) (Scotland) (Miscellaneous Amendments) Regulations 2017.

2. The Application comprised:
  - (i) An application form setting out the complaint as failures to comply with Section 2 of the Code at paragraphs 17, 19, 21 and 24; Section 3 of the Code at paragraphs 29g, 32n and 33 and Section 7 of the Code at paragraphs 107 and 108 and setting out the loss suffered by the Applicant and the remedy sought by him;
  - (ii) Copy of the letting contract between the Parties being the Respondent's Terms of Business for Lettings (Scotland) signed by the Applicant on 15 October 2019;
  - (iii) Copy exchange of correspondence both email and letter and between the Parties during the period from 27 January 2020 to 27 May 2020 dealing with the Applicant's formal complaint to the Respondent;
  - (iv) Copy exchange of email correspondence between the Parties during the period from 15 October 2019 to 27 March 2020 dealing with the Applicant's instructions to the Respondent and the Respondent's performance of these instructions;
  - (v) Copy screen shots of message exchange between the Applicant and his tenants dated 7 and 8 March 2020;
  - (vi) Copy email correspondence from SafeDeposits Scotland to the Applicant dated 10 March 2020;
  - (vii) Copy Scottish Power invoicing in respect of the Property dated 1 January 2020;
  - (viii) Copy of the Respondent's marketing material and copy of a marketing email from Stirling Electrical Services Limited; and
  - (ix) Photographs of the Property.
3. On 17 August 2020, a legal member of the Chamber with delegated powers of the Chamber President accepted the Application and a Hearing was fixed for 15 October 2020 at 10.00 by telephone conference call. The Application was intimated to the Respondent. The Hearing was intimated to both Parties.
4. Prior to the Hearing, the Respondent's Representative lodged written submissions and a copy of the tenancy agreement between the Applicant and his tenants with the Tribunal which were copied to the Applicant. He intimated that he would call one of the Respondent's employees, Mrs. Corless, as a witness.

### **Hearing**

5. A Hearing took place on 15 October 2020 at 10.00 a.m. by telephone conference call. The Applicant and the Respondent's Representative took part. One of the Respondent's employees, Rena Hayre, attended but did not take part. Both Parties advised that they had no witnesses.
6. The Tribunal Chair outlined the role of the Tribunal and set out the way in which the Hearing would proceed with reference to the Rules.

### **Preliminary Matter**

7. The Respondent's Representative raised a preliminary matter in respect of the competence of the Hearing being conducted by telephone conference call and objected to this course of action. The Respondent's Representative submitted that, in his opinion, the Tribunal could not properly test the evidence of the Applicant. He submitted that the facts of the matters complained of by the Applicant and the photographs lodge by him were in dispute and could not be fully and justly tested without a proper cross-examination and re-examination in person. Citing Rules 2 and 24 of the Rules, he submitted that Hearing being conducted by telephone conference call is not a proper forum to make a proper assessment of evidence and to test the credibility and reliability of the evidence to be led and so is wholly prejudicial to the Respondent. In response, the Applicant advised the Tribunal that he opposed the submission put forward on behalf of the Respondent as "waffle".
8. The Tribunal, taking the view that there was merit in the Respondent's Representative's submission adjourned to consider it further and to enquire if there were proposals for the Chamber to introduce video Hearings in the near future.
9. Having established that there were no proposals for the Chamber to introduce video Hearings in the near future, the Tribunal then considered the Respondent's Representative's submission. Whilst the Tribunal agreed with the Respondent's Representative that in usual circumstances, the best forum to test evidence is in person, the restrictions placed on the Tribunal by the Coronavirus legislation prohibits a Hearing in person. The Tribunal Chamber, in common with other jurisdictions, had chosen to deal with evidential proceedings by other means rather than delay proceedings indefinitely. Therefore, the question for the Tribunal was whether or not it should follow the Chamber's practice in respect of the Application.
10. The Tribunal had regard to the Rules and, in particular, Rule 2, which states:
  - (1) *The overriding objective of the First-tier Tribunal is to deal with the proceedings justly.*
  - (2) *Dealing with the proceedings justly includes (a) dealing with the proceedings in a manner which is proportionate to the complexity of the issues and the resources of the parties; (b) seeking informality and flexibility in proceedings; (c) ensuring, so far as practicable, that the parties are on equal footing procedurally and are able to participate fully in the proceedings, including assisting any party in the presentation of the party's case without advocating the course they should take; (d) using the special expertise of the First-tier Tribunal effectively; and (e) avoiding delay, so far as compatible with the proper consideration of the issues.*
11. The Tribunal noted that Rule 2 obliged it in dealing with proceedings "justly" to have regard to the complexity of the matter, to seek "informality and flexibility in proceedings" and to avoid "delay so far as compatible with the proper consideration of the issues". The Tribunal had regard to the fact that only the Applicant would give evidence and took the view that the Applicant's evidence would be the outlining of his complaints by reference to his application and the supporting documents. The Tribunal took the view that the matter before it was not a complex

matter but one of fact and that the Tribunal's decision would be based on whether, if proved, the facts would amount to a failure by the Respondent to comply with the Code. Therefore, the Tribunal's decision was likely to be subjective in that regard. The Tribunal had regard to the fact that there were no proposals for the availability of video conferencing and so any adjournment of the Hearing would be indefinite. The Tribunal reached the view that, taking all of these factors into account, on balance, the Hearing could and should proceed by way of by telephone conference call.

12. The Hearing reconvened and the Tribunal advised the Parties of its decision to proceed with the Hearing by telephone conference call and invited the Applicant to take it through the Application.
13. Following his preliminary submission, Respondent's Representative's indicated to the Tribunal that he did not intend to cross-examine the Applicant and would deal with points arising in this summing-up submission.

### **Applicant's Position**

#### **Section 2 of the Code at paragraph 17**

14. The Applicant's first head of complaint is under Section 2 of the Code, "*Overarching standards of practice*" at paragraph 17 which states "*You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)*". In the Application, the Applicant set out this complaint as relating to five separate incidents or matters: the erroneous transfer of energy suppliers and the way in which the matter was dealt with in communications, overcharging for an inventory check at the Property, the issue of marketing material, failure to refer to the First-tier Tribunal in their complaints procedure and the size of print on the Respondent's Terms of Business.
15. The Applicant advised the Tribunal that, although the contract entered into between the Parties was limited to finding a tenant only, the Respondent had exceeded this authority and had authorised a switch of energy supplier at the Property from Scottish Power to Spark Energy. The Applicant advised the Tribunal that the Respondent has accepted during their formal handling of his complaints that they had acted out with their authority and had offered him £175.00 in compensation. This was evidenced by reference to correspondence between the Parties. The Applicant's position is that the Respondent carried out the energy transfer deliberately in order to gain commission from Spark Energy and so acted dishonestly. He submitted that the Respondent had failed to take final meter reading before making the unauthorised transfer of energy provider and had misled him to believe that the Respondent had taken steps to remedy the unauthorised transfer of energy by switching back to Scottish Power. The Applicant submitted that the Respondent's employee, Mrs Deborah Cook, who had been dealing with this matter had lied to him by advising him that she was arranging the reversal of the energy transfer when she had, in fact, asked another department in the Respondent's organisation to do this. In support of this

assertion, the Applicant referred to an email from Mrs. Cook to him dated 27 January 2020 which states *“It has been brought to my attention that the erroneous transfer you requested has not yet been actioned as you requested. I would like to apologise .....as I have not properly sent on the request as yet. I will however action this immediately.”* The applicant further referred the Tribunal to an email from Spark Energy stating that the letting agent had not contact the energy supplier to remedy the transfer error.

16. The Applicant advised the Tribunal that the next part of his complaint under this heading was wrongful charging of an inventory fee. The Applicant stated that he had requested that the Respondent carry out an inventory inspection for both departing tenants and incoming tenants. He explained that the Respondent carried out and charged for an inventory check when his former tenants had left the Property. The Respondents had then found a tenant who had planned to move into the Property on 1 December 2019 but did not do so and asked that the entry date be delayed to 6 December 2019. The Applicant did not agree to this and so that tenancy had fallen through and advised the Respondent by email on 8 December 2019. The Applicant’s issue with the Respondent is that Mrs Cook arranged, and the Respondent charged for the incoming inventory inspection on 5 December 2019 for that tenancy without the Applicant’s express consent. The Applicant relied on an email from him to Mrs. Cook on 4 December 2019 advising that as he was travelling, he was not able to check and respond to emails and so should not have arranged the inventory check without advising him. The Applicant’s position is that the inventory should not have been charged by the Respondents as the tenancy did not proceed.
17. The Applicant advised the Tribunal that the next part of his complaint under this heading was unsolicited marketing material promoting a priority service for a fee when letting agency services resumed after the national coronavirus lockdown restrictions ended. The marketing material had been lodged by the Applicant and forms part of the Application. The Applicant advised the Tribunal that he found this to be unethical and offensive, unlike the content of a marketing email sent by a local electrical company.
18. The Applicant advised the Tribunal that the next part of his complaint under this heading was the Respondent’s failure to refer him to the First-tier Tribunal if he was unhappy with their compliant handling but instead referred him to the English Ombudsman.
19. The Applicant advised the Tribunal that the final part of his complaint under this heading was that size of the print on the Respondent’s Terms of Business was too small to be read and printed in full and was deliberately so printed.

**Section 2 of the Code at paragraph 19**

20. The Applicant’s next head of complaint is under Section 2 of the Code, *“Overarching standards of practice”* at paragraph 19 which states *“You must not provide information that is deliberately or negligently misleading or false.”* In the

Application, the Applicant set out this complaint as relating to three separate incidents or matters: the erroneous transfer of energy suppliers, the statement by Mrs. Cook that a tenancy agreement had been signed when it had not and Mrs. Cook advising him that one of the garage lights at the Property was not working when it was.

21. With regard to the unauthorised transfer of energy to Spark, the Applicant advised the Tribunal that in a telephone call on 3 January 2020, Mrs. Cook had indicated to him that the transfer had been requested by the prospective tenant in December 2019. The Applicant's position was that this was untrue as a tenant or prospective tenant has no authority to change energy suppliers and the Respondent's real reason for the unauthorised energy transfer was to obtain commission from the energy company.
22. With regard to the tenancy agreement, the Applicant explained to the Tribunal, that having had a tenancy agreement fall through, he was anxious to ensure that any future leases were signed promptly. He advised the Tribunal that in an email on 28 February 2020, Mrs. Cook had stated that the tenancy agreement for the Property had been signed but in an email on 2 March 2020, had stated that the tenancy agreement for the Property had been partially signed. The Applicant advised the Tribunal that this was deliberately misleading as he had been led to understand that the agreement had been signed and was binding when it had not been signed and was not binding. In response to questions from the Tribunal with reference to the emails in question, the Applicant did not accept that the wording of Mrs. Cook's email on 28 February 2020, being "*Mr and Mrs Haire have now signed the lease*" and "*We will forward a copy of the partially signed lease*" in her email of 2 March 2020 were factually correct.
23. With regard to the garage lights, the Applicant explained to the Tribunal, that, as the tenancy was being marketed in winter, it was important to him that the Property was photographed properly to be shown to its best advantage, and in particular, that the garage was photographed properly. The Applicant explained that he had arranged for his handyman to clean the garage and ensure that all was in order for Mrs. Cook to photograph. However, Mrs. Cook had advised him that she was unable to take proper photographs as one of the garage lights was not working. The Applicant stated that he did not know if it was deliberate or misleading, but his view was that Mrs. Cook did not want to take the photographs and had misled him into incurring the cost of an electrician. In response to questions from the Tribunal, the Applicant stated that there were two light switches but did not accept that Mrs. Cook who was not familiar with the garage, might not have known this, and maintained that the Mrs. Cook had deliberately misled him failing to carry out due diligence in respect of the garage lighting.

**Section 2 of the Code at paragraph 21**

24. The Applicant's next head of complaint is under Section 2 of the Code, "*Overarching standards of practice*" at paragraph 21 which states "*You must carry out the services you provide to landlords or tenants using reasonable care and*

*skill and in a timely way*". In the Application, the Applicant set out this complaint as relating to five separate incidents or matters: delay in advising him that a tenancy had commenced, poor record keeping, delay in carrying out meter readings, delay in responding to a request for fee reduction and delay in transferring a tenancy deposit to the Applicant's preferred approved scheme.

**Procedural Matter - Lack of Time**

25. At this point in the proceedings, the Tribunal, realizing that matters would not conclude on the day, continued the Hearing part heard to a later date to be intimated by the Chamber.
26. The Chamber subsequently intimated that the Hearing would continue on 10 December 2020 at 10.00 by telephone conference call.
27. By email dated 3 December 2020, the Applicant lodged substantial documents and a written statement which were copied to the Respondent's Representative.
28. The Respondent's Representative intimated by email an intention to object to the Applicant's lodging of the documents and a written statement and submitted case law authorities on which he intended to rely.
29. The Hearing reconvened on 10 December 2020 at 10.00 a.m. by telephone conference call. The Applicant and the Respondent's Representative took part. One of the Respondent's employees, Rena Hayre, attended but did not take part.
30. Before the hearing of evidence recommenced the Tribunal asked the Applicant why further information was being lodged at this stage. The Applicant advised the Tribunal that his understanding of the Rules at Rules 22 and 24 was that he was entitled to lodge the documents. He explained that he considered that he was entitled to raise new matters and to provide more clarity on evidence already given by him during the first part of the Hearing. He also considered that he was entitled to draw to the Tribunal's attention that the Respondent's Representative had made an offer to settle his claim. He accepted that some of the documents lodged were new evidence and new matters.
31. The Respondent's Representative formally objected to the Applicant's lodging of the documents and written statement on the following grounds:
  - (i) admissibility of evidence;
  - (ii) late lodging in terms of the Rules;
  - (iii) additional and new evidence; and
  - (iv) the Applicant's interpretation of Rules 22 and 24.
32. The Respondent's Representative firstly addressed the Tribunal on admissibility of evidence and the Tender, being the offer to settle, made on behalf of the Respondent and submitted that it was usual and accepted court practice, and with reference to the cases lodged by him, submitted that the Tender complied with the legal requirements and so was inadmissible.

33. With regard to lodging in terms of Rules 22 and 24, the Respondent's Representative submitted that the proper reading and construction of these Rules is that documents must be lodged prior to the beginning of a Hearing and that lodging midway through proceedings is grossly prejudicial and unfair. He submitted that the Tribunal lodging was late in terms of Rule 22 and could only be lodged if the Tribunal was satisfied in terms of Rule 22(2) that the Applicant has a reasonable excuse. The Respondent's Representative submitted further that many of the documents lodged had been in the Applicant's possession in 2019 and early 2020 and no reason had been given as to why they were being lodged now.
34. With regard to additional and new evidence, the Respondent's Representative submitted that the documents lodged conflate an attempt to introduce new evidence and to sum-up evidence already heard and so, as the Applicant had in his own words advised the Tribunal, were in effect an attempt by the Applicant to revisit and bolster evidence already given by him.
35. With regard to the Applicant's interpretation of Rules 22 and 24, the Respondent's Representative submitted that the Applicant had wrongly calculated the date as 3 December 2020 and it should have been seven clear days, being 2 December 2020.
36. The Tribunal invited the Applicant to respond. The applicant stated that he viewed the objection on behalf of the Respondent as a tactic to close down his dialogue on his complaints and restated that he considered that he was entitled to provide more clarity on evidence already given by him earlier, during the first part of the Hearing.
37. The Tribunal adjourned to consider the submissions.
38. The Tribunal had regard to Rule 22 which states:- *“(1) Except as otherwise provided in these Rules, or as otherwise specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing notified under rule 24(1)—(a) a list of any documents and copies of the documents that the party wishes to rely upon; and (b) a list of any witnesses that the party wishes to call to give evidence.(2) Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse.”* and Rule 24 (1) which states :-*“(1) The First-tier Tribunal must give each party reasonable notice of the date, time and place of a hearing (including any adjourned or postponed hearing) and any changes to the date, time and place of a hearing.”*
39. The Tribunal took the view that the proceedings before it was a continuation of a part heard hearing notified in terms of Rule 24(1) on 3 September 2020 and the date of which was 15 October 2020. Therefore, the last date for lodging documents in terms of Rule 22 was 7 October 2020. The Tribunal agreed with the Respondent's Representative that interpreting Rules 22 and 24 in a way which

refreshed the right to lodge documents was not compatible to rules of fairness and natural justice and so could not be intended to apply to continued and part heard hearings. Accordingly, the Tribunal took the view that the documents had been lodged late.

40. The Tribunal then considered if it could or should admit the documents in terms of Rule 22 (2). The Tribunal agreed with the Respondent's Representative that many of the documents lodged had been in the Applicant's possession in 2019 and early 2020 and no reason had been given as to why they were being lodged now and that no reasonable excuse had been given to allow them to be accepted late.
41. With regard to the inadmissibility of evidence in respect of the Tender made on behalf of the Respondent, the Tribunal had no difficulty in finding that this is well established law and that as the Tender complied with the legal requirements, it was inadmissible.
42. The Tribunal reconvened the Hearing and advised the Parties of its decision not to admit the documents lodged by the Applicant on 3 December 2020 and the reasons for it as outlined in the preceding paragraphs.
43. The hearing of evidence recommenced.
44. With regard to the delay in advising him that a tenancy had commenced, the Applicant explained to the Tribunal, that the tenancy had commenced on Friday 6 March 2020, but Mrs. Cook had not confirmed this to him until he emailed her on Monday 9 March 2020, having contacted the tenants direct on 7 March 2020. The Applicant considered this an unacceptable delay which had caused him embarrassment with his tenants.
45. With regard to poor record keeping, the Applicant explained to the Tribunal, that this related to Mrs. Cook emailing in two separate emails on 2 December 2020 to request his home address and bank account details when he had already provided this information in an email of 15 October 2019. In response to questions from the Tribunal with reference to the emails in question, the Applicant did not accept that Mrs. Cook might have been double-checking the information or following a case management script but maintained that the emails were evidence of poor record keeping on the part of the Respondent.
46. With regard to the delay in carrying out meter readings, the Applicant explained that although, taking meter readings was not part of his contracted service with the respondent, Mrs. Cook had offered to carry out this task. The Applicant explained that he did not expect Mrs. Cook to make a special trip to do so and expected that she would take the reading on her next visit to the Property. However, the Applicant advised that he had had to remind Mrs. Cook and that, having taken the readings, she did not forward until five days after taking them,

which was three full weeks from the date of the request. The Applicant considered this an unacceptable delay.

47. With regard to the delay in responding to his telephone request for fee reduction for another property in his portfolio on 23 December 2019, the Applicant explained that he was advised on 30 December 2019 that a response would not be forthcoming until Friday 3 January 2020. Although the Applicant appreciated that his request was out with Mrs. Cook's authority and that her line manager who had authority was on annual leave, he considered that she ought to have realised on 23 December 2019 that she was not likely to have a response from her manager and should have advised him at that time that a fee reduction was not likely. In his opinion, the delay was? unacceptable as he required the service to be carried out on Monday 6 January 2020 and this placed him under unnecessary stress.
48. With regard to the delay in transferring a tenancy deposit to the Applicant's preferred approved scheme, with reference to email correspondence, the Applicant explained to the Tribunal that he had specifically requested that tenancy deposits be lodged with SafeDeposits Scotland, but the Respondent had lodged a tenancy deposit with its own preferred approved scheme. The Applicant explained that he used SafeDeposits Scotland so that all deposits were lodged with the one approved scheme for ease of operations. He was aggrieved that the Respondent had not followed this instruction and had taken three weeks from the error being drawn to their attention to lodge the deposit with SafeDeposits Scotland. The Applicant advised the Tribunal that the Respondent's delay in lodging the deposit with his preferred scheme placed him at risk of breaching the deposit scheme regulations which applied to him as landlord and not the Respondent as letting agent. Again, the Applicant considered this an unacceptable delay on the part of the Respondent.
49. The Applicant's next head of complaint is under Section 2 of the Code, *"Overarching standards of practice"* at paragraph 24 which states *"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"*. In the Application, the Applicant set out this complaint as the Respondent's failure to provide him with documentary evidence relating to the switch of electricity supplier. In his evidence, the Applicant noted that the Respondent had not lodged any documents with the Tribunal. He stated that although the Respondent in their complaints procedure correspondence to him stated that they had reviewed "documented notes" and although his email of 27 March 2020 had asked for proof of lodging the tenancy deposit, the Respondent had not provided these documents. Accordingly, the conclusion to be drawn is that the Respondent does not maintain appropriate records.

50. The Applicant's next head of complaint is under Section 3 of the Code, "*Engaging landlords*" at paragraph 29g which states "*Identity checks*" "*You must take reasonable steps to check the identity of each landlord to ensure that they are who they say they are and that they are the legal owners of the property or have permission from the owner or power of attorney – for instance, asking for an official form of identification; proof of address; proof of ownership and, where applicable, landlord registration number or company registration number.*" In the Application, the Applicant's complaint referred to the matter complained of under Section 2 at paragraph 21. His position was that Mrs. Cook did not carry out an identity check until 2 December 2019 whereas she should have carried out an identity check earlier in the process. The Applicant accepted that he had provided personal information in his email of 15 October 2019 but maintained that the identity check should have been carried out earlier than December 2019.
51. The Applicant's next head of complaint is under Section 3 of the Code, "*Engaging landlords*" at paragraph 32n which states "*Conflict of interest*" "*Your terms of business ... must clearly set out: n) a declaration of any conflict or potential conflict of interest.*" In the Application, the Applicant set out this complaint as the Respondent's lodging of the tenancy deposit with MyDeposits Scotland and Mrs. Cook's email of 6 January 2020 advising him that "a lovely couple" were interested in the Property but had asked for a rent reduction.
52. With regard to the deposit being lodged with MyDeposits Scotland, the Applicant advised the Tribunal that, in his opinion, the Respondents lodged the tenancy deposit with MyDeposits Scotland as they received commission from that organisation and have not disclosed any fee which they received. The Applicant had no direct proof of this but advised the Tribunal that it was "fishy" and that the only conclusion is that the Respondent was in collusion with MyDeposits Scotland. In response to questions from the Tribunal, the Applicant did not accept that a reason might be that the Respondent used only MyDeposits Scotland for ease of business operations.
53. With regard to Mrs. Cook's email of 6 January 2020, the Applicant advised the Tribunal that Mrs. Cook was motivated to earn her fee by securing a tenant and her use of the phrase "a lovely couple" was to unduly influence the Applicant to accept a tenant at a reduced rent. He advised the Tribunal that Mrs. Cook was not looking after his interests but was trying to taint the position in favour of the prospective tenants to the Applicant's disadvantage. In response to questions from the Tribunal, the Applicant accepted that Mrs. Cook did not make any further representations on behalf of the prospective tenants or attempt to persuade him further on their behalf.
54. The Applicant's next head of complaint is under Section 3 of the Code, "*Engaging landlords*" at paragraph 33 which states "*Terms of Business*" "*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*". In the Application, the Applicant sets out this complaint as the Respondent's failure to provide him with a full copy of the Terms of Business bearing both his and the Respondent's signatures.

55. The Applicant's next head of complaint is under Section 7 of the Code, *"Communications and resolving complaints" Engaging landlords*" at paragraph 107 which states *"Terms of Business" "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"*. In the Application, the Applicant sets out this complaint as the Respondent's failure to include their letting agent registration number on all of the documents and communications sent to him, including the Terms of Business.
56. The Applicant's final head of complaint is under Section 7 of the Code, *"Communications and resolving complaints" Engaging landlords*" at paragraph 108 which states *"Terms of Business" "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."*. In the Application, the Applicant sets out this complaint as the Respondent's delay in transferring the tenancy deposit from MyDeposits Scotland to SafeDeposits Scotland and dealing with communications from him regarding the transfer of the tenancy deposit. He advised the Tribunal that the Respondents ought to have systems in place to monitor unanswered emails. His email of 20 March 2020 was unanswered and he had to issue a reminder on 27 March 2020.

### **Respondent's Position**

57. The Respondent's Representative, having made a preliminary plea in respect of the competence of the proceedings being heard by telephone conference call, lead no evidence.

### **Summing- up by the Applicant.**

58. In summing-up, the Applicant advised the Tribunal that the Respondent admitted failings but not breaches of the Code. He stated that the purpose of the Code was to improve behaviours and that his motivation in raising the complaints was to ensure that the Respondent changed their practices. He explained to the Tribunal that he had spent a considerable amount of time in his dealings with the Respondent and in formulating his Application as set out in Section 6c of the Application. The Applicant advised the Tribunal that his preference was for the Respondent to be fined or to be ordered to review their procedures as suggested by him in Section 6d of the Application.

59. In respect of the evidence, the Applicant asked the Tribunal to note the Respondent had not offered any evidence or lodged any documents refuting any of his complaints, particularly those in respect of failure to provide their letting agent registration number on all of the documents and communications and the misleading information they gave in respect of the utility transfer and the tenancy deposit.

### **Summing-up by the Respondent**

60. In summing-up, the Respondent's Representative adhered to his preliminary plea in respect of competence and that reliability and credibility of evidence cannot be tested properly by cross-examination without a face-to face hearing. He advised the Tribunal that the onus of proof on the balance of probabilities was on the Applicant to show that the Respondent's failings amounted to breaches of the Code and that it was not for the Respondent to prove a negative in this regard.

61. The Respondent's Representative addressed the Tribunal on each of the Applicant's complaints.

62. With regard to the Applicant's complaint regarding the energy switch to Spark and Section 2 of the Code, at paragraph 17, the Respondent's Representative stated that the Respondent accepted that they did have authority to switch energy suppliers and had offered compensation of £175.00 to the Applicant. The Respondent had not acted in a way which was contrary to openness and honesty and were not in breach of this part of the Code. The Respondent's mistaken belief that they had authority is a breach of contract but not a breach of the Code. He noted that no evidence had been lead in respect of commission from Spark Energy. With reference to the January 2020 exchange of emails between Mrs. Cook and the Applicant, the Respondent's Representative stated that Mrs. Cook did not lie as maintained by the Applicant but made statements of fact regarding what had occurred.

63. With regard to the Applicant's complaint regarding the overcharging of the inventory fee and Section 2 of the Code, at paragraph 17, the Respondent's Representative stated that two inventory checks had been carried out and the Respondent was entitled to charge for both. This was not dishonest or unfair and was not a breach of the Code: the Applicant simply did not wish to pay the fees.

64. With regard to the Applicant's complaint regarding the marketing material and Section 2 of the Code, at paragraph 17, the Respondent's Representative stated that there was no factual evidence that the marketing material fell short of the Code.

65. With regard to the Applicant's complaint regarding the failure to refer to the First-tier Tribunal in their complaints procedure and Section 2 of the Code, at paragraph 17, the Respondent's Representative stated that there was no evidence of dishonesty to show that this was a breach of the Code.

66. With regard to the Applicant's complaint regarding the Terms of Business font and size and Section 2 of the Code, at paragraph 17, the Respondent's Representative noted that the Applicant had managed to increase the size of the font and had, in fact, made handwritten amendments to the terms. Accordingly, the Applicant had suffered no detriment dealing with the font and size and in any event had not proved that the font and size was a breach of the Code.
67. With regard to the Applicant's complaint regarding the unauthorised switch of energy supplier at the request of a prospective tenant and Section 3 of the Code, at paragraph 19, the Respondent's Representative stated that Respondent denied this and noted that no documentary evidence had been provided of the telephone call on 3 January 2020 with Mrs. Cook, whereas all other matters had been documented and lodged.
68. With regard to the Mrs. Cook's emails of 28 February 2020 and 2 March 2020 regarding the signing of the tenancy agreement by Mr. and Mrs. Haire and Section 3 of the Code, at paragraph 19, the Respondent's Representative stated that the emails represented the accurate position and were not a breach of the Code.
69. With regard to the garage lights and Section 3 of the Code, at paragraph 19, the Respondent's Representative stated that the Applicant's evidence was confusing and contradictory and so was inconsistent and unreliable. The applicant had said that he did not know if Mrs. Cook had been negligent or misleading in stating that the lights did not work, and that the likely explanation was that Mrs. Cook did not know that there were two light switches. This was not enough to establish a breach of this part of the Code.
70. With regard to the Applicant's complaints under Section 2 of the Code at paragraph 21, the Respondent's Representative advised the Tribunal that standard of care to be applied by the Tribunal is that expected by an ordinary person. He stated that no evidence had been led of a specific market standard for letting agents and that all that was provided was the Applicant's subjective view of what the standard should be.
71. With regard to the March 2020 email correspondence response times complained of by the Applicant under Section 2 of the Code at paragraph 21, the Respondent's Representative noted that the tenancy began on Friday 6 March 2020 and Mrs. Cook responded on Monday 9 March 2020 within 20 minutes of the Applicant's email to her.
72. With regard to Mrs. Cook's email of 2 December 2020 requesting the Applicant's address and bank details complained of by the Applicant under Section 2 of the Code at paragraph 21, the Respondent's Representative stated that the Applicant had failed to prove that this was anything other than double-checking by Mrs. Cook and had failed to prove that this was a breach of the Code

73. With regard to the meter reading response times complained of by the Applicant under Section 2 of the Code at paragraph 21, the Respondent's Representative noted that once taken Mrs. Cook advised the Applicant of the readings within three days, a timescale which the Applicant had accepted in evidence as reasonable and so had failed to prove that this was a breach of the Code.
74. With regard to the response times to his request for a finder's fee reduction complained of by the Applicant under Section 2 of the Code at paragraph 21, the Respondent's Representative noted that the request was made on 23 December 2019 and responded to one week later, which given that it was the festive holiday was a prompt response time compliant with the Code.
75. With regard to the time taken to transfer the tenancy deposit from MyDeposits Scotland to SafeDeposits Scotland complained of by the Applicant under Section 2 of the Code at paragraph 21, the Respondent's Representative stated that the deposit was lodged with MyDeposits Scotland on 10 March 2020 and re-lodged with SafeDeposits Scotland three weeks later on 31 March. He pointed out that the time scale for lodging deposits as set out in the relevant regulations is thirty days. No evidence had been led in respect of how long that process would ordinarily take and there was no evidence of a breach of the Code.
76. With regard to the Applicant's complaint under Section 2 of the Code, at paragraph 24 that the Respondent's failure to provide him with documentary evidence relating to the switch of electricity supplier and lodging of the deposit are evidence of poor record keeping, the Respondent's Representative drew to the Tribunal's attention that this part of the Code relates to maintenance of records and failure to produce records does not prove a failure to maintain them. Accordingly, the Applicant has not proved a breach of this part of Code and no evidence was provided to allow the Tribunal to draw a conclusion of a breach of the Code.
77. With regard to the Applicant's complaint under Section 3 of the Code at paragraph 29g, the Respondent's Representative pointed out that the Applicant had provided the required information in his email of 15 October 2019 and there was no requirement on the Respondent to request information already provided. The requirement is to check the information, which was done. He noted that the Applicant made an issue of the timing of this but did not prove a breach of this part of the Code.
78. With regard to the Applicant's complaints of an undeclared conflict of interest with MyDeposits Scotland under Section 3 of the Code at paragraph 32n the Respondent's Representative stated that there was no evidence of this other than speculation on the part of the Applicant.

79. With regard to the Applicant's complaints of a conflict of interest between Mrs. Cook and the prospective tenants described by her as a "a lovely couple" under Section 3 of the Code at paragraph 32n the Respondent's Representative stated that the statement made by Mrs. Cook was an expression of her opinion of the couple and nothing stated by the Applicant comes close to proving a conflict of interest.
80. With regard to the Applicant's complaint under Section 3 of the Code at paragraph 33, the Respondent's Representative accepted that Applicant had not been provided with a full copy of the Terms of Business bearing both his and the Respondent's signatures.
81. With regard to the Applicant's complaint under Section 7 of the Code at paragraph 107, the Respondent's Representative accepted the Respondent had failed to include their letting agent registration number on all of the documents and communications including the Terms of Business and so had breached the Code in this respect. He advised the Tribunal that this breach had now been remedied.
82. With regard to the Applicant's complaint under Section 7 of the Code at paragraph 108, the Respondent's Representative stated that all of the response times were met within reasonable timescales. He pointed out that the lodging of the deposit and transfer between approved providers coincided with the national lockdown and that the other timescales were reasonable in all respect and so there was no breach of the Code.
83. With regard to the Applicant's claim for compensation, the Respondent's Representative stated that the Applicant had not suffered or proved any loss and that the breaches which the Respondent accepted caused the Applicant no detriment.
84. With regard to the Applicant's request that the Respondent be fined or be ordered to review their procedures, the Respondent's Representative stated that, in his opinion, this exceeded the powers of the Tribunal on the evidence before it.

#### **Findings in Fact**

85. The Tribunal accepted the Applicant's evidence at the Hearing as truthful and, although, in the Tribunal's opinion this was at times exaggerated, it was not an attempt to deceive.
86. From the Application and the Hearing, the Tribunal held the following findings in fact: -
- i) The Applicant is the owner and landlord of the Property;
  - ii) The Respondent was engaged as his letting agent on a tenant find basis only;

- iii) The Respondent issued their Terms of Business to the Applicant, the print of parts of which although small in size and font were capable of being read;
- iv) The Applicant amended parts of the Terms of Business in writing on the face of it to reflect the particular terms and conditions agreed between the Parties;
- v) The Respondent had no right or authority to switch energy supplier for the Property in terms of their Terms of Business;
- vi) The Respondent switched the energy supplier for the Property from Scottish Power to Spark Energy Limited;
- vii) The Respondent accepted they had exceeded their authority in respect of switching the energy supplier and offered the Applicant £175.00 as a goodwill gesture, in compensation;
- viii) Mrs. Deborah Cook was the Respondent's employee who dealt with the Applicant's business;
- ix) Mrs. Cook undertook to remedy the energy transfer error by instructing another part of the Respondents' business to carry out this task;
- x) The Applicant drew to Mrs. Cook's attention that the request to remedy the energy transfer error had not been actioned;
- xi) Mrs. Cook confirmed this in an email to the Applicant dated 27 January 2020 stating *"It has been brought to my attention that the erroneous transfer you requested has not yet been actioned as you requested. I would like to apologise .....as I have not properly sent on the request as yet. I will however action this immediately."*
- xii) The Applicant instructed the Respondent to carry out an inventory inspection for both departing tenants and incoming tenants;
- xiii) The Respondent carried out this instruction at a charge of £120.00 for an outgoing tenant at the Property;
- xiv) The Respondent found a tenant for the Property with a tenancy agreement scheduled to commence on 1 December 2019 and then delayed to 6 December 2019;
- xv) The Respondent carried out the inventory inspection for the incoming tenant at a charge of £120.00 on 5 December 2019;
- xvi) The Applicant emailed the Respondent on 4 December 2019 advising that as he was travelling, he was not able to check and respond to emails;
- xvii) The Applicant was aggrieved that Mrs. Cook did not have regard to his email of 4 December 2019 and did not seek his express prior consent to carrying out the inventory check on 5 December 2019;
- xviii) The tenancy arranged for December 2019 did not proceed;
- xix) The Respondent emailed the Applicant with unsolicited marketing material promoting a priority service for a fee for letting agency services to be resumed after the national coronavirus lockdown restrictions;
- xx) The Applicant found this marketing material to be unethical and offensive;
- xxi) On 6 January 2020, Mrs Cook emailed the Applicant to advise that she had prospective tenants whom she described as "a lovely couple" and passed on their request to the Applicant to accept for a reduced rent;
- xxii) The Respondent found tenants, Mr. and Mrs. Haire, for the Property in February 2019;

- xxiii) The Applicant was concerned that the tenancy agreement be entered into promptly lest the prospective tenancy fall through;
- xxiv) The Respondent issued a tenancy agreement to Mr. and Mrs. Haire for signature;
- xxv) Mr. and Mrs. Haire signed the tenancy agreement;
- xxvi) Mrs. Cook's reported to the Applicant by email on 28 February 2020 that Mr and Mrs Haire had signed the lease;
- xxvii) The Applicant requested a copy of the lease;
- xxviii) Mrs. Cook's reported to the Applicant by email on 2 March 2020 that she would send him a copy of the partially signed lease;
- xxix) The Applicant requested that marketing photographs of the Property, and the garage, in particular, be taken;
- xxx) Mrs Cook arranged for the photographs and reported to the Applicant that one of the garage lights was not working affecting the quality of the photographs;
- xxxi) An electrician or handyman employed by the Applicant found that both garage lights were in working order;
- xxxii) There are two light switches in the garage;
- xxxiii) Mrs. Cook had not been told that that there were two light switches in the garage;
- xxxiv) Mr. and Mrs. Haire's tenancy commenced on Friday 6 March 2020;
- xxxv) The Respondent and Mrs. Cook on their behalf did not confirm this to the Applicant until she replied to the Applicant's email on Monday 9 March 2020;
- xxxvi) The Applicant wrote a detailed email to the Respondent on 15 October 2019 providing information on, among other things, his home address and bank details;
- xxxvii) Mrs. Cook sent two separate emails on 2 December 2020 to the Applicant to request his home address and bank account details;
- xxxviii) Although not contracted to do so, Mrs. Cook undertook to take meter readings at the Property;
- xxxix) The Applicant did not expect Mrs. Cook to make a special trip to take the readings but was satisfied that this would be done and expected that she would take the reading on her next visit to the Property;
- xl) The Applicant reminded Mrs. Cook to take the readings;
- xli) Mrs. Cook took the readings three weeks from the date of the Applicant's initial request and provided the information within three working days;
- xlII) The Applicant requested a fee reduction for another property by telephone to Mrs. Cook on 23 December 2019;
- xlIII) Mrs. Cook made the Applicant aware that his request was out with her authority and would be referred to a manager who was on annual leave;
- xlIV) Mrs. Cook explained to the Applicant on 30 December 2019 that a response would not be forthcoming until Friday 3 January 2020;
- xlV) The Applicant was aggrieved that Mrs. Cook did not advise him of this sooner;
- xlVI) The Respondent received a tenancy deposit from Mr. and Mrs. Haire on 6 March 2020;

- xlvi) The Applicant had instructed the Respondent to pay the deposit to SafeDeposits Scotland;
- xlviii) The Respondent deposited the tenancy deposit with MyDeposits Scotland on 10 March 2020;
- xliv) The Applicant advised the Respondent on 10 March 2020 that they should transfer the deposit from MyDeposits Scotland to SafeDeposits Scotland;
- i) The transferred deposit was received by SafeDeposits Scotland on 31 March 2020;
- ii) The Applicant emailed the Respondent on 20 and 27 March 2020 regarding the transfer of the deposit;
- iii) The Respondent did not provide the Applicant with copy documentation relating to the deposit transfer;
- liii) The Respondent did not provide the Applicant with copy documentation relating to the energy transfer;
- liv) The Respondent did not provide the Applicant with a full copy of the Terms of Business bearing both his and the Respondent's signatures;
- lv) The Respondent did not include their letting agent registration number on all of the documents and communications including the Terms of Business;
- lvi) The Applicant pursued his complaints through the Respondent's complaint procedures;
- lvii) The Respondent did not advise the Applicant that if he were dissatisfied with the outcome of their complaint procedures, he could make an application to the First-tier Tribunal but referred him to the Ombudsman for the English jurisdiction.

#### **Issue for the Tribunal**

87. The issue for the Tribunal is whether or not the matters complained of by the Applicant and for which the Tribunal have found in fact amount to breaches of the Code as alleged by the Applicant.

#### **Decision of Tribunal and Reasons for the Decision**

88. Having made its findings in fact, The Tribunal considered each of the Applicant's heads of complaint in turn.

#### **Section 2 of the Code at paragraph 17**

89. The Applicant's first head of complaint is under Section 2 of the Code, "*Overarching standards of practice*" at paragraph 17 which states "*You must be honest, open, transparent and fair in your dealings with landlords and tenants (including prospective and former landlords and tenants)*". The Tribunal's view is that the key elements of this part of the Code are dealings which are "*honest, open, transparent and fair*".
90. The Tribunal considered the Respondent's dealing with the Applicant in respect of their unauthorised switch of energy supplier at the Property from Scottish Power to Spark Energy. The Tribunal took the view that this was an error on the

part of the Respondent which they readily accepted as their fault. The Tribunal considered the Applicant's position that the Respondent carried out the energy transfer deliberately in order to gain commission from Spark Energy and so acted dishonestly. The Tribunal found no evidence to support this assertion. The Tribunal considered the Applicant's statement that Mrs. Cook had lied to him by advising him that she was arranging the reversal of the energy transfer as confirmed by her email of 27 March 2020. The Tribunal took the view that the content of Mrs. Cook's email was accurate as it reflected the actions she had taken. The Tribunal took the view that the Applicant had wrongly assumed that Mrs Cook was undertaking the actions directly with the energy suppliers and had erroneously based his complaint on this wrong assumption. The Tribunal found no evidence to support the Applicant's claim that the Respondent acted in a way which breached this part of Code.

91. The Tribunal considered the Respondent's actions in carrying out the Applicant's inventory inspection instructions. The Applicant stated in evidence that he had requested that the Respondent carry out an inventory inspection for both departing tenants and incoming tenants. The Tribunal found that the Respondent carried out this instruction in relation to a departing tenant in October 2019 and in relation to an incoming tenant in December 2019 at a charge of £120.00 per inspection. The Tribunal noted the sequence of events in respect of the December inventory inspection. The Tenant was due to take entry on 6 December 2019; the Applicant had emailed the Respondent on 4 December 2019 advising that he was travelling and was not able to check and respond to emails but could be phoned for urgent matters; the inspection was carried out on 5 December 2019 and the tenancy fell through on 6 December 2019. The Tribunal took the view that, having been instructed by the Applicant to carry out an inventory inspection for both departing tenants and incoming tenants as a matter of routine, the Respondent was bound to carry out an inspection for the incoming tenant on 5 December 2019, as, at the point the tenancy had not fallen through. The Tribunal found no evidence to show that the Respondent required the Applicant's express consent. The Tribunal found no evidence to support the Applicant's claim that the acted in a way which was in breach this part of Code.
92. The Tribunal considered the Applicant's complaint that the Respondent's unsolicited marketing material breached this part of the Code but could find nothing to support this view. The Applicant may have been unhappy at its content and its receipt, but the marketing material was not in breach of the Code.
93. The Tribunal considered the Applicant's complaint that the Respondent's failure to refer him to the First-tier Tribunal if he was unhappy with their compliant handling was in breach of this part of the Code, referring him instead to the Ombudsman in the English jurisdiction. The Tribunal found that this was inaccurate but was not deliberately dishonest. The Tribunal found no evidence to support the Applicant's claim that the Respondent acted in a way which was in breach this part of Code

94. The Tribunal considered the Applicant's complaint under this heading that size of the print on the Respondent's Terms of Business was too small to be read and printed in full. The Tribunal found that the font and size, whilst small, were readable and so did not agree with the Applicant that the Terms of Business were in breach of this part of the Code.

### **Section 2 of the Code at paragraph 19**

95. Section 2 of the Code, "*Overarching standards of practice*" at paragraph 19 states "*You must not provide information that is deliberately or negligently misleading or false.*". The key elements of this part of the Code are providing false information deliberately or negligently and not simply providing false or wrong information mistakenly or inadvertently.

96. The Tribunal considered the Applicant's complaint that the Mrs. Cook had falsely advised him that the energy transfer was requested by a prospective tenant and that the Respondent's real reason for the unauthorised energy transfer was to obtain commission from the energy company. The Applicant provided no evidence to support these assertions in any way. The Tribunal held that this complaint was groundless speculation by the Applicant. Accordingly, the Tribunal found that no breach of this part of the Code had been proved.

97. With regard to the Applicant's complaint in respect of Mr. and Mrs. Haire's signing of their lease and that Mrs. Cook had lied and deliberately misled him in her emails of 28 February 2020 and 2 March 2020, the Tribunal's view is, that, to the contrary, Mrs. Cook had correctly and accurately conveyed the factual position as the lease had been signed by the tenants but had yet to be signed on behalf of the landlord. Accordingly, the Tribunal found that there had been no breach of this part of the Code.

98. With regard to the garage lights and the Applicant's complaint that Mrs. Cook had not wanted to take photographs of the garage and had deliberately misled the Applicant in this respect, the Tribunal found nothing in the Applicant's evidence to support these views. To the contrary, the Tribunal considered that Mrs. Cook far from being unhelpful and not wanting to take the photographs, was more likely to have been trying to assist the Applicant to obtain the best photographs possible by pointing out that a light was not working. The Tribunal found it more likely that Mrs. Cook who was not familiar with the garage was not aware that there were two light switches. Accordingly, the Tribunal found that there had been no breach of this part of the Code.

### **Section 2 of the Code at paragraph 21**

99. Section 2 of the Code, "*Overarching standards of practice*" at paragraph 21 states "*You must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way*". The standard is "reasonable care and skill" which is an ordinary standard of care and skill, not a high or superlative standard.

100. The Tribunal considered the Applicant's complaint that time taken from Friday 6 March 2020 to Monday 9 March 2020 to confirm that the Haires' tenancy had commenced was in breach of this part of the Code. The Tribunal took the view that the next working day was a perfectly acceptable business response time. The Applicant, not having established that a more prompt timescale should have been applied, the Tribunal held that he had not proved a breach of this part of the Code.
101. The Tribunal considered the Applicant's complaint that by issuing two separate emails on 2 December 2020 to request the Applicant's home address and bank account details which had already been provided in his email of 15 October 2019, Mrs Cook was in breach of this part of the Code as her actions amounted to poor record keeping. The Tribunal noted that the Applicant's email of 15 October 2019 was lengthy and was a combination of facts and narrations of the Applicant's personal history and views on his role as a landlord. The Tribunal took the view that Mrs Cook's actions were most likely to have been establishing or double-checking essential details and could not reconcile her actions to evidencing poor record keeping. Accordingly, the Tribunal found that there had been no breach of this part of the Code.
102. With regard to the complaint of a delay in carrying out meter readings, the Tribunal did not agree with the Applicant that there had been a delay, let alone an unacceptable delay. The Applicant did not provide evidence that the meter readings should be taken within a specific timescale of which the Respondent fell foul. The Tribunal found that overall time taken was reasonable. Accordingly, the Tribunal found that there had been no breach of this part of the Code.
103. With regard to the complaint of a delay in responding to the Applicant's telephone request for fee reduction for another property in his portfolio on 23 December 2019, the Tribunal found that, given 25 and 26 December 2019 were public holidays and 28 and 29 December 2019 were a weekend, Mrs. Cook's response on 30 December 2019 was perfectly acceptable. Accordingly, the Tribunal found that there had been no breach of this part of the Code.
104. With regard to the Applicant's complaint that there had been a delay in the Respondent transferring the tenancy deposit to the Applicant's preferred approved scheme, the Tribunal found nothing in the Applicant's evidence to show that the three weeks taken for the deposit to leave MyDeposits Scotland and arrive at SafeDeposits Scotland was due to the inaction of the Respondent. The Tribunal did not accept that the Respondent had placed the Applicant at risk of breaching the deposit scheme regulations which applied to him as landlord and not the Respondent as letting agent. The relevant regulations require that the deposit is lodged with an approved scheme provider within thirty working days of its receipt and the Respondent had lodged it with an approved scheme provider on the working day following its receipt. The Tribunal determined that the

Applicant not having established any delay on the part of the Respondent, had not proved a breach of this part of the Code.

### **Section 2 of the Code at paragraph 24**

105. Section 2 of the Code, *“Overarching standards of practice”* at paragraph 24 which states *“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 Applicant’s complaint in this regard is that In the Application, the Applicant set out this complaint as the Respondent failed to provide him with documentary evidence relating to the switch of electricity supplier and the lodging of the tenancy deposit. In his evidence, the Applicant noted that the Respondent had not lodged any documents with the Tribunal. He asked that the Tribunal draw the conclusion from this that the Respondent does not maintain appropriate records. The Applicant did not request the Respondent to lodge documents with the Tribunal and did not ask the Tribunal to ask the Respondent to do so. The Applicant did not provide any evidence on the Respondent’s record-keeping. Tribunal could not reconcile providing documents as part of a routine transaction as proof that records are not kept. Accordingly, the Tribunal found that the Applicant had not established a breach of this part of the Code

### **Section 3 of the Code at paragraph 29g**

106. Section 3 of the Code, *“Engaging landlords”* at paragraph 29g which states *“Identity checks” “You must take reasonable steps to check the identity of each landlord to ensure that they are who they say they are and that they are the legal owners of the property or have permission from the owner or power of attorney – for instance, asking for an official form of identification; proof of address; proof of ownership and, where applicable, landlord registration number or company registration number.”* This part of the Code does not provide any timeframe for the letting agent to carry out this task, it simply states that this must be done. The Applicant’s complaint is not that the Respondent did not carry out an identity check but that the Respondent did not carry out the check at the earliest opportunity but waited until a prospective tenant was found in December 2019. This is not an accurate understanding of this part of the Code on the part of the Applicant. The Tribunal determined that the Applicant not having established any failure on the part of the Respondent, had not proved a breach of this part of the Code.

### **Section 3 of the Code at paragraph 29g**

107. Section 3 of the Code, *“Engaging landlords”* at paragraph 32n which states *“Conflict of interest” “Your terms of business ....must clearly set out: n) a declaration of any conflict or potential conflict of interest.”* The Applicant asserts two breaches of this part of the Code: failure to disclose commission from MyDeposits Scotland and Mrs. Cook’s email attempt to place undue influence on him to accept tenants who wished a reduced rent for the Property.

108. With regard to the commission paid by MyDeposits Scotland, the Applicant offered no evidence in support of this and relied on his opinion that the Respondent's relationship with MyDeposits Scotland was "fishy". The Applicant did not accept that a reason for the Respondent's use of MyDeposits Scotland was for ease of business operations but offered no proof or fact for any other reason and, in particular, offered no proof or evidence that commission had been paid by MyDeposits Scotland to the Respondent. Accordingly, the Tribunal found that the Applicant had not established a breach of this part of the Code.

109. With regard to Mrs. Cook's email attempt to place undue influence on the Applicant to accept tenants who wished a reduced rent for the Property, the Tribunal had regard to the wording of Mrs. Cook's email of 6 January 2020. The Tribunal was of the view that this was a straightforward narration of the facts with a valid professional opinion of prospective tenants. The prospective tenants having asked about a rent reduction, Mrs Cook, as agent for the Applicant without authority to agree a reduction, was bound to advise the Applicant of the request. The Applicant agreed with the Tribunal that when the Applicant declined a rent reduction, Mrs. Cook had not taken the matter further and had not made representations on behalf of the prospective tenants. The Tribunal could not reconcile the Applicant's assertion that Mrs. Cook was not looking after his interests but was acting in favour of the prospective tenants to his disadvantage with the evidence led by the Applicant. Accordingly, the Tribunal found that the Applicant had not established a breach of this part of the Code.

### **Section 3 of the Code at paragraph 33**

110. Section 3 of the Code, "*Engaging landlords*" at paragraph 33 states "*Terms of Business*" "*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*". This is a precise and exact obligation on the letting agent. The Applicant's complaint is that the Respondent failed to provide him with a full copy of the Terms of Business bearing both his and the Respondent's signatures. The Respondent agrees that the copy which was sent to the Applicant was not signed by the Respondent but does not accept that this is a breach of this part of the Code as the Code does not require the fully signed copy to be given. The Tribunal does not agree with the Respondent on this point. The wording is that the Terms of Business must be signed by both parties "and a copy" must be given to the Landlord. Accordingly, the Tribunal found that the Applicant had established a breach of this part of the Code.

### **Section 7 of the Code at paragraph 107**

111. Section 7 of the Code, *“Communications and resolving complaints” Engaging landlords* at paragraph 107 states *“Terms of Business” “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”*. In the Application, the Applicant sets out this complaint as the Respondent’s failure to include their letting agent registration number on all of the documents and communications sent to him, including the Terms of Business. The Respondent agrees that they failed to include their letting agent registration number on all of the documents and communications and accept a breach of this part of the Code. Accordingly, the Tribunal found that the Applicant had established a breach of this part of the Code.

### **Section 7 of the Code at paragraph 108**

112. Section 7 of the Code, *“Communications and resolving complaints” Engaging landlords* at paragraph 108 states *“Terms of Business” “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.”*. Specific timescales are not prescribed by the Code. The Applicant complains that the Respondent’s delay in transferring the tenancy deposit from MyDeposits Scotland to SafeDeposits Scotland and their delay in dealing with communications from him regarding the transfer of the tenancy deposit breach this part of the Code. The Tribunal noted that the tenancy deposit transfer from MyDeposits Scotland to SafeDeposits Scotland took three weeks and the process was not wholly within the Respondent’s control. The Tribunal noted that the complaint relating to the unanswered email was an email of 20 March 2020 which was unanswered by 27 March 2020. The Applicant did not provide evidence of the response times which should have been applied and complied with and of which the Respondent fell foul. The Tribunal found that overall time taken was reasonable. Accordingly, the Tribunal found that there had been no breach of this part of the Code.

### **Letting Agent Enforcement Order.**

113. The Tribunal, having found that the Respondent was in breach of Section 3 of the Code at paragraph 33 and Section 7 of the Code at paragraph 107, had regard to Section 48(7) of the Act which states: *“Where the Tribunal decides that the letting agent has failed to comply, it must by order (a “letting agent enforcement order”) require the letting agent to take such steps as the Tribunal considers necessary to rectify the failure.”* Accordingly, the Tribunal was obliged to make a letting agent enforcement order to rectify the Respondent’s failure.

114. The Tribunal then had regard to Section 48(8) of the Act which states: *“A letting agent enforcement order (a) must specify the period within which each step must be taken and (b) may provide that the letting agent must pay to the applicant such compensation as the Tribunal considers appropriate for any loss suffered by the applicant as a result of the failure to comply.”*

115. With regard to Section 48(8) (a), the Tribunal considered that the steps to be taken by the Respondent is to provide written or documentary evidence the Respondent has amended its paperwork to comply with Section 7 of the Code at paragraph 107 and is to provide the Applicant with a copy of the fully signed Terms of Business within 28 days of the date of the order.

116. With regard to Section 48(8) (b), the Tribunal considered that the Applicant had not suffered a loss as a result of the Respondent's failure to comply and so did not exercise its discretion to award compensation.

### **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.**

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**Legal Member/Chair**

**6 January 2021**  
**Date**