

# Housing and Property Chamber

## First-tier Tribunal for Scotland

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### **Statement of Decision of the Housing and Property Chamber of the First-tier Tribunal for Scotland on an Application made under Section 48 of the Housing (Scotland) Act 2014**

**Chamber Ref: FTS/HPC/LA/21/0307**

**Re: Property at 2 Chamfron Gardens, Stirling, FK7 7XU ("the Property")**

#### **Parties:**

**Mr Archie Cowan, Apartment 519, Marsa Gardens, The Wave, Al Mouj, Muscat, Oman ("the Applicant")**

**Countrywide Residential Lettings Limited, Greenwood House (1<sup>st</sup> Floor), 91-99 New London Road, Chelmsford, CM2 0PP, Essex ("the Respondent")**

#### **Tribunal Members:**

**Fiona Watson (Legal Member)  
Eileen Shand (Ordinary Member)**

#### **Decision**

**The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal'), having made such enquiries as it saw fit for the purposes of determining the application, determined that the Respondents had failed to comply with Paragraph 21 of the Letting Agent Code of Practice.**

#### **Background**

1. By application dated 11 February 2021, the Applicant applied to the First-tier Tribunal for Scotland, Housing and Property Chamber ("the Tribunal") under Section 48 of the Housing (Scotland) Act 2014 ("the Act") for a determination that the Respondents had failed to comply with the Letting Agent Code of Practice ("the Code") as set out in the Letting Agent Code of Practice (Scotland) Regulations 2016, as amended.
2. The application stated that the Applicant considered that the Respondent

had failed to comply with their duties under Paragraphs 21, 57 and 61 of the Code of Practice.

3. Paragraph 21 of the Code states *“you must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.”*
4. Paragraph 57 of the Code states *“you must agree with the landlord what references you will take and checks you will make on their behalf.”*
5. Paragraph 61 of the Code states *“you must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord.”*
6. A Case Management Discussion took place on 21 May 2021 by tele-conference at which the matter was adjourned to a Hearing, with parties in agreement that the matter should reconvene with use of video-conferencing. A Hearing took place by Webex video conference over two days on 29 July 2021 and 25 August 2021. The Applicant was personally present and represented himself. The Respondent was represented by Mr McEntegart, solicitor of TLT LLP. For clarity, it should be noted that Slater Hogg and Howison is a trading name of Countrywide Residential Lettings Limited. Both parties lodged a number of documents prior to the Hearing commencing. The Applicant gave evidence personally, and called two witnesses: Mrs Cowan (the Applicant's wife) and Clive Loble, employee of Morgans Law lettings department. The Respondent called one witness: Lisa Carlton-Scott, Lettings Manager of Countrywide Residential Lettings Limited.

- **Applicant's evidence**

7. Mr Cowan's evidence is summarised as follows:

- 7.1 He has been a landlord for approximately twenty years and for approximately 12 years has engaged Slater Hogg and Howison to act as his letting agent for a number of properties. He instructed Slater Hogg and Howison to act as letting agent for the Property on a let-only basis. This involved marketing, arranging and carrying out of viewings and preparing the Tenancy Agreement.

In late January 2020 he was advised that a Mr Grierson (“the Tenant”) had applied for the tenancy of the Property and he had been approved as a tenant. His tenancy would commence 31 January 2020 at a rent of £825 per month.. The Tenant was American and claimed he’d only just arrived in the country. The Respondents had been contacted by a Linda Leung on the Tenant’s behalf to arrange the viewing. She was believed to be a relative of the Tenant. The Applicant’s wife had been present at the Property when the viewing took place. Two other people had viewed the Property that day as well. She had no authority to give any instructions to the Respondents regarding prospective tenants. It was stated that Mrs Cowan only dealt with the “cosmetic” side of things when it came to Mr Cowan’s Property. The Respondent had no authority to take instructions from Mrs Cowan. Mrs Cowan had told the Respondent following the viewings that they should keep the Applicant updated on the outcome of the viewings and seek his instructions. The Respondent advised Mrs Cowan thereafter, during Mrs Cowan attending at their office, that the Tenant had passed his checks with “flying colours.” The Applicant did not agree to proceed with the Tenant without a credit check being carried out. The Applicant’s wife also did not agree to proceed with the Tenant without a credit check being carried out.

7.2 The Tenant paid his first month’s rent and deposit before moving into the Property. Thereafter, he failed to pay his rent. It was discovered that he had allowed two other people to live in the Property as well, in breach of the agreement.

7.3 The Tenant had provided false information to the Respondents to obtain the tenancy.

7.4 The Respondents failed to check that the Tenant had a suitable Visa to allow him to remain in the UK.

7.5 The Respondent failed to check the Tenant’s current UK address, which was given as 101 The Maltings, Dalgety Bay.

7.6 The Respondent failed to properly check the Tenant’s bank statements to

check his suitability as tenant as well as affordability. Copy bank statements provided by the Tenant were lodged with application. The Applicant referred to each statement in turn and claimed that they were forged. They were not stamped by the bank. They were in black and white. Each statement showed a figure of how many debits were listed on the statement, but this did not coincide with the actual number of debits listed on each statement. Mr Cowan claimed they were of poor quality and were copied and pasted. Each statement also showed transactions taking place in various places such as Grangemouth, Perth and Falkirk and this did not tie in with the Tenant's claim that he'd only just arrived in the UK prior to viewing the Property. The Respondents hadn't assessed these properly.

7.7 The Respondent couldn't carry out a proper assessment of the Tenant's credit rating as he was not a UK resident. They could not have carried out a proper assessment of him being a suitable and viable tenant on the information available to them. He was only provided with this documentation following the raising of this application.

7.8 The Tenant's address as per his identification was in the US, but the address at Clause 1 of the Tenancy Agreement was 101 The Moorings, Dalgety Bay. The address that the Tenant wrote on the signing page, at Section 82 Declarations, of the Tenancy Agreement was the US address. If the Respondents were satisfied that his address at the time of entering into the Agreement was the Dalgety Bay address, they should have carried out referencing at that address. They failed to do so.

7.9 Reference was made to the referencing process and associated documentation from Homelet (the referencing company used by the Respondents.) The Applicant highlighted that there were a number of chasing emails sent to the Tenant seeking financial info which went unanswered for periods of time. Homelet concluded that the Tenant was acceptable, despite a pension statement not having been provided by the Tenant to verify his income. This pension statement had never been provided. Homelet failed to carry out any searches at the address of 101 The Moorings, Dalgety Bay. This should have raised a red flag as to the suitability of the Tenant. Homelet and the Respondents failed to check the First-tier Tribunal's website to see if any

Orders had been granted in respect of the Tenant or the address at The Moorings. At the time of the Agreement being entered into, the Tribunal did not automatically send copy Orders to the Registry Trust which meant that this wouldn't flag up on a credit or referencing check against a Tenant. Any reasonable letting agent would know to check the Tribunal website as part of any referencing check. The Respondents failed to ensure that the referencing checks carried out were fit for purpose and met requirements. Documentation should have been passed to the Applicant to review. This wasn't done. The Respondents failed to show reasonable care and skill in their referencing of the Tenant. The Respondents did not peer review the documentation. The Applicant should not have been accepted by the Respondent.

7.10 The Applicant raised Tribunal proceedings against the Tenant for his removal on the basis of rent arrears, as well as an order for payment of the arrears. It took until March 2021 for an eviction to be effected. The Tenant had appealed the first Orders granted for payment and eviction, which led to protracted proceedings. These appeals ultimately failed but the Applicant suffered financial loss as a result in terms of rent arrears and legal costs incurred. He is unable to enforce the orders against the Tenant who is believed to be abroad again.

7.11 The Applicant had requested copies of the referencing documentation from the Respondents prior to raising the application and they failed to provide same. This was a breach of his rights under the Data Protection legislation.

7.12 Reference was made to a (undated) letter from the Jake Ambler, Customer Care Executive of Countrywide Lettings to the Applicant in response to his complaint, in which it was stated *"as he did not declare that he had previously rented in the UK and was already renting here, a Landlord reference was not sought as per the process for an overseas applicant"* and *"I believe that the Tenant had been fraudulent in their application for this property and have also breached the signed Tenancy Agreement by allowing other occupants in the property."*

7.13 Reference was made to a Factsheet issued by the Scottish Association of Landlords (SAL) which set out suggestions of steps to be taken

in referencing tenants. This included checking a visa or residence permit for overseas residents and checking the Tribunal website for orders granted against the prospective tenant. These steps were not followed by the Respondent.

7.14 The Applicant's claim is for £49,141 comprising lost rent of £11,063, legal fees of £14,604 and his own time costs calculated at £23,474.

8. Prior to calling Mr Loble to give his evidence, the Tribunal heard arguments from the Respondent regarding the admissibility or otherwise of parts of Mr Loble's evidence, which had been set out in a document entitled "statement of evidence" and which had been lodged by the Applicant in advance of the hearing. Mr Loble's "statement of evidence" covered a combination of facts, opinion and legal arguments. It was accepted by the Applicant prior to the Hearing that Mr Loble was not an expert witness. It was argued by the Respondent that large parts of Mr Loble's eight page "statement of evidence" were inadmissible and irrelevant. In large parts of his "statement of evidence" he attempted to give opinion on evidence that he was not qualified to give, and also to give legal arguments that he was not qualified to make. His "statement of evidence" makes certain statements regarding the Respondents alleged breach of the Code, which he was not qualified to make and in terms of which it was not appropriate for Mr Loble to comment on. He also made statements regarding market practice, and what would be deemed to be reasonable skill and care of a letting agent, again which he was not qualified to comment on. Mr Loble is not legally qualified. He is not a recognised expert in private sector leasing matters. He is an employee of the lettings arm of a firm of solicitors in Fife and has had direct experience in terms of having leased a property to the Tenant prior to the Applicant having done same. The Applicant opposed the Respondent's motion for parts of Mr Loble's evidence to be deemed inadmissible. He accepted that Mr Loble was neither an expert, nor legally qualified but held the view that his evidence was necessary to his application. After an adjournment for the Tribunal to consider the arguments made, the Tribunal determined that Mr Loble could be called to give evidence by the Applicant but that any legal arguments, comment or opinion as regards the alleged breach of the Code, and

comment or opinion regarding what are “reasonable efforts” or “reasonable care and skill” by a letting agent would be held to be inadmissible as he was not qualified to make such comments or give such opinion. Mr Loble’s evidence is summarised as follows:

8.1 He is a lettings valuer with Morgans. He doesn’t carry out viewings. He deals with new properties, ensuring they meet legal requirements. Once he has completed his checks the property is handed over to a letting manager to take forward. He is a retired police officer. He commenced employment with Morgans on 17 February 2020 and only worked for one month when he was furloughed. He returned to work in July 2020.

8.2 He owns the property at 100 The Moorings, Dalgety Bay. Mr and Mrs Leung are UK citizens and in September 2018 entered into a joint tenancy agreement with Mr Greirson, who was believed to be Mrs Leung’s second cousin. Mr Grierson arrived in early 2019 on a UK visitor’s Visa. He had to leave the UK after six months. They left the UK in July/August and went to Hong Kong for several months. They failed to pay rent and Mr Loble had to raise repossession proceedings against them with the Tribunal.

8.3 As part of the referencing process carried out by Morgans prior to granting the tenancy, financial checks were carried out and bank statements were obtained from Mr Grierson in the US. No adverse information showed up on these.

8.4 The three tenants returned to the UK in November and attended the Tribunal hearing held in Kirkcaldy on 28 November 2019, when orders for payment and repossession were granted. A formal eviction was carried out on 25 February 2020. They were believed to have left the property a few weeks prior. A second application for a payment order as regards further rent arrears accrued was raised with the tribunal and obtained. They have only paid £1 towards the £7,600 rent arrears awarded under the orders.

8.5 Mr Loble submitted a Freedom of Information request with the Scottish Courts and Tribunals Service to ascertain the date that the orders

were published on the Tribunal website. This was confirmed as being 14 January 2020.

8.6 Throughout their tenancy, the tenants made false claims regarding repairs, and also regarding why rent hadn't been paid. They were not trustworthy tenants.

8.7 Morgans carry out checks on the Tribunal website for orders against prospective tenants, as part of their referencing process. This process was started by Mr Loble after he commenced employment with Morgans. Prior to this, Morgans did not carry out checks of the Tribunal website as part of their normal referencing checks.

9. The Hearing was adjourned following Mr Loble's evidence and re-convened on 25 August 2021. The Applicant moved for Mr Loble to be allowed to be recalled to give further evidence. The Applicant's reasoning for recalling Mr Loble was that Mr Loble had "good knowledge" (whilst still acknowledging that he was not an expert witness), that he works in the lettings industry and therefore is more knowledgeable than the Applicant and can add weight to his application. The recalling of Mr Loble was opposed by the Respondent. Reference was made to section 4 of the Evidence (Scotland) Act 1852, and that there were only very limited circumstances in which a witness could be recalled and that this test had not been met. The Tribunal had an overarching requirement to deal with proceedings justly. The Tribunal adjourned to consider matters. The Tribunal determined that the Applicant would not be permitted to recall Mr Loble. There was no proposition by the Applicant that he was seeking to recall the witness to clarify an ambiguity or a prior statement made, but rather to supplement evidence and statements already made to the tribunal. This was not appropriate. A failure by the Applicant to ask certain questions of his witness when he had the opportunity to do so, is not a justified reason for seeking a recall of that witness at a later stage in the proceedings.

10. The evidence of Mrs Catherine Cowan is summarised as follows:



10.1 On the day that the Tenant viewed the Property, he had not booked in advance for the viewing. There were two other people booked in to view. Mrs Cowan was told by Ms Carlton-Scott when she attended at the Property for those two viewings, that an additional viewing would be taking place.

10.2 The Tenant and Mrs Leung attended the Property first to view. They had previously viewed another property in Stirling.

10.3 Mrs Cowan was staying in the Property at the time as she was carrying out some works to it. She was there to make sure the house was presentable for viewings. She took no role in the viewings. This was done by Ms Carlton-Scott. Mrs Cowan only deals with the “cosmetic” side of things. Her husband (the Applicant) is the registered landlord and she takes nothing to do with the finances or legal side. She has never been instructed to deal with the letting agent regarding letting of the Property.

10.4 Mrs Cowan asked Mr Grierson when he had arrived in Scotland and he told her it was two or three weeks prior. Mrs Leung advised that he was staying with her in her property in Dalgety Bay. Mrs Cowan remained in the living room whilst the viewings took place. No discussion took place with Ms Carlton-Scott regarding the issue of not being able to credit check the Tenant. Ms Carlton-Scott told her that Mr Grierson would be the “ideal tenant” as he would be living alone in the Property and was looking for long term accommodation.

10.5 Afterwards Mrs Cowan contacted Ms Carlton-Scott to find out how the viewings had gone and if there were any further booked in, and was told that Mr Grierson had passed all checks “with flying colours.” At no point did she have a conversation with Ms Carlton-Scott where she gave any instructions regarding a credit check not being necessary.

10.6 Mrs Cowan was told by Ms Carlton-Scott that she had to have the Property let out by 31st of the month so that she could claim her commission.

- Respondent's evidence

11. The evidence of Lisa Carlton-Scott is summarised as follows:

- 11.1 She is 41 years old and employed as a Lettings Manager with Slater Hogg & Howison in their Stirling branch. Her duties include day to day management of the office, booking and carrying out viewings, carrying out market appraisals, visiting landlords and arranging for safety certificates to be carried out. She is trained to Level 6 with MARLA and has been a Lettings Manager in the Stirling branch since 2018, having worked for the company for six and a half years.
- 11.2 The Applicant appointed Slater Hogg & Howison to advertise the Property, find a tenant and prepare the tenancy agreement. A reduced fee of £350 was agreed with the Applicant for the service, as he had handed them two properties to deal with.
- 11.3 Ms Carlton-Scott received a call from Linda Leung on 22 January 2020 asking to view the Property. She advised she was calling on behalf of her cousin who had just arrived from the US. Ms Carlton-Scott took her name, telephone number, address and email address. She arranged a viewing for the next day.
- 11.4 At the viewing, Mrs Cowan was present. Mrs Cowan went around the Property with Ms Carlton-Scott and those viewing the Property. Mrs Cowan explained about new blinds being fitted and other decorative matters. Two other viewings were carried out that day. The other two said that they'd think about it. Mr Grierson said he was happy to proceed with the Property. Mr Grierson told her that he was a retired veteran and that he intended to rent for a year. He said that his partner would be joining him.
- 11.5 After the viewings, Mrs Cowan made Ms Carlton-Scott a cup of tea and they sat on the sofa in the lounge and discussed the viewers.

Mrs Cowan said that she was happy to go ahead with the referencing process for Mr Grierson. Ms Carlton-Scott told Mrs Cowan that she couldn't do a credit check because he had only just arrived from the US and had no credit history in the UK. Mrs Cowan indicated that she was happy with this. Mrs Cowan did not tell Ms Carlton-Scott that she should speak to Mr Cowan, but told her to proceed.

- 11.6 Ms Carlton-Scott thereafter contacted Linda Leung and informed her that they would send out an application form to be completed. It was explained that a Homelet application is emailed to a prospective tenant. Homelet are the company that Slater Hogg & Howison use for all referencing of tenants. To create this form, Ms Carlton-Scott input the property address, length of let, client name and email address, and then the prospective tenant receives an emailed link which they access to complete the rest of the information on the form. The form was referred to in evidence. The residency status was noted as "living with relative." On 27 January 2020 Homelet emailed the office inbox to advise that they had requested pensions statements to verify income and they were awaiting this information being provided. On 28 January 2020 Homelet again chased this. The financial information is sent by the prospective tenant directly to Homelet. Slater Hogg & Howison do not see this information. By email of 29 January 2020 Homelet confirmed that the referencing had been acceptable.
- 11.7 It was confirmed that Slater Hogg & Howison had obtained a copy of Mr Grierson's passport and driving licence with photo to verify his identity and for proof of address.
- 11.8 After the report was received from Homelet, Ms Carlton-Scott called Mrs Cowan and asked if she was happy to proceed to lease to Mr Grierson. Mrs Cowan confirmed that she should go ahead.

- 11.9 Ms Carton-Scott explained that the address of The Moorings was inserted into the tenancy agreement as this was given by Lisa Leung as being the address he was staying at whilst in the UK. The agreement was prepared by their Scotland Support Centre. This is standard practice. The agreements are not prepared by the branch office. Their system automatically inserts the address that they hold on their system as their residential address for the agreement.
- 11.10 Slater Hogg & Howison had no further involvement in the management of the tenancy after the agreement was signed.
- 11.11 Ms Carlton-Scott was told by Mr Cowan to take instructions from Mrs Cowan, as he was overseas. He gave her Mrs Cowan's mobile number to make contact with her. There had been no suggestion that Ms Carlton-Scott must only take instructions from Mr Cowan.
- 11.12 Ms Carlton-Scott had no reason to believe at the time that Mr Grierson had acted fraudulently in obtaining the tenancy.

## **Findings of fact**

16. The Tribunal makes the following findings of fact:

- (i) The Respondents are letting agents who were appointed by the Applicant to manage the letting of the Property on their behalf. Accordingly, their work falls within the definition of letting agency work in Section 61(1) of the Act and they are subject to the requirement to comply with the Letting Agent Code of Practice which came into force on 31 January 2018.
- (ii) On 19 July 2020 the Applicant notified the Respondents of his belief that they had failed to comply with the Code of Practice, as required by Section 48(4) of the Act.
- (iii) The Respondents were in breach of section 21 of the Letting Agent

### **Reasons for the decision**

17. Paragraph 21 of the Code provides that *“you must carry out the services you provide to landlords or tenants using reasonable care and skill and in a timely way.”* The Tribunal found that this paragraph had been breached. It was clear to the Respondents that the tenant, Mr Grierson, was a US national who had only recently arrived in the UK at the point he viewed the Property. In her own evidence, Ms Carlton-Scott said that she had advised Mrs Cowan that due to Mr Grierson not being a UK resident, she would be unable to carry out a credit check as he would have no credit history in the UK. Therefore Ms Carlton-Scott was aware that this was not a “standard” applicant. When asked why she had not checked Mr Grierson’s visa, Ms Carlton-Scott’s reply was “I can’t comment.” and that ‘I don’t deal with visas’ The Tribunal found this reply somewhat odd. It was unclear whether the Respondents had a procedure in place for additional checks to be carried out on non-UK residents and these hadn’t been followed, or if they had no such procedures in place at all. Either way, Ms Carlton-Scott’s answer of “no comment” simply raised more questions than answers. Whilst in general the Tribunal found Ms Carlton-Scott to be a credible and reliable witness, her failure to provide any sort of explanation as to the failure to check Mr Grierson’s visa was unsatisfactory. Whilst the Tribunal acknowledges that “Right to Rent” checks are not a legal requirement in Scotland, failure to carry out a check of a non-UK citizens’ visa would mean that the agent could not be satisfied of the tenant’s ability to live in the Property as a long-term let.
18. The Tribunal was satisfied with Mr Cowan’s position that had he known that Mr Grierson only had a short period left on his visitor’s visa that he would not have agreed to lease the Property to him. This would be a reasonable position to take and the Tribunal did not doubt that most landlords in that position would likely take the same view. Whilst it is noted that there was no evidence to suggest that the Applicant had specifically requested that the Respondents check the status of the tenant’s visa as part of their checks, the Tribunal was satisfied that the onus was not on him to do so. The Applicant was entitled to rely on the Respondent’s

reasonable care and skill to reference prospective tenants appropriately. However, the Tribunal considered that it would be reasonable to assume that where presented with a prospective tenant who has advised that he only just arrived in the UK, that a letting agent acting with reasonable care and skill would carry out a check on that prospective tenant's right to reside in the UK. This was not a short-term let.

19. The Tribunal were not persuaded by the Applicant that it was unreasonable for the Respondents to rely on an external referencing company alone. It is entirely common for letting agents to use external referencing companies for tenants.
20. The Tribunal was not persuaded that the Respondents should have carried out further investigations into the previous address given of 100 The Moorings. The Respondents were told that Mr. Grierson was residing at that address with relatives since arriving in the UK and there was nothing put to the Tribunal to suggest that there would be a reason for the Respondent to disbelieve that.
21. Much was made by the Applicant of the Respondents' failure to check the First-tier Tribunal website for any past orders against the tenant, as part of their referencing procedure. Evidence was heard from Mr Loble that this was the practice his employer used. However, it should be noted that Mr Loble stated in his evidence that his employer only implemented that procedure after he commenced employment with them and suggested it be done. They had not done so prior to that. The Applicant referred to an un-dated SAL factsheet as evidence that it was recommended that these checks be carried out. SAL (the Scottish Association of Landlords) is a Membership organisation for landlords and letting agents in Scotland. Their guidance to their members is not binding. It is guidance. Their members are free to follow it if they choose. The Tribunal was not persuaded on this basis that it should be expected that every letting agent would carry out such checks. No evidence was put to the Tribunal as how many other letting agents carry out these checks, or whether this is industry standard. No evidence was put to the Tribunal that these checks had been requested by the Applicant. The Tribunal was not persuaded that a letting agent acting with reasonable care and skill should carry out these checks as a matter of course. This was a unanimous decision.

22. Paragraph 57 of the Code states *“you must agree with the landlord what references you will take and checks you will make on their behalf.”* The Tribunal did not find that this paragraph had been breached. The Terms of Business between the parties states at Clause 2.3.3 that *“we will qualify suitable tenants and reference them from appropriate sources, which may include previous landlords (if any), employers, accountants, business references, Companies House and credit checks.”* At Clause 2.3.4 it states *“we do not provide any guarantee that any Tenant we identify will satisfy the relevant referencing procedure i.e. credit checks.”* The Tribunal was satisfied that the Respondents carried out their referencing in line with the contractual agreement between the parties. It was clear to the Tribunal that the Applicant was entirely hands-off in his approach to the referencing process and only raised questions about what had or had not been done at the point that the tenant failed to pay rent. He had not made any requests to see any of the financial information provided by the tenant at the reference stage, prior to the lease commencing. There was no evidence to suggest that the Applicant had made requests of the Respondents to carry out any specific tasks in referencing that were not done.
23. The Tribunal was persuaded by the evidence of Ms Carlton-Scott as to the conversation that took place with Mrs Cowan at the Property following the viewing. The Tribunal was satisfied from the evidence before it that Ms Carlton-Scott had been given authority from the Applicant to take instruction from Mrs Cowan, and did so by advising that a credit check could not be carried out due to the tenant’s non-UK residence status. The Tribunal was satisfied that Mrs Cowan gave such delegated authority to Ms Carlton-Scott to proceed. It was clear that the evidence of Ms Carlton-Scott and of Mrs Cowan was entirely at odds as regards the conversation had with each other at the viewings. The Tribunal preferred the evidence of Ms Carlton-Scott. Mrs Cowan said in her evidence that she did not discuss the viewings with her husband afterwards at all, nor give any opinion to him on the prospective tenants. She said in her evidence that this was none of her business and that she left it to the Respondents to discuss with him directly. She also said in her evidence when asked under cross-examination whether, if she had formed a negative opinion about one of the prospective viewers, would she have told her husband. She answered no. The Tribunal found

this hard to believe. The Tribunal found Mrs Cowan's evidence to appear somewhat rehearsed at times. There were suggestions by the Applicant in his evidence that the Respondents should have followed up the conversation with Mrs Cowan in writing to him to ensure they had his authority. There was no evidence put forward to suggest that had been required prior to then, or that had been a practice in place with this particular landlord. There was no evidence before the Tribunal of the Applicant having contacted the Respondents following the viewings to ask any questions, or follow up in any way. The only evidence of any follow up was that of Mrs Cowan herself doing so. This was a unanimous decision.

24. Paragraph 61 of the Code states "*you must take all reasonable steps to confirm the applicant's identity and to verify references, in line with your agreement with the landlord.*" The Tribunal did not find that this paragraph had been breached. The Tribunal was satisfied that the Respondents had obtained appropriate identification from the prospective tenant by way of passport and photo driving license and that Ms Carlton-Scott had verified that the photographs did match with the tenant she had met that day. The Applicant himself also confirmed that this matched. There was no evidence to suggest that there would be any reason for the Respondents to doubt the validity of those documents. The Tribunal is satisfied, as has been set out above, that the Respondents took reasonable steps to verify references using their external referencing company, Homelet.
25. Accordingly, the Tribunal upheld the Applicant's complaint under Paragraph 21 of the Code of Practice.
26. The Tribunal was not satisfied that there was sufficient evidence before it to find a breach of paragraphs 57 and 61 of the Code of Practice.
27. The Tribunal determined that a Letting Agent Enforcement Order would be issued ordering the Respondent to pay to the Applicant the sum of £7,302.
28. The Applicant's claim was for a total sum of £49,141 comprising lost rent of £11,063, legal fees of £14,604 and his own time costs calculated at £23,474.



29. The Applicant had already obtained orders from the Tribunal of payment against the tenant, Mr Grierson, in the sum of £7,425 by order of 16 December 2020 and £3212.50 by order of 13 July 2021. Whilst it may be the case that the Applicant finds difficulty in enforcing payment from the debtor in relation to these Orders, nonetheless, he has been given a legal remedy for seeking repayment of that debt and requires to utilise same. It is an unfortunate fact that many creditors face difficulty in enforcing orders obtained against debtors, whether they are based in the UK or abroad, simply due to their financial circumstances rendering enforcement extremely difficult. It is not appropriate to seek a further order against another party for the same debt, which has previously been decided upon by a differently constituted tribunal. It should also be noted that the failure to pay rent was a failure on the part of the tenant himself, and not a failure on the part of the Respondents. It is a fact of being a landlord that there is a risk with any tenant, even those who pass referencing checks, that they may well cease paying rent.
30. The Applicant had lodged a number of invoices from Mailers and Lindsays solicitors in relation to the legal fees claimed. It was argued by the Respondent's solicitor that these were vague in their terms, that they did not set out in each invoice what the fee covered, and that the original terms of business was not lodged and therefore they could not be relied upon. The Tribunal was not persuaded that the fee notes should be disregarded. The Tribunal was satisfied on the basis of the Applicant's evidence that the invoices were provided as a result of advice given relating to the tenancy at hand. However, the Applicant confirmed in his own evidence that that he had not sought an award of expenses against the tenant in any of the applications raised. It appears that there have been four separate applications raised by the Applicant against the tenant, and multiple hearings. Whether or not the Applicant considers that they could enforce any such order against the debtor, the Tribunal does not consider it reasonable for the Applicant to fail to seek an award of expenses against the tenant in these applications and then seek payment from the Respondents instead. The Applicant's suggestion that he would be unable to claim any such payment from the tenant is somewhat irrelevant. The Applicant had a remedy available to seek and he has failed to exercise same.
31. The Tribunal found the Applicant's claim for his own "time costs" at £23,474 to be

entirely exaggerated and not founded upon any vouching. It was said in his evidence that he has calculated these based on his daily contracting rate of remuneration. There was no evidence put to the Tribunal of what the Applicant charges out as a contractor. Even so, in his claim for expenses the Tribunal could see no legal basis for claiming both legal expenses and personal time costs. Overall, the Tribunal found the Applicant's claim for losses to be exaggerated and largely unsubstantiated.

32. The Tribunal has made a finding that there has been a breach of section 21 of the Code. The Tribunal was satisfied that had the Respondents carried out a basic check on the tenant's visa and ascertained that he had only a short period left on his visitor's visa, then it would reasonably follow that the Applicant would not have proceeded with the tenancy. By failing to do so, the Applicant has encountered significant difficulties in terms of obtaining payment of rent, recovering possession of his property, and having to engage in lengthy tribunal procedure as a result.. Whilst it is noted that the tenant himself is primarily responsible for these losses due to his failure to pay rent lawfully due under the tenancy agreement, the Tribunal does consider that the Respondents' failures have contributed to the Applicant having incurred such a loss. The Tribunal accordingly awards the sum of £7,302 representing one half of the legal fees incurred by the Applicant as compensation for the time and trouble which has arisen as a result of the Respondents' failure to comply with section 21 of the Code.
33. The decision of the tribunal was unanimous.

### **Right of Appeal**

**In terms of section 46 of the Tribunals (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.**

**Where such an appeal is made, the effect of the decision and of any**

**order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

Legal Member/Chairperson

28 September 2021