

Proposed decision

As the parties have been unable to resolve their disagreement, the case has been referred to the Property Redress Scheme (PRS) for a decision in line with the Terms of Reference and Conditions of Complaints. If the parties accept the decision it will be the final decision and binding on the agent.

All evidence provided will be considered, even if it is not specifically referred to in the decision. For more information on our approach to making this decision, you can refer to the guidance at the back of this document.

Proposed decision summary

In the case between Yaqov Israel Grossi and Michael Charles Limited

The agent is to:

- i. **Pay compensation** £400.00
- ii. **Provide an apology** for the delays

Total £400.00

Decision

The decision below has been made using any relevant law, code of practice, industry best practice and what is considered fair and reasonable.

To resolve this complaint the tenant would like the agent to:

- Check and replace the unit
- Pay compensation for the inconvenience suffered

The following lists *only* the key pieces of evidence:

- Tenancy agreement
- Correspondence
- Audio recordings
- Noise complaint

Claim 1: There a number of issues with the property which have not been addressed by the agent

1. The tenant claims that when he moved into the property the intercom was broken. The agent has failed to repair the intercom for a significant period of time. There have been a number of issues with heating in the property, the bedroom window handle is broken and the balcony light does not work. The agent advertised the tenant that the property was quiet, however since the tenancy began there has been constant building work taking place, creating a noisy and dusty environment. These issues have caused distress and inconvenience.
2. The agent states that the issues with the intercom were reported to the company managing the intercom and various investigations took place, but they were hampered by delays due to Covid. It was decided it would be easier to replace the intercom, which was completed on 8 March 2021. The heating issues were investigated and no issues were found to be present. There is one light on the balcony which does not work. This is a bespoke fitting which the landlord has been unable to replace due to supply issues. The window handle has stopped working and the agent advised the window company of this on 21 September 2020. As the window cannot be opened to obtain the reference number the supplier will not come out to inspect.

3. It is apparent from the content of the tenancy agreement that the tenancy began on 28 August 2020.
4. It is apparent from the correspondence provided that the tenant emailed the agent on 24 August 2020 confirming that the reason the property had been chosen was because it was soundproofed and that it was a quiet flat. I note that the advertising provided in evidence also refers to the flat as being in a 'quiet, purpose built development'.
5. The tenant emailed the agent on 3 September 2020, stating that there were a few urgent issues with the property, regarding being unable to open the window in the bedroom, a non-functional balcony light, and the lack of function to the intercom. On 8 September the tenant asked for a reply to the previous email. On 9 September the agent confirmed that the issues had been passed onto the maintenance team.
6. On 15 September 2020 the tenant reiterated the remaining issues regarding the bedroom window and intercom. The tenant raised further concerns regarding these issues on 16 September 2020, and regarding the intercom on 17 September.
7. I note that the agent raised an enquiry with the window supplier on 21 September 2020.
8. On 3 December 2020 the tenant raised a formal complaint regarding the ongoing issues with the broken intercom, window and lights and the lack of action taken to repair these issues. On 8 December the tenant raised issues with the ongoing noise disturbance in the property due to the building work taking place, and discussions took place regarding the extent of work taking place and the disturbance occurring.
9. On 15 January 2021 the agent asked for access to investigate the intercom issues, and the tenant responded, raising additional issues regarding the function of the intercom and reiterating the disruption being caused by the building work. On 18 January the agent confirmed that the maintenance had been cancelled as the tenant had not responded with confirmation for access on 15 January.
10. On 25 January 2021 the tenant confirmed that the intercom was still not working, and the agent confirmed that the issue was affecting several flats and that it had been recommended that the system be replaced. On 27 January the tenant noted that the building work was still ongoing and continuing to cause a disturbance. The agent responded denying that the tenant had been misled regarding the property. The agent

states on 27 January 2021 that the heating engineer had attended and confirmed that the heating was functioning.

11. On 6 February 2021 the tenant made further complaints regarding ongoing heating uses and the risk caused by the broken bedroom window.
12. On 4 March 2021 the intercom engineer confirmed that installation of a replacement intercom system had begun. On 2 April the tenant reported that the fob was not working and the tenant was stuck outside the building. The agent confirmed that further problems with the intercom had been reported. On 3 April the agent stated that the intercom should be fixed, to which the tenant responded stating that the fobs were still not working.
13. The agent had provided evidence regarding the tenant's behaviour towards contractors, and being offered termination of the contract, which was not taken up.
14. According to the CMA guidance for lettings professionals on consumer protection law ("the CMA Guidance") and the Private Rented Sector Code ("the Code"), advertising should be clear, accurate and not misleading and should provide all the information a potential tenant needs in order to make an informed and efficient decision about the property being marketed. Advertisements should not permit material information; and material information is considered to be likely to include any significant features that are likely to put the person off entering into a tenancy. I would consider significant noise disturbance from building work to be considered material information in this instance.
15. Based on the evidence provided, I find that the tenant was taking the property due to the advertised quiet location. While I note the agent's assertion that the tenant was informed of the building work which would be taking place, I have not had provided evidence to demonstrate that the tenant was informed during the advertising period of the extensive ongoing disturbance and noise pollution which would occur, as illustrated to have been suffered for the length of time in question. I find that had the tenant been aware of the significant noise disturbance which would occur from the beginning of the tenancy onwards, the tenant may have made a different transactional decision. I consider on this basis that the agent has omitted material information in marketing the property which would allow the tenant to make a fully informed decision about whether to take on the property.

16. According to the CMA Guidance, where an agent has agreed to carry out repairs on the landlord's behalf, the contractual relationship means that these should be done in a reasonable time. What is reasonable depends on the urgency and complexity of the work. Furthermore, the Code states that Agents should deal with matters of disrepair promptly and in a timely manner appropriate to their urgency.
17. Assessing the evidence provided, I find that the agent did not address defects and issues with the condition of the property within a reasonable time period.
18. I note the agent's submissions regarding the tenant not providing access to the property, and the issues regarding availability of suppliers. I accept that a portion of the delay in respect of the repairs is outside of the agent's control. I find, however, that the agent has not acted proactively in ensuring a prompt and timely repair of the issues raised with the intercom, lighting and window handle. If suppliers were refusing to attend the property it is not clear why the agent has not investigated other alternatives to repair outside of like-for-like replacement, or why the agent's only option is to wait until the supplier is ready to attend, without any evidence of potential timescales for such attendance. Furthermore, the agent has not demonstrated why it took six months for replacement of the intercom to take place when the issues were being reported in early September 2020.
19. I do not find it reasonable for the tenant to have had to suffer the inconvenience of the issues in question for the period of time demonstrated. I find that the tenant's enjoyment of the property has been compromised as a result of the issues with the property occurring during the tenancy, which have not been addressed by the agent in a timely manner.
20. Based on the above, and considering the inconvenience suffered in respect of the lack of repairs and the disturbance resulting from a lack of material information provided by the agent, find the tenant should be compensated a sum of **£400.00** by the agent for the distress and inconvenience caused as a result of the issues present during the term. I also find that the agent should **provide the tenant with a written apology for the delay in completing the necessary repairs.**

Please refer to the decision summary on page 1

PRS Case Officer

Dated: 23 April 2021

Guidance

1. What happens next?

- ✓ Both parties have 10 working days to accept or request a review of this proposed decision. If the parties accept the decision it will be the final decision and binding on the agent
- ✓ If either party thinks there is an error in fact or law, or an administrative error, they may request a review in line with the Terms of Reference and Conditions of Complaints.
Note: You cannot request a review just because you disagree with the amount of compensation awarded
- ✓ Once the proposed decision is accepted, the instructions outlined in this decision must be carried out by the agent within **28 days**, or as directed
- ✓ If the person who raised the complaint accepts this decision and the agent does not respond then this will become our final decision and will be binding on the agent
- ✓ If the person who raised the complaint does not respond to this decision, we will close the case
- ✓ If the person who raised the complaint refuses to accept this decision, and would like another opinion they have the option of taking independent legal advice and can use this decision as evidence that the dispute has been reviewed; however, the agent will be informed of this decision and that the full process has been carried out using the evidence provided
- ✓ Our disciplinary process is in place for any agent who does not comply with the final decision (*See Terms of Reference*)

2. What should I be aware of when reading the decision?

2.1 Key resources used to make decisions

<p>Letting agent resources</p>	<p>Guidance for Lettings Professionals on Consumer Protection Law (2014) consumer-protection-guidance-for-lettings-industry</p> <p>Private Rented Sector Code of Practice (2015) rics.private-rented-sector-code-1st-edition</p> <p>Tenant Fees Act 2019 Tenant Fees Act</p>
<p>Estate agent resources</p>	<p>Guidance on Property Sales NTSEAT guidance on property sales Apr 19</p>
<p>Residential leasehold management agent</p>	<p>Service charge residential management Code and additional advice to landlords, leaseholders and agents rics.code-3rd-edition.2016</p>
<p>All</p>	<p>Consumers Rights Act 2015 part 1/chapter 4 services part 2/Unfair terms part 3/chapter 3 Duty of letting agents</p> <p>Consumer Protection from Unfair Trading Regulations the CPRs 2008</p>

2.2 Key terms used in decisions

Burden of proof

It is for the person making the complaint to prove, with evidence, that the complaint is justified

On balance

This is a flexible test which, on the evidence provided, allows us to find 'on balance', that the event was more likely than not to have happened

Issues not relating to the complaint

While all the evidence will be reviewed, and the specific complaints assessed, this decision will not refer to unrelated issues

Reasonable

A standard used to decide what is fair and in proportion to the circumstances

Unsupported

A complaint that is not supported with relevant evidence

Error in fact

Where a relevant fact relating to the complaint has been wrongly interpreted by the decision maker, and this incorrect interpretation has affected the outcome of the decision

Error in law

Where relevant legislation, common law or code of practice has been incorrectly applied to the case, and this has affected the outcome of the decision