FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Appeal ref
PR/2016/0012

Decided without a hearing
At Field House

Before

JUDGE PETER LANE

Between

RINGLEY AGENCY LIMITED
(DIPESH PAREKH)

Appellant

and

LONDON BOROUGH OF CAMDEN

DECISION AND REASONS

A. The duty

1. The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees. This is achieved by sections 83 to 86:-

"**CONSUMER RIGHTS ACT 2015**

Chapter 3

Duty of Letting Agents to Publicise Fees etc

83 Duty of letting agents to publicise fees etc

(1) A letting agent must, in accordance with this section, publicise details of the agent's relevant fees.

(2) The agent must display a list of the fees--

(a) at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate, and

(b) at a place in each of those premises at which the list is likely to be seen by such persons.

(3) The agent must publish a list of the fees on the agent's website (if it has a website).

(4) A list of fees displayed or published in accordance with subsection (2) or (3) must include--

(a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose of which it is imposed (as the case may be),

(b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house, and

(c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

(5) Subsections (6) and (7) apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England.

(6) If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme.

(7) If the agent is required to be a member of a redress scheme for dealing with complaints in connection with that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement--

(a) that indicates that the agent is a member of a redress scheme, and

(b) that gives the name of the scheme.

(8) The appropriate national authority may by regulations specify--

(a) other ways in which a letting agent must publicise details of the relevant fees charged by the agent or (where applicable) a statement within subsection (6) or (7);

(b) the details that must be given of fees publicised in that way.

(9) In this section--

"client money protection scheme" means a scheme which enables a person on whose behalf a letting agent holds money to be compensated if all or part of that money is not repaid to that person in circumstances where the scheme applies;

"redress scheme" means a redress scheme for which provision is made by order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013.

84 Letting agents to which the duty applies

(1) In this Chapter "letting agent" means a person who engages in letting agency work (whether or not that person engages in other work).

(2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person's employment under a contract of employment.

(3) A person is not a letting agent for the purposes of this Chapter if--

(a) the person is of a description specified in regulations made by the appropriate national authority;

(b) the person engages in work of a description specified in regulations made by the appropriate national authority.

85 Fees to which the duty applies

(1) In this Chapter "relevant fees", in relation to a letting agent, means the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant--

(a) in respect of letting agency work carried on by the agent,

(b) in respect of property management work carried on by the agent, or

(c) otherwise in connection with--

(i) an assured tenancy of a dwelling-house, or

(ii) a dwelling-house that is, has been or is proposed to be let under an assured tenancy.

(2) Subsection (1) does not apply to--

(a) the rent payable to a landlord under a tenancy,

(b) any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person,

(c) a tenancy deposit within the meaning of section 212(8) of the Housing Act 2004, or

(d) any fees, charges or penalties of a description specified in regulations made by the appropriate national authority.

86 Letting agency work and property management work

(1) In this Chapter "letting agency work" means things done by a person in the course of a business in response to instructions received from--

(a) a person ("a prospective landlord") seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or

(b) a person ("a prospective tenant") seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.

(2) But "letting agency work" does not include any of the following things when done by a person who does nothing else within subsection (1)--

(a) publishing advertisements or disseminating information;

(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;

(c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.

(3) "Letting agency work" also does not include things done by a local authority.

(4) In this Chapter "property management work", in relation to a letting agent, means things done by the agent in the course of a business in response to instructions received from another person where--

(a) that person wishes the agent to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the person's behalf, and

(b) the premises consist of a dwelling-house let under an assured tenancy."

B. Enforcement

2. Section 87 explains how the duty to publicise fees is to be enforced:-

"**87 Enforcement of the duty**

(1) It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area.

(2) If a letting agent breaches the duty in section 83(3) (duty to publish list of fees etc on agent's website), that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.

(3) Where a local weights and measures authority in England and Wales is satisfied on the balance of probabilities that a letting agent has breached a duty imposed by or under section 83, the authority may impose a financial penalty on the agent in respect of that breach.

(4) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority's area (as well as in respect of a breach which occurs within that area).

(5) But a local weights and measures authority in England and Wales may impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales only if it has obtained the consent of that authority.

(6) Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

(7) The amount of a financial penalty imposed under this section--

(a) may be such as the authority imposing it determines, but

(b) must not exceed £5,000.

(8) Schedule 9 (procedure for and appeals against financial penalties) has effect.

(9) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(10) A local weights and measures authority in Wales must have regard to any guidance issued by the Welsh Ministers about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(11) The Secretary of State may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in England;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities.

(12) The Welsh Ministers may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in Wales;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities."

C. Financial penalties

3. The system of financial penalties for breaches of section 83 is set out in Schedule 9 to the 2015 Act:-

"**SCHEDULE 9**

DUTY OF LETTING AGENTS TO PUBLICISE FEES: FINANCIAL PENALTIES

Section 87

Notice of intent

1

(1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a notice on the agent of its proposal to do so (a "notice of intent").

(2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent's breach, subject to sub-paragraph (3).

(3) If the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the notice of intent may be served--

(a) at any time when the breach is continuing, or

(b) within the period of 6 months beginning with the last day on which the breach occurs.

(4) The notice of intent must set out--

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the penalty, and

(c) information about the right to make representations under paragraph 2.

Right to make representations

2

The letting agent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to the local weights and measures authority about the proposal to impose a financial penalty on the agent.

Final notice

3

(1) After the end of the period mentioned in paragraph 2 the local weights and measures authority must--

(a) decide whether to impose a financial penalty on the letting agent, and

(b) if it decides to do so, decide the amount of the penalty.

(2) If the authority decides to impose a financial penalty on the agent, it must serve a notice on the agent (a "final notice") imposing that penalty.

(3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.

(4) The final notice must set out--

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

(f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4

(1) A local weights and measures authority may at any time--

(a) withdraw a notice of intent or final notice, or

(b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the letting agent on whom the notice was served.

D. Appeals

4. Schedule 9 provides for appeals, as follows.

Appeals

5

(1) A letting agent on whom a final notice is served may appeal against that notice to--

(a) the First-tier Tribunal, in the case of a notice served by a local weights and measures authority in England, or

(b) the residential property tribunal, in the case of a notice served by a local weights and measures authority in Wales.

(2) The grounds for an appeal under this paragraph are that--

(a) the decision to impose a financial penalty was based on an error of fact,

(b) the decision was wrong in law,

(c) the amount of the financial penalty is unreasonable, or

(d) the decision was unreasonable for any other reason.

(3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the final notice was sent.

(4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property tribunal may quash, confirm or vary the final notice.

(6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £5,000.

E. The appeal and its background

5. The appellant, Ringley Agency Limited, appeals against the decision of the London Borough of Camden ("the Council"), contained in the Council's final notice, dated 5 May 2016, to impose a financial penalty of £2,500, for a failure to "publish details of agent's tenant fees" on the appellant's website, contrary to section 83(3), and to impose a financial penalty of £2,500 for failing "to publish details of agent's landlord fees" on that website, contrary to section 83(3).

6. Both parties were content for the appeal to be decided without a hearing and in all the circumstances I consider I can justly do so. I have had regard to the materials set out in the Tribunal bundle, prepared by the respondent.

7. The evidence from the Council includes a witness statement from Martin Harland of the Council's trading standards department. This records that his colleague, Alexandra McKeown, wrote to the appellant on 30 June 2015 informing the appellant of the implications of the Consumer Rights Act 2015, which had come into force on 27 May 2015. A copy of this letter is exhibited to Mr Harland's statement. So too is a copy of a letter which Mrs McKeown wrote

to all letting agents in the London Borough of Camden on 22 December 2015, reiterating the earlier advice and sending information on the new legislation.

8. On 22 March 2016, the Council received a complaint that the appellant did not display its fees within its office and that they were making charges that the complainant was unaware of at the start of the contract. Mrs McKeown checked the website of the appellant and found that it did not comply with the requirements of the 2015 Act. A copy of a page taken from that website was exhibited to Mr Harland's statement. Of particular significance, I find, is the following:-

> "**Inventory check**
>
> .....
>
> All charges are subject to VAT and are approximate according to size and additional rooms may be charged for.
>
> **Other possible charges.**
>
> Other bills over and above the rent will be explained for each individual property by one of our lettings experts".

9. On 24 March 2016, Mrs McKeown visited the appellant's office and left the appellant a notice of intent relating to the alleged breaches on the website. A copy of this notice was also exhibited to Mr Harland's statement.

10. On 5 March 2016, Mrs McKeown, at the request of Mr Parekh of the appellant, visited the appellant's office and explained the areas of compliance that the appellant needed to address. According to the Council's record, Mr Parekh explained that "although their parent company had an exceedingly high turnover, their lettings business did not. Mrs McKeown therefore advised him in detail [of] the financial issues when making their representations to the Council".

11. Mr Harland's statement says that the appellant is a member of the Royal Institute of Chartered Surveyors and also a member of the Association of Residential Letting Agents. As such, the Council considers that the appellant would have received advice and guidance from those bodies regarding the new legislation. The Council was aware that the appellant had taken its website down as soon as it received the notice of intent.

12. On 13 April 2016, the appellant made representations, pursuant to the notice of intent, contending that it would be financially difficult for the appellant to pay the penalty. The submissions included a document called "abbreviated unaudited accounts for the year ended 31 March 2015" regarding the appellant.

13. I see from the accounts that there was a declared surplus of £2,444 in respect of the relevant period. Liabilities to shareholders amounted to £99,370.

14. In this regard, the following statement in the accounts is, I consider, of significance:-

> "**Going Concern**
>
> Current liabilities exceed current assets at the balance sheet date. The directors consider, however, that the company has sufficient liquid assets to meet its liabilities as and when they fall due, and that the company has sufficient support from its creditors. In particular the parent company, who is the principal creditor of the company, has given assurances that it will not seek repayment of the balances on its loan accounts until such time as the company has sufficient liquid assets to make payment. Accordingly the directors consider that it is appropriate to prepare the accounts on a going concern basis".

15. In his grounds of appeal, the appellant (Mr Parekh) states:-

> "I was shocked to hear that Camden Council has sent out three letters regarding the change in legislation, as we had not received anything.
>
> Business has been very difficult for us over the last two years and we are barely paying ourselves.
>
> This fine would simply mean that we would need to close the business down and make the staff redundant".

F. Discussion

16. The Council is under the mistaken impression that its final notice identifies two separate breaches of section 83, in the form of a failure by the appellant to publish on its website details of "tenant fees" and, separately, "landlord fees". It is plain from the relevant legislation that the Council's interpretation is incorrect.

17. The primary obligation in section 83(1) is for a letting agent to "publicise details of the agent's relevant fees". The expression "relevant fees" is defined by section 85. "Relevant fees" "means the fees, charges or penalties (however expressed) payable to the agent by a landlord **or** tenant" (my emphasis). It is clear from section 83(2) that the obligation to "display a list of the fees" means the "relevant fees"; that is to say, the fees etc. described in section 85. Similarly, the requirement in section 83(4), concerning what a list of fees must include, is a requirement in respect of the "relevant fees", as defined in section 85.

18. Section 83(2) contains a duty on the agent to display a list of the fees at its premises, in a place where actual or potential users of the agent's services can see the list. Subsection 83(3) contains a discrete requirement for the agent to publish a list of "the fees" (again, the "relevant fees") on the agent's website, if it has one.

19. Whilst an agent may be guilty of two breaches by failing, on a particular occasion, to comply with each of the duties under section 83(2) and (3), there cannot be multiple, contemporaneous breaches of the duty imposed by section 83(3) or, for that matter, section 83(2) if the agent fails to set out the requisite "tenant fees" and the requisite "landlord fees". In other words, the question is, simply, whether the "relevant fees" have been publicised in the way required by section 83(2), in the case of "physical" lists, and section 83(3), in the case of a "website" list. Given that the final notice, properly construed, concerned only one breach of section 83(3), it is manifest from section 87(6) that the Council could impose only one penalty on the appellant in respect of the breach. The final notice was, accordingly, wrong in law.

20. The only way in which a failure to publicise fees in respect of both a landlord and a tenant can properly be taken into account is, I find, in determining the amount of the penalty. A council, might, for example, consider that a list of relevant fees which fails to convey the requisite information to both landlords and tenants is a more significant breach than one which failed in respect of only one of those classes. In such a situation, a council, operating by reference to the Guidance for Local Authorities issued by the Department for Communities and Local Government (which has statutory force for these purposes), might look for stronger mitigating circumstances, before reducing the penalty from £5,000, if the breach were of such a generalised nature, compared with the position where it was not.

21. In view of my findings, it falls to the Tribunal to consider whether to vary the final notice, pursuant to paragraph 5(5) of Schedule 9.

22. I find as a fact that the appellant was or, in any event, should have been aware of the relevant law, so as to have avoided being in breach of section 83(3). I can see no reason why the letters sent to the appellant should have failed to arrive. In any event, the appellant's membership of relevant professional organisations ought to have been sufficient to have alerted it to its new statutory responsibilities.

23. Not only was the breach of section 83(3) one which extended to all relevant actual and potential customers of the appellant; it was also, in its own terms, strikingly non-compliant, as the extract set out in paragraph 8 above makes evident.

24. Set against this are three matters that I consider to be of relevance to mitigation. First, notwithstanding what I have said, the new legislative regime had only recently come into force. Secondly, the Council accepts that the appellant acted promptly, following the visit of Mrs McKeown. Thirdly, the Council itself has accepted that the financial position of the appellant, as set out in the unaudited accounts, was such that some mitigation of the financial penalty was appropriate.

25. I take due notice of the first and second factors, in reaching my own decision on the appropriate penalty. I have also had due regard to the Government Guidance, which indicates that the maximum £5,000 should, in effect, be at the starting point, subject to relevant mitigation. So far as the financial position of the appellant is concerned, I am not persuaded (as the Council was) that a 50% reduction is called for. In this regard, I consider what is quoted in paragraph 14 above under the heading "Going Concern" to be significant. There is a relationship between the appellant and its parent company which demonstrates that the latter is prepared to give the former material support. In the absence of any express explanation for that stance, I consider it more likely than not that the parent company considers it derives commercial benefit from seeing the appellant continue to trade.

26. Drawing these threads together and considering matters in the round, I find that the reasonable financial penalty to be imposed in respect of the breach of section 83(3) is £3,000. The appeal is allowed and the final notice is, accordingly, varied to that effect.

Judge Peter Lane

7 February 2017