



**First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation**

Appeal Reference: PR/2017/0005

Between

QUICK RENT PROPERTIES LIMITED

Appellant

and

LONDON BOROUGH OF TOWER HAMLETS

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. Background

1. Quick Rent Properties Limited (“Quick Rent Properties”) appealed against a Final Notice served on it by the Council of the London Borough of Tower Hamlets (“Tower Hamlets”), which is the local weights and measures authority for the geographical area comprising the Borough of Tower Hamlets. The Final Notice reference 0007 was dated 11th January 2017 and imposed a penalty of £5,000 on Quick Rent Properties for breaches of their obligation to publish on their website,

www.quickpropertygroup.co.uk a list of their letting agency fees and a statement saying whether they belong to a client money protection scheme.

2. The Final Notice referred to the requirements of sections 83 – 88 and Schedule 9 of the Consumer Rights Act 2015 (the “Act”) and set out the following details of the alleged failure by Quick Rent Properties:

“The Council is satisfied, on the balance of probabilities that on 8/12/16 you were engaged in letting agency work and that you have failed to comply with the above regulations. In particular, you have:

Failed to publish a list of the agents relevant fees, a statement saying whether you belong to a client money protection scheme on the company’s website at www.quickpropertygroup.co.uk”

3. The Final Notice refers to the office of Quick Rent Properties located at 24 Osborn Street, London E1 6TD, which is within the Borough of Tower Hamlets. Quick Rent Properties state that they carry on business activities, other than accounting duties, from 11 Ensign House, Admirals Way, London E14 9XQ, which is also within the Borough of Tower Hamlets.

B. Legislation

4. The sections of the Act that are referred to in this decision or that are of greatest relevance to this appeal are set out below in Annex A to this decision.

C. Guidance

5. Section 83 of the Act is the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government (the “Guidance”). Local authorities are required to have regard to the Guidance under S.87(9) of the Act. The sections of the Guidance that are of greatest relevance to this appeal are set out below in Annex B to this decision.

D. The Appeal

6. Quick Rent Properties submitted a Notice of Appeal against the Final Notice, which was received on 30th January 2017 and was signed by Mr Dobir Altab, the director of Quick Rent Properties. Quick Rent Properties set out the grounds of their appeal in the Notice of Appeal, the principle points of which are:
 - They acted immediately after receiving the Final Notice to update the website so that tenants’ fees were available for clients to see.
 - All other client fees have always been published on the website.
 - Client deposits are protected with DPS and this has always been displayed on the website.
 - The website management company that Quick Rent Properties use was not providing support in the period 12th December 2016 to 4th January 2017 and so the website could not be updated. An e-mail for the website management company was provided which confirmed that they were only offering emergency support during this period.

- Quick Rent Properties' fees are displayed in their office and in the 'welcome packs' they provide to tenants.
- Mr Altab has suffered from prolonged and serious ill-health including cancer diagnosed in 2010, which is now in remission, and chronic arthritis for which he was undergoing extensive treatment and physiotherapy during 2016 and in particular in the period October 2016 to January 2017. This affected him physically and mentally.
- Quick Rent Properties is a small company that will struggle to pay the penalty.

7. Tower Hamlets responded to the grounds of appeal with the following additional points:

- They had written to all letting agents in Tower Hamlets including Quick Rent Properties on 4th June 2015 advising them of the requirement to display information under the Act
- Quick Rent Properties' website had been reviewed on 9th November 2016 and was found to have no tenants fees on display and no statement about client money protection. Tower Hamlets wrote to Quick Rent Properties on that day, at their Admirals Way address, advising them of their responsibilities under the Act and explaining that if no response was received within 28 days Quick Rent Properties may be liable to a fine of up to £5,000, No response was received within this time period.
- On 8th December 2016 the Quick Rent Properties website was reviewed again and was found to have no tenants fees on display and no statement about membership of a client money protection scheme. As a consequence a Notice of Intent was issued, which repeated the responsibilities of letting agents under the Act, gave more details of the fees that had to be published on their website and explained that Tower Hamlets intended to issue a Final Notice imposing a penalty on Quick Rent Properties of £5,000 and stating that Quick Rent Properties had a right to make written representations within 28 days. No representations were received within the 28 day period.
- Quick Rent Properties' website was reviewed again on 11th January and the required information was still missing and so Tower Hamlets issued the Final Notice.
- The representative of Tower Hamlets explained in the response that it was sorry for Mr Altab's health problems, but it considers that it has acted reasonably.

8. Quick Rent Properties submitted further information in response and explained that:

- They had not received the letter of 1st June 2015 as it had been sent to an address they left in 2012.
- Mr Altab had only seen the letter of 9th November 2016 when he attended the office on 6th December 2016 and he had immediately asked an apprentice who was based in the office to update the website.
- He saw the Notice of Intent on 12th December 2016 and repeated his instructions to the apprentice. He could not attend the office much at this time

due to his physiotherapy and medical check-ups. The apprentice has assured him that he had contacted Tower Hamlets.

- The Final Notice was received on 16th January and Mr Altab was contacted by Tower Hamlets the next day and he felt offended by the tone of the conversation and its lack of regard for his health issues.
- Mr Altab sent in additional information regarding his medical and physiotherapy appointment during the period in which Quick Rent Properties was in contact with Tower Hamlets, these included confirmation of appointments to see a physiotherapist each week as well as consultants in orthopaedics and oncology.

9. Tower Hamlets provided a witness statement from an officer who had reviewed Quick Rent Properties' website, sent the correspondence and notices to Quick Rent Properties and who had the telephone conversation with Mr Altab on 17 January 2017. The officer stated that correspondence had been set to the Osborn Road address as it was the registered office of Quick Rent Properties. The officer also provided a 'hypercam' record of her review of the Quick Rent Properties website on 8th December, which showed the contents of the website.

10. Both parties were content for the matter to be determined by the Tribunal without a hearing.

D. Conclusions on the facts

11. I conclude from the submissions of the parties that there is no dispute over the following facts; on 8th December 2016 Quick Rent Properties was engaged in letting agency work, was within the jurisdiction of Tower Hamlets and was operating a website on which the fees payable by tenants were not displayed.

12. There is a disagreement over whether Quick Rent Properties' website contained a statement saying whether they belonged to a client money protection scheme. Quick Rent Properties state that client deposits were protected by DPS and that this has always been displayed on their website and so the Final Notice was incorrect to say they had failed to publish details of a redress scheme. Tower Hamlets state that the website contained no statement about client money protection on each occasion that they reviewed it.

13. I have reviewed the recording of the Quick Rent Properties website on 8th December 2016 submitted by Tower Hamlets and no reference to a client money protection scheme is visible on the website and no statement that Quick Rent Properties are not a member of such a scheme is apparent. A copy of a page from the Quick Rent Properties website on 30th January 2017 setting out their fees has been provided by Tower Hamlets and this includes the logo of the Tenancy Deposit Scheme. No text accompanies this. It is not clear if Mr Altab made an error in referring to "DPS" in the appeal rather than "TDS" or if there was a change in the provider of deposit protection services during this time. It is similarly unclear if Mr Altab has confused

the deposit scheme with a client money protections scheme. In any event the reference in the appeal to client deposits being protected by DPS does not appear to be relevant to determining whether or not Quick Rent Properties' website contained a statement saying whether they belonged to a client money protection scheme.

14. A witness statement from Rejaul Haque, an apprentice employed by Quick Rent Properties, states that Mr Haque was instructed to update the Quick Rent Properties website with the information in respect of agency fees and client money protection after Quick Rent Properties received the letter from Tower Hamlets dated 9th November 2016 referred to above. Mr Haque says that he was told to undertake this work when Mr Altab came into the office on 6th December 2016 and this work had not commenced before 8th December 2016. This suggests that Quick Rent Properties believed that further work was required to ensure that they were compliant with their responsibilities in respect of information about membership of a client money protection scheme around 8th December. No further evidence or information has been provided by Quick Rent Properties to support their assertion that they were a member of a client money protection scheme and that this has always been displayed on their website
15. I conclude that on the balance of the evidence the website of Quick Rent Properties did not on 8th December 2016 contain a statement of whether Quick Rent Properties is a member of a client money protection scheme as required by s. 83 (6) of the Act.

E. Mr Altab's Ill-health

16. On behalf of Quick Rent Properties, Mr Altab stated that the main reason why he was appealing was because he had been unable to attend work due to serious health concerns over a prolonged period. Mr Altab has described his ill-health and has provided copies of letters confirming some of the appointments that he had to attend during late 2016. I have considered Mr Altab's evidence and I accept that he had been suffering with a range of conditions, including cancer and arthritis since 2010 and that during the period from October 2016 to January 2017 he was in remission from cancer but still needed to attend appointments with oncology consultants and was attending appointments for his arthritis and receiving physiotherapy. I note that Mr Haque also confirms that Mr Altab did not attend the office of Quick Rent Properties on a regular basis during this period. However, it is clear from Mr Altab's submissions that the business of Quick Rent Properties continued throughout this period. Mr Altab had employed at least once person, Mr Haque, to work for Quick Rent Properties at this time. It is apparent that Mr Altab had plenty of time in which to assess the implications for Quick Rent Properties and its clients of his ill-health and his absences from the business. He had time to put in place staffing and other arrangements that would have enabled Quick Rent Properties to manage its affairs during the period when he had limited opportunity to take an active part in the business. These arrangements would need to have been sufficient to ensure that Quick Rent Properties could understand the legal obligations that it had to satisfy as a letting agent and to take the necessary obligations to ensure that it met these

obligations. Mr Altab does not suggest that he made any such arrangements during the period in which he was unable by reason of ill-health to manage the business of Quick Rent Properties. Leaving an apprentice in charge of the business, whilst making occasional visits to give instruction was an approach that contained obvious risks, but Mr Altab chose to take this approach.

17. By 8th December 2016 Quick Rent Properties had been subject to the requirements of s.83 of the Act for over 15 months and had it been appropriately resourced it would have had ample time to become aware of its legal obligations and to take steps to comply with them notwithstanding Mr Altab's prolonged ill-health. In practice it appears to have lacked the capability to respond to the letter of 9th November 2016 from Tower Hamlets and to ensure it complied with its obligations under s.83 of the Act when these were pointed out to them.

F. Findings

18. In reaching a decision in this case I have had regard to all of the written submissions, evidence and other documentation provided by the parties.
19. There is no requirement or expectation that enforcement authorities must publicise or take active steps to ensure that letting agents are aware of the coming into force of legislation that creates an obligation on them before taking any action to enforce those obligations. As Quick Rent Properties were and are carrying on business as letting agents, it is their responsibility to ensure that they are aware of the regulatory and legal requirements affecting letting agents and that they comply with any change in these requirements. In this instance Tower Hamlets did take steps to try to alert Quick Rent Properties to its obligations; Tower Hamlets letter of 9th November 2016 was sent to Quick Rent Properties' business address and was not acted upon.
20. I conclude for the reasons set out above that on 8th December 2016 Quick Rent Properties was engaged in lettings agency work and was operating a website which did not display the fees payable by tenants or a statement saying whether Quick Rent Properties was a member of a client money protection scheme. Quick Rent Properties were therefore in breach of s.83 of the Act. I find that Mr Altab's unfortunate period of prolonged and serious ill-health was not a factor that could excuse Quick Rent Properties' failure to meet its obligations under the Act as he had sufficient time to make alternative arrangements to ensure that Quick Rent Properties was properly managed in his absence.

G. Penalty

21. The last issue in this appeal is, therefore, whether, in all the circumstances the amount of the penalty for Quick Rent Properties' breach of their obligations under S.83 is unreasonable. In deciding that issue, which is left open by the primary legislation, it is helpful and appropriate to have regard to the Guidance, to which I have earlier made reference. The Guidance says the expectation is a "*fine*" (i.e.

penalty) of £5,000 and that a lower sum should be imposed only if the authority is satisfied there are "*extenuating circumstances*". The Guidance does not purport to be exhaustive as to what might constitute extenuating circumstances, saying that "*It will be up to the enforcement authority to decide what such circumstances might be*". However, it goes on to indicate some considerations that may be relevant and says:

" Another issue that should be considered is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business."

22. Quick Rent Properties state that the any penalty would put it in a position where it would struggle to pay the penalty as it is a small growing company. No other details of Quick Rent Properties' financial position have been provided and it has not provided any other evidence or submissions to support an argument that the penalty of £5,000 would create a risk of Quick Rent Properties going out of business or that the proposed penalty is otherwise disproportionate. In the absence of such information or supporting argument, I do not find that the proposed penalty of £5,000 is unreasonable. I have considered if any other extenuating circumstances arise in this case and in particular, whether Mr Altab's ill-health is relevant in considering the reasonableness of the penalty. I conclude that it should not for the reasons set out above.
23. In all of the circumstances of this case, I find that a financial penalty of £5,000 for Quick Rent Properties breach of its duties under s. 83 of the Act is reasonable.

F. *Decision*

24. The appeal is dismissed.

Peter Hinchliffe
Judge of the First-tier Tribunal
7 June 2017

ANNEX A

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:-

A. Duty of Letting Agents to Publicise Fees

“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

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

Final 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 Final Notice on the agent of its proposal to do so (a "Final Notice of intent").

(2) The Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final Notice.

Withdrawal or amendment of Final Notice

4

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

(a) withdraw a Final Notice of intent or Final Notice, or

(b) reduce the amount specified in a Final Notice of intent or Final Notice.

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

D. Appeals

4. Finally, Schedule 9 provides for appeals, as follows.

Appeals

5

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

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

(b) the residential property tribunal, in the case of a Final 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.

ANNEX B

Explanatory Notes and Guidance

A. In the present appeal, reference was made to the Explanatory Notes published in respect of the Consumer Rights Bill (which became the 2015 Act) and the Guidance for Local Authorities issued by the Department for Communities and Local Government, during the passage of the Bill, concerning the duty to publicise fees

B. Paragraphs 456 to 459 of the Explanatory Notes read as follows:-

“456. This section imposes a duty on letting agents to publicise ‘relevant fees’ (see commentary on section 85) and sets out how they must do this.

457. Subsection (2) requires agents to display a list of their fees at each of their premises where they deal face to face with customers and subsection (3) requires them to also publish a list of their fees on their website where they have a website.

458. Subsection (4) sets out what must be included in the list as follows. Subsection (4)(a) requires the fees to be described in such a way that a person who may have to pay the fee can understand what service or cost is covered by the fee or the reason why the fee is being imposed. For example, it will not be sufficient to call something an ‘administration fee’ without further describing what administrative costs or services that fee covers.

459. Subsection (4)(b) requires that where fees are charged to tenants this should make clear whether the fee relates to each tenant under a tenancy or to the property. Finally, subsection (4)(c) requires the list to include the amount of each fee inclusive of tax, or, where the amount of the fee cannot be determined in advance a description of how that fee will be calculated. An example might be where a letting agent charges a landlord based on a percentage of rent.”

C. So far as enforcement of the duty is concerned, the Explanatory Notes state:-

“477. Subsection (4) [of section 87] provides that while it is the duty of local weights and measures authorities to enforce the requirement in their area, they may also impose a penalty in respect of a breach which occurs in England and Wales but outside that authority’s area. However, subsection (6) ensures that an agent may only be fined once in respect of the same breach”.

D. Other passages of the Departmental Guidance are as follows:-

“Which fees must be displayed

All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured

tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy. ...

The only exemptions are listed below. The requirement is therefore for a comprehensive list of everything that a landlord or a tenant would be asked to pay by the letting agent at any time before, during or after a tenancy. As a result of the legislation there should be no surprises, a landlord and tenant will know or be able to calculate exactly what they will be charged and when.

.....

How the fees should be displayed

The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill-defined terms such as administration cost must not be used. All costs must include tax.

Examples of this could include individual costs for:

- marketing the property;
- conducting viewings for a landlord;
- conduct tenant checks and credit references;
- drawing up a tenancy agreement; and
- preparing a property inventory.

It should be clear whether a charge relates to each dwelling-unit or each tenant”.

Penalty for breach of duty to publicise fees

The enforcement authority can impose a fine of up to £5000 where it is satisfied, on the balance of probability that someone is engaged in letting work and is required to publish their fees and other details, but has not done so.

The expectation is that a £5000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the letting agency makes during the 28 day period following the authority’s notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; alternatively an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue that should be considered is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.

Primary Authority Advice

E. Under the Regulatory Enforcement and Sanctions Act 2008, eligible businesses can form partnerships with a local authority in relation to regulatory compliance. The local authority is known as the “primary authority”.

F. Pursuant to the 2008 Act, a primary authority partnership exists between Warwickshire County Council Trading Standards, the National Federation of Property Professionals and the Property Ombudsman. In November 2015, Warwickshire Trading Standards issued “Primary Authority Advice” in relation to the question: *“is it misleading for a letting agent not to display tenant and landlord fees in their offices?”*

G. This Advice includes the following:-

“Assured Advice Issued:

Section 83 of the CRA requires letting agents to display their fees for tenants and landlords.

These must be displayed at each of the agent’s premises where people using or likely to use the agent’s services are seen face-to-face. The fees must be displayed in a place where such people are likely to see them. People should not need to ask to see the fees as the list should be clearly on view.

The fees must also be published on the agent’s website, if there is one.

It is considered good practice for agents to check that customers have seen the fees price lists before they enter into any agreements or contracts.

The list of fees must include a description of each fee that enables people to understand what it relates to and how much it will be. In relation to fees payable by tenants, it should be clear whether each fee is per property or per tenant. Fees should be inclusive of VAT and any other taxes. ...

The list must be clear and comprehensive. Surcharges, hidden fees or vague expressions like ‘admin fee’ are not permitted”.