



Appeal number: PR/20170007

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**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PROFESSIONAL REGULATION)**

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M & M EUROPE LIMITED

Appellant

- and -

THE LONDON BOROUGH OF NEWHAM

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in public at Fleetbank House on 19 July 2017

Edward Cole, counsel, appeared for the Appellant

Ryan Thompson, counsel, appeared for the Respondent

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Decision

1. The Appeal is allowed in part.
- 5 2. The Final Notice dated 17 January 2017 is varied so that the monetary penalty is £5,000.00

Reasons

Background

- 10 3. M & M Europe Ltd is a letting agent. The Respondent (“the Council”) is the enforcement authority which served a Final Notice on M & M Europe Ltd on 17 January 2017. The Notice imposed a total monetary penalty of £10,000.00 for breach of duties under section 83 of the Consumer Rights Act 2015, consisting of £5,000 for breach of the duty to publicise a list of fees and
15 £5,000 for breach of the duty to publicise whether M & M Europe Ltd was a member of a client money protection scheme.
4. In its Grounds of Appeal, M & M Europe Ltd disputed the facts on which the Council relied when deciding to impose the financial penalty, submitted that
20 the Council had made errors of law and also submitted that the amount of the penalty was disproportionate. It also raised some arguments as to procedural irregularities, but these are to be remedied through a full-merits re-hearing and the making of a fresh decision by the Tribunal. I have no supervisory jurisdiction - see *HMRC v Abdul Noor* [2013] UKUT 071 (TCC).
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5. The Council conceded in its Response to the appeal (relying on the Decision of this Tribunal in PR/2016/0021 *Oakford Estates v London Borough of Camden*) that it had the power only to impose one financial penalty at a maximum rate of £5,000 and it asked the Tribunal to vary the Final Notice accordingly.
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6. The Tribunal sat in public and heard evidence called by both parties. I had before me an agreed bundle of documents, to which additional documents

were added by the Appellant during the hearing. I am grateful to both counsel for their helpful oral and written submissions.

The Legal Framework

5 7. Section 83 of the Consumer Rights Act 2015 provides that:

(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 –

10 *(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)...

15 *(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 for which it is imposed (as the case may be),

20 *(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.

25 *(5)...*

(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... 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 scheme.

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8. Guidance published by the Department for Communities and Local Government in March 2015 states that:

35 *The agent must display a list of the fees at each of their premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate. The list must be such that it is likely to be seen by customers.*

Ideally someone walking into an agent's office should be able to see the list without having to ask for it and if someone does ask it should be clearly on view and not hidden for example in a drawer.

...

5 *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.*

...

10 *In addition to the fees letting agents should publicise whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Letting agents who are not members of a client money protection scheme must make this clear, silence on this subject is a breach of the legislation. As with the fees this information should be prominently displayed in every office and on the website.*

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9. Section 87 of the Consumer Rights Act 2015 provides that:

(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.*

20 (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.*

25 (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) ...

(5) ...

30 (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.

35 10. Where the relevant enforcement authority (here, the Council) is satisfied on the balance of probabilities that the letting agency has breached the duty under s. 83, it may impose a financial penalty under s.87 of the 2015 Act. It does so

by serving a Notice of Intent, considering any submissions made and it may then serve a Final Notice on the letting agent concerned.

5 11. Schedule 9 paragraph 5 to the 2015 Act provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are (a) that the decision to impose the 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. The Tribunal may quash, confirm or vary
10 the Final Notice which imposes the financial penalty.

Evidence

12. The Tribunal was provided with witness statements made by Mr. Firuj Ahmed who works for M & M Europe Ltd and Mr. Meredith Howell-Morris, the
15 Council's Trading Standards Officer. These stood as their evidence in chief. Both witnesses attended for cross examination. The Tribunal also heard from Mr Mudassar Javed, the proprietor of M & M Europe Ltd, whose oral evidence I decided it would be fair and just to hear, notwithstanding the fact that he had not made a witness statement. Mr Cole said that Mr Javed
20 understood that he would be asked questions by counsel for the Council and by the Tribunal and confirmed that he was happy to proceed without a witness statement being taken. The Respondent had no objection. During his oral evidence, Mr Javed produced some additional documents, namely a letter from Mr. Masud Querashi and two colour photographs of the notices which he said
25 were at the relevant time and are on display at his premises.

13. The Tribunal watched a short film made by Mr Howell-Morris, which showed the reception area of the offices occupied by M & M Europe Ltd when he visited them on 18 November 2016. No copy of that film has been provided
30 for me to view subsequently. My recollection of it, and this was agreed by the Appellant, is that it showed no notices about fees were displayed in the reception area on the relevant date.

14. The Tribunal heard oral evidence as follows. Mr Javed told the Tribunal that the film was of the reception area, but that his office, and the place where he sees his customers, is in another part of the premises. He produced a plan showing two offices next to the reception area. He explained that the other office is occupied by Mr Querashi, who runs an import/export business. They share the reception area but conduct all business in their respective offices. This, he said, respects the confidentiality of his customers. He produced a letter from Mr Querashi dated 14 July 2017 which confirmed these arrangements. Mr Javed said that he keeps the information about fees in his own office only because that is where he meets his customers. Mr Thompson showed Mr Javed the film again, and identified advertisements for properties displayed in the window. He suggested that the information about fees should also be displayed in the reception area. Mr Javed said those adverts clearly showed that the properties were already let and that if people needed information about fees then they can ask him and if he is not there he will call them back and tell them. He said that the information is displayed on the wall of his office but that if he has cash in there he has to lock the door while he is out. It was for this reason that Mr Howell-Morris had not seen the information when he visited.

15. In relation to the financial position of his company, Mr Javed relied on a letter from Kingsway Accountants dated 10 February 2017. This stated that the company profits for the year ended 28 February 2016 were £2,534 and that the anticipated loss for the year ending 28 February 2017 would be £3,521. I asked Mr Javed whether the accounts for the year ended 28 February 2017 had now been completed and filed. He said they had. I asked him if he had brought them to show me but he had not. He said he thought there had been a 2017 year- end loss, as indicated in Kingsway's letter. Mr Thompson opened the Companies House website on his laptop while we were in the hearing. He told me that the latest accounts were not shown there and that the 2016 accounts showed a dividend of over £4,000 had been paid out.

16. The Tribunal heard from Mr Ahmed, who had been working for M & M Europe Ltd in the reception area on the day of Mr Howell-Morris' visit on 18 November 2016. He said that Mr Javed never sees clients in the reception area so the notices are kept in the office. They were put there in January 2016. He said that Mr Howell-Morris had not listened to him when he said that the notices were in the office and had been a little bit aggressive. In cross examination, he said that Mr Javed's office door had to be kept locked when he wasn't there because confidential files are kept in there. As Mr Ahmed could not be heard in the audio of the film saying that the notices were displayed in the office, he said he must have told Mr Howell-Morris this before the filming began, but he couldn't be sure.

17. Mr Howell-Morris gave evidence that there were a number of people in the reception area when he was filming it on 18 November. He said he had learned that the notices were said to be displayed in the office from the Appellant's Grounds of Appeal. He did not recall being told that when he visited and it was not recorded in his notes. He said he was told, and had recorded in his notes, that Mr Ahmed said the notices were not there because the printer was out of order. He said that the hearing was the first time that he had seen the notices. Looking at the photos produced by Mr Javed, his view was that they did not comply with the legislative requirements in any event.

Submissions

18. Mr Cole, on behalf of the Appellant, submitted that the relevant notices were on display at the place where lettings were negotiated and where customers would see them. He urged the Tribunal to take the view that in these circumstances there had been no breach of the statutory requirements to publicise the information required. In relation to the contents of the notices he submitted that the financial penalty had been imposed for a failure to display information, and not in relation to the contents of the notices, so it would be

wrong for the Tribunal to take their contents into account in determining this appeal.

5 19. In relation to the amount of the financial penalty, he asked the Tribunal to rely on the letter from Kingsway Accountants and reduce any penalty in view of the Appellant's financial difficulties.

10 20. Mr Thompson, on behalf of the Council, submitted that the notices displayed (as now seen in the photographs) were not compliant with the legislation but he accepted that this raised a different type of breach of the legislation which was not a matter before the Tribunal in this appeal. He submitted that keeping the notices in a locked room was analogous to keeping them in a drawer, which the DCLG Guidance clearly stated was inappropriate.

15 21. As to the amount of the penalty, Mr Thompson conceded that £5,000 was the maximum which could be imposed but stated that no satisfactory evidence of extenuating circumstances had been placed before the Tribunal so as to suggest that a reduction below £5,000 was warranted.

20 22. Finally, the Tribunal had heard that a Mr Aslam from the Council had visited the premises after the Final Notice had been issued and had told M & M Europe Ltd that there was no problem with the display arrangements. Mr Thompson explained that this gentleman had visited only to investigate the complaint made by M & M Europe Ltd about Mr Howell-Morris' conduct and
25 did not speak on behalf of the Council in respect of this appeal. In his submission, that matter was irrelevant to this appeal.

Conclusions

30 23. Having reviewed all the evidence, I conclude on the balance of probabilities that M & M Europe Ltd did breach its legal obligations in respect of the requirement to publicise its fees and to publicise its membership of a Client Money Protection Scheme. I find that the relevant information was not

publicised *at a place in the premises at which the list is likely to be seen by persons using or proposing to use the services* provided by M & M Europe Ltd. This is because I am satisfied, firstly, that “the premises” in this case comprises the reception area and the offices functioning together as a single unit and that, whatever arrangement has been reached with Mr. Querashi, it would not be consistent with the evidence to view Mr Javed’s office alone as “the premises” where the letting agency work is conducted. I say this because Mr Ahmed works for M & M Europe Ltd and his work station is in the reception area, and also because, as seen in the film, M & M Europe Ltd advertises its services through the shop window next to the reception area. Secondly, I find that persons using or proposing to use the services of M & M Europe Ltd could not access the information required by s. 83 of the 2015 Act easily and without asking for it. Furthermore, even if they had asked for the information on 18 November, they were not likely to see it because it was located in a locked room. I gained the clear impression that the room was often locked because it is the place where confidential information and cash is stored. I accept, as Mr Thompson submitted, that this is analogous to keeping it in a drawer, and contrary to the DCLG Guidance. I accept that Mr Ahmed would take a message from potential clients and that Mr Javed would respond to any enquiries made, but that is not what the legislation requires.

24. I accept Mr Javed’s and Mr Ahmed’s evidence that the information shown in the photographs was on display in Mr Javed’s office on the date of Mr Howell-Morris’ visit. I make no finding as to the legislative compliance or otherwise of the information which was displayed. I find that the display of the required information in a locked office not accessible to customers or potential customers is a breach of the legislation.

25. Turning to the matter of the financial penalty, for the reasons set out above I am satisfied that a financial penalty is warranted. I find that £5,000 is the maximum penalty that the Council can impose in relation to the breaches I have identified. I have considered whether the level of financial penalty ought to be reduced as a result of M & M’s alleged financial difficulties. Applying

the “best evidence” principle, I am not satisfied that I should accept an estimated year end loss contained in the letter from the accountant when the relevant financial year end has passed and I was told that the formal accounts were now available. I was given no explanation for the Appellant’s failure to produce the formal accounts and in these circumstances, I am not satisfied on the balance of probabilities that the financial evidence was accurate.

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26. For all the above reasons, I now allow the appeal in part and vary the Final Notice so as to substitute a financial penalty of £5,000.

Dated: 21 July 2017

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Alison McKenna

Principal Judge

Promulgation date 26 July 2017

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