First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2017/0029

Decided without a hearing
on 13th March

Between

FILTONS STRATFORD LTD

Appellant

and

LONDON BOROUGH OF NEWHAM

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Final Notice

1. Filtons Stratford Limited ("Filtons") appealed against a Final Notice dated 9th June 2017 served on it by the London Borough of Newham ("Newham"), which is the local enforcement authority for Filtons' premises at 190 High Street, Stratford, London E15. The Final Notice sets out Newham's conclusion that Filtons was on 22nd February 2017 engaged in letting agency work and in breach of three of the requirements imposed on letting agents under section 83 of the Consumer Rights Act 2015 (the "Act"). The Final Notice records these breaches as;

"1) Failure to display on your premises a list of fees, as required by Section 83(2)
2) Failure to display on your premises a client money protection statement, as required by Section 83(6)
3) Failure to display on your premises details of your membership of a redress scheme, as required by Section 83(7)"
Newham imposed a penalty on Filtons of £5,000 for each of first two of these breaches and a penalty of £1,000 for the third breach, amounting in total to £11,000.

2. Newham stated in the Final Notice that they had issued a notice of intent to Filtons on 22nd February 2017 (the "Notice of Intent") giving details of these breaches and the likely penalties and inviting representations from Filtons.

B. Legislation

3. 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 which forms part of this decision.

4. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under section 83, it may impose a financial penalty under section 87 of that Act. It does so by serving first a Notice of Intent, considering any representations made in response, and then serving a Final Notice on the letting agent concerned.

5. Schedule 9 paragraph 5 to the 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 the Final Notice which imposes the financial penalty

C. Guidance

6. 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 subsection 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 which forms part of this decision.

D. The Appeal

7. Filtons submitted an appeal dated 15th August 2017 against the decision in the Final Notice. The submission of this appeal was agreed even though it was out of time. This was appropriate in the light of the confusion caused by Newham in a letter that

preceded the Final Notice and which caused Filtons to submit an appeal prematurely.

8. Filtons adopted a clear and consistent response to the breaches identified by Newham in the Notice of Intent and in the Final Notice. In their representations submitted in response to the Notice of Intent, in their initial premature appeal, the substance of which they adopted in this appeal and in this appeal, Filtons have admitted all three breaches, sought to put their failures in context and objected to the level of the monetary penalty.

9. Filtons state that they have previously complied with all of their obligations under the Act to display the required information at their premises. However, their office was refurbished six months prior to the date of the Notice of Intent and they state that the display of the information required under section 83 of the Act was not reaffixed to the walls. They express their remorse for these failures, but point to the fact they had always been members of a redress scheme and a client money protection scheme and that they promptly remedied the failures when these were pointed out to them. They have never had enforcement action taken against them before and no formal complaints have ever been made by customers. Filtons also state that they are a small business facing a difficult time financially. The large fines proposed by Newham would have a vast impact on Filtons and they are concerned at the long term viability of their business and their ability to continue to employ all of their staff if financial penalties of this scale have to be paid.

10. Filtons supplied a copy of their corporation tax computations for the financial years ended 31 March 2015 and 31 March 2016 with the appeal. These showed a net profit of £42,069 in the year to 31 March 2015 and a net profit of £46,937 in the subsequent year. Filtons stated that they had lost a large contract after that, but did not provide any further figures or accounts. Filtons objected in particular to Newham's decision to impose the harshest penalties for these breaches.

11. In their appeal Filtons indicated that they wished the appeal to be heard on the papers. I consider that the appeal was suitable for determination on this basis.

12. Newham responded to the grounds of appeal by providing details of the correspondence that they had sent to Filtons on 3rd October 2016 explaining their obligations under the Act. They stated that they had visited Filtons' premises on 7 December 2016 and found that no fees to tenants or landlords were displayed and no statement about Filtons' membership of a client money protection scheme was visible. The Trading Standards Officer who visited Filtons on that day said in her witness statement that Filtons was a member of a redress scheme and a certificate was on display. The Trading Standards Officer issued a non-compliance notice at the end of her visit, which stated that Filtons had failed to display their fees and their membership of a client money protection scheme and also stated that they had not displayed details of their membership of a redress scheme in their office, and that their fees on their website had to be published inclusive of VAT. The

contradiction in relation to the display of the details of the redress scheme between the notice of intent and the witness statement was not explained but I find that it is not relevant to the outcome of this appeal.

13. Newham stated that on 22nd February 2017 the Trading Standards Officer from Newham had conducted a further inspection of Filtons' business premises at 190 High St, London, E15 and found that Filtons did not display within the premises a list of their fees, whether they were a member of a client money protection scheme or not or information concerning the redress scheme of which they were a member. As a consequence the Trading Standards Officer issued the Notice of Intent. Newham accepted that Filtons were at that time a member of a client money protection scheme and a redress scheme.

14. In response to the appeal, Newham stated that they accepted that the total financial penalty that can be imposed in respect of the three failures to display information at Filtons' premises referred to above is £5,000. They argued that there were no extenuating circumstances justifying the imposition of a penalty of less that £5,000. They had asked for audited accounts of Filtons for the year ended 31st March 2017 to substantiate Filtons' claim that the viability of the business would be threatened if the penalties were imposed. These had not been provided and in the absence of such audited accounts they believe that £5,000 is a reasonable penalty.

15. Newham clarified their position in a subsequent submission to this tribunal and confirmed that they accepted that the appeal should be allowed in part and to the extent required to reduce the penalty from the amount set out in the Final Notice to a total of £5,000.

16. In a later submission from Filtons to the tribunal, Filtons stated that they were prepared to pay £5,000 but could only do so over a 12-18 month period. No additional financial information was submitted by Filtons.

D. Conclusions on the facts and law

17. In reaching a decision in this case I have had regard to all of the written submissions, evidence and other documentation provide by both parties during the course of this appeal including, where appropriate, to the information and submission submitted in the course of the premature appeal, where this was referred to by either of the parties

18. The parties agree, and I concur, that on 22nd February 2017 Filtons was engaged in lettings agency work within Newham and had a duty, which they were failing to meet, to display the fees that they charged and whether or not they were a member of a client money protection scheme and details of the redress scheme to which they belong. I therefore conclude that on that day Filtons were in breach of their obligations under section s 83 (2), 83 (6) and 83 (7) of the Act.

19. The Final Notice sought to impose three fines for breach of three different obligations under section 83 of the Act on 22nd February 2017. Newham have accepted that the total penalty that it may levy is limited to £5,000. I agree with this conclusion. I note that subsections 83 (6) of the Act states that;

"*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*".

Subsection 83 (7) contains an equivalent provision in respect of the duty to display a statement that give details about whether a letting agent is a member of a redress scheme. I conclude from these provisions that the Act treats the duties created by subsections 83 (6) and 83 (7) as being part of the duty imposed under subsection 83 (2).

20. Section 87 of the Act sets out the basis upon which penalties can be levied for breaches of subsection 83. Section 87 (6) states that:

"*Only one penalty under this section may be imposed on the same letting agent in respect of the same breach"*

Although this section appears to be primarily intended to avoid different local weights and measures authorities imposing penalties for the same breach, it can also be to be construed as having a wider effect.

21. Subsection 87 (7) limits the amount of any financial penalty under section 87 to £5,000. Schedule 9 of the Act sets out the power of the Tribunal on appeal and states that a final notice may not be varied by the Tribunal so as to impose a financial penalty of more than £5,000.

22. The Guidance states in Section 3 that a fine of up to £5,000 can be imposed where a letting agent has failed to "publish their fees and other details". The "other details" in this context can only refer to the information required to be published under section 83 other than that about fees, such as information about membership of a client money protection scheme or a redress scheme.

23. I conclude that Filtons' failure on 22nd February 2017 to display at their premises; their fees, a statement of whether or not they were a member of a client money protection scheme and details of the redress scheme to which they belong should properly be regarded as giving rise to a single breach for which the maximum penalty is £5,000.

24. Filtons have based their appeal on the amount of the monetary penalty being unreasonable. In deciding that issue, which is left open by the primary legislation, I accept that it is helpful and appropriate to have regard to the Guidance. 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; however, it goes on to indicate some considerations that may be relevant. It recognises that an issue that should be

considered in this regard is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is clear that the Act must take precedence over the Guidance and that, in any event, enforcement authorities such as Newham must consider the issue of reasonableness and proportionality of a penalty in the round and that they should not follow the advice in the Guidance to the exclusion of all other matters.

25. The Act is intended to reduce harm and the risk of harm to consumers from letting agents. The penalty needs to be set at a level that reflects the public benefit in ensuring compliance with the Act whilst being proportionate to the scale of the business and the severity of the failure.

26. I have considered the financial information provided by Filtons in order to determine if a further reduction in the penalties is appropriate. The information does not suggest that Filtons would be unable to pay a penalty of £5,000 or that it will threaten the viability of the business. Its profits in the last two years for which they have provided information are sufficient to enable Filtons to pay a penalty of £5,000. Filtons has had the opportunity to provide further evidence supporting its contention that the level of its financial difficulties amount to extenuating circumstances that justify a reduction from the maximum penalty of £5,000 for the breaches of section 83 of the Act. It has not done so. Newham had taken constructive steps to point out Filtons' obligation under the Act in the past and Filtons had no reasonable excuse for permitting the breaches to take place and to remain unremedied. A penalty should act as deterrent and an amount of £5,000 for the failures identified in the Final Notice is not unreasonable.

F. ***Decision***

27. By virtue of paragraph 5(5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.

28. I find that Filtons' failure to display at their premises on 22nd February 2017 a list of the fees that they charged customers of their letting agency business, a statement of whether they were a member of a client money protection scheme and details of the redress scheme to which they belong gives rise to a single breach of section 83 and that a financial penalty of £5,000 should be payable in respect of this breach and that such a figure is reasonable and proportionate. The Final Notice is therefore varied so as to substitute a penalty of £5,000 in place of the penalty of £11,000 originally imposed.

Peter Hinchliffe
Judge of the First-tier Tribunal
21 March 2018
Promulgation Date: 29 March 2018

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 and other information. 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

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 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 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 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".