



Appeal number: PR/2019/0037 and 0038

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

1st CHOICE ESTATES LTD

Appellant

- and -

LONDON BOROUGH OF LAMBETH

Respondent

TRIBUNAL: HER HONOUR JUDGE ANGELA MORRIS

Sitting in Chambers on 29th August 2019

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Decision

1. The Appeal is part allowed.
2. The Final Notices dated 30th April 2019 are varied in that the penalty is reduced from £5,000 per Notice to £2,500 per Notice.

Reasons

Background

3. The Appellant (1st Choice Estates Ltd”) is a letting agent. The Respondent, London Borough of Lambeth (“the Council”) is the enforcement authority which served Final Notices on 30th April 2019. The Notices imposed a financial penalty of £5,000 each for breach of the Appellants failure to publish a list of relevant fees with sufficient description of each fee and a statement indicating they were a member of a client money protection scheme whether the appellant dealt face to face with persons using or proposing to use services to which the fees related and also a failure to publish the same fees on the companies website.
4. By its Notice of Appeal dated 25th May 2019, the Appellant disputes the facts on which the Council relied when deciding to impose the financial penalties and also submits that the amount of the penalty is in each case disproportionate.
5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.

The Legal Framework

- (i) *Fees*

6. Section 83 of the Consumer Rights Act 2015 requires letting agents to publicise details of relevant fees at its business premises and on its website. It came into force in May 2015.
7. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
8. 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 the Final Notice which imposes the financial penalty.
 - (ii) *Client Money Protection Schemes*
9. Section 83 (6) of the Consumer Rights Act 2015 states that, if a letting agent holds money on behalf of persons to whom the agent provides services, the agent must publish with the list of fees a statement of whether it is a member of a client money protection scheme. It came into force in May 2015.
10. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
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 the Final Notice which imposes the financial penalty.

Submissions and Evidence

12. By the notice of Appeal dated 25th May 2019 the Appellant relies on the following Grounds of Appeal:

- (i) In respect of the failure to publish the requisite fees on the Appellant's website, the Respondent has made an error of fact and the fees were published;
- (ii) In respect of the failure to publish a list of relevant fees with sufficient description and the failure to state that they belonged to a client money protection scheme, that the fees were published but concedes that they were not with sufficient description to meet the legislative requirements.
- (iii) In respect of the financial penalties of £5,000 each, these are disproportionate and would cause the company serious financial hardship.

13. The Council's Grounds of Opposition are as follows:

- (i) No error of fact was made by the Respondent in respect of the failure to publish the fees on the website;
- (ii) No error of fact was made by the Respondent in respect of the failure to sufficiently describe the fees at the Appellant's brach – the error appears to be that of the Appellant themselves and, therefore, not a proper Ground of Appeal;
- (iii) The financial information provided to the Respondent was insufficient to be taken into account at the time and remains so for the purposes of this appeal.

14. In February 2019, the Council received notice from Powys Trading Standards that the Appellant had failed to renew its membership with a property redress scheme and yet was advertising that it was a member of such a scheme. On 22nd February 2019, the Council's Officer checked the Appellant's website and found no information about fees charged to landlords and tenants. The Council's Officer checked on the four header pages – "Home", "Properties", "Properties Map" and "Contact Us" and clicked on every sub-link as well. Despite doing this the officer could find no list of fees which a tenant might be liable to pay detailed anywhere.

15. On 27th February 2019, the Council's Officer visited the Appellant's business premises. The Appellant's employee was unable to show the Officer where the list of fees and charges was displayed. The Officer provided the employee with an advice letter dated 27th February 2019 setting out the steps which needed to be taken to bring the company into compliance.
16. On 11th March 2019, the Officer carried out another online inspection of the Appellant's website. The Officer could find no dropdown box relating to fees in the "Contact us" hyperlink. The Officer then attended the Appellant's premises together with a colleague. The fees and charges were found on a table at the front of the premises. The tenant fees was stated as "Reference + Admin Fee: £200 Per Person". There was no statement in respect of whether the Appellant was a member of a Client Money protection Scheme in evidence either.
17. Notices of Intent (one dated 11th March 2019 and the other undated) were served on the Appellant on 11th March 2019.
18. The Appellant made representations to the Council dated 11th March 2019. The Council convened a panel to determine the Notices of Intent and to consider the Appellant's representations on 15th April 2019. Having considered all of the evidence the Council decided to issue the Final Notices dated 30th April 2019. This decision was based on the fact that the Appellant's business non-compliance matter had been referred to them from another authority and the Council considered that in light of the advice already given orally and in writing, the Appellant had had sufficient time to make the necessary adjustments to the website and branch fees notices.
19. The Council did not accept that the website had displayed the requisite fees from the evidence placed before them. Furthermore, the accounts evidence was of limited help regarding the health of the company. The Council considered that in line with government guidance the fine of £5,000 should be the norm and the accounts do not provide extenuating circumstances to suggest a departure from that position.

Conclusions

20. The Appellant's Notice of Appeal does not dispute that it had breached its duties under the legislation in respect of the description of the fees which a tenant might be liable to pay at its branch. The consequences for failing to display such fees was made clear in the letter dated 27th February 2019 which was handed to the Appellant's employee.
21. The government guidance¹ which was easily accessible also indicated to the Appellant states that "that *ill-defined terms such as administration cost must not be used*". This guidance also goes on to reiterate what is contained in the legislation that a letting agent should publicise whether or not they are members of a client money protection scheme.
22. The only area of factual dispute raised is whether the website did actually publish the fees information before the Notices of Intent were issued on 11th March 2019. From the evidence provided and the statement of the Council Officer, I am satisfied the adjustments were made after the Officer had investigated the Appellant's website on 11th March, the premises visited and the Notices of Intent served. In any event, if the website published fees had followed those seen at the Appellant's branch, it would still put the Appellant in breach of its legislative responsibility to sufficiently describe them.
23. I am satisfied on the basis of the Council's evidence that the Council has complied with its duty in terms of serving the Notice of Intent and the Final Notice. I am satisfied that the Council took into account all relevant matters when issuing the Final Notice. The accounts which the Appellant served as part of their representations on 11th March 2019, were short-form and related to the financial year up to 31st July 2017. It would not have been unreasonable for the Council to have been provided with the Appellant's accounts up to 31st July 2018 which may have given a more accurate figure of the company's financial situation.
24. I conclude on the basis of the evidence before me and on the balance of probabilities that the appellant did breach its legal obligations in respect of the publication of fees both on the website and at its branch and failed to indicate

¹ Guidance on Consumer Rights Bill 2015: Duty of Letting Agents to Publish Fees

whether it was part of a client money protection scheme. I am satisfied that it was reasonable for the Council to impose a financial penalty in the circumstances. The only question is whether the maximum financial penalty for both sets of contraventions should have been imposed.

25. The Appellant's accounts for the period to 31st July 2018 have been made available. This is a small company with a relatively small turnover. I have considered whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation. The Council submits that the accounts provided are out of date and still insufficient in detail to establish if the penalties are unreasonable.
26. Taking into account the nature of the breach, its duration, and the mitigating circumstances, that this is a small company with a relatively small turnover, I do consider that it was unreasonable for the Council to impose the maximum penalty for both contraventions in these circumstances.
27. I have concluded that the Final Notice should be varied to reduce the penalty to £2,500 for each Notice, making a total of £5,000 penalty.
28. Accordingly, the appeal is now dismissed in respect of the factual matters and the Final Notice is varied to the extent that each Final Notice is £2,500,

(Signed)

Dated: 29th August 2019

Her Honour Judge Angela Morris