



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

**Appeal Reference: PR/2018/0075
& PR/2018/0076**

**Heard at Field House
On 12 April 2019**

Before

JUDGE JACQUELINE FINDLAY

Between

FRASER CONSULTANTS (LONDON) LIMITED

Appellant

and

LONDON BOROUGH OF TOWER HAMLETS

Respondent

DECISION AND REASONS

Appearances:

The Appellant, Mr Chowdhury, Legal Liberty Solicitors.

For the Respondent, Mr J Green, Counsel.

Mr Wilson, Legal Service for the Respondent

Witnesses:

Mr Rahman witness for the Appellant

Ms K Morath, Trading Standards, witness for the Respondent

Mr D Lux, Property Redress Scheme, witness for the Respondent

In attendance:

Mr N Williams observer

A The legislation

The requirement for letting agents to publicise details of fees

1. The Consumer Rights Act 2015 (“the CRA 2015”) imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees.

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.”

Enforcement

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.

Financial penalties

SCHEDULE 9

DUTY OF LETTING AGENTS TO PUBLICISE FEES: FINANCIAL PENALTIES

Section 87

Notice of intent

1

- (1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a notice on the agent of its proposal to do so (a “notice of intent”).
- (2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent’s breach, subject to sub-paragraph (3).
- (3) If the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the notice of intent may be served--
- (a) at any time when the breach is continuing, or
 - (b) within the period of 6 months beginning with the last day on which the breach occurs.
- (4) The notice of intent must set out--
- (a) the amount of the proposed financial penalty,

- (b) the reasons for proposing to impose the penalty, and
- (c) information about the right to make representations under paragraph 2.

Right to make representations

2

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

Final notice

3

- (1) After the end of the period mentioned in paragraph 2 the local weights and measures authority must--
 - (a) decide whether to impose a financial penalty on the letting agent, and
 - (b) if it decides to do so, decide the amount of the penalty.
- (2) If the authority decides to impose a financial penalty on the agent, it must serve a notice on the agent (a “final notice”) imposing that penalty.
- (3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.
- (4) The final notice must set out--
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) information about how to pay the penalty,
 - (d) the period for payment of the penalty,
 - (e) information about rights of appeal, and
 - (f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4

- (1) A local weights and measures authority may at any time--
 - (a) withdraw a notice of intent or final notice, or
 - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the letting agent on whom the notice was served.

Appeals

5

- (1) A letting agent on whom a final notice is served may appeal against that notice to--
 - (a) the First-tier Tribunal, in the case of a notice served by a local weights and measures authority in England, or
 - (b) the residential property tribunal, in the case of a notice served by a local weights and measures authority in Wales.
- (2) The grounds for an appeal under this paragraph are that--
 - (a) the decision to impose a financial penalty was based on an error of fact,
 - (b) the decision was wrong in law,
 - (c) the amount of the financial penalty is unreasonable, or
 - (d) the decision was unreasonable for any other reason.
- (3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the final notice was sent.
- (4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £5,000.

Explanatory Notes and Guidance

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.

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.”

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”.

Potentially relevant 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”.

Any representations made about a penalty reduction will be considered on a case-by-case basis. Account may be taken of:

- The size of the business committing the breach may be a factor to consider.
- Whether the maximum fine of £5,000 fine (sic) may be disproportionate to the turnover/scale of the business.
- May lead to the organisation going out of business.

A lower fine may be charged if the enforcement authority is satisfied that there are extenuating circumstances.”

The Estates Agents (Redress Scheme) Order 2008

Requirement to belong to an approved redress scheme

Article 2. Every person who engages in relevant estate agency work shall be required to be a member of an approved redress scheme.

Requirement to belong to a redress scheme: lettings agency work

3.—(1) A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is—

(a) approved by the Secretary of State; or

(b) designated by the Secretary of State as a government administered redress scheme.

(3) For the purposes of this article a “complaint” is a complaint made by a person who is or has been a prospective landlord or a prospective tenant.

Exclusions: lettings agency work

4.—(1) For the purposes of section 83 of the Act, “lettings agency work” does not include the things described in this article.

(2) “Lettings agency work” does not include things done by —

(a) the employer, where the prospective tenant is an employee;

(b) the person for whom the prospective tenant provides work or services, where the prospective tenant is a worker;

(c) the person for whom the prospective tenant provides work or services, where the prospective tenant is —

(i) an employee who provides work or services under the contract of employment to a person who is not the prospective tenant’s employer; or

(ii) a worker who provides work or services under the worker’s contract to a person who is not a party to that contract;

(d) the hirer, where the prospective tenant is an agency worker;

(e) the person for whom the prospective tenant provides services under a contract for services.

(3) “Lettings agency work” does not include things done by —

(a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992(1);

(b) an authorised person within the meaning of section 18 of the Legal Services Act 2007(2).

(4) In this article the following have the same meaning as the Agency Workers Regulations 2010(3) —

“agency worker”

“contract of employment”

“employee”

“employer”

“hirer”

“worker”.

B The Hearing

1. I have considered the Respondent’s Response and the schedule of documents and a hyper cam recording of the Appellant’s website on 10 October 2018. I conducted an oral hearing and have heard submissions from Mr Chowdhury and Mr Green and evidence from Mr Sheikh Abdur Rahman a Director of the Appellant Company.

2. When Mr Rahman first began to give evidence, he appeared not to understand the questions put to him. A recess was called to enable him to consider with his Solicitor, Mr Chowdhury, if he wished to seek an adjournment to enable him to be provided with the services of an interpreter. On return Mr Rahman and Mr Chowdhury confirmed that he wished to proceed without an interpreter and that he was able to understand the proceeding. I was satisfied that no injustice was done in proceeding taking into account that Mr Rahman graduated from the University of Gloucestershire in 2012 with an MBA.

C The Final Notice

3. The Final Notice dated 18 October 2018 was hand delivered under cover of a letter of the same date (pages 1-5 to 1-11) states (1) that the Appellant was engaged in letting agency work on 9 August 2018 and failed to publish a list of the agent's fees and (2) that on 9 August 2018 the Appellant was not a member of an approved redress scheme. The Final Notice states that a £5000 penalty should be imposed for each breach.

D The Appellant's Case

4. The Appellant invites me to allow the appeal and relies on the following grounds:
 - a) The Appellant is not a rogue operator and was registered with the Property Redress Scheme ("PRS") but forgot to pay the renewal fee when membership of the PRS expired.
 - b) The Appellant is no longer trading as a letting agent. The Appellant had a few properties and the rent was paid direct to the landlord as they were being let through Airbnb.
 - c) As soon as the membership of PRS ended the Appellant stopped operating as a letting agent.
 - d) As a small business the Appellant's profit is nil after business expenses.
 - e) The tenant and landlord fees did not appear on the website due to a technical error (page 2.7). The website was updated and the page for fees was not loading. The issues have now been fixed.
 - f) The Appellant does not keep any client money. All deposits received go straight to the landlords and accordingly the Appellant does not need to have client money protection.
 - g) The Appellant does not keep any rent money from the tenants as it is paid to the landlord. Accordingly, the Appellant does not need to have client money protection.
 - h) As a small business the Appellant can get things wrong sometimes and the Appellant asks the Respondent to assist the Appellant to follow the law.
 - i) The Appellant wants to be compliant and follow the rules but as a small business and a lack of finance to get legal advice the Appellant can often struggle.

- j) Any fine means the Appellant will go out of business because the company handles only 5 landlords.
- k) The Appellant is trying to grow the business and will always be as compliant as possible.

E The Respondent's Case

- 5. The Respondent invites me to confirm the decision and invites me to consider the following points:
 - a) The Appellant did engage in lettings agency work on 9 August 2018.
 - b) The website on 9 August 2018 did not display fees for tenants and landlords clearly.
 - c) The website on 9 August 2018 gave no details as to whether or not they were a member of a client money protection scheme.
 - d) The Appellant does not deny that the website was in breach of the CRA 2015 (for failing to display Fees and CMP information).
 - e) The responsibility for compliance falls on the Appellant at all times.
 - f) The Appellant is required to exercise due diligence when instruction and supervising contractors to design their website.
 - g) The Respondent does not accept that the Appellant's fees and/or CMP information were on the website at all other times prior to 3 July 2018. The breach was for longer than suggested by the Appellant.
 - h) Even if there was a lapse in the displaying of the landlord and tenant fees and CMP this would still amount to an actionable breach of the Act.
 - i) The Respondent gave a grace period of over a year and only started taking action under the Act in September 2016.
 - j) The grounds of appeal do not constitute extenuating circumstances that warrant reducing the monetary penalties.

F Discussion

- 6. Mr Chowdhury submitted the following points:
 - a) Mr Rahman's apparent ignorance and/or non-compliances should be compassionately considered.
 - b) The Appellant has never been engaged in property management work since its inception and therefore the Appellant is not required to belong to a redress scheme.

- c) The Appellant used to engage in lettings agency work but has not done so since March 2018 and in particular not between 24/5/18 and 15/08/18. Accordingly, the Appellant was not under a statutory duty to be a member of an approved PRS.
- d) Mr Rahman made an honest and sincere representation within the given period and asked that the situation be taken into account and the financial situation of the Appellant.
- e) The Appellant ceased to engage in letting agency work and started trading under Airbnb and as such the Appellant does not require to have a membership with an approved PRS.
- f) The Appellant's Cashplus business account statement since May 2018 until March 2019 show the only income is from Airbnb.
- g) The Appellant publicised the tenant and landlord fees on the website with sufficient clarity and detail.
- h) The standard of publication must vary from person to person and organisation to organisation. The Appellant business is run by two persons and by Mr Rahman on a day to day basis and therefore the expectation of the Appellant should be realistic.
- i) A liberal and reformatory approach should be taken rather than a stringent approach to a micro business.
- j) The decision was Wednesbury unreasonable given that Mr Rahman made an honest and sincere representation which should have been taken into careful consideration.
- k) The monetary penalty was unreasonable.
- l) The decision in the case of London Borough of Camden v Foxtons Ltd UKUT 349 (AAC) was relevant to this case and in particular paragraph 29 which stated:

I accept the above arguments, but prefer to put it this way. The overall purpose is to protect consumers. If letting agents are not in compliance, they should be encouraged to come into compliance. Allowing changes of circumstances that are beneficial to consumers to be taken into account before the final notice is issued contributes to this.

7. Mr Green submitted the following points:

- a) It is conceded that the Appellant did take steps to remedy the situation in relation to the breach arising from a failure to be a member of an approved PRS.
- b) No steps were taken to remedy the breach in relation to the tenant and landlord fees.
- c) The financial information provided does not support a finding that there are extenuating circumstances.

- d) The evidence does not support the contention that the Appellant was not engaged in letting agency work.
- e) The case of London Borough of Camden v Foxtons Ltd UKUT 349 (AAC) does not assist the Appellant.

G Findings of Fact and Reasons

- 8. The Appellant company was incorporated on 17 December 2012.
- 9. Mr Rahman is a Director of the Appellant company and the correct person to appear for the Appellant. He is responsible for the acts and omissions of the Appellant company.
- 10. Mr Rahman's wife, Zahid Iqbal, is also a Director of the Appellant company.
- 11. The screen print taken on 10 October 2018 shows the updates made to the website in relation to fees for tenants and landlords.
- 12. The Appellant's website was in operation on 10 October 2018 advertising properties for tenants and services for landlords.
- 13. On 9 August 2019 the Appellant's website showed a number of properties under the lettings tab. Full management services for landlords were detailed. The website stated that "in order to maximise property exposure our website is updated daily and our properties are listed on market leading property portals." This is consistent with the Appellant undertaking lettings agency work and not consistent with the Appellant undertaking only work using Airbnb.
- 14. On 9 August the landlord and tenant fees were not detailed in a clear manner.
- 15. The Appellant became a member of the PRS on 24 May 2017 and the membership expired on 23 May 2018 (page 2.9). The Appellant became a member of the PRS on 16 August 2018 (page 2.10).
- 16. The Appellant was operating as a letting agent at all material dates and does not come within any of the exceptions.
- 17. The Final notice contained all the information as required by statute.
- 18. The Report and Accounts to 31 December 2018 lodged at the hearing were prepared to support the appeal. The Accountants' report to the Directors is dated 10 April 2019, two days before the hearing. Mr Rahman could offer no other reasons for the preparation of the financial reports so shortly before the hearing date. The proximity in time persuades me that they were prepared specifically for the hearing.
- 19. Mr Rahman stated that he had not met with his Accountant for the preparation of the financial report and accounts. He stated he provided the information over the telephone and provided copies of the bank statements. He stated that he might have provided a personal statement. He stated he did not provide copies of his personal bank statements

despite stating in oral evidence that he had on occasions made business payments from his personal bank account.

20. The accounts were inconsistent with the oral evidence of Mr Rahman and other evidence. I find that the accounts submitted do not represent a true indication of the Appellant company's financial activities and are not a reliable indicator of the Appellant's financial health. I have not attached weight to them.
21. For example, Mr Rahman stated that the premises costs shown at page 10 of the profit and loss account represented the £560 he paid a month to rent an office and the £1500 a month he paid in rent to a private landlord for home. This is a private rental in his own name. He rents separate office space as a Director of the Company. This entry in the profit and loss accounts indicates that the accounts are not reliable and not properly prepared.
22. For example, Exhibit 2 (page 9) of Mr Rahman's witness statement dated 8 April 2019 is a copy of a Guaranteed Rent Agreement dated 1 February 2018 between the Appellant and Mr Amin relating to 158 Boundery Road, London, E13 9QF. Under this agreement the Appellant agreed to pay Mr Amin £1900 per month, £22800 per year, commencing on 1 February 2018. The profit and loss accounts do not show these payments as an expense of the business. Mr Rahman when asked about this stated about the Accountant that "I think he moved something." Mr Rahman offered another explanation namely that this expense was not shown in the accounts because all Airbnb money went straight to landlords and not to him. This was inconsistent with the bank statements at Exhibit 4 of Mr Rahman's witness statement (page 4552) which show regular lodgements of income from Airbnb.
23. The principal activities of the Appellant company in the Report are stated as "Letting and Mortgage Properties." This supports the finding that for the year ending 31 December 2018 the Appellant was engaged in letting agency work. No other explanation has been put forward to explain this statement of the Appellant's principal activities. It is not credible that this is just a typographical error. This supports, also, the finding that the Report and Accounts are not reliable.
24. Mr Rahman is clearly an intelligent man. He has an MBA from Gloucestershire University. He stated that he had done some research to find out what the legislative obligations were on the Appellant company. It does not assist him to suggest that the obligation is on the Respondent to advise and assist him to comply with legislative obligations.
25. It does not assist Mr Rahman to blame the breach in relation to landlord and tenant fees on a technical error. There is an obligation on the Appellant to comply with its legislative obligations and Mr Rahman as the Director and person in charge of the day to day running of the company assumes that responsibility.
26. The decision in the case of London Borough of Camden v Foxtons Ltd UKUT 349 (AAC) does not assist the Appellant to show that it must comply with its legislative obligations.

27. I do not accept that at all material dates the Appellant was engaged only in facilitating landlords to let their properties through Airbnb and therefore has an exemption from the requirement to register with a redress scheme. In the appeal form (2.4) Mr Rahman stated that membership of PRS had lapsed due to him forgetting to pay the renewal fees. If the real reason for not renewing membership was because he believed the Appellant was no longer undertaking letting agency work he would have stated this and not stated that a lapse was the reason.
28. Mr Rahman was unable to provide a reasonable explanation as to why if the Appellant was not engaged in lettings agency work the Appellant's website was advertising properties to let, for example at Tab 7 pages 20 and 43. I find that it is more likely than not that the Appellant company was undertaking letting agency work at the time of the breach.
29. Mr Rahman was not a persuasive or credible witness. His evidence was inconsistent and for that reason unreliable. For example, he stated both that the Appellant company was going to continue undertaking work through Airbnb and that the Appellant company was not going to continue undertaking work through Airbnb. I have been unable to attach weight to his evidence.

H The Decision

30. The appeal is allowed in part. Credit should be given to the Appellant for seeking to remedy the breach in relation to membership of PRS. The Notice of Intent is dated 9 August 2018. The Appellant company became a member of PRS on 16 August 2018. Accordingly, I substitute a penalty of £3000 for this breach.
31. The monetary penalty of £5000 for the breach in relation to the landlord and tenant fees of £5000 is appropriate. The Appellant took inadequate steps to remedy the breach.
32. I do not accept that the monetary penalties would lead to the Appellant company going out of business. I do not consider that the monetary penalties are disproportionate to the turnover and scale of the business. This is because I do not accept that the financial situation of the Appellant company is as submitted by Mr Rahman and I am unable to attach weight to the Report and Accounts lodged at the hearing. Accordingly, I find there are no extenuating circumstances to reduce either monetary penalty for financial reasons.

Signed: J R Findlay

Judge of the First-tier Tribunal

Date: 12 April 2019

Signed: 24 May 2019