IN THE FIRST TIER TRIBUNAL **PR/2018/0078**
(GENERAL REGULATORY CHAMBER) **PR/2018/0079**
PR/2018/0080

Between:

CHETTS ESTATES LTD

Appellant

and

LONDON BOROUGH OF BARKING AND DAGENHAM

Respondent

DECISION

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal refuses the appeal.

REASONS OF THE TRIBUNAL

Introduction

1. This decision relates to three closely related appeals received by the Respondents on 20 November 2018, brought under **the Consumer Rights Act 2015 ("the 2015 Act")**. The appeals are against Final Notices issued by **the London Borough of Barking and Dagenham** ("the Council"), in which the Council imposed a total financial penalty of **£2500** on the Appellant for failing to publicise fees, and details of any Client Money Protection Scheme or Redress Scheme on the company website.

Legislation

Fee Publicising

2. Section 83 of the Consumer Rights Act 2015 ('the 2015 Act') 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 –
        (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 for 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.
3. A letting agent is defined in section 84 as follows:
    (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.

4. Section 86 further defines ‘letting agency 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.
5. The fees to which this Chapter applies are set out in section 85:
    (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.

Client Money Protection Scheme

6. The Consumer Rights Act 2015 also imposes duties on letting agents engaged in letting agency or property management work to publish a statement of whether the agent is a member of a client money protection scheme (section 83(6)) and a statement indicating that the agent is a member of a client redress scheme and the name of that scheme (section 83(7)).
7. Section 87 imposes a duty on the local weights and measures authority to enforce these provisions in its own area where it is considered on the balance of probabilities they have been breached. Breaches are considered to have occurred in the area of the local authority in which a dwelling house is situated to which any fees relate, but authorities can take enforcement action in the area of another local authority with the consent of that authority. Local authorities have the power to impose monetary penalties not exceeding £5,000 in the event of a breach.
8. The procedure for the imposition of monetary penalties and the rights of appeal are set out in Schedule 9 of the 2015 Act. The local authority is required to issue a 'notice of intent' to issue such a penalty within six months from the date the authority had sufficient evidence of a breach. The notice must set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the right to make representations within 28 days of the sending of the notice. At the end of that period the authority must decide whether to impose a penalty and the amount of that penalty. The final notice must set out that amount, reasons for the imposition of the penalty and information regarding how to pay and how to appeal. Anyone served with such a notice has the right to appeal within 28 days, on one of four grounds:

    (1) the decision to impose a financial penalty was based on an error of fact,

    (2) the decision was wrong in law,

    (3) the amount of the financial penalty is unreasonable, or

    (4) the decision was unreasonable for any other reason.

Final Notice

9.In the present case the Final Notices dated 23rd October 2018 stated that the Council believed that on 24th May 2018 the Appellant had committed breaches of its duty to publicise fees, and details of any Client Money Protection Scheme or Redress Scheme

(each breach included in one of the three Final Notices served), on the company website contrary to sections 83(3), (6) and (7) of the 2015 Act.

The Appeal

10. The Appellant appealed to the Tribunal on 8th November 2018 and made the following points:
    a) the website was set up for a separate and now-defunct business entity;
    b)the person who dealt with the website was out of the country, and in any event the website had not been in use since 2014;
    c) the notices were initially addressed to the wrong business;
    d) the business would be unable to pay the amount of the fines.
11. The Council responded, noting the following facts:
    a) the contents of the website show that it was a "*virtual shop front"* for the letting agency work taking place out of the Appellant's business premises, and was only taken offline after the Notices of Intent were issued;
    b) the notices were delivered by hand to the Appellant's representative Mr Khalid, and Trading Standards Officers noted whilst at the premises that the website was referred to on a sign on the wall. Various permutations of the company name were evident on various signs within the premises and in correspondence with the email address used to lodge the present appeals;
    c) the notices were originally addressed to 'Chetts Agents Ltd', and then amended by hand to 'Chetts Estates Ltd'. Both companies are trading, and share an address and a director. A similar company at the same address 'Chetts Estate Agents Ltd' also with the same director filed a notice for voluntary strike off with Companies House on the day that the original notices of intent were received. The Council believes that the agent uses a range of registered, dissolved and unregistered company names for its trading activities;
    d) the Council is willing to accept staged payments, and accounts from Chetts Estates Ltd suggest that the company's finances are sufficient to withstand the fine. It was also noted that the director of the various companies owns the freehold to the business premises.

TRIBUNAL FINDINGS

12. The Tribunal is satisfied that the notices were appropriately served in the circumstances as outlined in the witness statement dated 28 February 2019, provided by Cenred Elworthy the Chartered Trading Standards Officer employed by the Respondents herein. It transpires form the evidence before the Tribunal that the Appellant's incorporation status is convoluted and opaque, however the relevant website observed by the Trading Standards Officer made reference to the Appellant's business premises. There was nothing on the website to suggest that it was no longer in use, and provided ways for prospective tenants and landlords to contact the business. The purpose of the legislation referred to above, and engaged in this appeal, is to ensure that such prospective clients are given every available opportunity to access details regarding fees and any statutory schemes to which the business may belong. If a website exists and is accessible to those prospective clients, then the onus is on the business to keep it updated in line with the obligations imposed by the 2015 Act, or to take the website down without delay. It seems on the evidence before this Tribunal that the Appellant therefore breached its obligations under s.83.
13. To turn then to the question of whether the level of fine was justified, the Tribunal is aware of Guidance for Local Authorities published by the Department for Communities and Local Government in March 2015, in which it is stated that the expectation is that the imposition of the maximum fine should be the norm, save where there are clear extenuating circumstances. Local Authorities are obliged to consider this Guidance under s.87 (9) of the Act. Guidance from the Ministry of Housing, Communities and Local Government issued on 28th January 2019 also makes it seems clear that where breaches of the various limbs of s83 occur at a single point in time, it should be treated as a single breach for the purposes of the limitation of the amount of the penalty. The Respondents seem to accept this interpretation.
14. The Respondent Council in these appeals assert it has been lenient in its treatment of the Appellant Company by agreeing to limit the fine to £2,500. The Tribunal has received no evidence from the Appellant that the fine would cause undue financial hardship, and therefore we affirm the level of the fine.
15. In the circumstances and for the reasons above, the Tribunal refuses the appeal in its entirety.

Brian Kennedy QC 30 August 2019.

Promulgation Date 4 September 2019.