



**IN THE FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER**

Appeal No: PR/2016/0025

BETWEEN

Mohammed Mlah t/a SN PROPERTY SERVICES LIMITED

Appellant

and

LONDON BOROUGH OF CAMDEN

Respondent

Hearing at Fleetbank House, London on Wednesday 21 December 2016;

Before:

Brian Kennedy QC

Representation:

For the Appellant:

Mohammed Mlah

For the Respondent:

Ms. Lilangi Cooke

DECISION

The Tribunal allows the appeal by way of a reduction of the Final Penalty only.

Introduction

1. This is an appeal brought against the decision of the London Borough of Islington (hereinafter "LBC") to issue a Final Notice on 20 July 2016 (the "Final Notice") against the Appellant Company (the "Company") in respect of alleged breaches of s.83 of the Consumer Rights Act 2015 (the "CRA").

2. It is claimed in the Final Notice that the Company has breached s.83 in four material ways, namely: -
 - a. It failed to publish details of agents tenants fees on its website contrary to s.83(3);
 - b. It failed to publish details of agents landlord fees on its website contrary to s.83(3);
 - c. It failed to publish details of the agents redress scheme membership (S83.7)
 - d. It failed to publish details of whether or not the agent is a member of a client money protection scheme (S83.6)

3. For the reasons below, the Appeal is partly allowed.

Legal Framework

4. The relevant obligations placed on letting agents are contained in ss.83-88, and Schedule 9, of the CRA.

5. An obligation to letting agents to publish their fees came into force on the 27th May 2015. Section 83 sets out the duty on letting agents as follows:-

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 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.

(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.

6. The methods for enforcing the duties set out in s.83 are provided for in s.87 CRA as follows: -

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.

7. The procedure is set out in Schedule 9 of the CRA, which states as follows: -

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.*

8. To further assist with the proper interpretation and implementation of the above, the Department for Communities and Local Government issued guidance on the private rented sector in March 2015 (the "Guidance").
9. The Guidance deals with issues relating to enforcement and notes the following relevant matters:
 - a) *"Generally, the enforcement authority will be the local authority in whose area the letting agent who has not complied with the requirement is based. So for a national letting agent who has not published their fees and other details, tjeu can be liable for a fine for each and every office where the information is not published. However, local authorities will need to agree to enforce fines for a website which covers the whole country, as fines cannot be imposed for the same breach of the requirement"*
 - b) *"The expectation is that a £5,000 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"*
 - c) *"In the early days of the requirement coming into force, lack of awareness could be considered; alternatiely an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction"*

- d) *“Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business”*
- e) *“The enforcement authority can impose further penalties if a lettings agent continues to fail to publicise their fees despite having previously had a penalty imposed. There is no limit to the number of penalties that may be imposed on an individual lettings agent if they continue to be in breach of the legislation.”*

10. The grounds for appealing a penalty imposed by a Final Notice are contained at Schedule 9 (5) as being: --

- 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

The Parties Submissions

The Appellant's Submissions

11. In their written submissions, the Company did not dispute the grounds for the Final Notice either as an error of fact or Law but claimed that due to health problems Mr. Miah the principal of the firm, had been unable to ensure compliance and in the circumstances sought a reduction in the penalty imposed.

Unreasonableness of financial penalty

12. The Company claimed that, in all the circumstances, the financial penalty of £11,000 was unreasonable. The Company claimed in mitigation that, *inter alia*, it had been very responsive to the Respondents requests and that it had only failed to comply because of ill health that had plagued Mr. Miah.

The Respondent's Submissions

13. LBC first submitted that, even on the Company's case, it was not in dispute that the Company's website failed to publicise, *inter alia*, a list of fees during the relevant period. In LBC's submission that fact without more was sufficient to justify the imposition of a final notice.

14. LBI made the following more specific submissions.

Error of law

Unreasonableness of financial penalty

15. LBC submitted that it had acted entirely reasonably, and in accordance with the formal Guidance, in the way it calculated the level of fine awarded. Indeed, LBC submitted that it had levied a relatively modest fine, and that it could reasonably, and within the relevant Guidance, have levied a larger monetary penalty.

Evidence

16. The Tribunal had the benefit of reading and considering written evidence in this matter, as well as oral evidence on the day of hearing.

17. No witness statements were filed on behalf of the Company.

18. Two witness statements with exhibits were submitted on behalf of IBC, both dated the 11 November 2016.

19. Few factual matters were in dispute. IN fact the evidence amounted to a plea in mitigation on the grounds of ill health of Mr. Miah which had led to oversights in compliance. A medical report was produced supporting the Appellants position however it post dated the time of compliance and had never been previously presented to the Respondents.

Discussion

20. By agreement of the parties the only issue for the Tribunal to consider was whether the amount of the financial penalty is unreasonable. We note that LBC provided the Appellant Company with advice on the duty under the CRA well in advance of the instant proceedings. LBC provided multiple opportunities to the Company to rectify the relevant defects. LBC again repeated its advice and warnings to the Company and gave it a further opportunity, with guidance, to comply with the provisions of CRA. This notwithstanding, the Company continued its failure to comply with its duties and obligations.

21. We note that LBC were entitled to impose a fine of up to £5,000 per breach. We accept, furthermore, that the Guidance stipulates that £5,000 should be the starting point and that a lower fine should only arise where there are good reasons to do so.

22. In the circumstances, where the Company has continually failed to meet its duties under the CRA, and where it continues to do so, we have no difficulty accepting that the fine levied was reasonable.

23. Finally, in respect of the argument about the ill health of the principal operative being taken into account. The Respondent very fairly accepts that this was an issue, which had not been evidenced at the time of the decision to assess the applicable monetary penalties, and had the medical evidence been available, it is something that would have been taken into consideration.

24. For those reasons, we accept that a small reduction in the monetary penalty of £2,000.

Conclusions

25. In view of the foregoing, we are satisfied that the overall financial penalty be reduced from £11,000 to £9,000.

Signed:

Brian Kennedy QC

3 January 2017.