



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

**Appeal Reference: PR/2017/0034**

**Heard at Field House, London  
On 23 February 2018**

**Before**

**JUDGE JACQUELINE FINDLAY**

**Between**

**CH PEPIATT ESTATE AGENTS LIMITED**

Appellant

**and**

**LONDON BOROUGH OF CAMDEN**

First Respondent

Appearances:

For the Appellant, Mr P Paschali, Solicitor

For the First Respondent, Mr M Coley, Counsel, instructed by London Borough of Camden

Witnesses:

Mr B Felfeli

Ms A McKeown

In attendance:

Mr M Harland, Principal Trading Standards Officer, London Borough of Camden

Mrs L Cooke

## **DECISION AND REASONS**

### **Introduction**

*A. The requirement for letting agents to publicise details of fees*

1. The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees. This is achieved by sections 83 to 86:-

## **“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***

2. 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 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.

*D. Appeals*

4. Schedule 9 provides for appeals, as follows.

*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.

### *E. Explanatory Notes and Guidance*

5. 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.

6. 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."

7. 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".

8. 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”.

### **The Respondent’s case**

1. The Respondent submits that on 30 June 2015 the Respondent wrote to the Appellant at 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN, to inform of the implications of the Consumer Rights Act 2015 (“CRA”) and that it came into force on 27 May 2015. On 22 December 2015 the Respondent wrote to all estate agents in the Borough including the Appellant reiterating the earlier advice. On 11 January 2016 a trading standards officer visited the Appellant’s premises at 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN and met with Mr Ben Felfeli and explained that the fees must be displayed to comply with the legislation.
2. On 20 and 29 June 2017 the Respondent received complaints from the public that the Appellant was not displaying their fees correctly and consumers were being charged fees that had not been displayed. On 29 June 2017 the case officer checked the Appellant’s website and found that there were two breaches a) they did not have any landlord fees displayed at all and b) the Appellant did not display at the office details of the redress scheme of which they were a member. On 4 July 2017 the case officer checked the website and made a video recording of the searches made of the website.
3. A Notice of Intent dated 4 July 2017 was served by hand. The Appellant made written representations to advise that the Notice of Intent had been served on the wrong legal entity.
4. The Respondent submits that both CH Peppiatt Limited and CH Peppiatt Estate Agents Limited has the same registered address, namely, 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN. Mr Felfeli is the sole director of both companies. The Final Notice was correctly served on CH Peppiatt Estate Agents Limited and as a result there has been no detriment to the Appellant.
5. The Respondent alleges that on checking the downloaded website it appears that the Appellant added and amended the landlord fees after 4 July 2017.
6. The Respondent states that the case officer did not download the Appellant’s information page showing membership of a client money protection scheme. As a result, the Final Notice penalty was reduced to £5000.
7. The Guide to Local Authorities dated 13 March 2015 – Improving the Private Rented Sector and Tackling bad practice – advises that ‘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.’

8. The Respondent submits that although there were some inadequacies in the content of the Notice of Intent and Final Notice these were minor, that the obligations in relation to the form of the Notices set out in Schedule 9 were not mandatory taking into account the overall intention of the scheme.

### **The Appellant's Case**

9. The Appellant appeals on the following grounds:
  10. Ground 1 - The decision was wrong in law. No Notice of Intent was sent to C H Peppiatt Estate Agents Limited (Company number 06367492), the Appellant. Accordingly, the Respondent has no power to impose a financial penalty.

In oral submission this ground of appeal was expanded as follows:

The Notice of Intent did not meet the requirements of paragraph 1(4) of Schedule 9 to the CRA. The Notice of Intent sought to qualify the Appellant's right to make representations. The information in the Notice of Intent made clear that if the Appellant did not provide to the Respondent's satisfaction representations which met its prescribed criteria the Respondent would proceed to issue a financial penalty. It was submitted that the requirements imposed by the Respondent eroded the Appellant's absolute right to make representations on any grounds they chose and for whatever reason they chose. The Notice of Intent did not validly set out "information about the right to make representations under paragraph 2" and accordingly did not meet the requirements of paragraph 1(4) of Schedule 9 of CRA and was not a valid Notice of Intent. No financial penalty can be imposed under the CRA without a valid Notice of Intent having been served.

11. Ground 2 - The Final Notice did not comply with the requirements of paragraph 3(4) of Schedule 9 to the CRA and was not, therefore, a valid Final Notice. The Final Notice did not set out sufficient reasons explaining why a penalty had been imposed. The Final Notice did not specify the address of the website that it was alleged was operated by the Appellant. The Final Notice gave no information about how the penalty could be paid. Paragraph 3(4) of Schedule 9 to the CRA uses the term "must" when describing what the Final Notice has to contain in order for it to be a valid Final Notice. The use of the term "must" indicates mandatory requirements.
12. Ground 3 - The decision was based on an error of fact. Assuming that the website referred to in the Final Notice was [www.ch-p.co.uk](http://www.ch-p.co.uk) that website did display all of the information required under section 83 of the CRA on 3 July 2017.
13. Ground 4 -The amount of the financial penalty is unreasonable in all the circumstances.

### **The Issues**

14. Issue 1 – I am required to determine whether the Notice of Intent and the Final Notice complied with the statutory requirements and are valid. I am required to determine first whether the obligations in Schedule 9 paragraphs 1(4) and 3(4) are mandatory.

15. Issue 2 – If the Notice of Intent and Final Notice are valid I am required to determine whether there has been breach of the statutory requirements by the Appellant.
16. Issue 3 – If there has been a breach of the statutory requirements I must determine whether there are extenuating circumstances to support a lower penalty.

### **The Discussions**

- 14 I shall deal very briefly with the discussions of the case law because there is no directly applicable case law which sits squarely with the jurisdiction of a public body tasked with imposing a financial penalty.
- 15 With regard to Issue 1, the historical approach was as set out by the Court of Appeal in *Osman and another v Natt and another* [2014] EWCA Civ 1520, at paragraphs 24 and 25:

“24 Where a statute lays down a process or procedure for the exercise or acquisition by a person or body of some right conferred by the statute, and the statute does not expressly state what is the consequence of the failure to comply with that process or procedure, the consequence used to be said to depend on whether the requirement was mandatory or directory. If, on the proper interpretation of the statute, it was held to be mandatory, the failure to comply was said to invalidate everything which followed. If it was held, on the proper interpretation of the statute, to be directory, the failure to comply would not necessarily have invalidated what followed.

25 That approach is now regarded as unsatisfactory since the characterisation of the statutory provisions as either mandatory or directory really does no more than state a conclusion as to the consequence of non-compliance rather than assist in determining what consequence the legislature intended. The modern approach is to determine the consequence of non-compliance as an ordinary issue of statutory interpretation, applying all the usual principles of statutory interpretation, it invariably involves, therefore, among other things according to the context, an assessment of the purpose and importance of the requirement in the context of the statutory scheme as a whole.”

15. With regards to the statement of principle on the proper interpretative approach the Court of Appeal stated at paragraph 28 in relation to the reported cases:

“28 The cases cover a very broad spectrum of legislative and factual situations. For the purposes of this appeal a distinction may be made between two broad categories: (1) those cases in which the decision of a public body is challenged, often involving administrative or public law and judicial review, or which concern procedural requirements for challenging a decision whether by litigation or some other process, and (2) those cases in which the statute confers a property or similar right on a private person and the issue is whether non-compliance with the statutory requirement precludes that person from acquiring the right in question.”

16. Following and applying the above direction of the Court of Appeal is not straightforward in this appeal because the nature of this jurisdiction, ie the application of a penalty for a statutory breach, does not sit squarely within any of the categories set out in paragraph 28.
17. I am invited to consider the discussion before Mr Justice Burnett in *North Somerset District Council v Honda Motor Europe Limited, Chevrolet United Kingdom Limited, Martin Graham* [2010] EWHC 1505 (QB) and the comments of Mr Holgate at paragraph 30. In particular, to consider that some statutory requirements may be so important that the absence of prejudice resulting from non-compliance is irrelevant and whether the statutory requirement of purpose could be fulfilled by substantial compliance. If not then the requirement should be taken as mandatory and that if the word “shall” is used the requirement is not intended to be optional.
18. The Respondent invites me to consider that in considering the validity of the Notice of Intent and Final Notice I should have regard to the intention of the scheme and that I should take into account the guidance in *Sinclair Gardens Investments (Kensington) Ltd v Poets Chase Freehold Co Ltd* where it was submitted in discussion at paragraph 54 that “Speaking generally if a mandatory contractual or statutory provision requires a party to give a notice in a particular form in order to achieve a result identified in the contract or statute and if a purported notice given by that party fails to comply with the mandatory contractual or statutory provision, then the normal position is that the notice has no legal effect.” However, “the general position is modified by the application of the Mannai test as to the reaction of a reasonable recipient to the imperfect notice.”
19. The Respondent submits that notwithstanding that the Notice of Intent was addressed to the wrong company the director Mr Felfeli must have known that the Notice of Intent related to his letting agency company in view of the information he had received about compliance (paragraph 1 above) with the provisions of the CRA and the content of the notice which was unambiguous.

### **Findings of Fact and Reasons**

15. CH Peppiatt Estate Agents Limited, the Appellant, undertakes both sales and lettings estate agency work. It has a website at [www.ch-p.co.uk](http://www.ch-p.co.uk). CH Peppiatt Ltd undertakes property repairs, maintenance, renovations, decoration and general building work. This is for commercial and residential clients. CH Peppiatt Ltd does not have a website.
16. Both companies use the same address for registration at Companies House; 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN. The companies operate different businesses. Mr Ben Felfeli is the director and sole shareholder of both companies.
17. The Notice of Intent dated 4 July 2017 was addressed to C H Peppiatt Limited, Company Registration Number 06037213, Registered address 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN. This company was not responsible for the alleged breaches.
18. The Appellant was not served with a valid Notice of Intent.

19. When the Respondent became aware that the Notice of Intent was addressed to the wrong company it could have withdrawn the Notice and issued a fresh Notice of Intent to the correct company. The Respondent chose not to do so.

20. I find that the Notice of Intent does provide information about the right to make representations and satisfies the requirements of Schedule 9 paragraph (1)(4)(c). Part 3 of the Notice of Intent under the heading “Information as to the right to make representations” includes the statement “As a person on whom a notice of intent has been served may, within 28 days beginning with the day after the date on which this Notice was made, sent written representations and objections to us in relation to the proposed imposition of a monetary penalty.” Although the Respondent indicates prescribed circumstances where they would be willing to vary or withdraw the monetary penalty I find that the first open statement as quoted above is sufficiently clear and wide to satisfy the requirements of Schedule 9 paragraph (1)(4)(c) and is not negated by the inclusion of the Respondent’s instructions as follows:

“We will vary or withdraw the monetary penalty notice if we are satisfied of one or more of the following reasons:

- (a) The decision to impose a monetary penalty was based on an error of fact;
- (b) The decision was wrong in law;
- (c) The amount of the monetary penalty is unreasonable;
- (d) The decision was unreasonable for any other reason.”

21. The Final Notice dated 8 September 2017 was addressed to C H Peppiatt Estate Agents Limited, Company Registration Number 06367492. The Registered address was 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN. This was the correct company but the Final Notice did not comply with the statutory requirements. The Final Notice did not set out as required:

the information about how to pay the penalty and  
the period for payment of the penalty.

22. The Final Notice at page 2 states only:

“1. HOW THE PENALTY CHARGE MAY BE PAID

Invoice to follow

Case Officer: Alexandra McKeown

Email: [alexandra.mckeown@camden.gov.uk](mailto:alexandra.mckeown@camden.gov.uk)

Telephone number: 020 7974 6461”

The statement that an invoice will follow does not provide information about how to pay the penalty and does not provide information about the period for payments of the penalty. Had the invoice accompanied the Final Notice and included details of how payment could be made and the period for payment this might have been sufficient. However, in this case, as was the usual practice, the invoice was not issued.

23. I find that Schedule 9 sets out the process that authorities must follow and sets out how authorities must carry out their enforcement duties. I find the the requirements of Schedule 9 are mandatory. The Respondent has a mandatory obligation under paragraph

1(4) to include in the Notice of Intent the information set out in subparagraphs (a), (b) and (c) of paragraph 1(4) and under paragraph 3(4) to include in the Final Notice the information set out in subparagraphs (a) to (f) inclusive.

24. In my view it is appropriate to give the word “must” its ordinary and natural meaning and should be read literally. It is a plain word and needs no further interpretation. The literal approach is sufficient and there is no need to interpret the word “must” in any other way as it is not obscure, ambiguous or without meaning. The purpose of the legislation is to enact a scheme that will be purposeful and clear. Schedule 9 sets out clearly what each party must do and it is highly unlikely that the intention was to create obligations on the parties that would be anything other than mandatory.
25. I find that a valid Notice of Intent was not served on the Appellant. The Notice of Intent dated 4 July 2017 was addressed to C H Peppiatt Limited, company Registration number 06037213 at 1 Chalk Farm Parade, Adelaide Road, London, NW3 2BN. C H Peppiatt Limited is a different legal entity to the Appellant, CH Peppiatt Estate Agents Limited, Company Registration 06367492. The two companies have similar names and share the same address but that does not make them interchangeable. There must be certainty and it is not sufficient to suppose that Mr Felfeli as director and sole shareholder must have known and been able to surmise that the Respondent meant the Notice of Intent to apply to C H Peppiatt Estate Agents when the notice was clearly addressed to CH Peppiatt Limited.
26. I am not persuaded by the submission from the Respondent that the error in the addressee on the Notice of Intent is in some way “made good” when the correct party was named on the Final Notice.
27. I am not persuaded that interpreting the obligations on the Respondent as mandatory is being unduly technical or formalised.
28. I do not consider that the fact that there is no apparent prejudice to the Appellant means that the obligations on the Respondent should not be viewed as mandatory.
29. I consider that it is significant that the requirements and obligations lying on the Respondent under in Schedule 9 are not onerous. The requirements of what should be included in the Notice of Intent and Final Notice are straightforward and clear. It would not be difficult for the Respondent to comply with those obligations.
30. In my view the intention of Parliament was to introduce a simple and straightforward scheme to impose a financial penalty where there had been a breach by a letting agent of the duties under the CRA. The requirements in Schedule 9 were not intended to be optional and the intention was to achieve clarity by setting in simple clear language what the Respondent must do and what information must be included in a Notice of Intent and Final Notice to a potential Appellant.
31. Paragraph 4 of Schedule 9 sets out the procedure for an authority to withdraw a Notice of Intent or Final Notice at any time. Accordingly, if at any time it is clear to an authority there are errors on the Notices there is a simple procedure to withdraw those Notices.



All that is required is that the authority serves notice. Any error can then be rectified and the Notice re-issued.

32. Put briefly, if a Local Authority decides to impose a financial penalty it must serve a Notice of Intent which must set out certain particulars and it must service a Final Notice that must include certain particulars.
33. I find that the Respondent did not discharge its statutory obligations in that the Final Notice did not contain, pursuant to paragraph 3(4)(c), information about how to pay the penalty or (d) the period for payment of the penalty. The Final Notice stated only that the Invoice was to follow. Ms McKeown stated in oral evidence, and I accept, that the Respondent waited to see if an Appellant would appeal a Final Notice before sending out an invoice which did contain details of how the penalty could be paid and the period for payment. This was a practical approach because payment was suspended pending the outcome of an appeal.
34. In reaching my decision I have taken into account that the scheme involves the exercise of power by a public authority to levy a financial penalty. The Respondent is a sophisticated litigant and the intention of the scheme is to create certainty and clarity. It is only fair, therefore, that there is a clear procedure and that the procedure is properly followed.
35. In reaching my decision I have borne in mind that the defects in the procedure are significant and go to the heart of the process, namely identifying the correct party who is responsible for the breach and providing the information as required.
36. The Respondent has a statutory obligation to issue a Final Notice in accordance with the provisions of Schedule 9 and the Final Notice dated 8 September 2017 failed to comply with that statutory obligation and accordingly was invalid.
37. The Respondent did not serve a valid Notice of Intent on the Appellant or a valid Final Notice and accordingly no financial penalty can be imposed.
38. In view of my findings and decision it is not necessary for me to consider Issues 2 and 3.
39. This appeal is allowed.

Signed: J R Findlay

Judge of the First-tier Tribunal

Date: 23 February 2018

Signed: 29 March 2018

Promulgation Date : 26 June 2018