



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

**Appeal Reference: PR/2017/0024**

**Held on the papers**

**Before**

**Judge CLAIRE TAYLOR**

**Between**

**STATION ESTATES LTD**

Appellant

**and**

**LONDON BOROUGH OF NEWHAM**

Respondent

**Decision**

This appeal is allowed in part for the reasons set out below.

## REASONS

1. Station Estates Limited (the 'Appellant' or 'Station Estates') appeals against a penalty charge of £10,000 issued by the London Borough of Newham ('the Council') related to failure to publicise details of fees and a client money protection ('CMP') statement in accordance with the legislative requirements set out below.

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

2. The Consumer Rights Act 2015 (the 'Act') 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, as follows:

## "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.”*

## **Enforcement**

3. 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.” (Emphasis Added).*

### **Financial penalties**

4. The system of financial penalties for breaches of section 83 is set out in Schedule 9 of the 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.”

*Emphasis Added.*

### **Appeals**

5. Finally, 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.”

*Emphasis Added.*

## **Guidance**

6. The Guidance for Local Authorities issued by the Department for Communities and Local Government (known as ‘statutory guidance’ and referred to below as the ‘Guidance’), during the passage of the Bill, concerning the duty to publicise fees includes the following at Annex D:

a. **“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.”*

*(Page 56 of the Guidance)*

b. **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”. (Page 57 of the Guidance).*

c. **Penalty for breach of duty to publicise fees**

*“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. It will be up to the enforcement*



*authority to decide what such circumstances might be, taking into account any representations the lettings agent makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; alternatively an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. 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". (Page 60 of the Guidance).*

25. On 19 June 2017, Meredith Howell-Morris, a Trading Standards Officer for the Council conducted an inspection of the Appellant's premises accompanied by an officer from another council. The officer issued a notice of intent for the company failing to meet the requirements of sub-sections 83(2), (4) and (6) of the Act, which the staff-member signed for. The Appellant made no representations. The final notice was issued for £10,000.
26. Both parties were content for the matter to be determined without an oral hearing. Having read the papers, I issued directions requesting the Council addressing concerns as to (a) erring in exceeding the maximum allowed penalty for breach of the Act, and (b) the relevance of the Upper Tribunal decision of *London Borough of Camden v Foxtons Ltd [2017] UKUT 349 (AAC)* ('*Foxtons*'), where the company's efforts to comply at a similar stage was taken into account in reducing the fine. The Council provided a response. The Appellant neither responded nor informed the Tribunal as to whether it would do so. I am now satisfied that, in all the circumstances, I can fairly and justly determine the matter on the papers. I have read and considered all material presented to me, even if not specifically referred to below.
27. Mr Stefan Yordanov, director of the Appellant now appeals the penalty. Reasons and evidence submitted include:
  - a. The Appellant rectified the matters complained of in the notice of intent shortly after the inspection on 19 May 2017. He mistakenly thought that a compliance visit would be conducted within the 28 days following the service of the notice. This is why he had not sent representations to the Council.
  - b. When the officer returned on 7 July 2017, he served the final notice even though he saw that all the requirements were then satisfied. Meredith Howell-Morris took photos of the displayed information.
  - c. He attached the photos to show the compliance.
28. The Council's evidence and submissions include:
  - a. Newham is not obliged to publicise, advise or warn letting agents of the obligations placed upon them. (See also Tribunal decision of *ETB Property Services v LB Islington ref PR/2015/0004*.)

- b. The inspection on 19th May 2017 followed a complaint being made to Newham and therefore the investigation of such a complaint would be by way of an unannounced visit.
  - c. At the time of the inspection, no information conforming to section 83 of the Act was on display in the area where face to face business was conducted which prompted the enforcement officer to issue a Notice of Intent.
  - d. The Appellant does not dispute that he received the Notice of Intent. It clearly advises of the right to make representations, and the process that is then followed and would be followed if the decision to impose the financial penalty was upheld. It warns of Newham's intention to issue a financial penalty and does not indicate that there would be any further inspection to review compliance.
  - e. The decision to issue the final notice, was correct and there was no error of fact or law which vitiates the imposition of the financial penalty.
  - f. Ignorance of the law and/or or the obligations placed upon a letting agent by the Act is no defence to the imposition of a financial penalty. A misunderstanding of the process is also no defence.
29. In response to further directions, (setting out my understanding of the position in law), the Council accepted that a maximum penalty of £5,000 could be imposed in this case. As to the 'trajectory of compliance' the Appellant had claimed to have shown and to the decision in *Foxtons*, the Council accepted that compliance between the notice of intent and final notice ought justify a reduction in the penalty. The Council considered that at the time of the final notice, the Appellant displayed fees but failed to indicate whether it belonged to a CMP scheme under under s.83(6) of the Act. It gave reasons for a 10% reduction applying in such circumstances.

### ***Finding***

30. It is accepted by the Appellant that it had failed to comply with the legislation set out above. Therefore, there was a legal basis for the Council to impose a financial penalty on the Appellant. However, as made clear above, the Council erred in seeking to impose more than £5,000 for the breach.
31. Although not raised by the Appellant, there were additionally what may be termed 'procedural shortcomings'. The notice of intent on page 113 of the Bundle stated an intention to impose a fine of £5,000. The amount in the final notice was entered as £10,000. Given that it is accepted that the fine must in any event not exceed £5,000, the Appellant is not further materially prejudiced by this discrepancy, and I find that in all other respects the notices substantially complied with the requirements of the Act.
32. The remaining issues before me are whether, in all circumstances (as found by me), the amount of the penalty was unreasonable or the decision to fine the company was unreasonable for any other reason. On making a

finding, I may quash, confirm or vary the final notice. In making my decision, I may take into account evidence and submissions before me, even if these were not before the Council at the time of their decision.

33. I accept that letting agents, as professionals can be expected to be aware of the law. The Council has made clear that in this case, there had been a complaint of potentially untoward practice. The details in relation to this have not been expanded upon and the complaint is made from an official in another council. However, the Appellant has made no submissions on this. (*See, for instance pages 100 to 111*). In all the circumstances, it seems reasonable for the Council to have inspected and served a notice of intent without making prior contact, in the hopes of prompting the most speedy compliance.
34. It is unfortunate that the Appellant failed to make representations after service of the notice of intent. Nonetheless, it is not disputed that by the time of the final notice, the Appellant fees were displayed on the premises, such that there was some 'trajectory of compliance'. The Council's witness states that the CMP statement was still not shown by 7 July. Whilst he took photos which have been provided, these are not sufficiently clear to serve as proof of this. The Appellant provides photos of the displayed information and this includes such a statement. On balance, I find that the CMP statement was displayed, because I am not fully satisfied by the evidence produced.
7. The Council now accepts lowering the penalty by ten percent, because of the trajectory of compliance. It also notes that the Guidance set out above states an expectation that the £5,000 be considered the norm in the absence of extenuating circumstances.
8. In all the circumstances and based on the information before me, I find that the Council has erred in law. I find that it is reasonable for the final notice to be varied, so that the financial penalty payable is £4,000, rather than £10,000.
35. Accordingly, I allow the appeal to a limited extent.

**Dated**  
**Promulgation Date**

**Judge Claire Taylor**  
**9 January 2018**  
**10 January 2018**

