



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

Appeal Reference: PR/2019/0018

**Decided without a hearing
On 19 July 2019**

Before

JUDGE JACQUELINE FINDLAY

Between

MAYA RESIDENTIAL LONDON LTD T/A ANISTENHOMES

Appellant

and

LONDON BOROUGH OF REDBRIDGE

Respondent

DECISION AND REASONS

A The legislation

Consumer Rights Act 2015 (“CRA 2015”)

SCHEDULE 9 Duty of letting agents to publicise fees: financial penalties
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

2The 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.

B The Procedure

1. I have determined this appeal on the basis of the papers only in accordance with the wishes of the parties. I consider it is just and fair to do so as there is sufficient evidence to determine the appeal and both parties have had ample opportunity to prepare and present their cases.

C The Appellant's Case

2. The Appellant appeals on the following grounds:
 - a) The Appellant received two Notices of Intent dated 14 November 2018.
 - b) The Appellant made representations within 28 days in a letter dated 27 November 2018 with supporting evidence.
 - c) The Appellant did not receive a Final Notice before an invoice was issued dated 22 February 2019 for £5000. This invoice is invalid as does not contain the required information. It was not a valid Final Notice.
 - d) The Appellant sent an email to Nicola Gregg, on behalf of the Respondent, on 5 March 2019 and attached to the email the letter of 27 November 2018 and supporting evidence referred to above.
 - e) Nicola Gregg sent an email on 5 March 2019 apologising and stating that the invoice should have been accompanied by the Final Notice
 - f) The Appellant submits that the Respondent has not followed the correct protocols and has acted unreasonable in the matter.
 - g) The Appellant denies the breaches relied on by the Respondent.
 - h) The Appellant's website was undergoing maintenance development and this led to a technical issue whereby on 1 November 2018 the fees did not appear on the website. This was immediately corrected on or before 27 November 2018 and evidence of this was submitted as evidence with the letter of 27 November 2018. This was a technical issue with the fee list on the company's website and the tenant/relevant fees on all other marketing portals were still active.
 - i) A list of the relevant fees and membership certificates for the Client Money Protection Scheme, the Independent Redress Scheme provided by the Ombudsman and Mydeposit are all displayed at the office based at 369 Green Lane, Seven Kings, Essex, IG3 9TQ. All memberships were active throughout the company's website pages as affiliations on 1 November 2018 or before.
 - j) The Final Notice issued on 5 March 2019 was not issued with a revised invoice. The invoice dated 22 February 2019 was invalid.
 - k) The breach on 1 November 2018 was not an ongoing breach after 27 November 2018.
 - l) The evidence submitted shows that the Appellant displayed relevant fees on other marketing portals and in the office premises before 1 November 2018 and the omission was not deliberate.
 - m) The Appellant considers the monetary penalty to be unreasonable and the Respondent should have provided some grace in all the circumstances.

The Respondent's Case

3. The Respondent submits the following points:
 - a) The Appellant accepts the breaches on 1 November 2017.
 - b) The Respondent does not accept that these were due to technical issues and asserts that the breaches were ongoing and persistent.
 - c) On 16 May 2018 a Trading Standards Enforcement Officer visited the Appellant's premises and the office manager, Anita Jethva, was provided with advice leaflets about compliance.
 - d) On 23 May 2018 an inspection of the Appellant's website found it was non-compliant in relation to the display of redress scheme membership, display of fees and display of Client Protection Money Scheme.
 - e) On 26 October 2018 an inspection of the website showed that it was non-compliant as above and displayed logos purporting to show membership of organisations of which the Appellant was not a member. These logos were removed after service of the Notice of Intent.
 - f) On 1 November 2018 an inspection of the website showed that it did not publish a list of agent fees and membership of a Client Money Protection Scheme.
 - g) On 14 November 2018 two Notices of Intent were issued for each breach with a monetary penalty of £5000 for each breach.
 - h) On 15 January 2019 a Representations Panel considered the evidence submitted by the Appellant.
 - i) On 15 January 2019 a decision was made that on 1 November 2018 the Appellant had not published on their website their fees or a statement as to whether they were members of a Client Money Protection Scheme. It was decided to reduce the monetary penalties to £2500 for each breach. In reaching this decision the following factors were taken into account:
 - The Appellant company was incorporated on 10 January 2013 and was well established in lettings and sales.
 - The Appellant had been non-compliant following an advisory visit in May 2017.
 - The website was non-complaint on 23 May 2018 in relation to three matters.
 - The website was non-compliant on 1 November 2018 in relation to two matters.
 - The website became complaint after service of the Notices of Intent.
 - The Appellant engaged with Trading Standards and corrected the breaches.
 - On 15 January 2019 the website became complaint.
 - It was not submitted by the Appellant that the monetary penalties would be disproportionate to the turnover and scale of the business.
 - j) Following the policy direction of the Minister for Housing and Homelessness the decision was revised and it was decided that a single monetary penalty of £5000 was

appropriate. The payments and benefits section were instructed to cancel the previous invoices and raise a single invoice for £5000 to be served with the Final Notice.

- k) The payments and benefits section sent the invoice directly to the Appellant in error.
- l) A Final Notice was emailed to the Appellant on 5 March 2019 on the same day the invoice was received.
- m) The Final Notice complied with the terms of the legislation and the Appellant was not disadvantaged by the error.

Findings of Fact and Reasons

- 4. On 14 November 2018 two Notices of Intent were issued by the Respondent to Mr Chaudhury, the Company Director of Maya Residential Ltd T/A Anisten Homes (pages 19 to 22).
- 5. The Notice of Intent which appears at pages 19 and 20 stated that “Maya Residential Ltd T/A Anisten Homes are or have been engaged in property management and/or letting agency work and that your website: <https://anistenhomes.co.uk/> did not on 01/11/2018 publish a list of fees to tenants.” The Notice of Intent stated that the Respondent intended to issue a Final Notice imposing a monetary penalty of £5000.
- 6. The Notice of Intent which appears at pages 21 and 22 stated that “Maya Residential Ltd T/A Anisten Homes are or have been engaged in property management and/or letting agency work and that your website: <https://anistenhomes.co.uk/> did not on 01/11/2018 indicate whether Maya Residential Ltd T/A Anisten Homes is a member of a Client Money Protection Scheme.” The Notice of Intent stated that the Respondent intended to issue a Final Notice imposing a monetary penalty of £5000.
- 7. The Notices of Intent set out as required the amounts of the proposed financial penalties, the reasons for proposing to impose the penalties and the information about the right to make representations.
- 8. On 5 March 2019 a Final Notice was issued to Maya Residential Ltd T/A Anisten Homes (pages 77 and 78). The Final Notice states that “on 01/11/2018 you were engaged in letting agency work and that you have failed to comply with the above regulations. In particular you have failed: to publish a list of the agent’s relevant fees, a statement saying whether you belong to a client money protection scheme on the company’s website at www.anistenhomes.co.uk.” The Final Notice stated that the Respondent had had regard to the representations received and that the Appellant had been issued with a single Final Notice for both breaches with a penalty of £5000.
- 9. The legislation requires that a 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.
10. The Final Notice at page 77 and 78 does not include any information about how to pay the penalty or any information about the period for payment of the penalty. Accordingly, it does comply with the legislative requirements of Schedule 9 3(4) of the CRA 2015. The legislative requirements are mandatory.
 11. The Respondent submits (page 15) that the “Final Notice complies in its terms with the legislation.” I have considered whether the invoice at page 39 and 40 can form part of the Final Notice. The Respondent by implication suggests this is the case on the grounds that although it is dated 22 February 2019 it was received by the Appellant on the same day as the Final Notice.
 12. Although the point has not been clearly argued the implication is clear but I am not persuaded. The Final Notice was not created until 5 March 2019 and makes no reference to the invoice of 22 February 2019. In my view these two documents cannot be read together as one document and the invoice cannot ‘by implication’ become part of the Final Notice.
 13. Although not relevant to the appeal it is important to mention that the financial penalty of £5000 was in respect of two breaches. The invoice refers only to the “non display of fees on website” and does not give information about the period for payment of the penalty. Even if the invoice was part of the Final Notice ‘by implication’ it is inadequate.
 14. I find that the Final Notice does not comply with the legislative requirements and is not valid.

The Decision

15. The appeal is allowed.

Signed: J R Findlay

Judge of the First-tier Tribunal

Date: 19 July 2019

Signed: 19 August 2019

Promulgation date 22 August 2019