



PR/2016/0005

V AND V PROPERTIES LIMITED

Appellant:

and

ISLINGTON COUNCIL

Respondent:

Judge Kennedy QC

DECISION NOTICE

Legislation

1. 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.

2. 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.

3. 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.

4. 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.

5. Further to the requirement to publish fees, the 2015 Act 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)).

6. 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.

7. 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:

- (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.

Final Notice

8. In the present case the final notice dated 1 April 2016, addressed to the appellant, stated that Ms Louise Smedley, an authorised officer of Islington Council ('the Council'), believed that the appellant had committed a breach of its duty to publicise fees under section 83 of the 2015 Act. Ms Smedley visited the appellant's business premises on 29 January 2015. She was informed by Mr Villani and Mr Bottino, directors of the appellant company, that they only introduce tenants to landlords and that only landlords pay fees. They were passing deposits from tenants to landlords without securing it, and information came to the Council that the appellant company was charging tenants an

administration fee. The tenants fees, landlords fees and redress scheme were not publicised, and the Client Money Protection Scheme statement was not present in the office or on the website.

9. Correspondence between the Council and the Appellant then ensued, with the Appellant arguing that it was entitled to charge tenants an administration fee and that its website and literature was compliant with the 2015 Act. Ms Smedley responded on various dates advising the Appellant that the term 'administration fee' as *per* the Department of Communities and Local Government guidelines should not be used, and there was still no statement of fees or client money protection on the appellant's website.
10. On 17 February 2016 Ms Smedley visited the Appellant's property again. She noted that the tenant fees were displayed on the wall in the office, but it referred to an 'administration fee' and so the fees were not accurately described. No landlord fees were displayed on the premises or the website. Ms Smedley issued a Notice of Intention, which Mr Bottino refused to sign.
11. Representations from the Appellant were received on 10 March 2016 and these were considered at a meeting between Ms Smedley and a senior manager, Mr David Fordham on 22 March 2016. The decision was made to accept representations regarding the landlord fees but to uphold the breach regarding the ambiguously described 'administration fee'. Accordingly a monetary penalty of £2,000 was imposed. Ms Smedley attempted to serve the Final Notice on Mr Bottino on 1 April 2016 but he refused to accept it, and it was left in hard copy at the premises and emailed to the directors.

The Appeal

12. The Appellant appealed to the Tribunal. Both parties were content for the matter to be determined without a hearing.
13. The Appellant argues that a comprehensive fee schedule and explanation was displayed at all material times both in the premises and on the website. Its explanations did not omit any important information, and were not likely to

mislead or take advantage of any lack of knowledge as to legal rights. It states that the term 'administrative fee' was not in fact used in its literature. The imposition of any monetary penalty is inappropriate as it is based on errors of fact and law.

The Council's Response

14. The Council states that Ms Smedley was not mistaken regarding the administration fee, pointing out that it clearly appears in exhibited material provided by the Appellant to the Tribunal. The list does not specify what service or cost is covered by the fee, the purpose for which it is imposed, whether the fee relates to each dwelling-house or each tenant, nor a description as to how it is calculated.

15. The calculation of the monetary penalty was made after the extensive involvement of Ms Smedley with the Appellant's business, and was reduced accordingly given the partial compliance with the requirement to display fees.

Appellant's Reply

16. The Appellant did not receive the DCLG guidance prior to its involvement with the Council, but in any event this guidance does not preclude the use of the term 'administration fee' providing that the description as a whole is sufficient to enable the person paying it to understand what services or costs are being covered. It argues that the scheme sets out an administration fee payable for the preparation of a binding tenancy agreement.

17. The Tribunal notes that: *THIS IS NOT WHAT THE EXHIBIT STATES AT p9 OF THE BUNDLE: "AN ADMINISTRATION FEE OF £250 INC VAT WILL BE PAYABLE UPON CREATION OF A LEGALLY BINDING TENANCY AGREEMENT"* As each tenant requires a tenancy agreement it is clear that this charge applies to each tenant.

18. I have read the witness statements of Louise Smedley and David Fordham and the exhibits thereto and on the facts before me in the bundle provided am satisfied that the Appellant failed to comply with the statutory requirements as set out above.

19. Accordingly, looking at article 9 of the 2014 Order, the Respondent has not based the decision to impose a monetary penalty on any error of fact. The decision is not wrong in law and I do not consider that the monetary penalty is unreasonable an appropriate discount from the maximum fine having been given by the respondent for the reasons given, that is to say although insufficient, some information on fees had been displayed.

20. Accordingly this appeal is dismissed.

Brian Kennedy QC

24 September 2016.