



**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
Professional Regulation**

Tribunal Reference: **PR/2018/006**  
Appellant: **K Hillside Ltd t/a Field and May**  
Respondent: **London Borough of Tower Hamlets**  
  
Judge: **Angus Hamilton**

**DECISION NOTICE**

*Legislation*

1. Section 83 of the Consumer Rights Act (CRA) 2015 imposes certain obligations on letting agents:
  - (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.

2. Section 84 clarifies the letting agents to which these duties apply:

- (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 85 explains the fees that must be published:

- (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.

3. Section 87 deals with the enforcement of these obligations by local authorities:
  - (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.

.....

(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.

4. Schedule 9 of the 2015 Act deals with the procedure to be followed when a local authority imposes a financial penalty:

*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”).

1(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 subparagraph (3).

1(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.

1(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.

3(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(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.

3(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.

4(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.

5(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.

5(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.

5(4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

5(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.

5(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.

### *Recovery of financial penalty*

6(1) This paragraph applies if a letting agent does not pay the whole or any part of a financial penalty which, in accordance with this Schedule, the agent is liable to pay.

6(2) The local weights and measures authority which imposed the financial penalty may recover the penalty or part on the order of the county court as if it were payable under an order of that court.

6(3) In proceedings before the county court for the recovery of a financial penalty or part of a financial penalty, a certificate which is –

(a) signed by the chief finance officer of the local weights and measures authority which imposed the penalty, and

(b) states that the amount due has not been received by a date specified in the certificate,

is conclusive evidence of that fact.

6(4) A certificate to that effect and purporting to be so signed is to be treated as being so signed unless the contrary is proved.

6(5) A local weights and measures authority may use the proceeds of a financial penalty for the purposes of any of its functions (whether or not the function is expressed to be a function of a local weights and measures authority).

6(6) In this paragraph “chief finance officer” has the same meaning as in section 5 of the Local Government and Housing Act 1989.

### *The appeal*

5. The appellant, K Hillside Ltd t/a Field and May, appeals against a final notice dated 15 January 2018 from the Tower Hamlets (the Council), imposing a penalty charge of £5,000 for failing to publish full details of agents’ landlord fees and tenant fees and £5,000 for failing to publish details of the agents’ client money protection scheme.
6. The appeal was dealt with on written submissions only and was considered on 4 June 2018.
7. In her statement of 18 April 2018 Ms Alexandra McKeown, a Consumer Protection Officer employed by the Council, set out the Council’s reasons for imposing the maximum permissible penalties of £5000 in this case. Ms McKeown’s reasons do not really go beyond stating that her investigation was prompted by complaints from the public and that having considered the company’s accounts she felt that the company could afford the fines.
8. In the Grounds of Appeal the Mr Li, who does not clarify his role within the company, states that the company is struggling in a difficult market and has



only made a nominal profit over its last two financial years. Mr Li accepts that the company overlooked its obligations under the CRA but says that the company will do its best to ensure this does not reoccur. It is not entirely clear whether the company has now complied with its obligations and no evidence to this effect was provided. The company did submit company accounts for 2016 and 2017.

9. I am aware of the guidance to local authorities in these matters which reads, in part:

**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 or property manager 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; nevertheless 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.** It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.

10. I am a little concerned by this guidance as it would appear to set a starting point of £5000 which will only be reduced if extenuating circumstances are established or the company's existence is threatened. I think that there is a counter-argument that the 'starting point' for the fine should be at a lower level and the fine then increased or decreased based on the establishment of aggravating or mitigating factors. To put it another way the maximum fine should be reserved for the 'very worst' rather than the ordinary case.

11. A 'bad' case may arise, for example, when the following factors are present:

- a. Actual complaints from the public
- b. Lack of co-operation with local authority
- c. Failure to take prompt corrective action
- d. Lack of remorse and failure to acknowledge obligations
- e. Total non-compliance as opposed to partial non-compliance e.g. - some but not all fees are published
- f. Evidence of poor running of office e.g. officers/managers not being on premises

This list is neither definitive nor exhaustive.

12. In this case there appears to have been total non-compliance prior to the intervention of the local authority; there were complaints; the company has expressed remorse but it is unclear whether the corrective action has been taken.
13. The company has provided financial information for 2 years. I think it is more illuminating to look at the company's turnover rather than profit since 'profit' is far too amenable to accountancy adjustments and turnover tends to give a better idea of how a company is performing. Poor turnover may of course be a further indication that a company is not well-run which is then not a particularly good point of mitigation.
14. Here the turnover of the company was £136000 in 2016 and £153000 in 2017 which are hardly negligible sums. I note that in 2017 the 'labour costs' and 'rent & rates' increased by huge unexplained amounts and a large unexplained 'management fee' of £13000 appeared in the accounts. I think this reinforces my point about approaching a 'profit' figure with caution.
15. There are, as mentioned, some aggravating factors here, and the turnover figures provided by the company are not a persuasive source of mitigation. Nevertheless. I think it would be wrong to categorise this as one of the 'worst' cases and I therefore discount both fines by 20% bringing them down to £4000 each or a total of £8000.
16. I would mention for the benefit of the appellant that there has been some debate between Judges of the First Tier Tribunal (FTT) as to whether it is correct to impose more than one fine in cases such as these. See, for example the decision of Judge Hinchliffe in Top Supports Estate Agents Limited. [http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKFTT/GRC/2017/2016\\_0037.html&query=\(%22GENERAL+REGULATORY+CHAMBER%22\)](http://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKFTT/GRC/2017/2016_0037.html&query=(%22GENERAL+REGULATORY+CHAMBER%22))
17. Decisions of fellow FTT Judges are not binding on me but in any event I consider that the issue has been settled by the Upper Tribunal (whose decisions are binding on FTT Judges) by Judge Levenson in Camden v Foxtons Ltd [2017] UKUT 349 (AAC) which I believe clarifies that it is quite appropriate for the local authority to impose more than one fine in cases such as this one.
18. This appeal is accordingly allowed to the extent mentioned above.

**Angus Hamilton**

**Tribunal Judge**

**Dated 7 June 2018**

**Promulgation date 11 June 2018**

