



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

Appeal Reference: PR/2018/0048

**Decided without a hearing
On 11 February 2019**

Before

JUDGE JACQUELINE FINDLAY

Between

ELLIOTT DAVIS PROPERTIES

Appellant

and

LONDON BOROUGH OF NEWHAM

Respondent

DECISION AND REASONS

A The legislation

Section 83 of the Consumer Rights Act 2015 (“CRA 2015”)

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 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.

Section 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

Section 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.

Section 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.

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

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.

B The Appellant's Case

1. The Appellant appeals on the following grounds:
 - a) The decision to issue a financial penalty in relation to the client money protection was based on an error of fact, namely the website displayed a logo for the UK Association of Letting Agents ("UKALA") which was sufficient to cover any obligation to display a statement concerning whether the business is a member of a client money protection scheme. The Appellant concedes that they did not specifically state that this was a money protection scheme. However, the legislation does not specifically require an explanation of who UKALA are and any client entering into a transaction where an agent is holding their money would be inquisitive enough to make enquiries to find out if their money would be safe. If a client had enquired it would have been explained to them and a client could have found this out by looking at the UKALA website. The logo UKALA was sufficient and an analogy is drawn with the Law Society.
 - b) Notice of client money protection is not required because there is an official review and therefore there is no requirement to display client money protection information.
 - c) Even if technically in breach the Appellant disputes the amount of the penalty and asks that the attempts to comply and the fact that the Appellant takes this matter very seriously be taken into account in assessing what is a fair penalty.
 - d) The decision to issue a final notice with respect to fees information was based on an error of fact, namely the use of the words "administration charges £400" is sufficient to describe the fee charged and in any event the fee charged is always explained to the consumer by email, telephone, or in person. This fee is a "one-off payment" which is paid only after the Tenant has agreed to take a tenancy of the premises on offer and the fee cannot be broken down as it encompasses all of the work that has to be done by the agent and is non-negotiable and cannot be reduced. The fee covers the costs of carrying out the various enquiries that have to be carried out, the taking up of references, the immigration checks and preparation of the Tenancy agreement plus numerous other matters that need to be carried out before the tenancy can be signed.
 - e) The fees charges to Landlords varies and is negotiable but is invariably the equivalent of 1.5 to 2.5 weeks rent depending on the property. An exact figure cannot be shown as it varies from property to property. Accordingly, Landlord Fees cannot be broken down and described in any sensible fashion.
 - f) The decision to issue both final notices was unreasonable, namely the Appellant has been penalised unfairly because other letting agents do not display on their website

fees information, describe the fees and/or display any statements concerning any membership of a client money protection.

Findings of Fact and Reasons

2. On 11 June 2018 the Appellant's website did not indicate whether or not the business was a member of a client money protection scheme. On the website Tenant Fees were displayed but not clearly described. On the same day Landlord Fees were displayed but no amounts were provided.
3. On 13 June 2018 Ms Exley, Trading Standards Officer and Ms Howell-Morris visited the Appellant's premises and spoke to Mr Yasin and issued a Notice of Intent dated 13 June 2018.
4. On 13 June 2018 a letter was delivered to the premises of the Appellant marked for the attention of Mr Asif Yasin (page 28) confirming that the Notice of Intent had been issued and setting out the alleged breaches and explaining what action should be taken.
5. On 27 June 2018 a letter to the Appellant marked for the attention of Mr Asif Yasin (page 29) was delivered to the premises to remind of the last date for making representations or objections and asking if the outstanding breaches had been addressed and rectified.
6. On 2 August 2018 Final Notices for each of the breaches was issued (pages 32 and 33). The Final Notices indicated that there was a monetary penalty of £2500 for each breach. The Respondent indicated that the first penalty was in relation to the failure of the Appellant to display on its website a statement as to whether the business was a member of a client money protection scheme and the second penalty was in relation to the failure to display appropriate fees information.
7. On 7 July 2018 an email was sent from Faisal, on behalf of the Appellant (pages 11 and 12), asking that it be taken into account that the Appellant would abide by the law and took the obligations seriously. Faisal explained that the new website was under construction and would be live soon and it would comply with the legislative requirements.
8. The Appellant's website stated "administration charges £400." This fails to comply with s 83(4)(a) because it is insufficient for a prospective tenant to understand the services covered by the fee of £400. In relation to the fees charged to prospective landlords there was a list of services but insufficient information to show the cost for each service as required by s 83(4)(a) and s 83(4)(c).
9. The fact that prospective clients would need to be informed by email, by telephone or in person supports the finding that the information on the website was insufficient.
10. How other business have been treated is irrelevant to this appeal.
11. I find that there was a breach of s 86(6) of the CRA 2015 in that the Appellant did hold money on behalf of persons to whom the Appellant provided services and the Appellant did not comply with the duty to display or publish "a statement of whether the agent is a member of a client money protection scheme." The Appellant displayed on the website a logo for UKALA. The appellant did not display, as required, a statement to say that the

Signed: J R Findlay

Judge of the First-tier Tribunal

Date: 11 February 2019

Signed: 18 March 2019