



**Appeal number: PR/2019/0042**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(PROFESSIONAL REGULATION)**

**H4U (LONDON) LIMITED**

**Appellant**

**- and -**

**LONDON BOROUGH OF LAMBETH**

**Respondent**

**TRIBUNAL:**

**JUDGE ALEXANDRA MARKS CBE**

**(sitting as a First-tier Tribunal Judge)**

**Sitting at Field House, London EC4**

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## **Decision**

1. The Appeal is allowed.
2. The Final Notice dated 6 June 2019 is quashed.

## **Reasons**

### ***Background***

3. Bartosz Bartkowiak is the sole director of H4U (London) Limited ('H4U'), the Appellant in this case. The Respondent ('the Council') is the enforcement authority which served a Final Notice on H4U.
4. The Final Notice imposed on H4U a financial penalty of £5,000 for breach of the duty to display in its premises a list of fees including a statement whether H4U belongs to a client money protection scheme.
5. By his Notice of Appeal, Mr Bartkowiak argues that the Council's decision was wrong because H4U is not a letting agent.
6. Mr Bartkowiak asked for a hearing of this matter rather than determination on the papers.
7. At the hearing, Mr Bartkowiak attended, and represented H4U. The Council was represented by Katherine Forrest, Trading Standards Officer of the Council. Other members of the Council's Trading Standards team were in attendance.

### ***The Legal Framework***

8. Section 83(2) and (3) of the Consumer Rights Act 2015 ('CRA') impose duties on letting agents to display a list of fees at their business premises and on their website (if they have one). These duties came into force in May 2015.
9. Section 83(6) of CRA states that, if a letting agent holds money on behalf of persons to whom the agent provides services, the agent must publish with the list of fees a statement whether it is a member of a client money protection scheme.
10. S.84(1) defines a letting agent as 'a person who engages in letting agency work (whether or not that person engages in other work' and s.86(1) defines letting

agency work as things done by a person in the course of a business in response to instructions received from (a) a prospective landlord seeking to find someone wishing to rent a dwelling-house and grant such a tenancy, OR (b) a prospective tenant seeking to find a dwelling-house to rent and obtain a tenancy of it.

11. Where the relevant enforcement authority is satisfied on the balance of probabilities that a letting agency has breached its duties under s.83 CRA, that authority may impose a financial penalty under s.87 CRA by serving a Notice of Intent and then a Final Notice on the letting agent concerned. S.87(6) provides that only one penalty may be imposed on the same letting agent in respect of the same breach.
12. Schedule 9 paragraph 5 to CRA provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are:
  - (a) that the decision to impose the 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.
13. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.

### ***Chronology***

14. Between December 2018 – February 2019, Ms Forrest, Council Trading Standards Officer, approached the two Government approved property redress schemes to request a list of current members based in Lambeth. She established that a business called Perfect Properties Maintenance Limited, based at 71/72 Clapham Common South Side, London SW4 appeared to be operating as a letting agent, but did not appear to be a member of either scheme.
15. On 20 February 2019, Ms Forrest visited that address and met Mr Bartkowiak who identified himself as the office manager. He explained that Perfect Properties Maintenance Limited no longer operated from that address but that

AP Assets Limited (which owns properties) and South London Estates Limited (which finds tenants and manages the tenancies) did so. Ms Forrest believed that neither business was registered with a property redress scheme, nor displayed a list of fees at the branch. Ms Forrest gave Mr Bartkowiak an advice letter which he said he would pass onto the owner, Mr Patel.

16. On her return to the office, Ms Forrest checked Companies House for other businesses based at the same address and found H4U also operated from there.
17. On 13 March 2019, having learned that H4U had joined the Property Redress Scheme ('PRS'), Ms Forrest again visited 71/72 Clapham Common South Side, accompanied by her colleague, Gareth Morris. Ms Forrest took with her a draft Notice of Intent referring to various potential breaches of the CRA.
18. During the visit, Mr Bartkowiak explained to Ms Forrest that various changes had taken place with the companies operating from the premises, and that H4U acted as managing agent for landlords. He said H4U had since written to all tenants to explain that maintenance issues should be referred to H4U, and all rents paid direct to landlords. Mr Bartkowiak handed over to Ms Forrest a sample letter to tenants as evidence of this arrangement.
19. Because Ms Forrest could not find a list of fees displayed on the premises, nor could Mr Bartkowiak direct her to one, she handed him a Notice of Intent dated 13 March 2019 in relation to H4U's failure to publicise its fees. This notice gave H4U 28 days within which to make representations to the Council.
20. On 15 April 2019, the Council – having received no representations from H4U– convened a panel to decide whether to issue a Final Notice. On the basis of Ms Forrest's report, the Council decided to issue a Final Notice, imposing a maximum financial penalty of £5,000.
21. The reasons for this decision were set out in the Council's covering letter dated 1 May 2019. Ms Forrest, again accompanied by Mr Morris, took this with her when visiting the premises that day to hand over the Final Notice of the same date.
22. During that visit, Mr Bartkowiak said that he had sent representations to the Council by email. He tried resending the email in Ms Forrest's presence but it bounced back as undeliverable. Ms Forrest concluded that the original email

might also have been undeliverable. She told Mr Bartkowiak that she would report this to the Council but as she had been instructed to issue the Final Notice on 1 May 2019, she went ahead and issued it.

23. On Ms Forrest's return to the office, she emailed Nicole Terrieux, the Council's Consumer Protection Manager, to explain what had happened with Mr Bartkowiak's emailed representations. She recommended that the Final Notice dated 1 May 2019 be withdrawn, and H4U permitted to submit representations.
24. This was duly agreed. Mr Bartkowiak's re-submitted his representations the next day, and a new Council panel convened to determine the matter afresh on 15 May 2019. That panel considered Mr Bartkowiak's representations which included several photographs taken at the premises of a notice relating to fees, and laminated PRS and MyDeposit certificates. Ms Forrest said that none of these had been present when the Notice of Intent had been issued on 13 March 2019.
25. The 15 May panel decided to withdraw the Final Notice dated 1 May 2019 but concluded that, despite Mr Bartkowiak's representations, it was appropriate to issue a fresh Final Notice.
26. A new Final Notice was duly sent by email to H4U on 6 June 2019 with a covering letter of the same date explaining the decision. The letter stated that the Council had noted that H4U had joined PRS after the Council's first visit on 20 February 2019, but there was still no list of fees displayed at H4U's premises when the Council's officers revisited on 13 March 2019. Photographs which H4U had since sent the Council showed a notice about fees and certificates of scheme memberships but these had been displayed at the premises only after the Council's second visit on 13 March 2019, so the Council had decided to issue a Final Notice for the breaches of the CRA found on that date.

### ***Grounds of Appeal, and Grounds of Opposition***

27. Mr Bartkowiak's Notice of Appeal dated 10 June 2019 sets out Grounds of Appeal, in summary that:

- a. H4U is a small business which is not a letting agent but manages properties.
- b. All rental payments are made direct to the properties' landlords, and H4U charges landlords a commission for its management services.
- c. Communication with tenants is via email, not by visits to the office.
- d. Emails with tenants show that H4U is registered with PRS and MyDeposit.
- e. H4U has never charged tenants any administrative or other fees.
- f. Since the Council's first visit in February 2019, H4U had joined PRS, and displayed a notice in the premises stating "No agent fee charges".
- g. All customers coming to the office are informed that there is no fee charged.

28. The Council's Grounds of Opposition dated 16 July 2019 are in summary:

- a. The issue is whether or not H4U as a matter of fact carries out letting agency work as defined in s.86 CRA.
- b. The arrangement for the collection of rent is irrelevant.
- c. H4U has provided no evidence that the office is not a branch: it is open to the public, its unlocked door and waiting area give the impression of a physical branch; and the assertion in H4U's appeal notice about 'all customers coming to the office' is inconsistent with the claim that tenants do not come to the office.
- d. The legal obligation to publicise fees (pursuant to s.83 CRA) goes beyond the requirement to publish fees: it includes the requirement to state the business's membership of redress and client money protection schemes. There is no exemption from any of these requirements just because no fees are actually being charged.
- e. Although H4U joined PRS after the Council's first visit, information required to be displayed by CRA was not present in the branch during the follow up visit on 13 March 2019.
- f. The Final Notice was therefore properly issued and none of the statutory grounds of appeal has been made out.

### *Submissions*

29. In addition to the Grounds of Appeal, Mr Bartkowiak's written and oral submissions were, in summary:

- a. H4U's clients are landlords, not tenants.
- b. People do not come to H4U's offices looking for properties to rent or, if they do, they are redirected to estate agents who can help them.
- c. H4U does not advertise properties, arrange viewings etc: it manages properties for landlords.
- d. Correspondence with tenants makes clear that no administrative or other fees are charged to them.
- e. Most of the properties H4U manages are council or housing association properties, not privately rented: hence deposits, references etc. are not required.
- f. H4U invoices landlords for commission (a percentage of gross rents landlords receive) but does not charge landlords fees per item.
- g. The Tenancy Agreement at p.74 of the bundle which shows H4U as landlord was a mistake: in fact the landlord is Mr Patel who owns the property and is also company secretary of H4U. H4U just manages the property. The documentation showing H4U as the landlord rather than managing agent has now been corrected.
- h. All tenants of properties H4U manages have now been sent letters explaining that H4U only provides maintenance services.
- i. There are no charges to tenants, let alone 'hidden' charges.
- j. H4U is a member of MyDeposits because it owns some properties which it lets privately.
- k. H4U is a small 'side' business which Mr Bartkowiak runs alongside his day-job as office manager for AP Assets and South London Estates which also operate from the premises.

30. For the Council, Ms Forrest responded as follows:

- a. The CRA imposes duties to display fees so that no tenant is caught out by unexpected fees, or is at risk of being double-charged.

- b. The Council disputes Mr Bartkowiak's claim that H4U does not charge fees. For example, the Council referred to the Tenancy Agreement at p.74 of the bundle which shows that H4U granted that tenancy, and secured the tenant's deposit. The Council argues this amounts to letting agency work.
- c. As a matter of fact, and admitted by H4U's notice of appeal, customers do visit the premises. Even if this is only occasional and there is little footfall, it is evidence of H4U's premises being a branch rather than merely an office.
- d. The PRS sticker on the door to the street is another indication that H4U's premises are a branch not just an office.
- e. If, as the Council argues, H4U operates as a letting agent, the list of fees should be visible straightaway. In this case, they were not – at least not on 13 March 2019 when the Notice of Intent was issued.
- f. It is important that tenants know who to complain to, and H4U's documentation is confusing in that respect.
- g. Other landlords' letters and invoices to landlords which Mr Bartkowiak had produced do not demonstrate that H4U was not (also) carrying out the work of a letting agent at the time of the breach in March 2019.
- h. The Landlord-Agent agreement at p.29 of the Appellant's Bundle actually states in the introduction that H4U provides 'property letting and management services' to landlords. Amongst other things, that document also refers to a Holding Fee (which amounts to a fee chargeable to tenants if they do not proceed with a letting). This too is evidence of H4U acting as a letting agent, and charging fees to tenants.

31. In reply, Mr Bartkowiak argued:

- a. Whatever had been done in the past, H4U has tried to comply with CRA.



- b. The documentation to which the Council refers has been corrected: in practice, H4U has never held money for landlords or tenants, nor ever charged tenants fees.
- c. While H4U could have carried out estate agency services, in fact it only manages properties for landlords.
- d. In practical terms, managing properties means H4U visits landlords' properties, deals with maintenance issues, checks legal issues such as functioning smoke alarms and arranges access for contractors etc. For all this, H4U charges landlords a percentage commission from gross rents they receive direct from tenants. Tenants do not pay anything for these services.
- e. The Council's £5,000 fine is very high, more than the profit of H4U's business: if the Tribunal upholds a financial penalty, he would like to pay by instalments.
- f. In future, H4U will contact the Council for advice on its business.

***Discussion***

- 32. The principal issue in this case is whether H4U in fact operates as a letting agent. If, as the Council argues, H4U *is* a letting agent, it must comply with s.83 CRA and display on its premises a list of fees including a statement whether it is a member of a client money protection scheme.
- 33. The effect of Mr Bartkowiak's argument is that the Council made errors of fact and law in issuing the Final Notice because H4U is not a letting agent, but a management agent.
- 34. In reaching a decision in this case, I have considered all the oral submissions at the hearing, and also the written submissions, evidence and other documentation contained in the hearing bundles produced by the Council and H4U, and evidence produced after the hearing in response to my request for such.
- 35. I conclude on the basis of the evidence before me and on the balance of probabilities that H4U is not a letting agent. The principal evidence the Council relies on to argue otherwise is certain of the documentation produced by H4U - such as a Tenancy Agreement, and Landlord-Agent Agreement included in the

Bundles. Other circumstantial evidence relied on by the Council is the appearance of H4U's premises, including a waiting area with sofas, and the PRS logo sticker on its front door which is open to the public.

36. Against this, there is no evidence that any particulars of properties were displayed at the premises, as one would certainly expect of a letting agent; nor that Mr Bartkowiak had any intention of acting as a letting agent or ever received any payment from tenants; nor that prospective tenants do or did in fact visit the premises for the purpose of finding properties to rent.
37. I find Mr Bartkowiak a credible witness and I am satisfied by his explanation that the Tenancy Agreement and Landlord-Agent Agreement were standard form documentation he used without paying careful attention to their terms. This may have been casual, careless or unprofessional on Mr Bartkowiak's part but I do not find that he was dishonest when he told the Tribunal that, whatever the terms of that documentation, H4U had never intended to - nor indeed did in fact - charge tenants any fees.
38. I therefore consider that the principal mischief at which the CRA provisions are directed were not engaged, namely the charging of unexpected, excessive or undisclosed fees to tenants.
39. I accept Mr Bartkowiak's claim that many of the lettings by the landlords whose properties H4U manages, involve no tenants' deposits, references or fees because the properties comprise social housing or housing association stock.
40. I also accept Mr Bartkowiak's explanation that H4U registered with MyDeposits for the properties it *owned* rather than let on behalf of others; signed up for PRS in response to the Council's advice; and put up a fees notice in H4U's premises for the same reason. I do not infer that, by taking these steps, Mr Bartkowiak was admitting that H4U is engaged in letting agency work, or that H4U holds money on behalf of either landlords or tenants.
41. I have paid careful attention to the general appearance of the premises, of which Mr Bartkowiak sent photographs to illustrate – and which the Council officers agreed accurately represented the layout and appearance of the premises at the date of the Final Notice. I observe particularly the absence of

any property particulars displayed anywhere on the premises, and I accept Mr Bartkowiak's explanation that the waiting area and sofas at the premises were for the use of visiting landlords and maintenance contractors, not prospective tenants.

42. If I am wrong to accept Mr Bartkowiak's various explanations, and H4U is – contrary to my findings – in fact a letting agent so that in law the CRA duties apply to H4U's business, it is open to the Council to revisit the premises at some future date and, depending on the evidence available at that time, to issue a fresh Notice of Intent and Final Notice.

***Decision***

43. In the light of my findings of fact that H4U is not a letting agent, as a matter of law the CRA duties applicable to letting agents do not apply to H4U and thus the Final Notice dated 6 June 2019 was wrongly issued.
44. This appeal is therefore allowed, and I quash the Final Notice accordingly.

***Closing observations***

45. I wish to stress that no criticism of the Council is intended or to be inferred by this decision. The Council was evidently faced with a confusing situation when first visiting the premises, and when reviewing H4U's documentation since. Based on this, it is understandable that the Council reached the decision it did to issue a Notice of Intent and then a Final Notice. However, Mr Bartkowiak's oral submissions and subsequently provided photographic evidence have resulted in my findings of fact and hence the decision set out above.

**(Signed)**

**Dated: 04 November 2019**

**Alexandra Marks CBE**

**Sitting as a First-tier Tribunal Judge**

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