

**PRIME LODGE ESTATES**

and

**LONDON BOROUGH OF BARKING & DAGENHAM**

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**DECISION**

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**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal refuses the appeal.

**REASONS OF THE TRIBUNAL:**

**Introduction**

1. This decision relates to an appeal brought under Schedule 9 of the Consumer Rights Act 2015. It is an appeal against a Final Notice Ref T/001183/CGE08053 issued by the London Borough of Barking & Dagenham (“the Council”), in which the Council imposed a financial penalty of £10,000 on the Appellant company for operating as a letting agent without being a member of an approved redress scheme.

**Legislation**

2. 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

(5) 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),

(6) 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

(7) 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.

3. 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.

4. 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.

5. 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.

6. 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)).
7. 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.
8. 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:
  - (1) the decision to impose a financial penalty was based on an error of fact,
  - (2) the decision was wrong in law,
  - (3) the amount of the financial penalty is unreasonable, or

(4) the decision was unreasonable for any other reason.

### **Final Notice**

9. In the present case the Final Notice dated 15 May 2017, addressed to AMBI Investments T/A Primelodge Estates, stated that the Council believed that on 3 March 2017 the appellant had committed breaches of its duty to publicise fees, fee information and details of any client money protection scheme on its website and in its premises contrary to section 83(3), (4) and (6) of the 2015 Act.

### **The Appeal**

10. The Appellant appealed to the Tribunal on 16 June 2017, alleging that the decision to impose the penalty was based on an error in fact as the Appellant Company had published a list of fees with advice from a Trading Standards Officer, and was a member of a redress scheme. They explained that they were not aware that it was a requirement to publish fees or redress scheme details on their website, and have made arrangements to address this oversight. They also alleged that the amount is unreasonable as it **may** (our emphasis) put their company out of business.

### **Council's Response**

11. The Council explained that the Appellant company was provided with comprehensive written advice in person on 3 January 2017 which included reference to the need for publication on its website. Further written and oral guidance was given following a visit on 24 February 2017. An inspection on 2 March 2017 discovered displayed an unsatisfactory notice, which did not sufficiently detail the breakdown of fees or statement of membership of a Redress scheme. This was communicated to the individual present.
12. The Council also noted that two businesses with different redress scheme memberships operate from the same premises, and Prime Lodge Estates is operated by a different company to AMBI Investments. To date the Appellant's website does not list details of fees or redress scheme membership. The Council also noted that, according to Companies House, the Appellant Company's tangible assets are listed as **£452,745** (our emphasis) as of June 2016.

## **WITNESS STATEMENTS**

### **Cenred Elworthy – Principal Trading Standards Officer**

13. Mr Elworthy explained that in December 2016, the Council commenced a project designed to encourage consistency amongst businesses through membership of Buy with Confidence and Primary Authority schemes, and enforce ss.83-88 of the 2015 Act. He delivered a letter with guidance documents regarding these duties to AMBI Investments Ltd T/A Primelodge Estates on 3 January 2017.
14. This letter was followed up by a visit on 24 February, when Mr Elworthy spoke to the manager, Mr Arshad Fazal. He noted that there was no sign listing fees or any declaration of membership of either a client money protection scheme or redress scheme, and took photographs of the displayed signage. There were two separate signs related to redress schemes, and Mr Fazal stated that two businesses operate from the same premises with each being signed up to a different redress scheme. He assured Mr Elworthy that the signage would be rectified by the end of the day.
15. On 2 March, Mr Elworthy visited the premises again, and described a sign present that was “poorly printed [and] did not include a breakdown of fees or details of redress scheme membership”. He photographed this sign and exhibited it to his statement. Between 3 and 8 March Mr Elworthy accessed the Appellant's website and took screenshots of the website, showing no reference to fees on the site.
16. On 16 March, Mr Elworthy served a Notice of Intent on Mr Fazal, and noted that the unsatisfactory sign was still on display. Mr Fazad emailed the Council with a draft notice to be displayed and asked for the Council's approval. Mr Elworthy made some suggestions but reiterated that Mr Fazal had the right to make representations about the breaches and penalty. Nothing further was forthcoming, and on 10 May the Council's review panel supported the issuing of one £5,000 penalty for lack of fee breakdown and one £5,000 penalty for lack of indication of redress scheme membership. The Final Notice was delivered on 15 May 2017. Mr Elworthy also exhibited a copy of AMBI Investments Ltd abbreviated accounts dated 30 June 2016.
17. The Tribunal has considered the papers in this appeal and noted the evidence provided including the witness statement of Cenred Elworthy dated 4 July 2017.
18. The Tribunal have also considered the grounds of opposition and the Response provided in support of the decision to issue a notice in this case. The Tribunal accepts

and adopts the reasoning in the decision and accepts it was not made on an error of law or fact.

19. This Tribunal also accepts the penalty, in the circumstances is reasonable. The Tribunal is not satisfied that the Appellant has provided any or adequate mitigating circumstances or other evidence to justify a reduction in the penalty imposed.

Brian Kennedy QC

10 November 2017.

Promulgation date: 15 November 2017