



NCN: [2024] UKFTT 001043 (GRC)

PR/2023/0087/CMP

IN THE FIRST TIER TRIBUNAL

(GENERAL REGULATORY CHAMBER)

Between:

JEREMY JOHN DELL

Appellant:

and

SHROPSHIRE COUNCIL

Respondent:

DECISION

Tribunal: Brian Kennedy KC.

Date of Hearing: 18 October 2023.

Decision: The Tribunal allows the Appeal and reduces the fine to £250.00.

REASONS

Introduction:

1. This decision relates to an appeal dated 09 September 2023 and brought under Schedule 9 of the Consumer Rights Act 2015 ('the 2015 Act'). The appeal is against a Final Notice (Ref: 23/00132/ENFORC) issued by Shropshire Council and dated 19 October 2023 in which the Council imposed a financial penalty of £1,925.00 on the Appellant company for a Breach of Duty under Regulation 4 of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme Etc.)

Regulations 2019 (“CMPSR”) for failing to comply with your duty as a letting agent to publish your certificate with a client money protections scheme on your website while undertaking property management or letting agency work.

2. The issues between the parties are not in dispute and they have agreed that the appeal is to be decided on the papers. The Tribunal apologise for the delay in promulgating this decision, but the matter was detained due to an oversight on my behalf.

The Law:

3. Regulation 4(c) CMPSR requires a property agent to publish a copy of its client money protection certificate on its website;
4. Section 83(6) Consumer Rights Act 2015 (CRA) requires letting agents holding client money to publish with the list of fees, a statement on its website indicating that the agent is a member of a client money protection scheme, giving the name of that scheme.
5. The Appellant’s website was inspected by the Respondent on or about 2 May 2023 and took a video recording on 16 June 2023. The Appellant was engaging in letting agent work but failed to comply with the above requirements on its website, in that it did not: publish a copy of its client money protection scheme membership certificate.
6. As a result of the above stated breaches, a notice of intent was served on the Appellant. The notices stated that the Respondent intended to impose a financial penalty of £3750.
7. Representations were received from the Appellant on 30 June and 14 July 2023. The Respondent considered these representations and reduced the financial penalties to a fine of £1,925 for the breach of regulation 4 CMPSR, and failing to publish the agent’s CMP certificate on their website.

8. The factors considered by the Respondent when reducing the penalties are set out fully in the letter accompanying the Final Notice included the fact that the breaches were rectified quickly following the notices of intent.

The Appeal:

9. The Appellant invites the tribunal to reduce the penalties. The Appellant makes the following submissions:
 - a. The Appellant states they had been a member of RICS since 1977 and they state that they were fully aware of their legal obligations under the Regulations;
 - b. They state that they did not receive the general advice letter that was sent by the Respondent in December 2022;
 - c. The certificate was immediately uploaded to the website the same day they received the Notice of Intent;
 - d. The Appellants state that in their view, section 4 of CMPSR is to ensure that all letting agents are regulated and they have been regulated since 1982, which was many years before the legislation came into force.
 - e. They state that they have fully complied with the legislation, except for displaying their CMP certificate on their website; however, they had published the fact that they are a member of a CMP scheme on their website.
 - f. The Appellant refers to the Statutory Guidance in relation to CMPSR, and states that they have never misappropriated money, the clients' money account is balanced every month and audited for compliance every 12 months by an accountant.
 - g. They further feel that the fine is not proportionate for not having a CMP certificate displayed on their website and that it is disproportionate to the turnover of the business. They are a very small business and do not manage many properties.
 - h. They further suggest that the £1925 penalty imposed by Shropshire Council is of an arbitrary amount.
 - i. The appellant has stated that he feels the breach is of low culpability and should be reduced to £250.

Response of the Council:

- 10.** The Appellant does not deny being in breach of Regulation 4 CMPSR at the material time, accordingly the Respondent was entitled to impose a financial penalty.
- a. The Appellant is a professional entity and is expected to be aware of and to comply with all requirements imposed on it by law. Furthermore, they state that they were aware of their legal obligations at the time the Notice of Intent was issued. The Council did send the Appellant a general advice letter on 21 December 2022; however, it is not a requirement for the Council to issue advice or warnings prior to issuing a penalty;
 - b. The requirements are not new. The CMPSR came into force in April 2019.
 - c. There is no evidence to suggest that the amount of the financial penalties will cause the Appellant to vacate the premises or to cease trading. The potential financial impact of a penalty was not raised by the Appellant during the representation period.
 - d. The Respondent took into account the fact that the certificate was uploaded to their website very quickly; however, simply rectifying a breach following on from the Notice of Intent being served, does not negate the penalty.
 - e. When the Respondent received the representations from the Appellant, the culpability was considered to be high, due to the fact that they had been advised and had not taken any action to rectify the breach. Their appeal states that they did not receive this letter; however, they do confirm that they were aware of the legislation and therefore their culpability is still regarded as high. Furthermore, the Appellant has been in business for over 30 years, therefore, they should be fully conversant with their legal obligations as property agents.
 - f. Following on from these representations the Respondent reduced the level of harm to low as the agent's website had the RICS logo on it. However, the purpose of regulation 4 of CMPSR is intended to provide landlords and tenants confidence that the money taken on their behalf will be protected. When an agent does not publish their CMP

certificate this is sometimes and indication that CMP is not in fact in place, or that the agent's CMP membership has actually expired.

11. The Appellant set out extensive and helpful mitigating factors in an exchange with the Respondents on 25 January 2024 (see Pages A66 to A72 of the hearing bundle) which included but was not exclusive to the following submissions:
- a. The actual amount levied in any particular breach should be fair and proportionate reflecting the severity of the breach as well as taking into account the agent's previous record of non-compliance.
 - b. Mitigating factors that should be taken into consideration include; Co-operation with the investigation and no previous breaches.
 - c. The Appellant has consistently denied he received the general advice letter of December 2022.
 - d. The Appellant are regulated by the R. I.C.S. and have been since 1982 (42 years in business) and nothing since 2019 when the legislation was introduced.
 - e. The Appellant has never denied the mistake which he has always maintained was an oversight and his certificate was uploaded within 30 minutes of being made aware.
 - f. He has at all times fully co-operated with the investigation and at no time since 1982 has any client's money been misappropriated nor has the firm ever received any complaints from the public,
 - g. The proposed penalty is 20% of the management income of £10,000 and would have a serious financial impact.

 - h. The Company display and had at the material time displayed more than just membership of the R. the following statement: I.C.S. – they **displayed "J J Dell & Co. are registered with the Property Ombudsman Redress Scheme. All** Clients are registered with R.I.C.S. Clients' Money Protection Scheme."
 - i. Culpability was reduced by the Respondents from high to low
 - j. The Respondent have failed to take into account the role of the R.I.C.S. and the Appellants long membership but the proposed reduction

does not fairly or properly reflect that nor the long and unblemished record of the Appellant Company.

- k. All Tenants deposits are registered with the Tenant Protection scheme.
- l. There is and never has been any harm caused to Tenants or Landlords
- m. The principal of the firm is 72 years of age, in good health and although the market is declining on the high Street, and this business is low in numbers of clients compared to earlier years. The Company has never had any trouble or complaints or breaches of statutory or other legal provisions.

12. The Tribunal notes further grounds of appeal but considers those above sufficient for our findings herein.

13. The Tribunal accepts that the imposition of financial penalties under the CMPSR serve not only to deter property agents from repeating breaches, but also to deter other agents from committing similar ones. That principle is reflected in the Statutory Guidance, which also states that penalties should be set at a high enough level to ensure that they have a real economic impact on the agent and demonstrate the consequences of not complying with the legal obligations. In all the circumstances the Tribunal regards this offence as one of Low culpability under Harm category 3 with a fine where the Starting point in Appendix 9 (as provided in the Guidance) starts at £250.00.

Tribunal Findings:

14. The Tribunal has been provided with a comprehensive and helpful witness statement in support of the Respondents case from Alexandra Cosgrove dated 8 December 2024 and in fairness the Respondent does not challenge the Appellants bona fides. However, a deterrent effect can and is achieved even by the lowest level of fine envisaged and demonstrated in Appendix 9

15. On consideration of all the material evidence and representations the Tribunal finds that the grounds of appeal, (which are restricted to

mitigation) to be taken into account have reasonably, fairly and properly been presented by the Appellant herein.

16. The Appellant could hardly have established more by way of mitigating factors and has never denied culpability. The Appellant has been completely co-operative and repentant and the minimum fine will not only act as a deterrent but also demonstrate that fairness and recognition of good practice generally should be acknowledged.

17. Accordingly, the appeal, which is limited to submissions to have the penalty reduced to £250.00 is allowed,

Brian Kennedy KC

18 October 2024.