



Neutral citation number: [2024] UKFTT 1133 (GRC)

Case Reference: **FT/SL/2024/0046**

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

**Heard in Chambers on the papers**

**Decision given on 18<sup>th</sup> December 2024**

**Before**

**HHJ DAVID DIXON**

**Between**

**MARTIN BROOKES LIMITED**

**Applicants**

**- and -**

**LONDON BOROUGH OF ENFIELD**

**Respondent**

**Decision:** Appeal dismissed and penalty upheld.

## REASONS

### Background

1. The Respondent purports that the Appellants is a letting agent. The Respondent is the enforcement authority which served a Penalty Notice on the Appellant on 26<sup>th</sup> April 2024. A Penalty Notice imposed a financial penalty for breaching the requirement to be a member of a Client Money Protection Scheme, and a penalty of £7,500 was imposed.
2. The Appeal to the Tribunal was dated 29<sup>th</sup> April 2024.
3. The bundle supplied consisted of 171 pages.
4. In simple terms the Appellant argues that it has proudly served the community for a number of years; it signed up with PropertyMark in 2017 before it was a requirement, and between 2017 and March 2023 were covered by the necessary safeguards. However, there was an error made and the CMP protection lapsed. When this was discovered efforts were made to re-register but this took longer than anticipated. However, the Appellant stresses they were trying to comply. They also assert that they are under a degree of financial hardship and suggest that the fine imposed will close the business. A letter from an accountant purports to support the latter assertion.
5. The Appellant seeks the penalty be cancelled.

### Determination

6. This appeal has been determined on the papers. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered all the evidence and submissions made by both parties.

### Evidence

7. The Respondent has very helpfully provided a Response to the Appeal document. The document is extremely helpful and the Respondent is thanked by the Tribunal for the assistance provided to see the issues in this appeal.
8. In summary the Respondent looked at the Appellant's website on 19<sup>th</sup> January 2024 and noticed that details of CMP membership were provided. Checks were made of the provider that revealed that cover was no longer being provided. Other providers also confirmed that the Appellant was not a member of any registered scheme. A Notice of Intent was drafted the following day indicating a provisional penalty of £20,000 for failing to be a member of an appropriate scheme.
9. On 22<sup>nd</sup> February 2024 representations were received from the Appellant, and then after considering the same the Respondent decreased the penalty to £7,500. The

Respondent has in effect used the matrix within the London Lettings Enforcement Policy.

#### Law

10. The requirement to belong to a client money protection scheme under the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc) Regulations 2019, reads:

*Reg 3.— (1) A property agent who holds client money must be a member of an approved or designated client money protection scheme.*

*(2) The property agent must ensure that the membership obtained results in a level of compensation being available which is no less than the maximum amount of client money that the agent may from time to time hold.*

11. For breaching Regulation 3 a financial penalty, that “must not exceed £30,000,” Regulation 6(2)(b), is possible. Such a penalty may be imposed where the relevant local authority is “satisfied beyond reasonable doubt” that a breach has occurred.
12. Schedule 9 paragraph 5 to the 2015 Act 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. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.

#### Determination

13. The Appellant argues that it has a strong history of compliance, that it takes its responsibilities seriously; that this was an unfortunate error not a deliberate attempt to avoid compliance; that every effort to regain compliance was made, but it simply took time; and that the level of fine is simply too high for a business in financial difficulties.
14. The Respondent counters the aforesaid saying that there is an admitted breach; the Appellant is under a duty to be a member of a CMP and knows that; there is insufficient evidence that the penalty will cause real financial difficulties; in real terms the Appellant was not covered under CMP membership for nearly a year; whilst compliance is notable it doesn't negate the necessity of a penalty; and that the penalty imposed is a lot lower than some imposed in other cases.
15. Looking at the London Letting document the Respondent put the Appellant into the middle tier of such businesses as a starting point, and without any details from the

Appellant that seems entirely reasonable. Such a starting position fixed the penalty starting point at £20,000.

16. Upon receipt of the review request/appeal details the Respondent drastically reduced that starting point to £7,500, taking account of cooperation, alleged (but unsupported) financial hardship, previous compliance etc. There can't be any complaint that the Respondent failed to pay regard to the mitigating features here.
17. The primary issue it seems to me, the rest being appropriately balanced by the reduction, is whether the Appellant can pay the penalty levied. Whilst a penalty must always be of such regard that a business can't just put it to one side, it shouldn't normally be such that it causes insurmountable difficulties for a business.
18. Here. a letter from an accountant saying in effect we think the Appellant will struggle is not enough to show financial hardship. The Appellant has failed to provide anything concrete to the Tribunal or the Respondent to show hardship. Words in these circumstances count for little. A mere assertion without more is never going to persuade a Tribunal that something is so. Accordingly, the Tribunal cannot accept the assertion that the penalty will cause real issues. The burden was on the Appellant to prove its case and it simply hasn't here.
19. Looking at the sum involved, all of the other factors highlighted within the bundle, the Tribunal can not find that the sum of £7,500 is anything other than entirely appropriate. There is nothing unreasonable about it and as a result there is no arguable appeal against the sum.
20. As a result appeal is dismissed and the penalty is upheld

**(Signed)**  
**HHJ David Dixon**  
**Judge of the First Tier**

**Dated: 17<sup>th</sup> December 2024**