



NCN: [2024] UKFTT 001164 (GRC)

Appeal Number: FT/SL/2024/0055

**First-Tier Tribunal
(General Regulatory Chamber)**

Between:

DAVIS ESTATE AGENTS LIMITED

Appellant:

and

THE LONDON BOROUGH OF ENFIELD

Respondent:

Date of Hearing: 19 December 2024.

Before: Brian Kennedy KC

Hearing Type: On the papers.

In a Matter under the Consumer Rights Act 2015 - Chapter 3 Ss. 83 -88 Financial Penalty.

Result: The Tribunal dismiss the appeal.

Date of Decision - delivered on: 19 December 2024.

Decision Sent on: 03 January 2025

REASONS

Introduction:

1. This decision relates to an appeal (dated 22 June 2024) against the decision of the London Borough of Enfield Information (“the Respondent”) contained in a Penalty Notice (“PN”) dated 26 April 2024 (WK/223091633), under the Consumer Rights Act 2015, Part 3, Chapter 3₁ Section 83-88 (Duty of Letting Agents to Publicise Fees etc.)

Background to this Appeal:

2. Full details of the background to this appeal, are set out in the PN but in essence in January 2024 an enforcement officer, of the Respondent checked the portal: On the Market at: www.onthemarket.com/agents/branch/davis-estate-agents-london/, where the Appellant advertised properties to let and it was found that Davis Estate Agent Limited had failed to comply with the requirements of the duty imposed by Section 83(3C) of the Consumer Rights Act 2015 as follows:
 - A failure to publish your relevant fees on a third-party website (S83(3C))
 - A failure to publish with the list of fees a statement that indicates that you are a member of a client money protection (CMP) scheme and giving the name of that scheme (s83.6)
3. The Respondent therefore issued a Notice of Intent on the 12th of February 2024 to impose a monetary penalty totalling £5,000, for failing to display the required information on a third-party website.
4. The details of the breach therein informed the Appellant that an authorised officer of the London Borough of Enfield Trading Standards, observed that the Respondent had committed a breach of section 83(3C) of the Consumer Rights Act 2015, namely that as a letting agent, engaging in letting agency or property management work, the Respondent had failed to comply with the duty to display or publish required information on a third-party website in accordance with section 83(3C) of the Act in relation to properties (dwelling-houses) located in England.

The Legal Framework:

5. Section 83 of the Consumer Rights Act 2015 requires letting agents to publicise details of relevant fees at its business premises and on its website. It came into force in May 2015.
6. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
7. Section 83 (6) of the Consumer Rights Act 2015 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 of whether it is a member of a client money protection scheme. It came into force in May 2015.
8. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
9. Schedule 9 paragraph 5 to the 2015 Act provides that a letting agent upon whom a financial penalty is imposed may appeal to this 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.
10. Other letting agent duties in respect of Redress Schemes are not relevant for the purposes of this appeal or the Tribunal decision.

The Appeal:

11. The Appellant wrote on 26 February 2024 to challenge the PN on a number of issues which included the following:

a) The Appellant was not aware that it was compulsory to display the accreditations on a site which does not belong solely to the Respondent. When they signed up for the website this information was not provided to them by the company. The Appellant argues that the obligation partially lies with the 3rd party, and the 3rd party should have been up to date with digital legislations considering that they are in the digital industry.

b) The Respondent has failed to comply with its own enforcement policy because according to paragraph 5.1 (stage 2; informal action) an informal letter of advice should have been issued to my company prior to serving the 'Notice of Intent to impose a financial penalty'

c) The Appellant argues it has not been provided with adequate or sufficient reasons as to why they have been issued a 'Formal Warning' prior to receiving an Informal Warning or guidance to resolve the issue.

d) The Respondent has failed to comply with the Secretary of States Guidance (issued by The Ministry of Housing, Communities & Local Government, dated April 2018) without reasonable excuse as according to paragraphs 3.4 and 3.5 of the Guidance, 'an assessment of the letting agents or landlords' income and factors should be taken into consideration when determining an appropriate level of civil penalty fine.' There is no sufficient reason on the Notice of Intent provided by the Respondent as to how a fine of £5,000 is decided appropriate for my business without considering the Respondents income factors.

12. In response the Respondents wrote to the Appellant on 26 April 2024 indicating they had revisited the legislation and having had due regard to the guidance for local authorities issued by the Department for Communities and Local Government (the "Guidance"), as well as their own enforcement. The Respondent confirmed they had considered that Letting agents, as professionals, are expected to be aware of the law, as it directly impacts upon their business/industry and;

- (i) The Department for Communities and Local Government Guidance (DCLG) (now known as the Department for Levelling Up, Housing and Communities (DLUHC), states that, "*in the early*

days of the requirement coming into force, lack of awareness can be considered'. However, this legislation came into force on the 27 May 2015 and was updated to include all third-party websites in 2019.

- (ii) Under "*the Guidance*" the expectation is that a £5,000 fine (per breach) should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.
- (iii) In the Appellants' representations they have referred to the Council's 'Private Rented Sector Enforcement' Policy' dated 2020 and have made several observations regarding this policy in relation to these specific penalties. The Private Rented Sector Enforcement Policy solely relates to the enforcement work that is carried out by our Private Sector Housing Team. In the introduction of that policy, it states that 'the policy outlines the extent to which the Council will intervene to make use of the powers in Parts 1 to 4 of the Housing Act 2004 and Housing Act 1985'. The penalty that has been issued against the Appellant company, has been issued by the Trading Standards department, who are not included in this policy and the penalty is not related to Housing Act offences or breaches; therefore, this policy does not have to be considered when issuing these penalties. Furthermore, the policy relates to prosecutions, whereas the Appellant have been issued with a civil penalty.
- (iv) The Appellant have also stated in their letter, that the Council should consider the agent's financial ability to pay the penalty when determining the level of the penalty; however, the Appellant had not supplied any financial information in their representations, such as accounts or bank statements, therefore these could not be considered.
- (v) The Respondent has taken into account the fact

that the Appellant are now compliant with the legislation and have uploaded the details of which the CMP the Appellant are a member of. The Respondent currently cannot check whether the fees would be published, as there are no properties to rent listed on the portal; however, simply rectifying a breach following on from the Notice of Intent does not negate the penalty.

- (vi) As previously stated by the Respondent, letting agents as professionals are expected to be aware of the law that applies to their business. It is not for Trading Standards to issue warnings or advise agents regarding the legislation that they need to comply with. Furthermore, it is not a legal requirement for the third-party websites and portals to make businesses aware of the legislation they need to comply with.
- (vii) Under "*the Guidance*" the expectation is that a £5,000 fine (per breach) should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.
- (viii) In the Appellants' representations they have referred to the Council's 'Private Rented Sector Enforcement' Policy' dated 2020 and have made several observations regarding this policy in relation to these specific penalties. The Private Rented Sector Enforcement Policy solely relates to the enforcement work that is carried out by our Private Sector Housing Team. In the introduction of that policy, it states that 'the policy outlines the extent to which the Council will intervene to make use of the powers in Parts 1 to 4 of the Housing Act 2004 and Housing Act 1985'. The penalty that has been issued against the Appellant company, has been issued by the Trading Standards department, who are not included in this policy and the penalty is not related to Housing Act offences or breaches; therefore, this policy does not have to be considered when issuing these penalties. Furthermore, the policy relates to prosecutions,

whereas the Appellant have been issued with a civil penalty.

- (ix) The Appellant have also stated in their letter, that the Council should consider the agent's financial ability to pay the penalty when determining the level of the penalty; however, the Appellant had not supplied any financial information in their representations, such as accounts or bank statements, therefore these could not be considered.
- (x) The Respondent has taken into account the fact that the Appellant are now compliant.

13. After careful consideration of the points mentioned above, the legislation, the guidance and all the relevant circumstances the Council therefore decided to reduce the penalty for not displaying the required information on a third-party website as set out in the Final Notice attached to £3,500.00 for failing to publish details of agent's relevant information on a third-party website.
14. The Appellant has produced to the Tribunal a witness statement from Mr Sonay Sahin, one of the Directors in the Respondent Company, dated 7 November 2024.
15. The witness statement alleges victimisation on several grounds none of which can be determined or clarified by this appeal and are not relevant to the material facts before this Tribunal. These are matters for another forum and indeed the witness indicates that other action is being pursued on that account.
16. The witness statement also indicates financial hardship and produces bank Statements which suggest use of an overdraft facility. The Appellant has also produced unaudited and unsigned account details which had not previously been produced.
17. It is noted that no specific material evidence of financial hardship was produced to the Respondent, and such evidence as has been produced to this Tribunal lacks material veracity and cannot be regarded as evidence of significant financial hardship.

18. On 14 June 2024, the Respondents have provided a response to the grounds of appeal, the veracity of which is noted and accepted by this Tribunal.

19. The Appellant does not deny the breach and fails to offer or cannot offer any substantive credible grounds for a further reduction of the standard fine from £5,000 to £3,500, which the Respondent has already made on review, and accordingly in all the above circumstances I am not satisfied the penalty revised of £3,500 is disproportionate or otherwise unreasonable

Brian Kennedy KC
Promulgated

19 December 2024.
03 January 2025.