



Neutral citation number: NCN [2024] UKFTT 00696 (GRC).

Case Reference: PR.2023.0068

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

**Heard by CVP**

**Heard on: 10 July 2024  
Decision given on: 30 July 2024**

**Before**

**DISTRICT JUDGE REBECCA WORTH  
(authorised to sit as a Tribunal Judge in the GRC)**

**Between**

**PROPERTY LINK (E17) LTD**

Appellant

**and**

**THE LONDON BOROUGH OF WALTHAM FOREST**

Respondent

**Representation:**

For the Appellant: Ms Shela Karim, Lay Representative

For the Respondent: Mr Fitzsimons of Counsel

**Decision:** The appeal is partly allowed,

**Varied Financial Penalty Notice:** the financial penalty amount in the original notice is varied to £3,000; all other terms of the Notice are confirmed.

**SUMMARY of REASONS**

*Summary of decision*

1. The breach is admitted by Property Link. I consider that, despite the reasons for the breach, it is appropriate to issue a penalty notice against Property Link.

2. To determine the appropriate amount of penalty, I apply the London Trading Standards' Guidance for imposition of a penalty for not being a member of a CMPS as follows:

STEP 1: Determine the starting point:

Property Link's turnover is less than £75,000, making the starting point £10,000.

STEP 2: Adjust starting point to reflect aggravating and mitigating features:

I find the following aggravating features:

An extended period of breach (i.e. never complied).

Potential harm caused to tenants and landlords.

I find the following mitigating features:

Property Link cooperated with the investigation, so far as they were able given Mr Chaudary's health issues.

They have a good reputation with no previous complaints.

There is an early admission and they are taking steps to join a CMPS; they have been unable to comply due to the requirement to have a "Client Account" and no bank agreeing to open one for them.

A fine may cause severe financial hardship or would be likely to put Property Link out of business.

From early 2023 the sole Director of Property Link has suffered serious medical conditions requiring urgent and intensive treatment which has been supported by medical evidence.

STEP 3: Consider other factors

Relevant factors in this case are deterrence totality (there is a separate appeal against a separate fine) and affordability issues.

3. Having started at £10,000 and applied the steps, I determine that the appropriate level of penalty is £3,000.
4. Whilst the payment terms remain unaltered, I actively encourage LB Waltham Forest to agree a reasonable payment plan with Property Link to enable them to pay the financial penalty in a reasonable timeframe and without undue hardship.

## **REASONS**

Key to abbreviations:

[ ]	denotes a page number in the Hearing Bundle, so [15] means page 15 of that Bundle
17 August Notice	the Final Notice issued on 17 August 2023
CMPS	Client Money Protection Scheme (or, if context requires, Schemes)
FPN	the Fixed Penalty Notice, dated 08 September 2023 with reference CMP/004878, which is the subject of this appeal
GRC Rules	the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended <sup>1</sup>
LB Waltham Forest	the London Borough of Waltham Forest (Respondent in this appeal)
Property Link	Property Link E17 Limited (Appellant in this appeal)
Regulations	the Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme, etc.) Regulations 2019/386

*Overview, evidence and hearing*

5. This is an appeal against an FPN issued under the Client Money Protection Scheme for Property Agents (Requirement to Belong to a Scheme, etc.) Regulations 2019/386. It was listed and heard alongside appeal number PR-2023-0069 which involves the same parties and a breach of a different regulatory requirement. I decided to issue separate decisions as I felt it enabled clearer explanation of my reasons.
6. The LB Waltham Forest issued the penalty, in the amount of £10,000 and specified the breach (see [17]):

*Details of Breach:*

*A failure to comply with the duty to belong to a client money protection scheme in accordance with Regulation 3 of the legislation.*

7. Property Link appealed to this Tribunal.
8. Each party was able to put their case in writing, pursuant to GRC Rules 22, 23 and 24. I was provided with a bundle, consisting of 303 pages.
9. I heard the appeal by CVP (Cloud Video Platform) on 10 July 2024. I had technical issues which delayed the start of the hearing; all parties were able to fully participate in the hearing.
10. Property Link had two persons involved in the hearing, Mr Chaudary who is the Director of the Company and Ms Karim who is his niece and assists with some matters. I considered it clearer to have one person speaking on behalf of Property Link and asked them to decide which of them it would be; they chose for Ms Karim to speak. I was clear that they were still both able to participate by Mr Chaudary speaking to Ms Karim to ensure that she covered all matters that he considered relevant.

<sup>1</sup> Available here: <https://www.gov.uk/government/publications/general-regulatory-chamber-tribunal-procedure-rules>

11. At the start of the hearing, I asked whether all relevant documents were in the 303-page bundle and parties agreed that it did contain all directly relevant documents. Ms Karim offered to send audited accounts for 2023 and Mr Fitzsimons explained that there was a later witness statement which was not in the bundle. I clarified that all relevant facts were agreed. Therefore, I decided not to hear evidence from witnesses, instead hearing submissions from parties<sup>2</sup>, meaning I did not need to see the additional witness statement. I did not consider that I needed to see the 2023 audited accounts, Ms Karim in any event informed me of the key information therein, namely Property Link’s profit for 2023.
12. I heard Ms Karim’s submissions first and then Mr Fitzsimons’. I then took a short break in proceedings to enable further instructions to be taken by Mr Fitzsimons and to enable Ms Karim and Mr Chaudary to speak with each other without any concern of being overheard. I then heard further submissions from both parties, giving Ms Karim (on behalf of the appellant) the “last word”. Ms Karim and Mr Fitzsimons each confirmed that they did not need to add anything to what I had heard. I then explained the likely timeframe for a decision being issued.
13. I am grateful to both Ms Karim and Mr Fitzsimons for their helpful submissions.
14. I was satisfied that the parties had a fair opportunity to present their case and that the hearing, despite being on CVP, was fair.

*The Law*

15. As far as is relevant, the Regulations provide:

**3 – Requirement to belong to a client money protection scheme**

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

**5 – Enforcement**

- (1) It is the duty of every local authority in England<sup>1</sup> to enforce the requirements of regulation 3 in its area.

.....

- (3) A local authority in England must have regard to any guidance given by the Secretary of State [or the lead enforcement authority (if not the Secretary of State)]<sup>6</sup> about the exercise of its functions under these Regulations.

**6 – Penalty for breach of the requirement to belong to a client money protection scheme**

- (1) Where a local authority in England is satisfied beyond reasonable doubt that a property agent has breached regulation 3, the authority may impose a financial penalty in respect of the breach.

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<sup>2</sup> The Tribunal decides what evidence it receives, see Rule 15 of the GRC Rules

- (2) The financial penalty—
  - (a) may be of such amount as the authority imposing it determines; but
  - (b) must not exceed £30,000.
- 16. There is a process which must be followed by the relevant local authority, this is found in Schedule 1 of the Regulations; there is no dispute that LB Waltham Forest followed the correct process in coming to the decision to issue the FPN in respect of Property Link’s breach.
- 17. Paragraph 5 of Schedule 1 to the Regulations gives a right of appeal:

**Schedule 1, paragraph 5 - Appeals**

- (1) A property agent on whom a final notice is served may appeal to the First-tier Tribunal against—
  - (a) the decision to impose the penalty; or
  - (b) the amount of the penalty.
- (2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was served.
- (3) If a property agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (4) An appeal under this paragraph—
  - (a) is to be a re-hearing of the local housing authority’s decision; but
  - (b) may be determined having regard to matters of which the authority was unaware.
- (5) On an appeal under this paragraph the First-tier Tribunal may quash, confirm or vary the final notice.
- (6) ...
- 18. This Tribunal’s attention was not drawn to any Upper Tribunal authority about this type of appeal. There is, however, useful case authority about other breaches of legislation which enables a local authority to issue financial penalties on persons dealing with landlords and tenants. The following principles can be distilled from those authorities,:
- 18.1. The overall purpose is to protect the consumer and a change of circumstances which benefit the consumer is to be considered before a Final Notice is issued. Also, the financial state of a company should be considered in assessing the appropriate penalty (*London Borough of Camden v F Ltd [2017] UKUT 349 (AAC)*).

- 18.2. Any maximum penalty should be reserved for the worst cases (*M & M Europe Ltd v London Borough of Newham [2018] UKUT 271 (AAC)*).
- 18.3. A starting point in any formal (or less formal) Guidance is a helpful starting point to adopt but not a legally binding statement of law or practice (*London Borough of Newham v Samson Estates Limited [2019] UKUT 110 (AAC)*).

Agreed facts

19. It is agreed:
- 19.1. LB Waltham Forest, via a Trading Standards Officer, formed the view that Property Link was not a member of a CMPS.
- 19.2. A Notice of Intent was issued on 04 May 2024 (see [221] to [222]) with an intended penalty amount of £30,000.
- 19.3. On 10 May 2023, LB Waltham Forest received a request for further time to make representations, further time (2-3 weeks) also being requested on 26 June 2023.
- 19.4. LB Waltham Forest emailed the Appellant on 03 July 2023 asking for representations and did not receive any response.
- 19.5. The 17 August Notice was issued with a penalty amount of £10,000.
- 19.6. On 20 and 21 August 2023 representations were received.
- 19.7. LB Waltham Forest withdrew the 17 August Notice and issued the FPN, referred to above, the penalty amount remaining as £10,000.
- 19.8. Property Link appealed to this Tribunal against the FPN.
- 19.9. Property Link was not at the time of the breach (and is currently not) a member of a CMPS.

Property Link's case

20. Property Link's position is that the penalty should be cancelled and/or varied and the following reasons are relied upon within the grounds of appeal [10] and supporting documents [34] to [101], additional representations/submissions [230-231] and submissions at the hearing:
- 20.1. To obtain membership of a CMPS, you need to have "everything ready", namely a Bank Letter confirming that you have a "Client Account" with a banking institution, your PI Certificate, your Redress Scheme Membership Certificate and your Deposit Scheme Membership Certificate/Details.
- 20.2. Property Link spoke with two different CMPS – Money Shield and Property Mark. Each told Property Link that they must have a Client Account before they could obtain membership of their scheme.

- 20.3. In 2020 and 2021 Property Link applied to NatWest (the bank they used for business accounts) for a Client Account. That application was refused in 2023 (no reason being given by NatWest for the delay and/or the refusal). From application to refusal, they had asked NatWest for updates.
- 20.4. In May 2023, Property Link made a further application to NatWest for a Client Account; that application has also been refused with no reason being given. They have an application now pending with Barclays.
- 20.5. As Property Link did not have a Client Account, they could not join a CMPS. This is not a deliberate act, the situation persists that they cannot join a CMPS without a Client Account, they do not have a Client Account, and, therefore, compliance with the regulatory requirement to belong to an CMPS was, and remains, impossible.
- 20.6. Mr Chaudary is the sole Director of Property Link and the company does not employ anyone to assist him. Any outside assistance is by way of informal family arrangement. Mr Chaudary is 67 years old a pensioner and partially disabled. He has health issues (they are extensively evidenced in the 303-page bundle, I do not set them out here in full). His health issues prevented him from being able to ensure that Property Link complied with the requirement of CMPS membership and prevented him from communication with LB Waltham Forest in advance of the issue of the 17 August FPN.
- 20.7. Due to email size limit, Property Link were unable provide LB Waltham Forest with audited accounts in advance of the FPN being issued; audited accounts for year 2022 were included as document in support of the appeal. Report and Accounts dated 30 April 2022 [67] to [77] record a turnover of £52,205 with post-tax profit £5,714; and in 2021 a turnover of £40,121 with post-tax profit £7,942. Their profit for 2023 was £2,603.
- 20.8. Since opening in 2003, Property Link has not caused any harm to any tenant or landlord, that it is well trusted in the community, they have not had any complaints from clients and have not been expelled from any scheme.
- 20.9. Property Link’s case, overall, was that they cannot pay “such a hefty fine” and, if the fine remains Mr Chaudary will “have no option but to close the business” (see [230]).

LB Waltham Forest’s case

21. LB Waltham Forest’s position is that the penalty should remain and should remain as £10,000 and the following reasons are relied upon in their Form of Response and Statement in Support (which deal with this appeal and appeal PR-2023-0069) at [102] to [11], alongside witness evidence and documents at [112] to [303] and submissions:
- 21.1. The Regulations came into force on 01 April 2019 and place a legal requirement on all property agents who hold client money to join a client money protection scheme. The purpose of the requirement is to protect landlords and tenants when they handed money (or transferred it) to a

property agent. There was a grace period to enable property agents to comply, so enforcement did not commence until April 2020.

- 21.2. LB Waltham Forest is authorised, and (per regulation 5) have a duty to enforce the requirements of the Regulations.
- 21.3. A Trading Standards Officer (“TSO1”) was assigned by London Trading Standard to conduct checks on agent compliance. He was authorised by LB Waltham Forest to investigate the Appellant’s compliance in relation to letting agent consumer law, (see paragraph 9 on [106]). He checked the Appellant’s website and found “no indication on the site as to membership of a Client Money Protection Scheme”, paragraph 10 (see [107]).
- 21.4. TSO1 made specific enquiries of the six providers of CMPS and was informed that the Appellant was not a member of any Scheme.
- 21.5. Due to breaches found, a Notice of Intent was issued, setting the penalty amount as £30,000, paragraph 16 [108] (the maximum allowed under the legislation).
- 21.6. The Notice of Intent was sent, by email, to the Appellant, with a covering letter, on 02 May 2023; the Notice of Intent was finalised by a Trading Standards Manager (“TSM”) who posted them on 04 May 2023, paragraphs 17 and 18 [108].
- 21.7. On 10 May 2023, communication was received on behalf of the Appellant, seeking time to make representations as the Appellant’s Director. LB Waltham Forest gave that time to the Appellant, paragraph 19 [109].
- 21.8. At an internal meeting on 26 June 2023, TSO1, TSM and another Trading Standards Officer (“TSO2”) decided that, as the Appellant was a small business the starting point was £10,000. They also noted that the business had traded since 2003 without client money protection, paragraphs 20-21 [109]. In submissions at the hearing, Mr Fitzsimons (on instruction) submitted that LB Waltham Forest had not re-run their analysis of the right penalty amount following receipt of the audited accounts.
- 21.9. A final notice and covering letter were sent to the Appellant on 17 August 2023 – see exhibits DC/PLE17/07 and DCPLE17/08, paragraphs 25 and 26 at [110].
- 21.10. Representations from the Appellant were then received on 20 and 21 August 2023, paragraphs 27 and 28 at [110].
- 21.11. TSO1, TSM and TSO2 met to discuss the late representations made by the Appellant. They decided to withdraw the original notice and draft a fresh penalty notice, paragraph 29 at [110], albeit that the penalty notice was in the same sum, £10,000.
- 21.12. The FPN which is the subject of the appeal was issued and sent, paragraphs 30 to 31 at [110] to [111].



- 21.13. The FPN (a copy of which is found at exhibits DC/PLE17/11 and DC/PLE17/12) was in the sum of £10,000.
- 21.14. LB Waltham Forest accept Mr Chaudary’s health concerns and expressed their hope that he is able to recover to good health. They submitted that most of non-compliance occurred before any documented health issues.
- 21.15. LB Waltham Forest accept that some property agents have come across difficulties in opening a Client Account. They consider that Property Link has displayed a “lack of serious effort to get a Client Account”. They would have expected more action than an application in 2020, an application in 2021 and little evidence of chasing the bank for a decision. They recognised mitigating features of acceptance of the breach but considered that £10,000 was the right level of penalty.

Guidance about the Regulations and enforcement

22. The Government’s Enforcement Guidance for Local Authorities (see [189] to [214]) sets out the harm which may be caused by money not being protected:

**[196]**

*The ultimate risk of client money being lost normally crystallises when an agent becomes insolvent at which point there will be less chance of monies being recovered. Therefore, enforcement authorities should not wait until this stage to begin enforcement action but instead take a proactive approach to working with the approved schemes to identify non-compliance. There are provisions in the Approval Regulations 2018 for approved schemes to share information on the membership of agents and claims against the scheme with local authorities.*

23. The Government’s Guidance sets out various factors (see [206] to [208]):

- a. Severity of the breach.
- b. Deterring agents from breaching the Regulations.
- c. Aggravating and mitigating factors.
- d. Fairness and proportionality.

24. I have considered the London Trading Standards Model London Lettings Enforcement Policy (now referred to as the “LTS Policy”) see [130] to [136]; in my view, it very much follows the Government’s Enforcement Guidance and gives some helpful practical application. When referring to sanctions for a property agent not being a member of a designated Client Money Protection Scheme, the LTS Policy states (see [133]):

*Trading Standards considers this a very serious breach because of the potential for extreme harm with potentially devastating consequences to both tenants and landlords. It is also an indicator of poor professional standards within the sector.*

25. The LTS Policy sets out a structure for considering the level of a penalty issued. That structure (see [134] to [136]) is:
- STEP 1: Take account of the size of the company with reference to turnover, this gives a starting point.
  - STEP 2: Adjust the starting point to reflect aggravating and mitigating factors (it lists some suggested such factors).
  - STEP 3: Consider other factors such as deterrence, the totality principle and affordability.

Issues

26. The following are agreed:
- 26.1. Property Link is a property agent.
  - 26.2. Property Link was not, on 02 May 2023, a member of a CMPS.
  - 26.3. Property Link is not, currently, a member of a CMPS.
  - 26.4. Property Link does not have a “client account” with a bank.
  - 26.5. To be granted membership of a CMPS, a business must have a “client account”.
  - 26.6. Property Link’s turnover for 2021 and 2022 was under £75,000.
  - 26.7. This appeal is a re-hearing at which I may have regard to matters of which LB Waltham Forest was unaware at the time it made its decision.
27. For the avoidance of doubt, I find:
- 27.1. The Notice of Intent and Final Notices which were issued were identical to the draft documents exhibited to Mr Campbell’s statement. This is found as Ms Bennett states that she sent the documents as drafted by him (see paragraphs 7, 13 and 20 of her statement at [185-186]).
28. The following is in dispute:
- 28.1. Whether the decision to impose the penalty should be quashed, confirmed or varied.

Discussion

29. I accept that Property Link does not deliberately seek to disobey the requirement for membership of a CMPS. However, given that they are fully aware of the need for membership and fully aware of the need for a Client Account, I do find that they have been at the very least careless as to compliance with a regulatory requirement. I find this because:

- 29.1. Until recently, they did not make any attempt to ask a bank other than NatWest for a Client Account.
- 29.2. The applications as found in the 303-page bundle (see [80] to [90] and [236] to 246] for the 2021 application and see [248] to [256] for the 2023 application) seem to have some inaccurate or, at least not precise, information, probably due to not fully understanding what NatWest was asking.
30. I then must consider whether, in this re-hearing, I should, as requested by Property Link, find that, as they cannot get the right sort of account to join a CMPS, they should not be made subject to a financial penalty. I find myself unable to do that. Parliament has decided that property agents must be a member of an authorised scheme, therefore, every property agent must be a member and, therefore, take all steps to become a member. Such steps would include actively and persistently seeking the right account, once it was known that a Client Account was needed.
31. Their inability to find a bank willing to provide a Client Account had led to a lengthy breach of the requirement to be a member of a CMPS. However, Property Link do not wish to be in breach as, if a bank does open a Client Account for them, they will apply for membership (there is no indication that membership would be turned down).
32. LB Waltham Forest, when setting a penalty amount of £10,000 for the 17 August FPN and the FPN knew all the aggravating features – length of breach and the potential harm. It seems to me that no adjustment has been made for the mitigating features and they accept there is real mitigation.
33. Therefore, it is right that the Tribunal makes adjustment for the mitigating features: Mr Chaudary's health issues, co-operation with the investigation (so far as Mr Chaudary's health issues permitted), some difficulty in obtaining a Client Account, they are taking steps to join a CMPS, their acceptance of the breach, relatively early admission, good reputation with no complaints, and that a fine is likely to cause severe financial hardship and may put Property Link out of business.

Conclusion

34. For the above reasons, I vary the FPN, the penalty amount is now £3,000.

Signed: District Judge Worth

Date: 11 July 2024