



NCN: [2025] UKFTT 257 (GRC)

First-tier Tribunal
(General Regulatory Chamber
Professional Regulation)

Appeal Reference: FT/SL/2024/0059

Decided without a hearing
On 21 January 2025

Before

JUDGE ANTHONY SNELSON

Between

LS88 LTD

Appellant

and

LONDON BOROUGH OF TOWER HAMLETS

Respondent

DECISION

On considering the written representations on behalf of the Appellant and the Respondent, the Tribunal determines that the appeals are dismissed.

REASONS

Introduction

1. The Appellant is the corporate vehicle for a lettings agency business in East London.
2. By this appeal, the Appellant challenges two financial penalty notices issued by the Respondent ('the Council') on 17 May 2024 in respect of breaches of the Consumer Rights Act 2015 ('the 2015 Act'), s83(3) (duty to publish fees payable by tenants on the

company website) and the Client Money Protection Schemes for Property Agents (Requirements to Belong to a Scheme etc) Regulations 2019 ('the 2019 Regulations'), reg 4(1)(c) (duty to publish a certificate of membership of a designated scheme on the company website). The penalty imposed in each case was set at £2,250, a total of £4,500.

3. The appeals came before me for final determination on the papers, neither party having requested a hearing. I was satisfied that it was just and proper to proceed in that way.

The Statutory Framework

4. By the 2015 Act, s83 letting agents are required to publicise the fees which they charge for their services and certain other information.

5. Enforcement of the duties under the 2015 Act, s83, which is the responsibility of the relevant 'weights and measures authority', here the local authority (s87(1)), is effected by means of financial penalties (s87(3)). The amount of any penalty is in the discretion of the enforcing authority, subject to a maximum of £5,000 (s87(7)).

6. Schedule 9 to the 2015 Act requires the enforcing authority, before imposing a financial penalty under s83, to serve a 'notice of intent' specifying the penalty which is proposed, the grounds for it and the right of the letting agent to make representations in response (para 1). The letting agent then has 28 days in which to exercise the right to make written representations (para 2). After the expiry of the 28-day period, the enforcing authority must decide whether to impose a penalty and, if it decides to do so, in what sum (para 3(1)). If it decides to impose a penalty, it must issue a 'final notice' stating the amount of the penalty and the reasons for it and including certain other information (para 3(2)-(4)).

7. By reg 3 of the 2019 Regulations, it is provided that a property agent who holds client money must be a member of an approved or designated client money protection scheme. Breach of that obligation may be met with a financial penalty of up to £30,000. Associated duties include, under reg 4(1)(c), the obligation upon the agent, where the scheme administrator of an approved or designated client money protection scheme provides a certificate certifying its membership of the scheme, to publish the certificate on its website. Breach of a duty under reg 4 may attract a penalty of up to £5,000.

8. The enforcement regime under the 2019 Regulations is very similar to that under the 2015 Act (see in particular regs 5, 7 and 10 and the Schedule).

9. Under Schedule 9 to the 2015 Act, para 5(1) and (2), a letting agent may appeal to the First-tier Tribunal ('FTT') against a financial penalty on one or more of four specified grounds, namely that: (a) the penalty was based on an error of fact; (b) the penalty was wrong in law; (c) the amount of the penalty was unreasonable and (d) the decision to impose the penalty was unreasonable for any other reason. Disposal of the

appeal by the FTT may involve quashing, confirming or varying the final notice or affirming it, whether in its original form or subject to modification (para 5(5)).

10. Appeals under the 2019 Regulations are governed by very similar provisions (Schedule, para 5).

11. It is well-established that the FTT treats appeals in cases of the sort under consideration here as rehearings. It must simply make its own decision on the evidence before it (which may sometimes differ from that before the enforcement authority at the time of the decision under challenge)¹.

The Facts

12. The material facts can be stated shortly.

12.1 On 3 January 2024 a senior Trading Standards Officer ('the TSO') employed by the Council visited the Appellant's website and noted evidence that it was operating a letting agency and property management business providing services within the Council's boundaries.

12.2 The TSO also noticed that the website did not display (a) charges payable by tenants as required by the 2015 Act, s83, or (b) a membership certificate as required by the 2019 Regulations, reg 4(1)(c).

12.3 On or about 3 January 2024 the TSO wrote to the Appellant by email at an address published on its website to draw attention to the matters referred to at para 12.2 above, but received no response.

12.4 Having re-visited the Appellant's website on 20 February 2024 and 9 April 2024, and noted that the defects referred to at para 12.2 above had not been remedied, the TSO, on 9 April 2024, issued notices of intent to serve financial penalty notices in respect of both statutory breaches (see para 6 above) and sent them by first class post to the Appellant's registered office in Derby, which premises are occupied by its accountants.

12.5 The registered office was the only postal address shown on the Appellant's website.

12.6 Also on 9 April 2024 the TSO sent an email to the Appellant's email address shown on its website (the email address referred to in para 12.3 above), attaching copies of the notices of intent.

12.7 On 15 April 2024 the Appellant sent an email to the Council stating that both breaches had been corrected.

12.8 The Council does not dispute that the breaches were corrected as stated.

The Appeal

13. In its notice of appeal, the Appellant accepted that it had breached the 2015 Act and the 2019 Regulations in the respects alleged but contended that, given mitigating

¹ Under the 2019 Regulations, these principles are explicitly stated (Schedule, para 5(4)).

circumstances, the penalties imposed were excessive and unreasonable. Its principal arguments were the following.

- 13.1 The notices of intent were not received until 12 April 2024 when they were forwarded to the Appellant by its accountants.
 - 13.2 The breaches were remedied within three days of receipt of the notices of intent.
 - 13.3 The notices of intent should have been sent to the London office as well as the Registered Office.
 - 13.4 The Appellant is a compliant, law-abiding organisation.
 - 13.5 Imposition of the penalties will significantly impact upon the Appellant's ability to trade and to develop its business, which was launched as recently as April 2023.
 - 13.6 Imposition of penalties will also impact upon the Appellant's reputation.
 - 13.7 In the circumstances, the penalties should be revoked. Alternatively they should be significantly reduced.
14. The Council resisted the appeal, making (among others) the following points.
- 14.1 The 2015 Act and the 2019 Regulations have been in force for some years.
 - 14.2 Although the Council drew attention to the breaches in January 2024 they were not remedied until some four months later.
 - 14.3 Despite remedying the statutory breaches, the Appellant had continued to display on its website a logo which it was not entitled to use, and about which the Council had warned it in January and April 2024.
 - 14.4 The penalties imposed were moderate, being set below 50% of the maxima available.
 - 14.5 To impose no penalty or a substantially reduced penalty would undermine the important statutory purpose behind the regulatory regime.
 - 14.6 The Council discharged its functions correctly and there was no procedural irregularity or unfairness. (If the Appellant was disadvantaged by its accountants' failure to draw the notices of intent to its attention, that cannot stand as a ground for mitigating the proper penalty imposed.)
 - 14.7 There is no evidence to make good the Appellant's assertion that the penalties imposed are liable to cause it disproportionate or long-term commercial harm. According to its website, it is, despite having been incorporated only in January 2023, already trading successfully and in a substantial way of business.

Conclusions

15. I have no doubt that this appeal must be dismissed. The legislation under which the penalties were issued is intended to serve the crucial purpose of protecting consumers. It applies to professional practitioners who must be assumed to be aware of the law that regulates their activities and of their professional duty to keep themselves up-to-date with its legal obligations. The 2015 Act and the 2019 Regulations have been important elements of the regulatory framework for an appreciable period. Absent any jurisdictional or procedural error, this was clearly a proper case in which

to impose financial penalties. I agree with the Council that failure to do so in circumstances such as these could only serve to undermine the legislation and weaken its effect.

16. There was no jurisdictional bar or procedural flaw.

17. As to the level of the penalties, while I am in no doubt that a failure to correct the infringements would have warranted sterner punishment, I am equally clear that the act of correcting them did not absolve the Appellant of the consequences of its default. Accepting, as I do, that the infringements were accidental and not deliberate, they plainly merited *some* penalty. That being so, the appeal on quantum looks highly ambitious. The penalties were set below the midpoint of the available range. On the face of it, they appear unobjectionable. The duty to enforce consumer protection laws will not be served by imposing derisory penalties. The complaint that the figures settled on by the Council were objectively excessive when measured against the infringements is entirely without merit.

18. Does some special mitigation apply here? Clearly not. The Appellant's arguments about its status as a newcomer in the market cuts no ice in the absence of hard evidence to make good the suggestion that the penalties imposed would have a disproportionately damaging effect upon it commercially. Mitigation arguments of this sort cannot succeed without hard evidence. I am presented with nothing but assertion.

19. I have returned to the 2015 Act, schedule 9, para 5(1) and (2). The penalties were not imposed based on error of fact. There was no error of law. The amount of the penalty was not unreasonable. The decision to impose the penalty was not unreasonable for any other reason.

20. This is a clear case. The appeal must be dismissed.

21. The Appellant should learn a valuable lesson from this case. It operates in a sector which is, rightly, closely regulated and it must expect the appropriate authorities to enforce with rigour the important consumer protection measures which Parliament has enacted. Close familiarity with its legal obligations is crucial. So too is operating its business in such a way as to ensure that important official communications are not overlooked and key deadlines are not missed.

Signed

Anthony Snelson

Judge of the First-tier Tribunal

Date: 21 January 2025

Decision given on date: 27 February 2025