



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation**

PR/2016/0026

**Decided without a hearing
At Field House**

Before

JUDGE PETER LANE

Between

**INSPIRED SALES AND LETTINGS LIMITED
(NEIL BRIGGS)**

Appellant

And

MILTON KEYNES COUNCIL

Respondent

DECISION AND REASONS

A. The requirement for letting agents to publicise details of fees

1. The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees. This is achieved by sections 83 to 86:-

"CONSUMER RIGHTS ACT 2015

Chapter 3

Duty of Letting Agents to Publicise Fees etc

83 Duty of letting agents to publicise fees etc

- (1) A letting agent must, in accordance with this section, publicise details of the agent's relevant fees.
- (2) The agent must display a list of the fees--
 - (a) at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate, and
 - (b) at a place in each of those premises at which the list is likely to be seen by such persons.
- (3) The agent must publish a list of the fees on the agent's website (if it has a website).
- (4) A list of fees displayed or published in accordance with subsection (2) or (3) must include--
 - (a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose of which it is imposed (as the case may be),
 - (b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house, and
 - (c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.
- (5) Subsections (6) and (7) apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England.
- (6) If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme.
- (7) If the agent is required to be a member of a redress scheme for dealing with complaints in connection with that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement--
 - (a) that indicates that the agent is a member of a redress scheme, and
 - (b) that gives the name of the scheme.

- (8) The appropriate national authority may by regulations specify--
- (a) other ways in which a letting agent must publicise details of the relevant fees charged by the agent or (where applicable) a statement within subsection (6) or (7);
 - (b) the details that must be given of fees publicised in that way.

- (9) In this section--

“client money protection scheme” means a scheme which enables a person on whose behalf a letting agent holds money to be compensated if all or part of that money is not repaid to that person in circumstances where the scheme applies;

“redress scheme” means a redress scheme for which provision is made by order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013.

84 Letting agents to which the duty applies

- (1) In this Chapter “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work).
- (2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person’s employment under a contract of employment.
- (3) A person is not a letting agent for the purposes of this Chapter if--
- (a) the person is of a description specified in regulations made by the appropriate national authority;
 - (b) the person engages in work of a description specified in regulations made by the appropriate national authority.

85 Fees to which the duty applies

- (1) In this Chapter “relevant fees”, in relation to a letting agent, means the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant--
- (a) in respect of letting agency work carried on by the agent,
 - (b) in respect of property management work carried on by the agent, or
 - (c) otherwise in connection with--
 - (i) an assured tenancy of a dwelling-house, or

(ii) a dwelling-house that is, has been or is proposed to be let under an assured tenancy.

(2) Subsection (1) does not apply to--

(a) the rent payable to a landlord under a tenancy,

(b) any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person,

(c) a tenancy deposit within the meaning of section 212(8) of the Housing Act 2004, or

(d) any fees, charges or penalties of a description specified in regulations made by the appropriate national authority.

86 Letting agency work and property management work

(1) In this Chapter "letting agency work" means things done by a person in the course of a business in response to instructions received from--

(a) a person ("a prospective landlord") seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or

(b) a person ("a prospective tenant") seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.

(2) But "letting agency work" does not include any of the following things when done by a person who does nothing else within subsection (1)--

(a) publishing advertisements or disseminating information;

(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;

(c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.

(3) "Letting agency work" also does not include things done by a local authority.

(4) In this Chapter "property management work", in relation to a letting agent, means things done by the agent in the course of a

business in response to instructions received from another person where--

(a) that person wishes the agent to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the person's behalf, and

(b) the premises consist of a dwelling-house let under an assured tenancy."

B. Enforcement

2. Section 87 explains how the duty to publicise fees is to be enforced:-

"87 Enforcement of the duty

(1) It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area.

(2) If a letting agent breaches the duty in section 83(3) (duty to publish list of fees etc on agent's website), that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.

(3) Where a local weights and measures authority in England and Wales is satisfied on the balance of probabilities that a letting agent has breached a duty imposed by or under section 83, the authority may impose a financial penalty on the agent in respect of that breach.

(4) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority's area (as well as in respect of a breach which occurs within that area).

(5) But a local weights and measures authority in England and Wales may impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales only if it has obtained the consent of that authority.

(6) Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

(7) The amount of a financial penalty imposed under this section--

(a) may be such as the authority imposing it determines, but

(b) must not exceed £5,000.

(8) Schedule 9 (procedure for and appeals against financial penalties) has effect.

(9) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(10) A local weights and measures authority in Wales must have regard to any guidance issued by the Welsh Ministers about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(11) The Secretary of State may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in England;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities.

(12) The Welsh Ministers may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in Wales;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities."

C. Financial penalties

3. The system of financial penalties for breaches of section 83 is set out in Schedule 9 to the 2015 Act:-

"SCHEDULE 9

DUTY OF LETTING AGENTS TO PUBLICISE FEES: FINANCIAL PENALTIES

Section 87

Notice of intent

1

(1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a notice on the agent of its proposal to do so (a "notice of intent").

(2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent's breach, subject to sub-paragraph (3).

(3) If the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the notice of intent may be served--

(a) at any time when the breach is continuing, or

(b) within the period of 6 months beginning with the last day on which the breach occurs.

(4) The notice of intent must set out--

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the penalty, and

(c) information about the right to make representations under paragraph 2.

Right to make representations

2

The letting agent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to the local weights and measures authority about the proposal to impose a financial penalty on the agent.

Final notice

3

(1) After the end of the period mentioned in paragraph 2 the local weights and measures authority must--

(a) decide whether to impose a financial penalty on the letting agent, and

(b) if it decides to do so, decide the amount of the penalty.

(2) If the authority decides to impose a financial penalty on the agent, it must serve a notice on the agent (a “final notice”) imposing that penalty.

(3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.

(4) The final notice must set out--

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

(f) the consequences of failure to comply with the notice.

Withdrawal or amendment of notice

4

(1) A local weights and measures authority may at any time--

(a) withdraw a notice of intent or final notice, or

(b) reduce the amount specified in a notice of intent or final notice.

(2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the letting agent on whom the notice was served.

D. Appeals

4. Finally, Schedule 9 provides for appeals, as follows.

Appeals

5

(1) A letting agent on whom a final notice is served may appeal against that notice to--

(a) the First-tier Tribunal, in the case of a notice served by a local weights and measures authority in England, or

- (b) the residential property tribunal, in the case of a notice served by a local weights and measures authority in Wales.
- (2) The grounds for an appeal under this paragraph are that--
- (a) the decision to impose a 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.
- (3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the final notice was sent.
- (4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £5,000.

E. The present appeal

5. The appellant, Inspired Sales and Lettings Limited, acting via Mr Neil Briggs, appeals against the final notice issued by Milton Keynes Council ("the Council") on 27 July 2016 to impose a financial penalty of £2,500 in respect of a breach of section 83(3), in failing to publish a list of relevant fees (as defined in section 85) on the appellant's website. Both parties were content for the appeal to be decided without a hearing and, in all the circumstances, I consider that I can justly do so.

6. The final notice says that the Council wrote to all letting agents within its area in September 2015 to alert them to the existence of the new requirements in the 2015 Act, regarding lists of fees. In January 2016, the Council's Trading Standards Department considered that the appellant's website gave cause for concern. Trading Standards accordingly carried out an inspection visit to the appellant's premises. On 4 February 2016 an officer of Trading Standards met with the appellant's Daniel Withers to discuss the nature of the appellant's breaches. The notice states that Mr Withers was given advice as to how to bring the appellant's business into full compliance.

7. Following the service of a notice of intent, the Council received and considered the appellant's representations. Having done so, the notice stated that the Council had decided to impose a financial penalty of £2,500. This was because there was no comprehensive list of tenant or landlord fees on the website. No fees for landlords or tenants were displayed in the business premises.

8. The appellant contended that he did not receive the advice letter in 2015. However, the Council produced an email from Daniel Withers dated 2 October 2015 (at 12:32), confirming receipt of the information that was sent to the appellant.

9. The appellant's contention that all fees were displayed on the website at the time of the visit was regarded by the Council as incorrect. Amongst other matters, no costs for the various services, such as application fees, guarantor fees etc. were set out, whereas the legislation requires a letting agency to display "the amount of each fee inclusive of any applicable tax".

10. The notice stated that the Council had "significantly reduced the amount of the penalty notice to take into account the number and nature of the breaches (that there were signs of partial compliance) and an acknowledgement of the fact that the company responded to the advice provided by our officer".

11. In its grounds of appeal, the appellant contends that the penalty of £2,500 is unreasonable for "our first breach since opening our independent company in 2010". The grounds went on to state that the appellant considered that it was compliant with the legislation and that this had been confirmed by speaking with other letting agents. Nevertheless, following the visit on 4 February "we have made the necessary changes to make sure we are compliant". The grounds assert that other agents have told the appellant that they have been "fined" a much lower amount and conclude by saying that the appellant is "looking at joining a professional body within the industry ... to make sure we are compliant with all new legislations which come into force. This has been delayed due to cash flow".

12. I have considered the documents to which I have already made reference and the remainder of the Tribunal bundle, compiled in connection with this case. Having done so, I am satisfied on balance that the matters set out in the final notice are correct. Witness statements from Claire Kendall and Matthew Sheppard, together with their respective exhibits, make this plain.

13. Departmental Guidance, issued in connection with the relevant legislation, indicates that a financial penalty of £5,000 shall be regarded as the starting point, before allowance is made for any mitigating feature. Ms Kendall's statement explains how the Council approached this matter. The appellant had not, as part of the representations process, given the Council reason to believe that such a penalty would threaten the appellant's ability to continue to trade. The 50% reduction was made because the appellant had "worked with us to achieve compliance and acknowledgment that there were limited fees on the website,

although the information was incomplete". Any further reduction of the penalty would, according to the Council, be inappropriate, given it was clear that (contrary to the appellant's contention) the letter of September 2015 had been received by the appellant and that the appellant's website had not been compliant, when examined.

14. I am fully satisfied that the Council's approach to mitigation of the penalty cannot in any sense be categorised as unreasonable, let alone unlawful. The contention in the grounds of appeal that other agents have been subjected to lesser penalties is unparticularised. In any event, it is more likely than not to be the case that a lower penalty received by another agent reflects the particular circumstances of that other case, including the nature of the letting agent business and of the breach.

15. The grounds of appeal are, I consider, contradictory in, on the one hand, contending that the appellant was compliant with the legislation, before acknowledging that it was not. In any event, for the reasons set out above, I am fully satisfied that the appellant was in breach.

16. In all the circumstances, I consider that the imposition of a penalty of £2,500 was eminently reasonable. So too was the decision to impose the penalty. The Council has an obligation to enforce the law. It gave the appellant reasonable warning before invoking the enforcement provisions of the 2015 Act.

17. This appeal is dismissed.

Judge Peter Lane
3 February 2017