First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2016/0050

Heard at Field House, London
on 4th May 2017

Before

TRIBUNAL JUDGE PETER HINCHLIFFE

Between

METROPOLE PROPERTIES LIMITED

Appellant

and

WESTMINSTER CITY COUNCIL

Respondent

DECISION

1. Metropole Properties' failure on 17th and 18th October 2016 to publish on their website a list of the fees that they charged landlords of their letting agency business and also a statement of whether they were a member of a client money protection scheme put them in breach of s.83 of the Consumers Rights Act 2015. A financial penalty of £5,000 in respect of these failures is reasonable in all of the circumstances and the two Final

Notices issued by Westminster on 24th November 2016 are to be regarded as constituting a single Final Notice, which is varied so as to impose a single financial penalty of £5,000.

REASONS

A. Background

2. Metropole Properties Limited ("Metropole Properties") appealed against two Final Notices served on it by Westminster City Council ("Westminster"), which is the local weights and measures authority for the geographical area comprising the City of Westminster. The Final Notices refer to the office of Metropole Properties located at 224 Edgware Road, London W2 1DS, which is within the Borough of Westminster. Each of the Final Notices was dated 24th November 2016.

3. Final Notice reference 15/02114/FAIRTR/CRA (the "Fees Final Notice") imposed a penalty of £5,000 on Metropole Properties for a breach of their obligation to publish on their website the amount of the fees that they charged landlords who used their letting agency services. The Fees Final Notice set out details of the alleged failure by Metropole Properties to publish their fee structure for landlords as required by section 83 of the Consumer Rights Act 2015 (the "Act") and gave the following details of the breach:
"*As a letting agent you have failed to publicise on your website (http://www.metropoleproperty.com) the amount of your landlord fees partially or at all.*"

4. Final Notice reference 15/02114/FAIRTR/CRA/CMP (the "Client Money Final Notice") imposed a penalty of £2,500 on Metropole Properties for a breach of their obligation to include on their website a statement of whether they were a member of a client money protection scheme. The Client Money Final Notice set out details of the alleged breach by Metropole Properties of sections 83(3) and 83(6) of the Act and gave the following details of the breach:
"*As a letting agent you have failed to publicise on your website (http://www.metropoleproperty.com) with a list of your fees, a statement of whether you are a member of a client money protection scheme*"

B. Legislation

5. The sections of the Act that are referred to in this decision or that are otherwise relevant to this appeal are set out below in Annex A to this decision.

C. Guidance

6. Section 83 of the Act is the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government (the "Guidance"). Local authorities are required to have regard to the Guidance under s.87(9) of the Act. The

sections of the Guidance that are of greatest relevance to this appeal are set out below in Annex B to this decision.

D. The Appeals

7. Metropole Properties submitted a Notice of Appeal dated 14th December 2016 setting out the grounds of its appeal against both the Fees Final Notice and the Client Money Final Notice. The main points of Metropole Properties grounds of appeal are:

    - They had not received a letter from Westminster informing them that they were required to publicise whether or not they are a member of a client money protection scheme and which scheme they had joined.
    - They had responded quickly after receiving the initial notice of 21st October 2016 from Westminster and brought their website into compliance.
    - They were not aware that they had to publicise that they were not a member of a Client Money Protection scheme. They had not been led to believe that this was necessary when they reviewed the Property Ombudsman Code of Practice for Residential Lettings Agents.
    - Non-compliance with the requirements of s.83 of the Act was widespread.
    - The fine in the Client Money Final Notice was excessive. The proposed fines in aggregate would have an extremely detrimental effect on Metropole Properties. The company may have to cease trading and three members of staff will lose their jobs.

E. The Hearing

8. The hearing of the appeal took place on 4th May 2017. Prior to the hearing a bundle of relevant documentation was prepared by Westminster, which included copies of the notices Westminster sent to Metropole Properties. Westminster provided witness statements, including one from the authorised officer who identified the alleged breaches by Metropole Properties and prepared the correspondence and notices issued to them and another from the authorised officer who considered the representation submitted by Metropole Properties, decided to issue the Final Notices and determined the amount of the penalties.

9. It was common ground between the parties at the hearing that:

    - Metropole Properties were, and remain, letting agents as defined in the Act.
    - Metropole Properties were carrying on business within the City of Westminster.
    - On 17th and 18th October 2016 the website of Metropole Properties did not contain details of the fees that were payable by landlords who wished to use the company's services.
    - On 17th and 18th October 2016 the website of Metropole Properties did not indicate whether or not the company was a member of a client money protection scheme.
    - On 14th October 2016 Metropole Properties had become a member of Client Money Protect, a client money protection scheme.

10. At the hearing Mrs Taha represented Metropole Properties and Miss Panton represented Westminster. Mrs Taha had no questions for the witnesses from Westminster who had submitted statements. In response to concerns expressed by Mrs Taha, Miss Panton confirmed that Westminster was not asking the Tribunal to place any reliance or weight on the details of certain complaints by customers of Metropole Properties that had been provided in the papers prepared ahead of the hearing. Mrs Taha confirmed that Metropole Properties had no objection to the evidence provided by Westminster by means of software providing 'screen shots' showing the contents of the website of Metropole Properties on 18th October 2016.

11. I am grateful to both Mrs Taha and Miss Panton for their co-operation in narrowing down the focus of the hearing to the relevant issues and for the clarity of their representations.

F. Submissions

12. Metropole Properties asked the Tribunal to take account of the fact that it had been trading for twenty years without any concerns or complaints about its fees or about any failure to return deposits from customers. Over the last few years it had been bombarded with new legislation, which Mrs Taha said was not a bad thing, but which put pressure on them. It had not received any warning from Westminster about the new legislative requirements; a letter sent on 1st March 2016 by Westminster notifying them of their obligations in respect of publishing fees and whether or not they were a member of a client money protection scheme had not been received. They are a small company with just three employees. They had voluntarily joined a client money protection scheme and wished to publicise this fact on their website. However they had received confirmation that they were a member of a scheme on 14th October and Mrs Taha had not had time to include this on their website before Westminster inspected it on 17th and 18th October 2016. As membership of such a scheme was completely voluntary it was unfair to impose a fine for being a member but not publishing the information.

13. With regard to the fees for landlords; Metropole Properties said that they were members of the Property Ombudsman Scheme and had been audited by them and had passed the audit six months prior to the action by Westminster. They always informed landlords of their fees as otherwise they would not get business and / or Metropole would lose out as they would not be able to enforce these fees. They had bought their website as a package around 18 months prior to Westminster taking action. They can amend the website but it had no tab for displaying landlord fees.

14. Overall Metropole regarded the action being taken against them as unfair. They had made their website compliant within a matter of days of receiving the Final Notices informing them of their failures and their own research indicated that a large number of letting agents in Westminster were not compliant with the legislation.

15. On behalf of Westminster it was stated that the legislation had been in force for 18 months prior to them taking enforcement action against Metropole Properties. They had posted a letter on 1st March 2016 to Metropole Properties, amongst other letting agents, reminding them of their obligation to publish fees and to clarify if they were members of a client money scheme. They had sent two notice of intent on 20th October 2016 informing Metropole Properties of the breach of their duty to publish their fees to landlords and whether or not they were members of the client money protection scheme. They had then received and considered the representations received from Metropole Properties in response to these notices of intent prior to issuing the Final Notices on 24th November 2016.

G. Submissions on penalty

16. On behalf of Westminster it was pointed out that the Guidance that deals with penalty for breach of the duty to publicise fees (set out in Annex B to the decision) states that a £5000 fine should be considered the norm unless there were extenuating circumstances. Miss Panton acknowledged that this Guidance was not legally binding but stated that the penalty of £5,000 was appropriate for the failure to publish fees. Metropole Properties had had 16 months in which to comply with the legal obligation imposed on them by s.83 of the Act. Westminster had taken account of the small size of the company and the fact that it was levying two fines in deciding to reduce the penalty for the failure to publish information about its membership of a client money protection scheme to £2,500. Miss Panton also pointed to the bank account statements that Metropole Properties had provided and drew attention to payments being received from another bank account of the company.

17. Mrs Taha explained that Metropole Properties could not afford to pay £7,500. Penalties of this size would affect whether or not the company could continue trading. The sums received from another company account were simply the transfer of fees out of the client account into which all clients paid rentals and all other sums including fees. The accounts of Metropole Properties for the year to 31 August 2015 showed a loss of £12,208 after paying salaries of £38,853. The company had net assets of £478. When questioned, it was explained that no dividends are paid to the shareholders; the profits are largely shared between the members of staff. The shareholder derives a benefit from Metropole Properties activities as it enables a sister company offering estate agency services to offer a letting service to its clients.

18. I sought the views of the parties on whether more than one penalty may be levied in respect of the two failures by Metropole Properties to meet their obligations under s.83 of the Act outlined in the two Final Notices. Miss Panton gave Westminster's view that two Final Notices could be issued and two penalties could be levied for the failures by Metropole Properties. The failure to publish fees for landlords was a breach of s.83 (1) and s.83 (3) of the Act. The failure to include a statement on their website as to whether they were a member of a client money protection scheme was a breach of sections 83(3) and 83(6) of the Act. Westminster stated that the Guidance also confirmed that these were separate breaches giving rise to separate penalties.

G. Findings

19. In reaching a decision in this case I have had regard to all of the oral submissions at the hearing and also to the written submissions, evidence and other documentation contained in the hearing bundle and provided at the hearing.

20. I find that the evidence establishes, and that it is not contested, that on 17th and 18th October 2016 Metropole Properties failed to publish a list of the fees that they charged landlords for their letting agency service. S.83 of the Act is set out in full in Annex 1 and provides that:
(1) *A letting agent must, in accordance with this section, publicise details of the agent's relevant fees.*
and
(3) *The agent must publish a list of the fees on the agent's website (if it has a website*).
I conclude that Metropole Properties was in breach of its legal obligation under s.83 (3) of the Act to publish a list of the fees on their website on 17th and 18th October.

21. I find that the evidence also establishes, and that it is also not contested, that on 17th and 18th October 2016 Metropole Properties failed to publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme. S.83 (6) of the Act provides that;
(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.*
I conclude that Metropole properties was in breach of its legal obligation under s.83 of the Act to publish on 17th and 18th October a statement of whether it was a member of a client money protection scheme.

22. I note that s.83 (6) refers to the duty imposed on the agent by section 83 (3) *including* a duty to publish the required information about the membership of a client money scheme on its website. I conclude from this phrasing that the Act treats the duty created by s.83 (6) as being part of the duty imposed under s.83 (3).

23. S.87 of the Act sets out the basis upon which penalties can be levied for breaches of s.83:
S.87 (2) refers to s.83 (3) imposing a duty;
"*to publish a list of fees etc on agent's website.*
The "*etc"* must refer to the information other than that about fees required to be published under s.83, which includes the information about membership of a client money protection scheme.
S.87 (6) states that:
"*Only one penalty under this section may be imposed on the same letting agent in respect of the same breach"*
Although this section appears to be primarily intended to avoid different local weights and measures authorities imposing penalties for the same breach, it may also be construed as having a wider effect.
S. 87 (7) limits the amount of any financial penalty under s.87 to £5,000.

S. 87(8) states that Schedule 9 of the Act shall have effect and Schedule 9 sets out the power of the Tribunal on appeal and states that a final notice may not be varied by the Tribunal so as to impose a financial penalty of more than £5,000.
The Guidance states in Section 3 that a fine of up to £5,000 can be imposed where a letting agent has failed to "*publish their fees and other details".* The "*other details*" in this context can only refer to the information other than that about fees required to be published under s.83, which includes the information about membership of a client money protections scheme. The Guidance makes it clear that further penalties can be imposed if failures continue but is silent on whether the existence of a number of failures at one time can give rise to more than one penalty.

24. Having reviewed the legislation and taken account of the Guidance, I conclude that Metropole Properties' failure on 17th and 18th October to publish on their website their fees for landlords and a statement of whether or not they were a member of a client money protection scheme put them in breach of their obligation under s. 83 (3) and should properly be regarded as giving rise to a single breach and not two separate breaches. The maximum penalty that can be imposed in respect of a breach of s. 83 (3) is £5,000.

25. The last issue in this appeal is, therefore, whether, in all the circumstances the amount of the penalty for Metropole Properties' breach or breaches of their obligations under s.83 is unreasonable. In deciding that issue, which is left open by the primary legislation, it is helpful and appropriate to have regard to the Guidance, to which I have earlier made reference. The Guidance says the expectation is a "*fine*" (i.e. penalty) of £5,000 and that a lower sum should be imposed only if the authority is satisfied there are "*extenuating circumstances*". The Guidance does not purport to be exhaustive as to what might constitute extenuating circumstances, saying that "*It will be up to the enforcement authority to decide what such circumstances might be*". However, it goes on to indicate some considerations that may be relevant and says:

"Another issue that should be considered is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business."

26. Metropole Properties is a small business. Its accounts make this clear. However, it appears to be under the same ownership as a larger estate agency business about which no financial information was provided. The risk of it ceasing to trade if the fine is not reduced is mitigated by its ability to reduce its wages expense for a year or more or to call on the resources of its sister company to whom its activities provide some benefit. However a penalty of £5,000 is significant for this business and should act as a sufficient incentive to ensure that it remains on top of its legal responsibilities.

27. There is no requirement or expectation that enforcement authorities must publicise or take active steps to ensure that letting agents are aware of the coming into force of legislation that creates an obligation on them before taking any action to enforce those obligations. As Metropole Properties were and are carrying on business as letting agents, it is their responsibility to ensure that they are aware of the regulatory and

legal requirements affecting letting agents and that they comply with any change in these requirements. By October 2016 they had had over a year to become aware of their legal obligations under the Act.

28. In all of the circumstances of this case, I find that it is reasonable for the financial penalty payable by Metropole Properties to be set at £5,000 in respect of the failure to publish on their website a list of the fees that they charged landlords using their letting agency business and a statement of whether they were a member of a client money protection scheme.

H. ***Decision***

29. By virtue of paragraph 5(5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.

30. The appeal is allowed in part. The Final Notice comprising the Fees Final Notice and the Client Money Final Notice served on Metropole Properties were unreasonable in imposing an aggregate penalty of £7,500 for breaches of s. 83(1), s.83(3) and s.83(6) of the Act in respect of Metropole Properties website on 17th and 18th October 2016. I find that Metropole Properties' failure to publish on their website both a list of the fees that they charged landlords of their letting agency business and also a statement of whether they were a member of a client money protection scheme give rise to a single breach of s.83 and that a financial penalty of £5,000 in respect of this breach would be reasonable and that the Fees Final Notice and the Client Money Final Notice are to be regarded as constituting a single Final Notice, which is varied so as to impose a single financial penalty of £5,000.

Peter Hinchliffe
Judge of the First-tier Tribunal
31 May 2017

ANNEX A

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:-

A. Duty of Letting Agents to Publicise Fees

"**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

Section 87 explains how the duty under section 83 to publicise fees and other information 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

Final 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 Final Notice on the agent of its proposal to do so (a "Final Notice of intent").

(2) The Final 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 Final 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 Final 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 Final 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 Final 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 Final 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 Final Notice.

Withdrawal or amendment of Final Notice

4

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

(a) withdraw a Final Notice of intent or Final Notice, or

(b) reduce the amount specified in a Final Notice of intent or Final Notice.

(2) The power in sub-paragraph (1) is to be exercised by giving Final Notice in writing to the letting agent on whom the Final 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 Final Notice to--

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

(b) the residential property tribunal, in the case of a Final 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.

ANNEX B

Explanatory Notes and Guidance

A. In the present appeal, reference was made to the Explanatory Notes published in respect of the Consumer Rights Bill (which became the 2015 Act) and the Guidance for Local Authorities issued by the Department for Communities and Local Government, during the passage of the Bill, concerning the duty to publicise fees

B. Paragraphs 456 to 459 of the Explanatory Notes read as follows:-

> "456. This section imposes a duty on letting agents to publicise 'relevant fees' (see commentary on section 85) and sets out how they must do this.
>
> 457. Subsection (2) requires agents to display a list of their fees at each of their premises where they deal face to face with customers and subsection (3) requires them to also publish a list of their fees on their website where they have a website.
>
> 458. Subsection (4) sets out what must be included in the list as follows. Subsection (4)(a) requires the fees to be described in such a way that a person who may have to pay the fee can understand what service or cost is covered by the fee or the reason why the fee is being imposed. For example, it will not be sufficient to call something an 'administration fee' without further describing what administrative costs or services that fee covers.
>
> 459. Subsection (4)(b) requires that where fees are charged to tenants this should make clear whether the fee relates to each tenant under a tenancy or to the property. Finally, subsection (4)(c) requires the list to include the amount of each fee inclusive of tax, or, where the amount of the fee cannot be determined in advance a description of how that fee will be calculated. An example might be where a letting agent charges a landlord based on a percentage of rent."

C. So far as enforcement of the duty is concerned, the Explanatory Notes state:-

> "477. Subsection (4) [of section 87] provides that while it is the duty of local weights and measures authorities to enforce the requirement in their area, they may also impose a penalty in respect of a breach which occurs in England and Wales but outside that authority's area. However, subsection (6) ensures that an agent may only be fined once in respect of the same breach".

D. Other passages of the Departmental Guidance are as follows:-

> "**Which fees must be displayed**
>
> All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured

tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy. …

The only exemptions are listed below. The requirement is therefore for a comprehensive list of everything that a landlord or a tenant would be asked to pay by the letting agent at any time before, during or after a tenancy. As a result of the legislation there should be no surprises, a landlord and tenant will know or be able to calculate exactly what they will be charged and when.

… … … … …

How the fees should be displayed

The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill-defined terms such as administration cost must not be used. All costs must include tax.

Examples of this could include individual costs for:

- marketing the property;
- conducting viewings for a landlord;
- conduct tenant checks and credit references;
- drawing up a tenancy agreement; and
- preparing a property inventory.

It should be clear whether a charge relates to each dwelling-unit or each tenant".

Penalty for breach of duty to publicise fees

The enforcement authority can impose affine of up to £5000 where it is satisfied, on the balance of probability that someone is engaged in letting work and is required to publish their fees and other details, but has not done so.

The expectation is that a £5000 fine 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. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the letting agency makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; alternatively an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue that should be considered is whether a £5000 fine is disproportionate to the turnover / scale of the business or would lead to an organisation going out of business.

Primary Authority Advice

E. Under the Regulatory Enforcement and Sanctions Act 2008, eligible businesses can form partnerships with a local authority in relation to regulatory compliance. The local authority is known as the "primary authority".

F. Pursuant to the 2008 Act, a primary authority partnership exists between Warwickshire County Council Trading Standards, the National Federation of Property Professionals and the Property Ombudsman. In November 2015, Warwickshire Trading Standards issued "Primary Authority Advice" in relation to the question: *"is it misleading for a letting agent not to display tenant and landlord fees in their offices?"*

G. This Advice includes the following:-

> "**Assured Advice Issued:**
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> Section 83 of the CRA requires letting agents to display their fees for tenants and landlords.
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> These must be displayed at each of the agent's premises where people using or likely to use the agent's services are seen face-to-face. The fees must be displayed in a place where such people are likely to see them. People should not need to ask to see the fees as the list should be clearly on view.
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> The fees must also be published on the agent's website, if there is one.
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> It is considered good practice for agents to check that customers have seen the fees price lists before they enter into any agreements or contracts.
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> The list of fees must include a description of each fee that enables people to understand what it relates to and how much it will be. In relation to fees payable by tenants, it should be clear whether each fee is per property or per tenant. Fees should be inclusive of VAT and any other taxes. …
>
> The list must be clear and comprehensive. Surcharges, hidden fees or vague expressions like 'admin fee' are not permitted".