



Appeal number: PR/2017/0004

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PROFESSIONAL REGULATION)**

Appellant

OLIVER FRANKLIN LIMITED

- and -

LONDON BOROUGH OF TOWER HAMLETS

Respondent

TRIBUNAL: JUDGE ALISON MCKENNA

Sitting in Chambers on 5 April 2017

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Decision

1. The Appeal is dismissed. The Final Notice dated 14 December 2016 is confirmed.

Reasons

Background

2. The Appellant (“Oliver Franklin”) is a letting agent. The Respondent (“the Council”) is the enforcement authority which served a Final Notice on Oliver Franklin on 14 December 2016. The Notice imposed a financial penalty of £5,000.00 for breach of the duty to publicise fees.
3. The Council’s trading standards department had visited the Appellant in August 2015, during which there had been a discussion about the requirement to publicise fees. It was noted that the relevant Landlords’ fees were not published on Oliver Franklin’s website at the time of the Council’s visit. The website has subsequently been brought into compliance with the legislation.
4. The Council served a Notice of Intent on 26 April 2016. This indicated that a penalty of £5,000 would be payable. In the absence of further representations from Oliver Franklin, it served the Final Notice dated 14 December 2016 to this effect.
5. Oliver Franklin has appealed to this Tribunal against the Fixed Notice imposing the financial penalty of £5,000 by its Notice of Appeal dated 11 January 2017.
6. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal has carefully considered the bundle of evidence and submissions provided.

The Legal Framework

7. Section 83 of the Consumer Rights Act 2015 requires letting agents to publicise details of relevant fees at its business premises and on its website. It came into force in May 2015.
8. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Final Notice on the letting agent concerned.
9. Schedule 9 paragraph 5 to the 2015 Act provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are (a) that the decision to impose the financial penalty was based on an error of fact; (b) the decision was

wrong in law; (c) the amount of the financial penalty is unreasonable; or (d) the decision was unreasonable for any other reason. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.

Submissions

10. Oliver Franklin's Notice of Appeal relies on grounds that it has displayed on its website tenants' fees since April 2016 and Landlords' fees since November 2016. It asks the Tribunal to quash the financial penalty.
11. The Council's Response is that it served a Notice of Intent in April 2016 and made follow-up phone calls to Oliver Franklin in May and June. In November, a member of Oliver Franklin's staff called Emma Jolly agreed to update the website with Landlords' fees "*straight away*". A further check on 14 December showed that the landlords' fees were still not publicised so the Final Notice was served.

Evidence

12. The Council filed a witness statement dated 3 February 2017 from Nazir Ali, its Senior **Trading Standards** Officer. He confirms that a letter was sent to Oliver Franklin in June 2015, alerting it to the legal requirement to publicise fees. He exhibits a copy of that letter. He states that a fellow Council Officer visited Oliver Franklin in August 2015 and exhibits a copy of the questionnaire completed at that visit, which states that the publication of fees is "*being arranged*". He states that a reminder letter was sent to Oliver Franklin in March 2016 and exhibits a copy of that letter.
13. He states that he personally reviewed Oliver Franklin's website in April 2016, and found it to be non-compliant, and visited the premises where he found no list of fees on the premises so issued the Notice of Intent dated 26 April 2016. Mr Ali states that he made follow up phone calls to Oliver Franklin in May, June and November 2016. He was told in November that the tenants' fees were on the website and that the landlords' fees were to be uploaded. He states that he checked the website on 14 December and could not find the landlords' fees, so issued the Final Notice.
14. Mr Ali exhibits to his witness statements screen shots of Oliver Franklin's website dated 14 December 2016 and has produced a hyper-cam video giving a tour of the website as at 14 December 2016.
15. Oliver Franklin has not sought to challenge the evidence contained in the witness statements or video and has not filed any witness evidence of its own. It has attached to the Notice of

Appeal screen shots from its website which appear to be dated 16 December 2016 i.e. produced *after* the Council's screen shots and after the Final Notice was served. These appear to comply with the legislation.

16. The Notice of Appeal states that tenants' fees were publicised from April 2016 (presumably following the service of the Notice of Intent) and the landlord' fees from November 2016 (presumably from the date of the Council's phone call). It suggests that Mr Ali simply could not find the fees on the website on 14 December 2016.

Conclusion

17. I understand the Notice of Appeal to raise a dispute of fact (issue (a) set out at paragraph 9 above). It asks for the fine to be revoked.
18. Oliver Franklin clearly accepts in its Notice of Appeal that it did not publish tenants' fees on its website until April 2016 (eleven months after its legal obligation to do so arose) and that it did not publicise landlords' fees on its website until November 2016 (eighteen months after its legal obligation to do so arose). In these circumstances, it is difficult for Oliver Franklin to argue that it was wrong for the Council to impose a penalty at all. I consider that it was reasonable for the Council to impose a financial penalty in these circumstances. I have assumed that Oliver Franklin would like me to consider whether the *amount* of the penalty was unreasonable.
19. The only factual dispute between the parties appears to be whether the landlords' fees were publicised in November 2016 (as submitted by Oliver Franklin) or not until after December 2016 (as submitted by the Council). I have considered the evidence submitted by both parties. I note that the screen shots and video of Oliver Franklin's website produced by Mr Ali on behalf of the Council are dated 14 December 2016 and that it does not include the landlords' fees. I note that the screen shots produced by Oliver Franklin which do include the landlords' fees are either not dated (pages 9 and 10 of my bundle) or contain a note stating "*last edited by Oliver Franklin on December 16 2016 at 12.42 pm*" (pages 11 and 12 of my bundle). Having considered this evidence carefully, I am not persuaded by Oliver Franklin's submission and I conclude on the balance of probabilities that Oliver Franklin's website was still not compliant with the legislation on 14 December 2016 when the Council served the Final Notice.
20. As noted above, I have assumed that Oliver Franklin wishes me to consider whether the amount of the penalty was unreasonable. I note that £5000 is the maximum penalty that the Council can impose under s.87 (7)(b) of the Consumer Rights Act 2015. I have not been provided with any information about the Council's approach to calculating penalties but note

that under s. 87 (7) (a) the penalty may be “*such amount as the authority imposing it determines*”.

21. The period during which Oliver Franklin was in breach of its legal obligation to publish landlords’ fees on its website was, by its own admission, seventeen months and on the facts as I have found them, eighteen months. I note that the Council contacted Oliver Franklin on no less than seven occasions before imposing any penalty and that the Final Notice was issued eight months after service of the Notice of Intent, which clearly stated that a monetary penalty would be the next step. I note that Oliver Franklin, by its own admission, did not take the relevant action for a further seven months, and on the facts as I have found them, for a further eight months. I can find in these circumstances no mitigating factors which suggest that the penalty should not be of the maximum amount.
22. Accordingly, I am satisfied that the amount of financial penalty imposed by the Council in the Final Notice was reasonable. For the above reasons, the appeal is dismissed and the Final Notice is confirmed.

(Signed)

Dated: 5 April 2017

Alison McKenna

Principal Judge

(amended pursuant to rule 40 on 7 April 2017)

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