First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2017/0011

Heard 20 September and 30 October 2017

Before

JUDGE CLAIRE TAYLOR

Between

CENTRAL PARK ESTATES LIMITED

Appellant

and

LONDON BOROUGH OF NEWHAM

Respondent

Decision

The appeal is allowed in part for the reasons set out below.

DECISION AND REASONS

1. Central Park Estates Limited (the 'Appellant' or 'Central Park') appeals against a penalty charge of £8,000 issued by the London Borough of Newham ('the Council') related to failure to publicise details of fees on its website in accordance with the legislative requirements set out below.

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

2. The Consumer Rights Act 2015 (the 'Act') 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, as follows:

"**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."

Enforcement

3. 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 n-
(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." (Emphasis Added).

Financial penalties

4. The system of financial penalties for breaches of section 83 is set out in Schedule 9 of the 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. "

Appeals

5. 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."

Guidance

6. The Guidance for Local Authorities issued by the Department for Communities and Local Government (known as 'statutory guidance' and referred to below as the 'Guidance'), during the passage of the Bill, concerning the duty to publicise fees includes the following at Annex D:

a. *"**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."

(Page 56 of the Guidance)

b. ***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". (Page 57 of the Guidance).

c. Penalty for breach of duty to publicise fees

"The expectation is that a £5,000 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 lettings agent 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 which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business". *(Page 60 of the Guidance).*

B. Background

7. On 1 November 2016, an officer of the Council inspected the Appellant's premises and provided guidance as to its requirements under the Act. On 13 December 2016, the Council visited again. On 21 December 2016, the Council sent guidance. On 4 January 2017, the officer emailed the Appellant attaching guidance.

8. On 24 January 2017, the Council served on the Appellant a 'notice of intent' by hand. This gave notice of the intention to issue a penalty of £10,000 for failure to display a list of fees for tenants with a clear description of what work was included for the amount charged, and failure to display a client money protection scheme statement.

9. On the same day, the Appellant emailed the Council.

10. On 26 January and 20 February, the Appellant sent representations to the Council, including a copy of audited accounts.

11. On 15 March 2017, the officer of the Council issued a final notice by hand, reducing the penalty to £8,000.

C. The Appeal

12. Central Park now appeals the Council's decision. Both parties were content for the matter to be determined without a hearing. I am satisfied that, in all the circumstances, I can justly do so. I have read and considered all material presented to me, even if not specifically referred to below.

13. The Tribunal considered the matter on 20 September. Further directions were issued on that date, whereby the parties were set the Upper Tribunal decision of *London Borough of Camden v ('Foxtons Decision') Ltd [2017] UKUT 349 (AAC)* and asked if they had any submissions. In response, the Council explained that it now considered that the Appellant had made one and not two breaches of the Act because it interpreted the requirements of sub-sections 83(2), 83(4) and 83(6) as one duty. Accordingly, it sought to impose a penalty of £4,000 and not £8,000.

14. Central Park's submissions, are summarised below. *(For ease of reference, I have grouped the arguments below.)*

a. The fee description

i. Since 2014, the fee structure has been displayed clearly in the office window, visible from the outside and inside and available to take away, together with a credit check application form. Therefore, this part of the Final Notice should be cancelled.

ii. The Act states that *'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 for which it is imposed*'. *(Section 83(4))*. This has been complied with as the fee declaration states: *'Our agency fee or charges are £750 including Vat per property. This covers our administration, referencing and credit check costs'.* This is a description of what our fee is used for.

iii. The officer was not happy with the wording and insisted it be and was changed. No tenants have ever complained about this before. In fact, tenants would be surprised that they were declaring everything up front and other agents were not so transparent. To any reasonable person the fee structure describes what the fee is for. The legislation does not say 'clearly' it says 'description' of fees, which our fee declaration describes fully. The Cambridge English Dictionary definition of description is "something that tells you what something or someone is like."

iv. The wording was amended on 24/1/17 as insisted by the officer whilst on our premises with very minor changes.

v. The penalty of £5,000 reduced to £4,000 is extremely excessive and will put the company out of business.

vi. Newham Council fined Foxtons £2,500 for '£425 Administration Fee' where its was a lot clearer. Foxtons is a gigantic company and the fine is small therefore, the fine levied is disproportionate

b. Client money protection scheme statement

i. The company does not hold money on behalf of persons it provides services for. The company has now written a statement onto its documents that it is not members of any client money protection scheme.

ii. It is agreed this part of the breach occurred partially. It was rectified at same time the officer was on its premises. (The Appellant had understood that it only needed to show that membership of The Property Ombudsman rather than adding a line onto our documents.) For this partial breach the fine is very excessive at £4,000 and should be reduced to £500.

iii. It is obtaining quotes for voluntary client money protection scheme insurance, that the Appellant will implement very shortly.

iv. This is the first time that the Appellant had received a notice from the Council and a reduced fine would help it to stay in business.

15. The Council's response to the Appellant's arguments included the following:

a. The fee description

i. The Guidance provides that: 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.
ii. The intention of the legislation is that both tenants and landlords are able to understand what a service or cost is for and why it is being imposed.
iii. The actual wording on 27 January 2017 was: *'Our Agency Fee or Charges are £750 Including Vat per property. This covers our Administration, Referencing and Credit Check costs. If you fail or the results are received with an Unsatisfactory Result you will only receive back £600 Including Vat and No Tenancy will be granted, [sic*].'
iv. The description is entirely unclear. The purpose of the legislation is to enable clients to understand what they are being charged for. Instead, there is a lump sum charge for the services - it is unclear how much is being charged for the taking of references or for undertaking a credit check. 'Administration' is a meaningless term and is specifically identified by the Guidance as a term to be avoided *(see above*) for being hopelessly unclear. Permitting such a term as providing the necessary clarity would render the statutory scheme nugatory.

b. The level of fine imposed

i. Under section 87(7), the Council can impose a fine of up to £5,000 for failure to publish fees and other details. The Guidance indicates an expectation that a £5,000 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 is up to the Council to determine what those circumstances might be, taking into account the representations from the letting agent.
ii. The Council considered the Appellant's representations. The mitigation advanced (refurbishment work, information provided in another format) was not accepted as the Appellant had had 6 months to comply with the statutory requirements and the purpose of the legislation was to ensure that fees are 'upfront and visible'.
iii. In addition to borough wide 'mailshots', the Council inspected the business on 1 November 2016 and an employee provided with an advice letter. On 13 December 2016 the Appellant was again visited and, although the wording on the list had changed it was not compliant with the Act (indeed it was arguably more opaque). A was provided with advice and its director provided with a template. A was further reminded of the outstanding obligations by way on an e-mail dated 4 January 2017.
iv. On 24 January 2017 A remained non-compliant) updating the list only when advised that notice would now be given. This was too late to be regarded as mitigation.

16. A statement from Fiona Exley, Trading Standards Officer, that included:

a. On 1 November 2016, she carried out a general inspection of business. The owner was not present but business was open and she spoke to an employee called Mr Awadh (*sales specialist*). She gave him a copy of the advice letter sent out by the London Borough of Newham prior to the visit. She advised that if there anything was wrong she would put this in writing and could be contacted if anything was not clear. She found:

i. Tenants Fees were displayed on a notice in the office window, facing inwards. The wording stated: "*Agency Fee or Charges are £750 including VAT per property. This covers our Administration costs at £450, Reference costs at £150 and Credit Check costs at £150".* It was not clear in that the charge did not describe what work was carried out for administration cost.
ii. There was also no statement made as to whether a business was a member of a Client Money Protection scheme.

b. She issued a Non-Compliance Notice, which explained what was incorrect, and included her contact details.

c. On 13 December 2016, she revisited premises and the Director, Mr Shazhad Chaudry, was present. The wording for the "Tenants Requirements" fees display had been changed as follows *"£750 including VAT per property. This covers our Administration, Referencing and Credit Check costs*". This was still not sufficiently clear about what this work included and a client money protection statement was still not displayed. She advised what needed changing and provided him a copy of the fees template recommended by ARLA as an example of how it could be done. He said that he would amend the notice and suggested that he email a copy.

d. On 21 December 2016, an additional standard guidance letter was sent by the London Borough Newham to the business as part of another general mail out to letting agents.

e. On 4 January 2017, she emailed the business as she had not received anything from them confirming that they had amended the notices on display. She attached further guidance; Business Companion Letting Agents display fees and DCLG guidance. She received no response.

f. On 24 January 2017, she revisited the premises. Mr Chaudry was the only person present. The "Tenant Requirements" notice had not been amended and she took a photograph. The tenant's fees were not clearly described and displayed and a statement was not displayed as to whether the business was or not a member of a client money protection scheme. Mr Chaudry said that it was on a list of his "things to do". She issued a Notice of Intent for the two failures to comply. Mr Chaudry refused to sign for receipt of this and said he would amend the notices. She left the premises. Later that day, she received an email from the business stating that amendments had been made and attaching new Tenants and Landlords Requirements notices.

g. On 28 February 2017, the Letting Agents Officer Panel met and to issue a final notice but reduce the amount to £4,000 for each failure, £8,000 in total, taking into consideration the accounts provided by the company. On the 3 March 2017 a letter was sent by Mr Kari Aslam advising the business of this decision.

h. On 15 March 2017 she issued a Final Notice to the business in person with respect to both breaches.

D. Findings

17. The Tribunal's role is to decide whether the Council's decision to impose a financial penalty was based on an error of fact or was wrong in law or unreasonable; or whether the amount of the penalty is unreasonable. Depending on the finding I make, I may quash, confirm or vary the final notice.[1]

18. It is accepted by the Council that it erred in imposing two fines instead of one. It is accepted by the Appellant that it had failed to comply with the requirement to include on the list of fees a statement concerning membership of a client money protection scheme. *(See section 83(6)).* Therefore, there was a legal basis for the Council to impose the single financial penalty on Central Park. The issues before me are whether, in all circumstances (as found by me), the amount of the penalty was unreasonable or the decision to fine the Appellant was unreasonable for any other reason.[2] On making a finding, I may quash, confirm or vary the final notice.[3]

19. The Appellant does not accept failure to display a list of fees *(See section 83(2)).* I find that the Appellant failed to satisfy the legislation. This is because I accept Fiona Exley's testimony, which is supported by the detailed records she made and presented in the papers before me. The fee description at page 40 explained a cost of £450 for 'administration costs'. This is a vague term that does not satisfy section 83(4)(a) of the Act in providing a description enabling a client to understand the "*the service or cost that is covered by the fee or the purpose of which it is imposed".* The Guidance specifically makes reference to "administration" not being a sufficiently clear term to satisfy the Act. Unfortunately, the Appellant's later amendments made the description arguably still less informative. *(See page 52).* Despite her persistent efforts, on the day of the Notice of Intent, the fee description had still not been changed. (*See page 74.)*

20. Furthermore, as made clear from Ms Exley's testimony and paragraphs 7 to 11 above, the Council went to considerable effort to explain the requirements and the ramifications of not complying, and gave the Appellant a fair opportunity to address the breaches. The Appellant contests the requirements of the Act and the meaning of 'description'. However, the Council had informed the Appellant more than once that the term "administration" was not acceptable, and it provided the Guidance which explained this further. *(See for instance, pages 54-55 and page 60.)*

21. On the day the Appellant was issued a notice of intent, it amended the fee notice. *(Page 81).* Ms Exley accepts that it was satisfied with the amendments.

22. The Appellant argues that only minor amendments were needed. I do not accept this. The Appellant failed in providing an adequate description of fees, and a client money protection statement. The Foxtons Decision made clear the importance of any reference to an administration fee being accompanied by a description that is sufficient to enable a person to understand the service or cost that is covered by the fee or the purpose for which it is imposed. The Decision noted the importance of being clear that the amount specified was comprehensive to know precisely how

[1] See further paragraph 5 above.
[2] See paragraph 5(2) of Schedule 9 to the 2015 Act.
[3] See paragraph 5(5) of Schedule 9 to the 2015 Act.

much a tenant will have to pay and to know what is covered to enable a comparison with other agents. Without the relevant breakdown, it is unclear what services the tenant is paying for, and this goes against a core purpose of the legislation.

23. The Appellant provided audited accounts to the Council who reduced the penalty at the final notice as a consequence (where at the time it was seeking a total penalty of £8,000). The Appellant has not provided further reasoning as to why the reduced penalty is unreasonable on the basis of its accounts. Profit and Loss Accounts show a turnover of £250,350 (year ended 2015) and £154,264 (year ended 2014). There is nothing in the Accounts that indicates that the level of fine is disproportionate to turnover or will put the Appellant out of business.

24. The Foxtons Decision awarded a penalty of £4,500 for each breach, and not £2,500 as the Appellant had noted had previously been reported. In any event, in deciding if the amount of the penalty or decision to award a penalty is unreasonable, it is necessary to have regard to the Guidance, to which I have earlier made reference. This says that the expectation is a "fine" (ie penalty) of £5,000 is the norm 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. It states that: "*It will be up to the enforcement authority to decide what such circumstances might be*". It is clear that the Council considered whether there were extenuating circumstances in this case.

25. In short, I am not satisfied that any credible reason has been provided by the Appellant to justify lowering the fine below £4,000, where we are guided that in any event the fine of £5,000 is to be considered the norm. Having regard in particular to the fact that the Appellant did not comply with two aspects of section 83 duty, (concerning the description of fees and client money protection scheme statement); that the Appellant rectified this after the service of the notice of intent and before the final notice; and the company's accounts; I do not consider £4,000 unreasonable. Accordingly, I substitute a penalty totalling £4,000 instead of £8,000.

26. For the above reasons, this appeal succeeds to the extent indicated above.

Judge Claire Taylor
30 October 2017
Promulgation Date: 1 November 2017