First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2018/0015

Heard at East London Tribunal
on 30th August 2018

Between

PANTHER INTERNATIONAL PROPERTIES LTD

Appellant

and

ROYAL BOROUGH OF KENSINGTON AND CHELSEA

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Final Notice

1. Panther International Properties Limited ("Panther") appealed against a Final Notice dated 8th March 2018 served by the Royal Borough of Kensington & Chelsea ("Kensington & Chelsea") in which Kensington & Chelsea stated that on 27th September 2017 Panther was in breach of some of the duties imposed on letting agents under section 83 of the Consumer Rights Act 2015 (the "Act"). The Final Notice set out the breaches in the following terms:

"Failure to display a list of fees as required by S83(3) (website)
Failure to include in the list of fees the information required by S83(4) (information about fees)
Failure to include on the list of fees a statement concerning membership of a client money protection scheme S83(6)

Date of breach: 27/09/2017
Details of breach: the agent did not publish a list of any fees – either for tenants or landlords – on the agent's website www.panther-international.com
……."

2. In the Final Notice Kensington & Chelsea imposed a monetary penalty on Panther of £3,500 for these breaches. Kensington & Chelsea stated in the Final Notice that they had issued a notice of intent to impose a monetary penalty of £5,000 on Panther on 27th September 2017 (the "Notice of Intent") and that after considering the representations received from Panther in response to the Notice of Intent they had reduced the penalty from £5,000 to £3,500.

B. Legislation

3. The sections of the Act that are referred to in this decision or that are of greatest relevance to this appeal are set out below in the Annex which forms part of this decision.

4. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under section 83, it may impose a financial penalty under section 87 of that Act. It does so by serving first a notice of intent, considering any representations made in response, and then serving a final notice on the letting agent concerned.

5. Schedule 9 paragraph 5 to the 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

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 subsection 87 (9) of the Act. The section of the Guidance that is of greatest relevance to this appeal is set out below:

"Penalty for breach of duty to publicise fees

The enforcement authority can impose a fine 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."

D. The Appeal

7. Panther submitted an appeal dated 2nd April 2018 against the decision in the Final Notice. In the appeal Panther set out the following grounds of appeal:
   - They had no intention to deceive clients and had always been very open with them about fees.
   - This is their first offence.
   - Panther is a small company and the penalty is 50% of their annual income and is unreasonable.

   In bringing the appeal Panther sought the waiver of the fine.

8. Kensington & Chelsea responded to the grounds of appeal by noting that Panther did not appear to be contesting that they had failed to list their fees on their website. Kensington & Chelsea stated that Panther had amended their website after receiving the Notice of Intent and had included a list of fees to tenants. However, the website still failed to list any fees to landlords and there was insufficient detail about some of the tenant's fees e.g. an "administration fee". In addition there was still no statement about whether they were a member of a client money protection scheme. Kensington & Chelsea noted that Panther had never contacted Kensington & Chelsea for advice on compliance with the Act. Kensington & Chelsea also stated that they did not accept that the annual turnover of Panther was only £7,000 as Panther had appeared to suggest. Kensington & Chelsea rejected the argument that Panther was entitled to some mitigation by reason of this being their first offence as Panther had had over two years to become compliant with the Act before the Notice of Intent was issued and had been notified by Kensington & Chelsea in December 2015 of the requirements of the Act.

D. The hearing

9. The Appellant was represented by Mrs Azucena Pinter, the director of Panther and her husband, Mr Max Pinter. The Respondent was represented by Ms Kirsty Panton. Kensington & Chelsea provided witness statements from Mr Doug Love and Ms Alex Lanton, two Trading Standards Officers who had dealt with the case

against Panther, and Mr Hashish Shah, a Trading Standards Manager, who had been on the panel that decided to issue the Final Notice and determined the amount of the penalty.

10. It was agreed between the parties that Ms Panton would commence by setting out the basis upon which Kensington & Chelsea had issued the Final Notice and why it believed the monetary penalty should be imposed. Ms Panton took the tribunal through all of Kensington & Chelsea's dealings with Panther and the issue of the Notice of Intent and Final Notice. Ms Panton set out an analysis of the failures by Panther, both before and after the issue of the Final Notice, to comply with its obligations to publish its fees and a statement about whether they were a member of a client money protection scheme

11. Mrs Pinter did not seek to question any of the witnesses on the contents of their witness statements. Mr and Mrs Pinter confirmed that they were not disputing that Panther had failed to meet the requirements of section 83(3) of the Act to publish a list of their fees on their website on 27th September 2017. However, Panther was disputing that it had an obligation to publish a statement about whether they were a member of a client money protection scheme. Mr Pinter responded to Ms Panton and very briefly set out the basis for Panther's appeal and why they believed that the amount of the penalty should be reduced or waived.

12. It was apparent from the submissions at the hearing and from the written submissions that preceded it that the parties agreed on some of the facts that are relevant to the outcome of this appeal. It was common ground between the parties at the hearing, and I find it was the proper conclusion from the evidence, that on 27th September 2017 :
    - Panther was operating as letting agent.
    - Panther's business was operated from a website and they had no premises that clients could visit.
    - Panther was engaged in letting agency work in respect of residential properties within Kensington & Chelsea and elsewhere in London and fell within Kensington & Chelsea's jurisdiction as an enforcement authority under the Act.
    - Panther operated a website on which it was required to publish its fees for landlords and tenants.
    - Kensington & Chelsea had properly delivered the Notice of Intent and the Final Notice to Panther.
    - Panther had not included a statement of whether it was a member of a client money protection scheme on its website.

13. As a consequence of the conclusions on the points listed above, the matters that remain in contention between the parties and which I need to decide in order to determine this appeal are the following:
    - Whether Panther had a duty to publish a statement about whether they were a member of a client money protection scheme on its website on 27th September 2017.

- The reasonableness of the size of the monetary penalty imposed in the Final Notice after taking account of any extenuating, mitigating or aggravating circumstances and its impact upon Panther's financial position.

14. I consider these matters in detail below.

D. The matters in dispute

15. In reaching a decision in this case I have had regard to all of the written submissions, evidence and other documentation provided by both parties during the course of this appeal and to the evidence and submissions provided in the course of the hearing.

16. Panther stated that they do not hold client money. They receive payment from a landlord for introducing tenants. They also receive fees from tenants. However, their business model does not involve handling rental, deposit or other funds received from a tenant on behalf of a landlord. Mrs Pinter stated at the hearing that Panther only had one client, a landlord with a very large number of properties, and the landlord dealt directly with tenants in receiving payments and deposits. This is the business model that Panther pursues and they have no plans to change this approach.

17. Kensington & Chelsea responded to this assertion by pointing out that Panther had not previously told Kensington & Chelsea that they did not hold any client money. In any event, Ms Panton argued that the obligation under section 83 (6) of the Act required a letting agent to state if they were, or if they were not a member of a client money protection scheme.

18. I referred the parties to the specific wording of section 83 (6) and sought their views on whether the obligation to publish a statement about whether a letting agent is a member of a client money protection scheme on its website was conditional on the letting agent holding money on behalf of persons to whom they provide letting agency services. Ms Panton stated that Kensington & Chelsea was unsure on this point as the issue had only just arisen however, it did not affect the reasonableness of the penalty.

19. Panther was consistent in arguing in their appeal, in their representations to Kensington & Chelsea in response to the Notice of Intent and at the hearing that the amount of the monetary penalty imposed on them is unreasonable. In deciding that issue, which is left open by the primary legislation, I accept that it is helpful and appropriate to have regard to the Guidance. 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; however, it goes on to indicate some considerations that may be relevant. It recognises that an issue that should be considered in this regard is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is clear that the Act must take precedence over

the Guidance and that, in any event, enforcement authorities such as Kensington & Chelsea must consider the issue of reasonableness and proportionality of a penalty in the round and that they should not follow the advice in the Guidance to the exclusion of all other matters.

20. The Act is intended to reduce harm and the risk of harm to consumers from letting agents. The penalty needs to be set at a level that reflects the public benefit in ensuring compliance with the Act whilst being proportionate to the scale of the business and the severity of the failure.

21. Panther stated in their appeal that a £3,500 penalty was unreasonable. At the hearing Panther repeated that such a sum represented a very large part of the profit of the company. Panther did not provide any new information about the turnover or profitability of their business. Panther was invited to do so at hearing, but no other information was available and Mrs Pinter stated that she was not yet aware of the profitability of the business in 2018. Mr and Mrs Pinter also stated that their fees for landlords were negotiable and so they had not refused to publish these fees.

22. Kensington & Chelsea provided a copy of the Report and Accounts of Panther for the year to 28 February 2017 which had been signed by Mrs Pinter. These showed that Panther had a turnover of £57,127 in that year and made a profit of £2,278. Mrs Pinter confirmed that she recognised these figures. When asked Mrs Pinter also confirmed that the directors' salaries of £29,100 in the accounts referred to the salary that she received in that year.

23. Kensington & Chelsea accepted that the company was small and the penalty had already been reduced to reflect this fact. Kensington & Chelsea argued that the financial information that they had provided on Panther shows that it can afford to pay the penalty. Its website continues to show a large number of 'high end' properties for sale and for rent. The fact that its fees to landlords were negotiable did not mean that they should not publish the level of fees that they would seek so that landlords had access to this information.

24. Mrs Pinter responded by saying that Panther has not yet arranged the sale of any property and that its income comes from finding tenants and receiving commission from the landlord and fees from the tenant in a very competitive market.

E. Conclusions on the facts and law

25. I conclude from the information in Panther's Report and Accounts that a fine of £3,500 would not lead to a risk of Panther going out of business, but that it is a material amount for Panther.

26. With regard to other mitigating or aggravating factors that might affect the size of the penalty, I find that Panther did belatedly, but unsuccessfully, take steps to address the failings that Kensington & Chelsea had pointed out to them. The information on

fees that Panther did publish after receiving the Notice of Intent did not comply with the Act. It failed to list the fees that they charged landlords. Mr and Mrs Pinter said these were limited to commission on the finding of tenants and were negotiable. I do not accept that this is a reason for not publishing the fees that Panther would seek at the start of any negotiation. In addition the list of fees to tenants that Panther published after receiving the Notice of Intent included an administration fee of £180 + VAT per tenancy. This is despite the fact that the Act requires the description of each fee to be sufficient to enable a tenant to understand the service or cost that is covered by the fee and the Guidance specifically states that:
"Ill-defined terms such as administration costs must not be used. All cost must include tax"

27. Panther were required to comply with the Act from May 2015 and it is their responsibility to ensure that they comply with the legal obligations that fall upon them as letting agents. They are not entitled to await notification by a local authority that they are failing to meet their legal obligation.

28. I find that there is no evidence to suggest that Panther sought to take advantage of clients as a result of their failure to comply with the requirements of the Act. The breach and Panther's inability to remedy it appears to have arisen from a lack of capability and diligence that has persisted for a long time.

29. I accept the evidence of Mr and Mrs Pinter that they do not hold any client money and that their business model does not require them to hold funds on behalf of any landlord or tent. In the circumstances I also conclude that the obligation in section 83 (6) of the Act to publish a statement about whether a letting agent is a member of a client money protection scheme on its website is conditional on the letting agent holding money on behalf of persons to whom they provide letting agency services. As a consequence I find that Panther was not in breach of section 83 (6) on 27th September 2017.

30. In the circumstances, I have taken into account that the penalty imposed by Kensington & Chelsea was based upon Panther being in breach of both section 83 (3) and 83 (6) and that Mr Shah's evidence made it clear that the existence of two breaches of the Act and Panther's poor response to being notified of both breaches was a factor in Kensington & Chelsea's decision to set the penalty at £3,500. I note that the penalty has already been reduced to reflect the small scale of Panther's business. I find that that size of the penalty is material to Panther, but I do not believe it will create a risk of the business not continuing given the level of remuneration of the director. I find that there are no other extenuating or mitigating circumstances that justify a conclusion that the amount of the financial penalty set out in the Final Notice is unreasonable. I do not believe that the penalty is disproportionate to the severity of the breach or to the financial position of Panther. However, some reduction is appropriate to reflect my conclusion that Panther were only in breach of section 83 (3) and not section 83 (6) of the Act. In all of the circumstance I conclude that the penalty should be reduced to £3,000.

F. ***Decision***

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

32. I find that Panther's failure to publish on their website on 27th September 2017 a list of the fees that they charged to clients of their letting agency business put them in breach of section 83 (3) of the Act. However, Panther ran their business without holding any money on behalf of persons to whom they provide services as a part of their work and therefore Panther were not in breach of section 83 (6) of the Act. In all of the circumstances the financial penalty of £3,500 imposed by Kensington & Chelsea is unreasonable and should be reduced to £3,000.

33. The appeal is allowed in part

Peter Hinchliffe
Judge of the First-tier Tribunal
6th September 2018
Promulgation date 13 September 2018

ANNEX

The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees and other information. 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 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 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 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 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.