



**First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation**

Appeal Reference: PR/2017/0045

**Decided without a hearing,
Fleetbank House, London
on 19th April 2018**

Between

THE VITA PROPERTY GROUP LTD

Appellant

and

LONDON BOROUGH OF CAMDEN

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Final Notice

1. The Vita Property Group Limited (“Vita”) appealed against a Final Notice dated 4th October 2017 served on it by the London Borough of Camden (“Camden”). The Final Notice sets out Camden’s conclusion that Vita was on 16th August 2017 engaged in letting agency work in Camden and had committed a breach of the

following duties imposed on letting agents under section 83 of the Consumer Rights Act 2015 (the “Act”):

*“Failed to publish full details of agents tenant fees on their website (S 83.3)
Failed to publish details of agents landlord fees on their website (S 83.3)”*

2. In the Final Notice, Camden imposed a monetary penalty on Vita of £5,000 for these breaches. Camden stated in the Final Notice that they had issued a notice of intent to impose a monetary penalty to Vita on 16th August 2017 (the “Notice of Intent”) and that no representations had been received from Vita in response to the Notice of Intent.

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 to that notice, 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. Vita submitted an appeal dated 13th November 2017 against the decision in the Final Notice. In the appeal Vita set out the following grounds of appeal:
 - Vita accepted that their fees for landlords were not published on their website. Vita stated that this was because the legislation was implemented when they had different support staff, who did not make the director aware of these requirements.
 - The fees that Vita charged for tenants were published on their website.
 - Vita made an honest misunderstanding. They will remedy any failure to comply with their obligations as soon as it is brought to their attention. They were fully committed to meeting their responsibilities.
 - The amount of the penalty was unreasonable as it would be extremely detrimental to Vita. They sought leniency on this occasion.
8. Camden responded to the grounds of appeal by providing details of the contact and correspondence that they had had with Vita from 1st October 2015 up to the issue of the Final Notice. Camden provided copies of correspondence with Vita in October 2015 in which they had pointed out to Vita that they were not complying with their obligations under the Act with respect to publishing "*clear/broken down prices or charges to potential landlords and tenants*". Camden provided written advice on the Act at this time. Camden also provided copies of the Notice of Intent. The Notice of Intent was accompanied by details of how Vita could make representations to Camden in respect of the breaches of the Act that are set out in the Notice of Intent. Camden stated that no such representations were submitted by Vita.
9. Camden also submitted a DVD containing a screen shot or recoding of the website of Vita on the morning of 10th August 2017. This shows the content of the website and Camden say that it demonstrates that there was no information on the website about the fees charged to landlords. They also show the details of Vita's fees for tenants and offer a brief explanation of how these are insufficient to meet the requirements of the Act.
10. Vita made no response to Camden's submissions in response to the appeal and has not provided any further evidence or submission to the tribunal in the course of this appeal.

D. *Conclusions on the facts and law*

11. In reaching a decision in this case I have had regard to the written submissions, evidence and other documentation provided by both parties during the course of this appeal. Vita has made limited submissions to the tribunal and did not submit any representations or make other submissions to Camden.
12. In the circumstances I find that the evidence supports Camden's assertions that Vita was on 16th August 2017 undertaking lettings agency work, as defined in the Act, from its premises in Camden and that it had an obligation under section 83 of the Act to publish its fees to landlords and tenants on its website. Vita has not sought to challenge these facts and appears to accept them.
13. I find that it is common ground between Camden and Vita that Vita had failed to publish its fees for landlords on its website on 16th August 2017.
14. Both Vita and Camden agree that Vita's fees for tenants were published on Vita's website. They disagree over whether these details were sufficient to satisfy the requirements of section 83(3) of the Act. I have reviewed the screen shot taken from Vita's website on 10th August 2017. The Notice of Intent and the Final Notice refer to Vita having failed to publish full details of the fees to tenants. Camden have not made submissions in this appeal setting out the specific shortcomings or omission they cause them to conclude that the information relating to Vita's fees to tenants is insufficient or inadequate, save that a voice over from an officer from Camden who records the screen shot conducted on 10th August 2017 refers to the description of a charge for tenants as an "administration charge" as inappropriate and states that the fees are "vague". I note that the list of Vita's fees for tenants are shown exclusive of VAT, that one fee is described as a "general administration fee", that a "check in /check out fee" is referred to without any price being shown and that an "arrears chasing fee" is also referred to and is described as varying according to the circumstances.
15. In order to meet their obligations under the Act a letting agent should provide sufficient information about the basis upon which any fee is to be charged to a landlord or tenant. The Guidance refers to the need for the list of fees to be comprehensive and clearly defined. The Upper Tribunal stated in *London Borough of Camden v Foxtons* (2017 UKUT349 (AAC)) that the Act required:

"a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or the cost that is covered by the fee or the purpose for which it is imposed".
16. In this instance I find that the references to a "general administration charge" and to an unpriced "check in/check out fee" and "arrears chasing fee" are insufficiently clear to meet the requirements of the Act. I therefore agree that Camden were correct to conclude that Vita had failed to meet its obligations under section 83 of the Act to

publish full details of the tenants' fees when they issued the Notice of Intent and the Final Notice.

17. Vita challenged the reasonableness of a monetary penalty of £5,000 in respect of the alleged breaches of section 83(3) of the Act and set out the extenuating circumstances that they believe justify a penalty of less than that amount. In deciding on the reasonableness of the penalty, a matter 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 Camden 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.
18. 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.
19. Vita argues that their failure arose out of an honest misunderstanding and that they would never knowingly put themselves in breach of their legal obligations. They try hard to always be compliant. I note these arguments, but such a position is the least that might be expected of a business conducting lettings agency work in accordance with the law. Were any such business unable to meet these standards, it would be likely to be regarded as an aggravating factor as it would suggest a deliberate or reckless flouting of the law. It is incumbent on Vita to understand the legal obligations that it must fulfil in the course of its business. Camden had in 2015 pointed out Vita's legal responsibilities and Vita had failed to discharge these effectively. I do not accept that Vita have established that there are any extenuating circumstances with regard to their conduct that might form a basis for reducing the amount of the penalty.
20. Vita states that they are a small independent business that would suffer extreme detriment if a fine of £5,000 was imposed on them by Camden. No financial information was provided by Vita to support this assertion. The tribunal has no evidence from Vita or from any other source to indicate that a penalty of £5,000 would threaten the viability of Vita or would otherwise be disproportionate to the size of their business or the seriousness of their breach of the Act. Vita has had the opportunity to provide further evidence supporting its contention that the level of financial difficulties that it would suffer amount to extenuating circumstances that

justify a reduction from the £5,000 penalty imposed by Camden for the breaches of section 83 of the Act. It has not done so and I find that this aspect of their appeal does not succeed.

F. Decision

21. By virtue of paragraph 5(5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.
22. I find that Vita was on 16th August 2017 engaged in letting agency work in Camden and had failed at that time to publish on its website its fees for landlords and adequate details of its fees to tenants and as a consequence was in breach of its obligations under section 83 (3) of the Act. I conclude that the financial penalty of £5,000 imposed by Camden is not unreasonable in all of the circumstance of this appeal.
23. The appeal is dismissed.

Peter Hinchliffe
Judge of the First-tier Tribunal
19th April 2018
Promulgation Date:

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-

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- (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.