



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

Appeal Reference: PR/2019/0029

**Decided without a hearing
On 28 August 2019**

Before

JUDGE JACQUELINE FINDLAY

Between

NORTHWEST 6 LTD

Appellant

and

LONDON BOROUGH OF BRENT

Respondent

DECISION AND REASONS

Decision

1. The Appellant's failure on 21 February 2019 to publish at a business address a complete list of relevant fees, a statement that it belonged to a client money protection scheme and information about the redress scheme to which it belonged and on the website a failure to publish a complete list of relevant fees put it in breach of sections 83(2)(3)(6) and (7) of the Consumer Rights Act 2015 ("the CRA 2015"). A monetary penalty of £1,500 in respect of these failures is reasonable in all the circumstances and the extenuating circumstances were properly taken into account in the reduction of the monetary penalty.

A. Legislation

2. The sections of the Consumer Credit Act 2015 (“the Act 2015”) that are referred to in this decision or that are otherwise relevant to this appeal are set out below in Annex A to this decision.

B. The Appellant’s Case

3. The Appellant appeals on the following grounds:
 - a) Westminster Property Services was not a formal trading name of Northwest 6 Ltd and the Appellant never received any advisory letters addressed to Northwest 6 Ltd.
 - b) The Appellant has done everything possible after receiving the Notice of Intent to comply with the legislation.
 - c) The Appellant has joined a client money protection scheme
 - d) The financial penalty will seriously affect the ability to carry on trading.

C. The Respondent’s Case

4. The Respondent submits the following points:
 - a) Westminster Property Services ceased trading following the formation of Northwest 6 Ltd. Although the advice letter sent on 8 September 2017 was addressed to Westminster Property Services this was read by Mr Jones who was aware of his legal obligations under the Act.
 - b) The obligation is not on the Respondent to inform the Appellant of a breach. The obligation is on the Appellant to be aware of the statutory obligations and comply.
 - c) The legislation has been in place since May 2015 and the Appellant has had ample time to comply.
 - d) The Appellant has taken some steps to bring the business into compliance, however, although some information is displayed on the website the Appellant failed to comply with s.83(2), s.83(6) and s.83(7) of the Act at the premises at 6 Kilburn Bridge, Kilburn High Road, London, NW6 6HT.
 - e) The Appellant has been in business for 25 years so should have the experience to fully comply with the legislation.
 - f) The monetary penalty was reduced to take account of the efforts made by the Appellant to comply with the legislation and the financial situation of the Appellant as disclosed.
 - g) The monetary penalty is reasonable taking into account the Guide to Local Authorities dated 13 March 2015 and the extenuating circumstances as submitted by the Appellant.

D. Findings of Fact and Reasons

5. On 21 February 2019 the Appellant was engaged in letting agency work. Northwest 6 Ltd was incorporated on 17 October 2016.
6. The Respondent sent an advisory letter to Westminster Property Services at the present address of the Appellant at 6 Kilburn Ridge, Kilburn High Road, London, NW6 6HT on 8 September 2017. It is likely that the advisory letter was received on behalf of the Appellant which was operating a lettings agency business from that address on 8 September 2017.
7. The CRA 2015 has been in force since May 2015 and lays down specific requirements for businesses operating within the profession to display a comprehensive list of all fees and charges payable by tenants and landlords engaging the services of an agent and requires letting agents to display other prescribed information namely membership held with a Government approved redress scheme and details as to whether the business is a member of a client money protection scheme.
8. On 21 February 2019 at 6 Kilburn Bridge, Kilburn High Road, London, NW6 6HT where persons are dealt with face to face the Appellant failed to publish a complete list of relevant fees contrary to s. 83(2) of the CRA 2015, failed to publish a statement whether the Appellant belonged to a client money protection scheme contrary to s. 83(6) of the CRA 2015 and failed to publish information concerning which redress scheme the Appellant belonged to contrary to s. 83(7) of the CRA 2015.
9. On 21 February 2019 the Appellant failed to publish on the company website a complete list of relevant fees contrary to s. 83(3) of the CRA 2015.
10. A Notice of Intention to serve a monetary penalty of £1500 was issued to the Appellant on 21 February 2019. This Notice informed the Appellant of the statutory right to make written representations in relation to the proposed monetary penalty within 28 days beginning on the day after the Notice was issued.
11. On 10 May 2019 the Respondent issued a Final Notice.
12. On 25 March 2019 the Appellant joined a Client Money Protection scheme.
13. I find that the Final Notice contained no error of law or fact and this is not in issue.
14. In reaching my decision and dealing with the grounds of appeal, I have attached weight to the following factors:
 - a) There is no requirement or obligation on the Respondent to advise the Appellant about the legislative obligations.
 - b) It is the responsibility of the Appellant to ensure that as it is carrying on business as a letting agent it is aware of the regulatory and legal requirements affecting letting agents and complies with those responsibilities.
 - c) The Appellant had ample opportunity to ensure knowledge of and familiarity with the legislative requirements and ensure compliance since the introduction of the legislation.

- d) The Respondent adequately and properly took into account the financial impact of the monetary penalty on the business taking into account the limited information provided by the Appellant. The Appellant had ample opportunity to provide more detailed financial and up to date information. An email on 19 March 2019 (Appendix 24) to Mr Jones suggested what information should be submitted. On the basis of the evidence provided I do not find that the financial penalties are disproportionate to the turnover or scale of the business or would lead to the Appellant going out of business. The Appellant has had ample opportunity to make representations about these matters and submit documents in support or any submissions and has failed to do so.
- e) The Appellant took active steps to comply with the legislation and this action has been properly taken into account in the reduced financial penalty. However, the Appellant breached the legislative requirements notwithstanding the steps taken and the ongoing correspondence between the Appellant and the Respondent.
- f) The breaches were as a consequence of the Appellant not making sure it was aware of the legislative requirements and that it did comply. The ongoing correspondence with the Respondent was not the reasons for the breach and did not prevent the Appellant from complying with the legislation as required.

Signed: J R Findlay

Judge of the First-tier Tribunal

Date: 28 August 2019

Signed: 13 September 2019

ANNEX A

The Consumer Rights Act 2015 (“CRA 2015”) imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees. This is achieved by sections 83 to 86:-

A. Duty of Letting Agents to Publicise Fees

CONSUMER RIGHTS ACT 2015

Chapter 3

Duty of letting agents to publicise fees etc

83 Duty of letting agents to publicise Fees etc

(1) A letting agent must, in accordance with this section, publicise details of the agent's relevant fees.

(2) The agent must display a list of the fees—

(a) at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate, and

(b) at a place in each of those premises at which the list is likely to be seen by such persons.

(3) The agent must publish a list of the fees on the agent's website (if it has a website).

(4) A list of fees displayed or published in accordance with subsection (2) or (3) must include—

(a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed (as the case may be),

(b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house, and

(c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

(5) Subsections (6) and (7) apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England.

(6) If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme.

(7) If the agent is required to be a member of a redress scheme for dealing with complaints in connection with that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement—

(a) that indicates that the agent is a member of a redress scheme, and

(b) that gives the name of the scheme.

(8) The appropriate national authority may by regulations specify—

(a) other ways in which a letting agent must publicise details of the relevant fees charged by the agent or (where applicable) a statement within subsection (6) or (7);

(b) the details that must be given of fees publicised in that way.

(9) In this section—

“client money protection scheme” means a scheme which enables a person on whose behalf a letting agent holds money to be compensated if all or part of that money is not repaid to that person in circumstances where the scheme applies;

“redress scheme” means a redress scheme for which provision is made by order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013.

84 Letting agents to which the duty applies

(1) In this Chapter “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work).

(2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person's employment under a contract of employment.

(3) A person is not a letting agent for the purposes of this Chapter if—

(a) the person is of a description specified in regulations made by the appropriate national authority;

(b) the person engages in work of a description specified in regulations made by the appropriate national authority

85 Fees to which the duty applies

(1) In this Chapter “relevant fees”, in relation to a letting agent, means the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant—

(a) in respect of letting agency work carried on by the agent,

(b) in respect of property management work carried on by the agent, or

(c) otherwise in connection with—

(i) an assured tenancy of a dwelling-house, or

(ii) a dwelling-house that is, has been or is proposed to be let under an assured tenancy.

(2) Subsection (1) does not apply to—

(a) the rent payable to a landlord under a tenancy,

(b) any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person,

(c) a tenancy deposit within the meaning of section 212(8) of the Housing Act 2004, or

(d) any fees, charges or penalties of a description specified in regulations made by the appropriate national authority.

86 Letting agency work and property management work

(1) In this Chapter “letting agency work” means things done by a person in the course of a business in response to instructions received from—

(a) a person (“a prospective landlord”) seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or

(b) a person (“a prospective tenant”) seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.

(2) But “letting agency work” does not include any of the following things when done by a person who does nothing else within subsection (1)—

(a) publishing advertisements or disseminating information;

(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;

(c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.

(3) “Letting agency work” also does not include things done by a local authority.

(4) In this Chapter “property management work”, in relation to a letting agent, means things done by the agent in the course of a business in response to instructions received from another person where—

(a) that person wishes the agent to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the person's behalf, and

(b) the premises consist of a dwelling-house let under an assured tenancy.

B Enforcement

Section 87 explains how the duty under section 83 to publicise fees and other information is to be enforced:-

87 Enforcement of the duty

(1) It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area.

(2) If a letting agent breaches the duty in section 83(3) (duty to publish list of fees etc on agent's website), that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.

(3) Where a local weights and measures authority in England and Wales is satisfied on the balance of probabilities that a letting agent has breached a duty imposed by or under section 83, the authority may impose a financial penalty on the agent in respect of that breach.

(4) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority's area (as well as in respect of a breach which occurs within that area).

(5) But a local weights and measures authority in England and Wales may impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales only if it has obtained the consent of that authority.

(6) Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

(7) The amount of a financial penalty imposed under this section—

(a) may be such as the authority imposing it determines, but

(b) must not exceed £5,000.

(8) Schedule 9 (procedure for and appeals against financial penalties) has effect.

(9) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State about—

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

C. Financial penalties

3. The system of financial penalties for breaches of section 83 is set out in Schedule 9 of the CRA 2015

SCHEDULE 9

Duty of letting agents to publicise fees: financial penalties

Final Notice of intent

Section 87

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.

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 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.