



NCN: [2024] UKFTT 149 (GRC)

Case Reference: PR/2023/0056 PR/2023/0057 & PR/2023/0058

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

Heard by: Remote CVP Hearing

**Heard on: 19 February 2024
Decision given on: 21 February 2024**

Before

TRIBUNAL JUDGE FINDLAY

Between

KK RICH ESTATES LIMITED

and

LONDON BOROUGH OF NEWHAM

Appellant

Respondent

Representation:

For the Appellant:

Mr Kandeebhan Kannathasan, Business Partner
Mr Zubeer Yakub Damna, Director of the Appellant
Ms Hafeza Jama, Administration Manager

For the Respondent:

Mr N Ham, Counsel for the Respondent
Ms Alexandra Cosgrove, Trading Standards Officer, Private Sector Housing Standards
Ms Julie Cannard, Team Leader, Private Sector Housing Standards

Decision: The appeal is dismissed.

The Final Notice (“FN”) dated 12 June 2023 imposing a Financial Penalty (“FP”) of £3,000, for a breach of Regulation 4 of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (CMPSR) is confirmed.

The FN dated 12 June 2023 imposing a FP of £3,000, for a breach of s. 83 of the Consumer Rights Act 2015 (the CRA) in relation to the Appellant’s website, is confirmed.

The FN dated 12 June 2023 imposing a FP of £2,500, for a breach of section 83(2) of the CRA in relation to the Appellant’s office, is confirmed.

REASONS

Mode of Hearing

1. I have conducted a hearing by CVP which has been consented to by the parties, considered an open bundle of 268 pages (A1 to D260) and a screen recording of the Appellant’s website lasting 4 minutes 57 seconds dated 14 February 2023.. I have heard submissions from Mr Kannathasan and Mr Damna, on behalf of the Appellant. and from Mr Ham, on behalf of the Respondent. I heard evidence from Ms Jama for the Appellant and from Ms Cosgrove for the Respondent.

Background

2. The Respondent issued a Notice of Intent (“NI”) to impose a FP of £5,000 dated 15 February 2023 for a breach on 8 February 2023 under Regulation 4(c) of the CMPSR, namely a failure to comply with the duty to display or publish the Client Money Protection Certificate (“CMPC”) on the website.
3. The Respondent issued a NI to impose a FP of £5,000 for a breach on 8 February 2023 of s.83 of the CRA, namely; a failure to display required information on the website relating to landlord fees (s.83(4)(c)), whether the Appellant was a member of a Client Money Protection Scheme (“CMPS”) and giving the name of the scheme (s.83(6)) and a statement indicating that the Appellant was a member of a redress scheme and giving the name of the scheme with the list of fees (s.83(7)).
4. The Respondent issued a NI to impose a FP of £5,000, for a breach of s.83 of the CRA, namely; a failure to display or publish a list of the full landlord fees in the office (s.83(2)).
5. On 12 June 2023 the Respondent issued the three FNs which are the subject of this appeal.
6. The Appellant lodged a Notice of Appeal dated 19 July 2023.

Legal Framework

7. Regulation 4(c) of the CMPSR requires a property agent to publish a copy of its CMPC on its website.
8. S.83(2) of the CRA requires letting agents to publish details to its relevant fees at its premises where it deals face to face with persons using or proposing to use services to which the fees relate and at a place at those premises at which the list is likely to be seen by such persons.
9. S.83(3) of the CRA requires letting agents to publish details to its relevant fees on its website.
10. S.83(6) of the CRA requires letting agents holding client money to publish with the list of fees, a statement on its website indicating that the agent is a member of a CMPS and ,giving the name of that scheme.
11. S.83(7) of the CRA requires agents to publish a statement on its website together with its list of fees indicating that the agent is a member of a redress scheme and to give the name of the scheme.

Grounds of Appeal

12. Mr Kannathasan, on behalf of the Appellant, in his email of 15 February 2023 (B81) puts forward the following points:
 - a) The CMPC is not properly displayed on our website. This was due to human error due to a change in the hosting server for our website which meant that not all of the sourcing literature was extracted due to technical issues.
 - b) He submitted proof that the CMPC was uploaded last year prior to Ms Cosgrove's visit but did not display properly due to the technical issues.
 - c) The Appellant should not be punished for this oversight. The Appellant incurred additional costs in paying a professional company to upload the CMPC.
 - d) The Appellant is a law abiding company trying to make an honest living.
 - e) The Appellant has been publicly praised by tenants and landlords.
 - f) From the google review it can be seen that the Appellant has one of the best ratings in town due to the approach of putting the customer first and "a negative move" will send the Appellant into bankruptcy.

13. Mr Damna, on behalf of the Appellant, in the Notice of Appeal dated 19 July 2023 put forward the following points:

- g) He was aware that fees had to be published for clients visiting the office and the fees were displayed in the Letting Office
- h) He was not aware that the fees had to be published on the website.
- i) According to the Department for Communities and Local Government Guidance (now known as the Department for Levelling UP) in the early days of the legislation being in force a lack of awareness could be considered and the metric used to measure early days is not defined.
- j) As soon as matters were brought to his attention the fees were uploaded straight away even though he has not had a single lead in the last few years from the website and most of the business in through word of mouth. Customers like the personal approach.

14. In his email of 13 December 2023 Mr Damna, on behalf of the Appellant, put forward the following points:

- k) In relation to the FP for failing to publish required information on the website, due to the servers changing not all documents were uploaded on the new server.
- l) It is accepted that it was his responsibility to check all documents were uploaded but this was human error and a FP of £3,000 is absurd.
- m) In relation to the failure to display required information in the office there are two offices. One at the front and the second at the back; the Letting Office. Ms Cosgrove did not go into the Letting Office where all the certificates were displayed.
- n) A photograph of all the certificates in the Letting Office was sent to the Respondent. It is wrong to impose a FP when the whole office was not inspected and checked.
- o) There is no rule to say which office or what part of the office the certificates must be displayed.
- p) Two police officers attended the visit on 15 February 2023 and the member of staff in the office panicked. She did not know how to react when she saw the officers.
- q) The Appellant cannot afford to pay the full FPs and requests a discount.

Grounds of Opposition

15. The Respondent submits the following points:

- a) The Appellant does not deny being in breach of section 83(3) CRA at the material time. It was submitted that the landlord fees were displayed in the office, however, at the time the Respondent's officer visited, these were not on display. Accordingly the Respondent was entitled to impose FPs.
- b) The Appellant does not deny being in breach of Regulation 4 CMPSR at the material time and, accordingly, the Respondent was entitled to impose a FP.
- c) The Appellant is a professional entity and is expected to be aware of and to comply with all requirements imposed on it by law. It is not for the Council to issue advice or warnings prior to issuing a NI and FN.
- d) The legislative requirements are not new. The CRA requirements date back to May 2015 and the CMPSR requirements have been in force since April 2019.
- e) The 'early days' of the legislation coming into force would be regarded as the first few months of start date of the legislation, which is supported by many tribunal decisions.
- f) There is no evidence to suggest that the amount of the FPs will cause the Appellant to vacate the premises or to cease trading. The Appellant has not submitted any accounts or bank statements in support of the assertion that the FPs would have a negative financial impact on the business so this has not been taken into account.
- g) In relation to the CRA penalties, The Department for Levelling Up Housing and Communities (DLUHC) Guidance provide that a £5,000 fine (per breach) is the normal starting point and that a lower penalty should only be imposed if the enforcement authority is satisfied that there are extenuating circumstances. In this matter the penalties have already been reduced for the reasons outlined in the letters sent to the Appellant.
- h) The reduction in the FPs reflects that the Appellant quickly rectified the breaches.

Discussion

16. Mr Kannathasan and Mr Damna expanded on points set out above. Mr Kannathasan suggested to Ms Cosgrove that she had not investigated the website thoroughly and that the CMPC could be seen on the website. This was in contradiction to what had been submitted on appeal in writing.

17. Mr Kannathasan submitted that Ms Cosgrove did not inspect the offices thoroughly and had she done so she would have seen the fees displayed in the Letting Office. He suggested that Ms Jama did not inform Ms Cosgrove that the fees were in the Letting

Office because she was intimidated by the presence of the police officers. He said that due to religious reasons Ms Jama did not have much contact with men.

18. Mr Kannathasan submitted that he and Mr Damna had not concentrated on the website because little business came from it and they were concentrating on the recovery of the business following the Pandemic.

Ms Jama's evidence

19. Ms Jama stated that she panicked in the presence of the police officers and gave incorrect information as a consequence to Ms Cosgrove. She told Ms Cosgrove that she was the letting manager which was not the case. She is the administrative manager. She stated, also, that she could not remember what she said.

20. Ms Jama stated that Ms Cosgrove asked if they could sit down because she had failed to do so. She stated that Ms Cosgrove explained why she was visiting the office and the reason for the presence of the police officers.

21. Ms Jama stated both that she had told Ms Cosgrove that the certificates were in the Letting Office and that she had not told Ms Cosgrove that the certificates were in the Letting Office.

22. Ms Jama stated that the list of fees was not in the main sales office because no one had thought to do this.

Ms Cosgrove's evidence

23. Ms Cosgrove stated that she investigated the Appellant's website thoroughly on 8 February 2023 and on 14 February 2023 as demonstrated in the video recording.

24. Ms Cosgrove stated that when she arrived at the office on 15 February 2023 there was a woman in the main office and Ms Jama came out of the Letting Office into the main office. She stated that Ms Jama was the only employee present.

25. Ms Cosgrove stated that one of the police officers was a female officer and that she explained to Ms Jama the reason for their presence namely that they were there in case there was a breach of the peace and that Ms Jama did not need to worry about the presence of the officers.

26. Ms Cosgrove confirmed that at the visit to the office although she saw Ms Jama come from the Letting Office she did not ask to look in the Letting Office. She asked Ms Jama where the fees were displayed and she told her she did not know.

27. Ms Cosgrove stated that when she inspected the office the list of fees was not displayed in the main office where it would be seen by visitors and the frame with a red surround which appears on page B83 was added after her visit.

Conclusions

28. I find that Mr Damna, Director of the Appellant, and Mr Kannathasan, Business Partner, are the correct people to represent the Appellant at the hearing.

29. I find the Appellant's website was inspected by Ms Cosgrove, on behalf of the Respondent, on 8 February 2023 and a video recording was made of the website on 14 February 2023. I find that the video recording is likely to be a true record of the website as it was on 8 February 2023 when first inspected by Ms Cosgrove and on 14 February 2023.

30. I find on the basis of the video recording and Mr Damna's evidence that the Appellant was engaged in letting agency work at all material dates.

31. I find on the basis of the video recording that no valid CMPC was published on the website. I reject Mr Kannathasan's submission that the website was not thoroughly investigated and prefer the video recording which provides an accurate a comprehensive investigation of the website.

32. I reject Mr Kannathasan's submission that the CMPC was visible on the website if Ms Cosgrove had made a more thorough investigation. I find that the investigation by Ms Cosgrove was thorough and comprehensive.

33. I find that there was a breach of regulation 4 of the CMPSR and there were grounds for the Respondent to impose a FP.

34. I find on the basis of the video recording that there was a breach of s.83(4)(c) of the CRA on 8 February 2023 for a failure to publish details of relevant fees inclusive of VAT on the website. The video recording clearly shows that the fees state that VAT is in addition to the figures stated.

35. On the basis of the video recording I find that there was a failure to publish with the list of fees a statement that indicated the Appellant was a member of a CMPS and giving the name of the scheme (s.83(6)).

36. On the basis of the video recording I find that there was a failure to publish with the list of fees a statement indicating if the Appellant was a member of a redress scheme and giving the name of that scheme (s.83(7)).

37. I find that Ms Cosgrove attended the offices of the Appellant at 38a Ferndale Road, London, E7 8JX on 15 February 2023 with two police officers, one of whom was a

policewoman. I find that the police officers stood at the door, spoke to no one and played no part in the visit. I find that Ms Cosgrove explained to Ms Jama that the officers were present in case there was a breach of the peace and she told Ms Jama not to worry about the police.

38. I find on the basis of Ms Cosgrove's evidence that the Appellant failed to display a list of full landlord fees in the office as required pursuant to s.83(2) of the CRA.

39. I attached weight to Ms Cosgrove's evidence because it was given in a straightforward manner and was consistent with itself and other evidence.

40. I found Ms Jama's evidence contradictory and for that reason unreliable. For example, she told me both that she told Ms Cosgrove that the certificates and list of fees were in the Letting Office and that she did not tell her that the certificates and list of fees were in the Letting Office.

41. I find that Ms Cosgrove did not inspect the Letting Office. I find it more likely that not that Ms Cosgrove asked Ms Jama where the landlord fees were displayed and Ms Jama told her she did not know. In those circumstances it was reasonable for Ms Cosgrove not to inspect the other parts of the office including the Letting Office.

42. I find that Ms Cosgrove told Ms Jama the reasons for the presence of the police officers and told her she should not be worried by their presence. I find that the presence of the police officers did not invalidate the visit or in any way undermine Ms Cosgrove's observations at the visit.

43. I accept that Ms Jama may have been unnerved by the presence of the police officers but I find that Ms Cosgrove explained the reason for their presence. I accept that Ms Jama's anxiety may have led her to give misleading information about her job title to Ms Cosgrove and tell her she did not know where the fees were displayed but this does not assist the Appellant for the reasons set out below.

44. I find that even if the list of the landlord fees had been displayed in the Letting Office this was still a breach of s.83 of the CRA.

45. I find that displaying a list of fees on the wall behind the desk in the Letting Office does not satisfy the provisions of Section 83 of the CRA.

46. Section 83 of the CRA states as follows:

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.

47. I find that the Letting Office was used for the purposes of conducting appointments between the agents or representatives of the Appellant and prospective or existing clients. Mr Damna and Mr Kannathasan explained to me that when clients arrived in the office they would be asked if their business was connecting with sales or lettings. If they indicated they were interested in lettings they would be shown into the Letting Office. I find that the position of the Letting Office off the main entrance office would not be an area where a client could enter without being invited. Although clients may be in the Letting Office on their own prior to the agent or representative joining them the Letting Office was not a waiting area and the opportunity for clients to view the list of fees on the wall behind the desk was severely restricted.

48. Mr Damna and Mr Kannathasan submitted that the Letting Office complied with the requirements of section 83(2) of CRA because a list of the fees was displayed in this room and this was the office where people were dealt with face-to-face if they were using or proposing to use of the services to which the fees related. The fees would be seen in the Letting Office as were positioned about one and a half a metres from where clients would be sitting and to the left of the person behind the desk conducting the meetings. Mr Kannathasan measured the distance, from the wall to the far side of the desk where the client would be sitting, at 1.6 metres during the hearing.

49. I find that the list of fees were not in a position in the office where they would be likely to be seen.

50. In reaching my decision I consider that in this context the ordinary meaning of the word 'likely' should be used, namely; that something is expected to happen, there is a good chance that it will happen and it is probable.

51. I find that people were shown to the Letting Office if they expressed an interest in lettings and for the most part of their time in the Letting Office they would be in the presence of an agent. The list of fees was behind the desk and in these circumstances a person could not easily see and be free to read unsupervised the list of fees. To look at the list closely and in detail a person would need to go round to the agent's side of the desk.

52. The purpose of these legislative provisions is to enable people to have the opportunity to see the list of fees in order to make a comparison with the fees charged by other agents and make an informed decision. If a person's access to the list of fees is restricted, as in this case, it cannot be said that the list is likely to be seen. If a person only has access to the list after being shown to the Letting Office and has to either break eye contact with the agent to look at the list or ask to see the list of fees it cannot be said that a list is likely to be seen. If a person has to ask to be given a copy of the fees or has

to ask to have time in private to read the list of fees it cannot be said that the list of fees is likely to be seen. In order for it to be likely that the fees will be seen, as intended in these circumstances, a person has to have the time, opportunity and privacy to enable them to read the contents of the list. It is not enough for the list to just be displayed in their presence.

53. Due to the position of the list of fees behind the desk and in a side room I find that it could not be said to be in a position where those fees would be likely to be seen.
54. Accordingly, I find that the display of the fees only in the Letting Office was in breach of section 82(2) of the CRA and there were grounds to issue a FP.
55. I find that the NIs and the FNs complied with the Regulations and contained all the required information.
56. I find that it was the responsibility of Mr Damna, the sole Director, to ensure that the Appellant was kept up to date with its legislative obligations and comply with its legislative responsibilities. It was not the responsibility of the Respondent to ensure the Appellant complied with the legislative requirements.
57. I find that all the mitigating factors have been taken into account in reducing each of the FPs, namely that the Appellant was displaying a valid CMPC in the office, that there were reasons for information not being displayed on the website and the Appellant acted quickly to publish a valid copy of the CMPC on the website.
58. In relation to the financial impact of the FPs on the Appellant's business, I have borne in mind that the FPs must be proportionate to the Appellant's means and must take into account the impact of the FPs on the business. The Appellant has not produced accounts to show turnover or any financial information about the financial health of the company or to demonstrate the claimed inability to pay.
59. The Appellant has had ample opportunity to produce financial information and has failed to do so. In the circumstances it is appropriate, fair and just to proceed to determine the appeal on the basis of the evidence available.
60. On the evidence available I find that the FPs will not place the Appellant in financial difficulties and are not likely to put the company out of business.
61. At the hearing Mr Kannathasan stated that no financial information had been provided because it had not been asked for. I find that the Appellant was given ample notice of the grounds of appeal in the FNs (pages A4, A10, and A12) and the covering letters to the FNs stated clearly that representations about the fines having a negative financial

impact could not be taken into account because no accounts or bank statement to support this representation have been submitted (pages A2 and A6).

62. Mr Damna when asked what the impact of the FPs would be stated that he would have to cancel one of the marketing tools, let go a part-time cleaner and might have to look for a smaller office. He stated he would have to take less money from the business which would affect his family life. He stated that the Appellant had received a Bounce Back Loan of £10,000 which had kept the business afloat. He said that he tried to remain optimistic and could not say that the FPs would put the Appellant out of business.
63. I considered whether I should adjourn to enable the Appellant to lodge information about its financial situation and decided it was not proportionate to do so taking into account that the Appellant has had ample opportunity to do so and has chosen not to do so.
64. I find that the level of the FPs is high enough to ensure a real economic impact and demonstrates the consequences of not complying with the Regulations. The level of the FPs is at the right level to deter the Appellant from future breaches.
65. Accordingly, I find that there are no mitigating factors to reduce the FPs further and the FPs were fair and proportionate. I dismiss the appeals and confirm the FNs dated 12 June 2023.

Signed: J Findlay

Date: 19 February 2024