FT/SL/2024/0019.

Neutral Citation Number: [2025] UKFTT 00118 (GRC)

IN THE FIRST TIER TRIBUNAL

(GENERAL REGULATORY CHAMBER)

Standards and Licensing

Between:

MENDIP PROPERTY MANAGEMENT LIMITED

Appellant:

and

BATH & NORTH EAST SOMERSET COUNCIL

Respondent:

DECISION

Tribunal: Brian Kennedy KC.

Date of Hearing: 04 February 2025.

Attendance:

The Appellant: Mr Jason James Virjee appeared as a Litigant in Person and a Director of, and representing the Appellant Company.

The Respondent: was represented by Ms. Clover Taylor.

Decision: The Tribunal dismiss the Appeal, direct that the Appellant comply forthwith under their obligation to acquire membership of and belong to an approved Client Money Protection scheme forthwith and further to pay the outstanding fine of £10,000.00 within 28 days of the date if this Judgment.

REASONS

Introduction:

[1] This decision relates to an appeal dated 01 April 2024, brought under Schedule 9 of the Consumer Rights Act 2015 ('the 2015 Act'). It is an appeal against a Final Notice issued by the Respondent, dated 08 March 2024 in which the Respondent Council imposed a financial penalty of £10,000 on the Appellant Company for failing to comply with the duty to belong to a client money protection scheme while undertaking property management or letting agency work.

Legislation:

[2] Regulation 3 of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme Etc.) Regulations 2019 determines that a property agent, whose failure to comply with the duty to belong to a client money protections scheme constitutes a breach of the Regulation. In short it is a requirement under the above legislation for all property agents to belong to a government approved client money protection scheme.

[3] Section 83 of the 2015 Act provides that:

(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.

[4] A letting agent is defined in section 84 of the 2015 Act provides that:

(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.

Section 86 of the 2015 Act provides and further defines 'letting agency 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.

[5] The fees to which this Chapter applies are set out in section 85 of the 2015 Act, which provides that:

(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.

[6] Further to the requirement to publish fees, the 2015 Act also imposes duties on letting agents engaged in letting agency or property management work to publish a statement of whether the agent is a member of a client money protection scheme (section 83(6)) and a statement indicating that the agent is a member of a client redress scheme and the name of that scheme (section 83(7)).

[7] Section 87 of the 2015 Act provides that imposes a duty on the local weights and measures authority to enforce these provisions in its own area where it is considered on the balance of probabilities they have been breached. Breaches are considered to have occurred in the area of the local authority in which a dwelling house is situated to which any fees relate, but authorities can take enforcement action in the area of another local authority with the consent of that authority. Local authorities have the power to impose monetary penalties not exceeding £5,000 in the event of a breach.

[8] The procedure for the imposition of monetary penalties and the rights of appeal are set out in Schedule 9 of the 2015 Act. The local authority is required to issue a 'notice of intent' to issue such a penalty within six months from the date the authority had sufficient evidence of a breach. The notice must set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the right to make representations within 28 days of the sending of the notice. At the end of that period the authority must decide whether to impose a penalty and the amount of that penalty. The final notice must set out that amount, reasons for the imposition of the penalty and information regarding how to pay and how to appeal. Anyone served with such a notice has the right to appeal within 28 days, on one of four grounds:

(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.

[9] In the present case the final notice dated 08 March 2024, addressed to the appellant, confirmed a statement of reasons was contained in the Notice of Intent dated 22 January 2024 which outlined the reasons for the proposed penalty. In summary, the Appellant was informed that this was based on the following evidence:-

"• You are a property agent to which The Regulations apply in that you engage in letting agency work and / or property management work etc.

• Between 14 July 2022 and 04 January 2024 Mendip Property Management Ltd has not held membership of any government approved client money protection scheme, namely those operated by Client Money Protect, Money Shield, Propertymark, Safeagent, and UKALA Client Money Protection.

• Between 14 July 2022 and 04 January 2024, we received emails from and had telephone conversations with the Company Director, Jason James VIRJEE, which confirmed Mendip Property Management Ltd did not have client money protection scheme membership in place. This correspondence included assurances client money protection scheme membership would be obtained. You did not provide any representations following the service of the Notice of Intent and we consider that the original reasons contained in the notice remain relevant. The financial penalty imposed is determined by the Authority but must not exceed £30,000. The reasonable amount of the financial penalty for the above breach is £10,000.00."

The Appeal:

[10] The Appellant appealed to the Tribunal on 01 April 2024 and the Notice of Appeal was signed by Jason Virjee who stated at Para. 7.1, the Reasons of Appeal as : *"The appeal is being made to request some extra time to get the CMP in place and for the fine imposed of £10,000.00 to be waived"* and at Para.8 sought an outcome as follows: *"For the fine to be waived".*

The Respondents' Response:

[11] The Respondent confirmed all the client money protection schemes identified were checked again on 28 May 2024 and on that date the appellant still did not hold the required membership. *"The amount of the penalty was decided upon after considering both risk of harm to consumers and culpability of the appellant and in line with our published policy. The starting point for the penalty was £15,000. However, due to the smaller scale operation of the appellant, the fact that no complaints had been received about the business by this authority during the previous 18 months, and that this was the first recorded breach by the business, a further reduction of one third (£5,000) was applied reducing the penalty to £10,000. We are therefore not inclined to reduce the penalty amount further due to*

the fact that the appellant has still not obtained client money protection. We aim to treat all property management agents fairly and ensure that our enforcement practices are consistent. Other property management agents who have been advised to obtain client money protection have usually managed to do so within 3-4 months. We believe the delay in this case is unreasonable and consider our work as a regulator to address risks to consumers, tenants, and landlords has been inhibited. Failure to hold client money protection membership is a strict liability offence."

The Hearing on 04 February 2025:

[12] The Appellant was represented by the Director Mr Jason James Virjee, who frankly and candidly accepted full responsibility of the breach as charged above and apologised profusely for his failure to co-operate by failing to take out membership of the Client Money Protection Scheme to this date and failing to pay the fine. He explained he had some difficulty changing the company bank accounts. He made no challenge against the Final Notice nor the quantum of the fine imposed and in fact undertook to comply forthwith to the terms this Tribunal has imposed in this Judgment and as set out herein.

Tribunal Findings:

[13] The Tribunal has considered the requisite requirements on the four grounds for an appeal to be successful.

(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.

On consideration of the above evidence and representations the Tribunal finds that the grounds of appeal have not established any error of law or other defect, and the Appellant has failed to satisfy any of the grounds of appeal required to allow an appeal in this case. It all the circumstances it seems to the Tribunal that the Respondent has acted reasonably and within the Law. Accordingly, the appeal must be dismissed.

[14] The Parties are reminded that they are required by the overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (General

Regulatory Chamber) Rules 2009 to cooperate with each other, and with the Tribunal, as confirmed by the Upper Tribunal in Dorset Healthcare NHS Foundation Trust v MH [2009] UKUT 4 (AAC), (paragraph 13). This includes a requirement to liaise with each other concerning procedural matters; to identify and clarify issues; to agree a course of action; and to identify and agree any additional directions required, before they refer a matter to the Tribunal.

Brian Kennedy KC 04 February 2025.

Decision given on date: 10 February 2025