



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

**Appeal Reference: PR/2016/0022**

**Heard on the papers**

**Before**

**JUDGE CLAIRE TAYLOR**

**Between**

**AVAS RESIDENTIAL PROPERTY SERVICES LIMITED**

Appellant

**and**

**LONDON BOROUGH OF TOWER HAMLETS**

Respondent

**Decision**

The appeal is allowed to the extent set out below.

## **DECISION AND REASONS**

1. This is an appeal by Avas Residential Property Services Limited (the 'Appellant or 'Avas') against a penalty charge of £5,000 issued by the London Borough of Hamlets ('the Council') related to failure to publicise details of fees on its website in accordance with the legislative requirements set out below.

### **A. The Law: The requirement for letting agents to publicise details of fees**

2. The Consumer Rights Act 2015 (the 'Act') 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, as follows:

#### **"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."

### **Enforcement**

3. 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." (Emphasis Added).

### **Financial penalties**

4. The system of financial penalties for breaches of section 83 is set out in Schedule 9 of the 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 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. "

## **Appeals**

5. 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."

### **Guidance**

6. The Guidance for Local Authorities issued by the Department for Communities and Local Government (the 'Guidance'), during the passage of the Bill, concerning the duty to publicise fees includes the following at Annex D:

**a. "Which fees must be displayed**

*All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy...*

*The only exemptions are listed below. The requirement is therefore for a comprehensive list of everything that a landlord or a tenant would be asked to pay by the letting agent at any time before, during or after a tenancy. As a result of the legislation there should be no surprises, a landlord and tenant will know or be able to calculate exactly what they will be charged and when."*

*(Page 56 of the Guidance)*

**b. How the fees should be displayed**

*"The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill-defined terms such as administration cost must not be used. All costs must include tax.*

*Examples of this could include individual costs for:*

- marketing the property;*
- conducting viewings for a landlord;*
- conduct tenant checks and credit references;*
- drawing up a tenancy agreement; and*
- preparing a property inventory.*

*It should be clear whether a charge relates to each dwelling-unit or each tenant". (Page 57 of the Guidance).*

**c. Penalty for breach of duty to publicise fees**

*"The expectation is that a £5,000 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 lettings agent 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 which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business". (Page 60 of the Guidance).*

**B. Background**

7. On 26 April 2016, the Council wrote the Appellant explaining the legal requirement for it to publicise fees on its website. On 26 May 2016, the Council served on Avas a 'notice of intent' notifying the company that it was not complying with certain duties to publicise its fees in accordance with the relevant legislation. It made clear its intention fine the company £5,000 as a consequence of non-compliance.
8. On 14 July 2016, an officer of the Council served on the Appellant a 'notice of intent'.
9. On 14 July 2016, an officer of the Council issued a 'final notice', stating:

*"The Council is satisfied on the balance of probability that on 14 July 2016 you were engaged in letting agency work and that you have failed to comply with the above regulations. In particular you have:*

*Failed to publish a list of the agents relevant fees, a statement saying whether you belong to a client money protection scheme and which redress scheme you belong to on the companies website...*

*The Council is therefore imposing a monetary penalty of £5,000."*

**C. The Appeal**



10. Avas now appeals the Council's decision, seeking for a finding that it is not liable to pay the fine. Its case presented as follows:

*Notice of Appeal*

11. It did not provide supporting arguments in its Notice of Appeal of 9 August 2016. It stated that "our website is updated with all relevant information and this can be checked on our website" and provided what was stated to be pages printed from the website. It did not make clear what date these pages had been present on the website, but from the phrase 'our website is updated' I consider it likely that the print out was accurate as of 9 August 2016.

*Submissions*

12. In an email of 29 September 2016, Avas made submissions from Toni Murray:

- a. It had displayed its fees throughout the process and had not been shown any evidence to prove that it was in breach of the requirements.
- b. Upon receiving correspondence from the Council, Avas had "made efforts" to contact it for clarification of the requirements on multiple occasions, but had been unable to reach the appropriate representative. It had being extremely difficult to contact the Council and the requirements had been unclear throughout.
- c. It had taken measures to comply with the requirements and later discussed these with the relevant officer at the Council who informed Avas that what had been displayed with adequate such that it would no longer be fined. It had been advised to proceed with the initial appeal as a formality. Throughout correspondence by phone with the officer, the company have been informed that the Council was sending out the notices as a formality and that as it had complied with the notices it would no longer be fined.
- d. The initial notice appears was delivered to the wrong address, 16 Hesperus Crescent, before a later notice was delivered to a different address, 6 Express Wharf. Out of all the correspondence supposedly delivered to it, Avas only received two pieces, one simply dated "2016" and signed by Sean Rovai and the second being the Final Notice dated 14/07/2016 and signed by Nicola Tudor.
- e. At no point did the Council attempt to make contact with Avas via email or phone, despite the contact details being available on the Avas website. It did not receive the full paper correspondence, and would have expected the Council to contact it directly as the deadline for us displaying fees approached.
- f. Avas is a small, family run business without office space. Its turnover is a fraction of what some of the larger, more established agents generate. It is confident that there have been no instances where it has misled either landlords or tenants over fees and charges, which is what this legislation is designed to prevent.

13. In an email of 28 November 2016, Avas made further submissions from Lee Murray:

- a. The business started 6 years ago and was solely run by Lee Murray.
  - b. The tenant fees were correctly displayed on the website.
  - c. Having read the bundle, he now accepted that details about the landlord fees had not been successfully uploaded. This had been due to:
    - i. An administrative error by Toni Murray who was a family member helping out to keep the business going. She had informed him that she had updated all the required information. It was a lack of familiarity with the website system that had resulted in the landlord fees not being displayed. . Since this case, Toni Murray was no longer assisting as he could not have her helping me after the incident as he was taking precautions to stop anything similar happening again.
    - ii. He had been going through a very difficult time in his personal life.
  - d. He only ever received two letters from the Council. He was not sure if his wife who he was divorcing was disposing of his post or whether the letters had never arrived at that address. He had recently set up a virtual office in Canary Wharf in order to prevent post being sent to my wife or getting lost. The cost of the office was £154.00 per month and he was confident this would help to ensure all post reached him. He cannot afford high street office space at the moment and does not have a base since splitting up with his wife and he is living with his parents). Within the package I can meet clients in meeting rooms there to go through fees if they attend.
  - e. If he had thought he was not following correct legislation, he would have done whatever was needed to do to correct it.
  - f. Whilst he understood the legislation was to create transparency across the letting and sales markets and to protect both the landlord and tenant from 'rogue' agents, Avas was not the type of company responsible for these issues and takes pride in an honest and fair service for landlords and tenants. It has always made landlords and tenants completely aware of any fees.
  - g. It seems very extreme to be fined such a large amount for something that has not caused anyone harm or cost, particularly when Avas was a very small business with little income. His income was very low and if he received a large fine, it was likely that he would lose his business and income which currently supported his wife and children. He could provide the last five years' accounts and any other evidence needed to support this.
14. The Council provided two witness statements and a very short submission. Nicola Tudor's statement, as a Council officer included the following:
- a. In February 2016 both the East End Citizens' Advice Bureaux and a local group had complained that Avas was not properly publicising fees.
  - b. On 22 April 2016, the officer reviewed the company's website and could not find any indication of redress scheme membership or a list of fees payable by landlords. Whilst some of the fees payable by tenants were listed there was reference to a "variable" check-in fee without any further explanation.
  - c. She checked the Companies House listing and found that Lee Murray was the sole director of Avas.
  - d. She attended the address of the company shown on Companies House, but found this to be a domestic property such that she was unable to gain access.

She checked the Council's records and found that a letter had been sent on 1 March 2016 to Avas but that the address used was the previous registered office.<sup>1</sup> She sent another letter of advice, detailing the information that was missing from the website and warned that failure to comply within 28 days could lead to a fine of £5000. She did not receive a response.

- e. On 26 May 2016, the officer reviewed the website again, and finding no improvement, served a Notice of Intent by post. She received no response.
- f. On 14 July 2016, she looked at the website once more and as there was still no improvement, she served a Final Notice by post.
- g. On 19 July 2016, a member of the Tower Hamlets Support Services team emailed her asking her to contact Toni Murray regarding a Final Notice.
- h. On 8 August 2016, she called back, after having been on leave. Ms Murray told her that she was speaking on behalf of Avas and was helping her brother. The officer explained again what information was needed and Ms Murray said she would add it to the website. She offered to email her a copy of the letter of 26 April so that she would have the requirements immediately to hand, which she did, and was told that it would be done "by tomorrow".
- i. Ms Murray asked if she needed to submit an appeal and the officer advised that she should, so that her representations could be considered. On 9 August 2016, Ms Murray asked by email for copies of the Notice and letter so that she could complete a notice of appeal, so the letter, Notice of Intent and Final Notice were sent. Ms Murray also notified her by email that the website had been updated.

- 15. Another Council officer provided a further statement attaching screenshots of the website of Avas that he took on 7 April 2016. The Council also provided a copy of the company's webpages stated to be what was currently shown online.
- 16. The Council's submissions received by the Tribunal were dated 12 September 2016 and extremely brief. This included that it opposed the Appellant's case who had not complied or made representations until after the Final Notice.
- 17. The parties opted to have this matter heard on the papers without an oral hearing, and I am satisfied that I can fairly decide the matter in this way. In reaching a decision in this case, I have had regard to all the papers contained in the bundle as well as the Appellant's further submission of 28 November 2016.<sup>2</sup>

#### **D. Findings**

- 18. The Tribunal's role is to decide whether the Council's decision to impose a financial penalty was based on an error of fact or was wrong in law or unreasonable; or

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<sup>1</sup> Copy of letter sent attached as NLT 1 at 7.5 of the Bundle.

<sup>2</sup> It is noted that Toni Murray originally completed the Notice of Appeal and opted for a paper hearing. Some time later, Mr Denton of McKinsey & Company, Inc. contacted the Tribunal stating that he was the representative and requested an oral hearing, but the company sent no authorisation for this. In response to the Council's question, Lee Murray then identifying himself as Lettings Manager stated that Toni Murray represented the company but requested for Mr Denton to be copied in. A considerable time later, Mr Murray requested for a paper hearing.

whether the amount of the penalty is unreasonable. Depending on the finding I make, I may quash, confirm or vary the final notice.<sup>3</sup>

*i) Were there Legislative Breaches?*

19. The Final Notice states that Avas had failed to publish a list of the agent's relevant fees. It is now accepted by the Appellant that it had failed to display the landlord's fees. This is based on the screenshot in the bundle reflecting what was on the company's website on 7 April 2016. Ms Tudor also stated that the site showed a variable check-in fee without further explanation, not satisfying the legislative requirements to publicise fees. The Final Notice further claimed that the website failed to state whether Avas belonged to a client money protection scheme and which redress scheme it belonged to. Avas gave no substantive arguments on these points or make clear whether it contested them. I am satisfied that that the Final Notice accurately listed the legislative breaches by Avas. This is because I accept the testimony of Nicola Tudor including her attached Notes (*at 7.11 of the Bundle*), and the screenshots also support these allegations. If Avas has accepted the validity of the screenshots a propos the landlord's fees, then I see no reason why it should not accept its validity in relation to these other breaches.

*i) Were there Procedural Breaches?*

20. Avas assert that it only received two letters/notices from the Council, one being the Final Notice and one simply dated 2016. It did not provide the letters for the bundle. From the papers before me, I find it probable that this letter was that referred to by Ms Tudor as attachment NLT 1 is dated 2016. This advises the company of the various duties related to displaying fees and was sent on 1 March 2016. Accordingly, it seems that the Appellant are stating that it did not receive the Notice of Intent. Nevertheless, on balance, I find that the Notice of Intent was properly served on the Appellant. This is because I find Ms Tudor's testimony that it was posted most credible. Mr Murray has explained that it is possible that his wife disposed of the notice and he has now put in place measures to ensure post does not get lost in the future.

21. Having found that Avas had breached the legislative requirements in various ways described above, and that there have not been any substantive procedural shortcomings in the service of the notices by the Council, I find that there was a legal basis for the Council to impose a financial penalty on Avas. Furthermore, the Appellant has not shown that the penalty was based on any error of fact.

*iii) Was the amount of the penalty or decision unreasonable?*

22. I turn to whether, in all the circumstances (as found by me), either the amount of the penalty or the decision was unreasonable. In deciding if the amount of the penalty or decision to award a penalty is unreasonable, it is necessary to have regard to the statutory Guidance, to which I have earlier made reference. This says that the expectation is a "fine" (ie penalty) of £5,000 is the norm 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

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<sup>3</sup> See further paragraph 5 above.

extenuating circumstances. It states that "*It will be up to the enforcement authority to decide what such circumstances might be*".

23. Avas noted that they had tried to contact the Council for advice but found them non-contactable and that if they had been aware of not following legislation they would have complied. It is the role of a professional to be aware of the legal requirements appertaining to his business and to comply with them. In this case, the legislative requirements had been in place for a substantial period of time. Further, I have concluded above that they were in receipt of at least one of the advisory letters sent by the Council prior to the notice of intent.
24. As regards the assertion that the Council had assured Avas that the notices were a formality and the company would not need to be fined, there is nothing to corroborate this and on balance I do not find it credible that a Council officer would send out notices in writing and then verbally assure the company that these could be ignored without the company then requiring this to be evidenced in writing. In any event, it is at least questionable that an officer would have the authority to do so having issued the statutory notices on behalf of the Council.
25. Finally, Avas asserts that the penalty is disproportionate, where the company has always made relevant parties aware of its fees; that the legislation was intended to address the problem of rogue agents, which it is not; and that the fine would put the director out of business. Avas has a duty to comply with the requirements of the legislation and had not been doing for a substantial period of time. The director provided no accounts to support the claim that the fine would mean he would lose his business. If it were the case, I would expect a director to be sufficiently motivated to substantiate this by providing all relevant material before the time of the hearing.<sup>4</sup> I would also have expected the director to make written representations to the Council on receipt of the Notice of Intent, yet none were made. For these reasons, on balance, I conclude that the fine would not put Avas out of business.
26. From the details that the director has given as to not affording office space, which on balance I accept given the absence of representations or objections from the Council pertinent to the point, I conclude that £3,850 would be a proportionate fine in the circumstances.
27. In all the circumstances, I find that it is reasonable for the Final Notice to be varied, so that the financial penalty payable in respect of it is the sum of £3,850, rather than £5,000.
28. The appeal is allowed to the above extent.

**Judge Claire Taylor, 9 December 2016**

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<sup>4</sup> See also rule 2(4) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.