



**Appeal number: PR/2016/0047/48/49**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(PROFESSIONAL REGULATION)**

**CENTREPOINT PROPERTY  
LIMITED**

**Appellant**

**- and -**

**LONDON BOROUGH OF NEWHAM**

**Respondent**

**TRIBUNAL: JUDGE ALISON MCKENNA**

**Sitting in Chambers on 3 April 2017**

## **Decision**

1. The Appeals are each dismissed. The three Final Notices dated 10 November 2016 are confirmed.

## **Reasons**

### *Background*

2. The Appellant (“Centrepont”) is a letting agent. The Respondent (“the Council”) is the enforcement authority which served three Final Notices on Centrepont on 10 November 2016. The Notices imposed three separate financial penalties of £5,000.00 each for breaches of three separate legal duties, namely: (a) the duty to publicise fees (FLP/MHM/Fees1); (b) the duty to belong to a redress scheme (FLP/MHM/Redress/Centrepont); and (c) the duty to publicise whether Centrepont was a member of a client money protection scheme (FLP/MHM/Client1).
3. By its Notices of Appeal dated 7 December 2016, Centrepont disputes the facts on which the Council relied when deciding to impose the financial penalties and also submits that the amount of the penalty is in each case disproportionate.
4. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

### *The Legal Framework*

#### *(i) Fees*

5. Section 83 of the Consumer Rights Act 2015 requires letting agents to publicise details of relevant fees at its business premises and on its website. It came into force in May 2015.
6. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
7. Schedule 9 paragraph 5 to the 2015 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.

(ii) *Client Money Protection Schemes*

8. Section 83 (6) of the Consumer Rights Act 2015 states that, if a letting agent holds money on behalf of persons to whom the agent provides services, the agent must publish with the list of fees a statement of whether it is a member of a client money protection scheme. It came into force in May 2015.
9. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
10. Schedule 9 paragraph 5 to the 2015 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.

(iii) *Redress Schemes*

11. Section 83 of The Enterprise and Regulatory Reform Act 2013 and paragraph 3 of The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 require a letting agent to belong to a relevant Redress Scheme. It came into force in October 2014. (S. 83 (7) of the Consumer Rights Act 2015 also requires the agent to publish details of the relevant Redress Scheme).
12. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties paragraph 3 of the 2014 Order, it may impose a financial penalty under paragraph 8 of the 2014 Order. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.
13. Paragraph 9 of the 2014 Order 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.

*Submissions and Evidence*

(i) *Fees*

14. Centrepoint's Notice of Appeal dated 7 December 2016 relies on Grounds of Appeal that (i) it manages only six properties in a single block for four long-standing clients; (ii) the Council informed it of the £5,000 penalty with no prior notice; (iii) Centrepoint does not seek any additional clients and all its existing clients are already aware of its fees; (iv) Centrepoint took immediate action to comply with its obligations once the breach was made known to it; and (v) the financial penalty is unjustified in view of Centrepoint's turnover and the nature of the offence, which is described as a "minor breach of Newham Council Rules". It describes the financial penalty as "a ludicrous overreaction".
15. The Council's Grounds of Opposition are as follows. The Council wrote to all letting agents in the area in May 2015 to inform them of their new legal obligations. In July 2016, the Council's Officer checked Centrepoint's website and found no information about fees charged to landlords and tenants. The Council's Officer also made a visit to Centrepoint's premises in July 2016 and found the fees information was not displayed. A Notice of Intent was served in July 2016. Centrepoint made representations but the Council decided to issue the Final Notice dated 10 November 2016 in view of what it found to be an on-going breach of the legislation.
16. The Council disputes the submission made in the Notice of Appeal that the financial penalty was made with no prior notice. It submits that Centrepoint was advised of its obligations in May 2015 and July 2016 but did not comply with them. It further submits that Centrepoint has not identified any error of fact or law in respect of the Final Notice or given any reason why the amount of the financial penalty was not reasonable and that, although Centrepoint states that it has amended its website, it still does not say whether the list of fees is now available at its offices.

(ii) *Client Money Protection Scheme*

17. Centrepoint's Notice of Appeal relies on Grounds of Appeal that: (i) it manages only six properties in a single block for four long-standing clients and does not seek new clients; (ii) the Council informed it of the £5,000 penalty with no prior notice; (iii) it has at all times been a member of the Deposit Protection Scheme.
18. The Council's Grounds of Opposition are that the Council wrote to all Letting Agents in May 2015 to inform them of their new legal obligations. In July 2016, the Council's Officer checked Centrepoint's website and found no information about a client money

protection scheme. The Council's Officer also made a visit to Centrepoin's premises in July 2016 and found the relevant information was not displayed. A Notice of Intent was served in July 2016. Centrepoin made representations but the Council decided to issue the Final Notice dated 10 November 2016 in view of what it found to be an on-going breach of the legislation.

19. The Council disputes the submission made in the Notice of Appeal that the financial penalty was made with no prior notice. It submits that Centrepoin was advised of its obligations in May 2015 and July 2016 but did not comply with them, pointing out that the breach specified was not one of failure to belong to the Deposit Protection Scheme but the failure to publicise that fact. It further submits that Centrepoin has not identified any error of fact or law in respect of the Final Notice or given any reason why the amount of the financial penalty was not reasonable and that Centrepoin has not indicated whether it is now compliant with the legislation.

(iii) *Redress Scheme*

20. Centrepoin's Notice of Appeal relies on grounds that (i) Centrepoin has a small number of clients; (ii) does not solicit additional business; (iii) was already a member of the Deposit Protection Scheme and (iv) joined the Property Ombudsman's Redress Scheme upon notification of the breach. It is also said that it did not receive proper notice of this matter prior to the imposition of a financial penalty.

21. The Council's Grounds of Opposition are that the Council received a complaint about Centrepoin in July 2015 and, on carrying out checks, discovered that Centrepoin was a letting agent which had not joined a Redress Scheme.

22. I have seen a copy of the Notice of Intent sent to Centrepoin on 13 July 2016 in respect of this matter. It appears to be accepted that no letter preceded this Notice, as the Council points out that it was under no obligation to warn Centrepoin that it was breaking the law in not belonging to a Redress Scheme. I have seen and accept the evidence from the Property Ombudsman confirming that Centrepoin joined its Redress Scheme on 9 August 2016.

*Conclusions*

(i) *Fees*

23. Centrepoin's Notice of Appeal does not dispute that it had breached its duties under the legislation. The only area of factual dispute raised is whether Centrepoin had notice of the breach before the Final Notice was issued. I am satisfied on the basis of the

Council's evidence that Centrepoint was sent a letter, received a visit and received a Notice of Intent in the period between May 2015 when the legal duty arose and November 2016 when the penalty was imposed. I conclude that Centrepoint was duly notified that it was in breach of its legal duties in relation to the publication of fees and that it was in breach for a period of eighteen months.

24. The fact that it has a small number of clients, does not solicit additional business and states it has now complied with its obligations (although this seems to be in dispute) are not permissible grounds for appealing against a Final Notice (see paragraph 6 above).
25. I conclude on the basis of the evidence before me and on the balance of probabilities that Centrepoint did breach its legal obligations in respect of the publication of fees. I am satisfied that it was reasonable for the Council to impose a financial penalty in the circumstances.
26. I have considered whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation. The Council has not set out for me its approach to the calculation of penalties and Centrepoint has not put forward any specific mitigating circumstances. Taking into account the nature of the breach, its duration, and the absence of mitigating circumstances, I do not consider that it was unreasonable for the Council to impose the maximum penalty in these circumstances.

(ii) *Client Money Protection Scheme*

27. The Notice of Appeal does not dispute that Centrepoint was in breach of the legislation. As the question of notice appears to be the only factual dispute, I record that I am satisfied that Centrepoint was sent a letter, received a visit and was sent a Notice of Intent prior to the imposition of the financial penalty.
28. The fact that Centrepoint has a small number of clients, does not solicit additional business and was already a member of the Deposit Protection Scheme are not permissible grounds for appealing against the Final Notice (see paragraph 9 above).
29. Taking all the evidence into account, I am satisfied on the balance of probabilities that Centrepoint breached its legal obligations by failing to publicise its membership of a Client Money Protection Scheme and that it was reasonable for the Council to impose a financial penalty in these circumstances.
30. I have considered whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation. The Council has not set out for

me its approach to the calculation of penalties and Centrepont has not put forward any specific mitigating circumstances. Taking into account the nature of the breach, its duration, and the absence of mitigating circumstances, I do not consider that it was unreasonable for the Council to impose the maximum penalty in these circumstances.

*(iii) Redress Scheme*

31. It is implicitly accepted in the Notice of Appeal that Centrepont was not a member of a Redress Scheme at first, but took steps to become one once it was notified of its error. I conclude on the basis of the evidence before me and on the balance of probabilities that Centrepont was not a member of a Redress Scheme from October 2014 when the obligation to do so arose, until August 2016 when it joined the Property Ombudsman Scheme. That is a period of one year and ten months and I am satisfied that it was reasonable for the Council to impose a financial penalty in these circumstances.
32. The fact that Centrepont has a small number of clients, does not solicit additional business and was already a member of the Deposit Protection Scheme are not permissible grounds for appealing against the Final Notice (see paragraph 13 above).
33. I have considered whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation. The Council has not set out for me its approach to the calculation of penalties and Centrepont has not put forward any mitigating circumstances. Taking into account the nature of the breach, its duration, and the absence of mitigating circumstances, I do not consider that it was unreasonable for the Council to impose the maximum penalty in these circumstances.
34. I am satisfied for all the above reasons that the financial penalties were lawfully and reasonably imposed for each of the three breaches which are the subject matter of these appeals.
35. I am not satisfied that the amount of financial penalty imposed by the Council was in each Final Notice unreasonable in the circumstances.
36. Accordingly, these three appeals are now dismissed and the Final Notices are confirmed.

**(Signed)**

**Alison McKenna**  
**Principal Judge**

**Dated: 3 April 2017**