



**IN THE FIRST TIER TRIBUNAL  
(GENERAL REGULATORY CHAMBER)**

**PR/2018/0008**

**Calingford Limited t/a Xpresslink Properties  
and**

**LONDON BOROUGH OF TOWER HAMLETS**

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**DECISION**

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**DECISION OF THE FIRST-TIER TRIBUNAL:**

The Tribunal refuses the appeal.

**REASONS OF THE TRIBUNAL:**

**Introduction:**

1. This decision relates to an appeal brought under Schedule 9 of the Consumer Rights Act 2015. It is an appeal against a Final Notice Ref FLP/ABM/CRA/Xpresslink/5395 issued by the London Borough of Tower Hamlets ("the Council"), in which the Council imposed a financial penalty of £10,000 on the Appellant for operating as a letting agent without being a member of an approved redress scheme.

**Legislation:**



**2. Section 83 of the Consumer Rights Act 2015 ('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
- (5) 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),
- (6) 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
- (7) 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.

**3. A letting agent is defined in section 84 as follows:**

- (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.



**4. Section 86 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:**

- (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 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:
  - (1) the decision to impose a financial penalty was based on an error of fact,
  - (2) the decision was wrong in law,
  - (3) the amount of the financial penalty is unreasonable, or
  - (4) the decision was unreasonable for any other reason.

## **Final Notice**



9. In the present case the Final Notice dated 15 January 2018 stated that the Council believed that on 11 October 2017 the Appellant had committed breaches of its duty to publicise fees and details of any client money protection scheme on its website and in its premises contrary to section 83(3), (4) and (6) of the 2015 Act.

### **The Appeal:**

10. The Appellant appealed to the Tribunal on 7 February 2018, alleging that they were in fact displaying fees. The Appellant further claimed that it had been having issues with its Protection Scheme, and had recently been informed that registration with the scheme had been refused. They stated that they were unable to pay the fine and had decided to wind up the company in order to “start afresh” with a new company.
11. The Council explained that the Appellant had been incorporated since June 2011. On the basis of a complaint received, Ms McKeown of the Council checked the Appellant’s website on 10 October 2017 and found that it did not public full details of landlords’ fees, tenants’ fees or a statement as to whether the Appellant was a member of a client money protection scheme. The logo of the National Approved Letting Scheme (NALS) was displayed, but the Appellant was not a member of that scheme.
12. On 11 October Ms McKeown hand-delivered the Notice of Intent. On 25 October, the Appellant made representations to the Council, confirming that it had cancelled its membership of NALS and also stated that it had rectified the issues with its website. However, on 2 January 2018, Ms McKeown again reviewed the Appellant’s website, and found that no changes had in fact been made, and she downloaded the website. On 15 January 2018 the officer hand-delivered the Final Notice to the Appellant, and noted that the Appellant was displaying a certificate of membership of NALS on the wall of its premises despite still not being a member.

### **Tribunal Findings:**

13. On the evidence therefore there was no issue on the facts. The Appellant accepted that the defects had not been rectified. The sections of the website that purported to detail fees were entirely unsatisfactory, showing errors in VAT rate chargeable and, in the case of tenants’ fees, making no effort to particularise or give a breakdown of how



fees were calculated. While the Tribunal acknowledges that the Appellant took some steps in regards to its website by January 2018, there was still substantial non-compliance. The landlords' fees section had not changed at all, and the explanation of tenants' fees did not adequately detail who was liable for what fee, and when those fees were payable. Furthermore, the website was still falsely inferring membership of NALS through the publication of the logo.

**14.** The Tribunal is aware of Guidance for Local Authorities published by the Department for Communities and Local Government in March 2015, in which it is stated that the expectation is that the imposition of the maximum fine should be the norm, save where there are clear extenuating circumstances. Local Authorities are obliged to consider this Guidance under s.87(9) of the Act. The Appellant to date has not disclosed its accounts or given anything more than bare assertions that it would be unable to pay the amount. The Tribunal has not been persuaded that the Respondent was unreasonable in assessing the quantum of the fine in all the circumstances and accordingly upholds the sum of the fine imposed.

**15.** In the circumstances and for the reasons above, the Tribunal refuses the appeal in its entirety.

Brian Kennedy QC

9<sup>TH</sup> July 2018.

Promulgation Date: 16<sup>th</sup> July 2018