



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

**Appeal Reference: PR/2018/00017 and PR/2018/00018**

**Heard at Field House, London  
On 16 October 2018**

**Before**

**JUDGE JACQUELINE FINDLAY**

**Between**

**WISEMAN ESTATES**

Appellant

**and**

**LONDON BOROUGH OF ISLINGTON**

Respondent

Appearances:

For the Appellant, Mr C Oakley, Representative for the Appellant

For the Respondent, Mr Q Paterson, Legal Representative for the Respondent.

In attendance:

Mr D Fordham, Service Manager of the Trading Standards Team of the Respondent

Ms E Waters, Trading Standards of the Respondent

Ms K Snook, Senior Membership Compliance Advisor of The Property Ombudsman

### **DECISION AND REASONS**

#### **A The legislation**

##### ***The requirement for letting agents to publicise details of fees***

1. The Consumer Rights Act 2015 (“the CRA 2015”) imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees.

### **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***

### **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.

*Financial penalties*

**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

(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.

***Explanatory Notes and Guidance***

The Explanatory Notes published in respect of the Consumer Rights Bill (which became the 2015 Act) and the Guidance for Local Authorities issued by the Department for Communities and Local Government, during the passage of the Bill, concerning the duty to publicise fees.

Paragraphs 456 to 459 of the Explanatory Notes read as follows:-

“456. This section imposes a duty on letting agents to publicise ‘relevant fees’ (see commentary on section 85) and sets out how they must do this.

457. Subsection (2) requires agents to display a list of their fees at each of their premises where they deal face to face with customers and subsection (3) requires them to also publish a list of their fees on their website where they have a website.



458. Subsection (4) sets out what must be included in the list as follows. Subsection (4)(a) requires the fees to be described in such a way that a person who may have to pay the fee can understand what service or cost is covered by the fee or the reason why the fee is being imposed. For example, it will not be sufficient to call something an ‘administration fee’ without further describing what administrative costs or services that fee covers.

459. Subsection (4)(b) requires that where fees are charged to tenants this should make clear whether the fee relates to each tenant under a tenancy or to the property. Finally, subsection (4)(c) requires the list to include the amount of each fee inclusive of tax, or, where the amount of the fee cannot be determined in advance a description of how that fee will be calculated. An example might be where a letting agent charges a landlord based on a percentage of rent.”

So far as enforcement of the duty is concerned, the Explanatory Notes state:-

“477. Subsection (4) [of section 87] provides that while it is the duty of local weights and measures authorities to enforce the requirement in their area, they may also impose a penalty in respect of a breach which occurs in England and Wales but outside that authority’s area. However, subsection (6) ensures that an agent may only be fined once in respect of the same breach”.

Potentially relevant passages of the Departmental Guidance are as follows:-

“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.

... ..

**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”.

Any representations made about a penalty reduction will be considered on a case-by-case basis. Account may be taken of:

- The size of the business committing the breach may be a factor to consider.
- Whether the maximum fine of £5,000 fine (sic) may be disproportionate to the turnover/scale of the business.
- May lead to the organisation going out of business.

A lower fine may be charged if the enforcement authority is satisfied that there are extenuating circumstances.”

## **The Estates Agents (Redress Scheme) Order 2008**

### **Requirement to belong to an approved redress scheme**

**Article 2.** Every person who engages in relevant estate agency work shall be required to be a member of an approved redress scheme.

Requirement to belong to a redress scheme: lettings agency work

3.—(1) A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.

(2) The redress scheme must be one that is—

(a) approved by the Secretary of State; or

(b) designated by the Secretary of State as a government administered redress scheme.

(3) For the purposes of this article a “complaint” is a complaint made by a person who is or has been a prospective landlord or a prospective tenant.

Exclusions: lettings agency work

4.—(1) For the purposes of section 83 of the Act, “lettings agency work” does not include the things described in this article.

(2) “Lettings agency work” does not include things done by —

(a) the employer, where the prospective tenant is an employee;

(b)the person for whom the prospective tenant provides work or services, where the prospective tenant is a worker;

(c)the person for whom the prospective tenant provides work or services, where the prospective tenant is —

(i)an employee who provides work or services under the contract of employment to a person who is not the prospective tenant’s employer; or

(ii)a worker who provides work or services under the worker’s contract to a person who is not a party to that contract;

(d)the hirer, where the prospective tenant is an agency worker;

(e)the person for whom the prospective tenant provides services under a contract for services.

(3) “Lettings agency work” does not include things done by —

(a)an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992(1);

(b)an authorised person within the meaning of section 18 of the Legal Services Act 2007(2).

(4) In this article the following have the same meaning as the Agency Workers Regulations 2010(3) —

“agency worker”

“contract of employment”

“employee”

“employer”

“hirer”

“worker”.

## **B The Hearing**

2. I have considered the Respondent’s Response and schedule of documents numbered 1 to 97. I conducted an oral hearing. I have heard oral submissions from Mr Oakley, on behalf of the Appellant, and from Mr Paterson, on behalf of the Respondent. Although there are two appeal reference numbers there is only one appeal.
3. The case was listed at 10.00 am. At 9.30 am Mr Oakley reported to the Tribunal Clerk that he was representing the Appellant and that he was awaiting the arrival of Mr Hussain who he was expecting shortly as he was on his way to the venue. Mr Oakley informed the Tribunal Clerk that Mr Hussain was one of the Directors of the Appellant company. The case was called at 10.30 am. Mr Oakley explained that he was not legally qualified although had studied law and he described himself as the legal adviser and expert for the Appellant. He told me that he worked on a pro bono basis for the Appellant and had drafted the grounds of appeal at page 5 and did other work for the Appellant such as drafting tenancy agreements. He reported that Mr Hussain had not been feeling well since last night and could not make the hearing. He said he had been trying to telephone Mr Hussain’s brother, the other Director of the Appellant company, to get him to attend. He said that he found out at 9.30 am that Mr Hussain was not attending and confirmed he had also thought Mr Hussain would attend. He stated both that Mr Hussain could not get out of his house and that he was expecting him to walk in. Mr Oakley did not mention

to the Tribunal Clerk that Mr Hussain was ill and unable to come. I had delayed calling the appeal on the understanding that Mr Hussain would be attending. When the appeal was called at 10.30 am Mr Oakley informed me that Mr Hussain was ill, had been unwell since last night and both was unable to leave his house and had been expected. Mr Oakley applied for an adjournment. He stated he had instructions from Mr Hussain to withdraw the appeal if the Appellant was given 12 months to pay the financial penalty of £8000.

4. I refused the application for an adjournment. I found the explanation for Mr Hussain's absence unconvincing. Mr Oakley's explanation for his absence was contradictory and unlikely. I find that Mr Hussain as the sole Director of the Appellant company has had ample opportunity to prepare and present his case and that it was unlikely he would attend on a future occasion. Mr Oakley had been given instructions and although he was not legally qualified described himself as being the Appellant's legal adviser and legal expert and able to represent the Appellant as he had instructions. In all the circumstances, and having regard to the overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) 2009, I decided to proceed in the absence of Mr Hussain.
5. Mr Oakley had received a copy of the Response and the bundle and confirmed he had read the papers. He did not have a set of papers with him but was given a set to refer to and given a recess of 25 minutes to consider the Response and bundle and telephone Mr Hussain to obtain further instructions.

### **C. The Appellant's Case**

6. The Appellant lodged an appeal citing the following grounds:
  - a) In relation to the breach under section 83(2) the appellant denied the allegation that the company failed to display the list of fees as required due to the fact that "on the date of the alleged allegation that the list of fees was prominently displayed in the establishment. That being said we have since displayed in two very conspicuous locations so that they cannot be missed and attracts scrutiny of the potential client."
  - b) In relation to the breach under section 83(4) the Appellant "denies the allegation due to the fact that on the date of the alleged allegation the prescribed information was listed on the display titled "Wiseman Estates Fees.""
  - c) In relation to the breach under section 83(6) the Appellant "denies the allegation due to the fact that on the date of the alleged allegation Wiseman Estates as members of The Property Ombudsman a voluntary scheme approved by the Office of Fair Trading. Therefore the prescribed information required by S83(6) the details of the Client Money Protection Insurance (CMP) are listed with The Property Ombudsman."
  - d) In relation to the breach under s83(7) the Appellant "denies the allegation due to the fact that on the date of the alleged allegation Wiseman Estates displayed their membership of The Property Ombudsman a voluntary scheme approved by the Office of Fair Trading in a prominent location to be seen by all."
7. Mr Oakley submitted at the hearing the following:

- a) Mr Hussain assumed that the Appellant was a member of a Redress Scheme. He left such matters in the hands of his office manager and assumed this matter had been dealt with. The Appellant kept money in a separate client account and Mr Hussain thought this would suffice.
- b) The Appellant paid a website specialist company, Estates IT, to look after the website and Mr Hussain had assumed that the fees were displayed as required by the legislation.
- c) The Appellant company has a net income of £4000 per annum and cannot afford to pay the financial penalty.
- d) None of the grounds set out on page 5 were, in fact, correct.

#### **D. The Respondent's case**

- 8. The Respondent submits that the Appellant committed four breaches under Section 83 of the CRA 2015 as follows:
  - a) The Appellant failed to display a list of fees at the premises under s83(2) and on the Appellant's website under s 83(3).
  - b) The Appellant failed to include in the list of fees the information required under s83(4).
  - c) The Appellant failed to include in the list of fees, a statement concerning membership of a client money protection scheme as required by s83(6).
  - d) The Appellant failed to indicate membership of a Redress Scheme with details of that scheme as required by s83(7).

#### **E. Findings of Fact and Reasons**

- 9. Wiseman Estates Limited, the Appellant, was incorporated on 20 February 2007. Mr Mohammed Numan Hussain is the sole Director and shareholder. His brother Mr Suleman Hussain is also involved in the business but is not a Director as claimed by Mr Oakley.
- 10. The Appellant was a member of 'mydeposits' a government authorised Tenancy Deposit Protection Scheme from 20 February 2018 to 19 February 2019 (page 13).
- 11. The Appellant had employers' liability insurance with Hiscox from 5 July 2017 to 4 July 2018 (page 16).
- 12. At the date of the hearing the Appellant had one paid employee Mr Suleman Hussain, Mr Numan Hussain's brother. Mr Oakley provided legal services for free. At the date of the breaches the Appellant employed two other employees but they were no longer employed by the date of the hearing.
- 13. The Final Notices dated 21 February 2018 sets out four breaches under section 83 of the CRA 2015. A financial penalty of £3000 was imposed for the four breaches under the

CRA 2015. A financial penalty of £5000 was imposed in relation to the breach under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a scheme etc)(England) Order 2014.

14. The Appellant had membership with The Property Ombudsman between 12 September 2008 and 18 November 2016 when the membership ceased due to the non-payment of renewal fees. The Property Ombudsman wrote to Mr S Hussain on 18 November 2016 informing him that membership had been terminated (page 96).
15. The Appellant became a member of The Property Ombudsman Redress Scheme on 22 January 2018. The Appellant was not a member of any Redress Scheme between 18 November 2016 and 22 January 2018.
16. The Final Notices dated 21 February were appropriately addressed to Mr Mohammed Numan Hussain as sole Director of the Appellant company for the breaches in relation to the CRA 2015 and the breach in relation to the Redress Scheme. The Final Notices were sent on 21 February 2018 by recorded delivery.
17. On 10 January 2018 the Appellant was engaged in letting and management work and was required to be a member of a Redress Scheme and was not a member of any of the three government approved Redress Schemes. My findings are on the basis of the evidence at pages 90 to 97. Mr Oakley has not produced any evidence to contradict this evidence.
18. The Notices of Intent was appropriately served on Mr M N Hussain. The Notices of Intent contained the information as required by statute namely it set out the reasons for the penalty, the amount of the penalty and that there was a 28 day period to make written representations or objections, starting from the day after the date on which the Notices of Intent were sent.
19. On 10 January 2018 the website of the Appellant was not compliant with s 83 of the CRA 2015 because there were no landlord fees present, the tenant fees were not described or inclusive of VAT and there was no statement to say whether or not they were members of a Client Money Protection Scheme. There was no Client Money Protection statement displayed on the premises and the list of fees displayed did not include landlord fees. A sticker was displayed on the premises indicating that the Appellant was a member of The Property Ombudsman Scheme which was not the case. This is on the basis of the evidence of Ms Waters which was not contradicted by Mr Oakley. This is on the basis also that Mr Oakley when questioned admitted that the grounds of appeal on page 5 were not correct and the statements made therein were erroneous.
20. The Appellant made no response to the Notice of Intent.
21. Although Mr Hussain employed an IT firm to set up and run his website the responsibility to ensure that the Appellant complied with its legal obligations was on him as the sole Director. The obligation was on him, also, to ensure that the Appellant complied with the legal requirement to be a member of a redress scheme. The Appellant failed to comply with its legal obligations. Mr Hussain as the sole Director is the person to ensure the Appellant complied with its legal obligations.

22. The financial penalties of £3000 and £5000 were appropriate taking into account the size of the business in that it came into the category of micro business. The financial penalties are not disproportionate to the turnover or scale of the business and would not lead the Appellant to go out of business.
23. Mr Hussain and Mr Oakley, on his behalf and on behalf of the Appellant, have produced no evidence of the Appellant's financial circumstances. Mr Hussain and Mr Oakley have had ample opportunity to do so. The written grounds of appeal did not state that the financial penalty was unreasonable or would put the Appellant out of business. It is unlikely that this would not have been mentioned in the initial grounds of appeal if this were the case. Mr Oakley stated at the beginning of the hearing that he had instructions to withdraw the appeal on the basis that the Appellant were given a period of 12 months to pay the financial penalty in full. Mr Oakley claimed that the Appellant company for the last full year of trading made only a net profit of £4000. In my view this is inconsistent with the offer to make payment in full over the next 12 months.
24. I am not persuaded, therefore, that the financial penalty is unreasonable or the imposition of the financial penalty would be likely to put the Appellant out of business.
25. The Appellant was engaged in letting agency work and property management work on the basis of the evidence at pages 61 to 68. Mr Oakley confirmed, also, that the Appellant engaged in this business. The Appellant is not able to rely on any of the exclusions in the legislation due to the nature of the business.
26. I find that the Final Notices contained no error of law or fact and this is not in issue.
27. The findings of fact are on the basis of the witness statement of Ms Waters (pages 45 to 48) and the indexed and paginated bundle of documents annexed and marked EW1 to EW12. This evidence was not challenged by Mr Oakley who admitted that the grounds of appeal were without substance and erroneous.

### **The Decision**

28. This appeal is disallowed. The Tribunal finds the financial penalties were appropriate in all the circumstances.

Signed J R Findlay  
Judge of the First-tier Tribunal  
Date: 16 October 2018  
Signed: 1 November 2018  
Promulgation date: 8 November 2018