



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

Appeal Reference: PR/2017/0023

Decided without a hearing
on 9th March

Between

SAMSON ESTATES LTD

Appellant

and

LONDON BOROUGH OF NEWHAM

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Final Notices

1. Samson Estates Limited (“Samson”) appealed against three Final Notices dated 9th June 2017 served on it by the London Borough of Newham (“Newham”), which is the local enforcement authority for Samson’s premises at 269-271 High Street, Stratford, London E15.
2. The Final Notices issued by Newham are:
 - (i) Final Notice reference FPN/FE/Redress/Samson/170609 (the “Redress Notice”), which sets out Newham’s conclusion that on 22nd February 2017 Samson had failed

to comply with its duty under The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc. (England) Order 2014 (the "Order") "to belong to an approved redress scheme for property management (residential block management)". Newham imposed a penalty charge of £3000 in the Redress Notice.

(ii) Final Notice reference FPN/FE/CRAWebsite/Samson/170609 (the "Website Notice"), which sets out Newham's conclusion that Samson was on 22nd February 2017 in breach of section 83 of the Consumer Rights Act 2015 (the "Act") by reason of a

"failure on your website to display a list of fees (landlord and tenant) as required by section 83 (3)"

and a

"failure to include on your website a statement concerning membership of a client money protection scheme, as required by Section 83 (6)."

In the Website Notice Newham imposed a penalty charge of £2000 for the breach on section 83 (3) and a penalty charge of £2000 for the breach of section 83 (6).

(iii) Final Notice reference FPN/FE/CRAPremises/Samson/170609 (the "Premises Notice") sets out Newham's conclusion that Samson was on 22nd February 2017 in breach of section 83 of the Act by reason of a;

"failure on your premises to display a list of fees (landlord and tenant) as required by section 83 (2)"

and a

"failure to include on your premises list a statement concerning membership of a client money protection scheme, as required by Section 83 (6)."

In the Premises Notice Newham imposed a penalty charge of £2000 for the breach of section 83 (2) and a penalty charge of £2000 for the breach of section 83 (6).

3. Newham stated in the Final Notices that they had issued three notices of intent to Samson on 22nd February 2017 (the "Notices of Intent") giving details of these breaches and the likely penalties, which at that stage amounted to £17,000 in aggregate and inviting representations from Samson.

B. Legislation

4. The sections of the Act that are referred to in this decision or that are of greatest relevance to this appeal are set out below in Annex A, which forms part of this decision. The sections of the Order that are referred to in this decision or that are of greatest relevance to this appeal are set out below in Annex B, which also forms part of this decision.
5. Where the relevant enforcement authority is satisfied on the balance of probabilities that a letting agency has breached its duties under the Order, it may impose a monetary penalty under article 8 of the Order. Where the relevant enforcement authority is satisfied on the balance of probabilities that a letting agency has breached its duties under section 83 of the Act, it may impose a financial penalty under section 87 of that Act. In both instances the enforcement authority does so by

serving first a notice of intent, considering any representations made in response, and then serving a final notice on the letting agent concerned.

6. The Order and paragraph 5 of Schedule 9 to the Act both provides that a letting agent upon whom a financial penalty is imposed may appeal to this tribunal. The permitted grounds of appeal are in both cases (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

C. Guidance

7. The Act and the Order are the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government (the "Guidance"). The Guidance is non-statutory but the relevant enforcement authority is expected to have regard to it when considering what fine is reasonable for a breach of the Act or the Order. The sections of the Guidance that are of greatest relevance to this appeal are set out below:

"The expectation is that a £5000 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 letting agency 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 that should be considered is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business."

D. The Appeal and the Response

8. Samson submitted an appeal dated 5th July 2017 against the five penalties in the Final Notices. Samson's grounds of appeal was specific to each of the three Final Notices:
 - (i) With regard to the Redress Notice, Samson stated that they had ceased managing a residential block from which Newham had received a complaint and they "*begun handing over to the new block management company before the notice was issued.*"
 - (ii) With regard to the Website Notice, Samson stated that they were working with the Council to correct these matters and the work was completed before the Website Notice was issued.
 - (iii) With regard to the Premises Notice, Samson stated that the fines should not have been issued because the fees and the statement about membership of a client money protection scheme were displayed in a photo frame which normally sat on the front reception desk of their premises. At the time when the Officer from Newham visited their premises this frame had been placed by a cleaner under the front reception desk.

9. Samson also stated in their appeal that their financial position is very weak and that they were not in a position to pay the fines imposed by Newham in the Final Notices. They said that they had supplied their accounts for the last two years to Newham in order to demonstrate their position.
10. In their appeal Samson indicated that they wished the appeal to be heard on the papers. I consider that the appeal was suitable for determination on this basis.
11. Newham responded to the grounds of appeal by providing details of the correspondence that they had sent to Samson under its current and previous name. On 20th October 2016 they wrote explaining Samson's obligations under the Act. They stated that they had visited Samson's premises on 2nd November 2016 and found that Samson was failing to meet their obligations under the Order and the Act. The Trading Standards Officer who visited Samson on that day left a Non-Compliance Notice with Samson that outlined their failings and stated that a further visit would take place to see if the matters had been corrected. On 7th December 2016 they visited Samson's premises again and were shown a proposed list of fees, which the Trading Standards Officer said needed to be clearer. The Trading Standards Officer also repeated that a statement about whether Samson was a member of a client money protection scheme must be displayed. Samson produced a revised set of fees and on 8th December the Trading Standards Officer confirmed that they were clear enough. Samson was advised of the need to publish their fees on their website.
12. On 15th February 2017 Newham received a complaint from a tenant at a residential block of flats stating that Samson was not a member of an approved redress scheme. Newham checked the approved redress schemes and concluded that Samson was a member of a redress scheme for its letting agency work but not for its property management work.
13. On 22nd February 2017 Newham checked Samson's website and was unable to find any information about fees. Newham also checked the approved redress schemes and found that there was no change in Samson's status. Upon inspecting Samson's premises the Trading Standards Officer found that no fees were on display on the premises. A director of Samson stated that the fees display must have been tidied away by a cleaner. Newham state that at no stage was the officer shown the frame with the fees information displayed in it. Samson was able to show the officer where on their website the information about fees was displayed, however it only contained details of their fees for tenants and not for landlords. Newham state that the website failed to disclose whether Samson was a member of a client money protection scheme.
14. Samson responded to Newham's submission and acknowledged the correspondence and visits from Newham in 2016, stated that the photo frame displaying the fees at the premises had been found and placed on the front reception desk whilst the Trading Standards Officer was still at the premises on 22nd

February 2017. Samson submitted that two of their staff recall the photo frame displaying their fees being at their premises on 22nd February 2017. They confirmed that it is now screwed to the wall. Samson also referred to a number of errors in the Notices of Intent, for example; that the address for Samson in High Street, Stratford was given as 269 -272 instead of 269-271, two of the notices of intent were dated 27th February 2017 instead of 22nd February 2017 and a digit had been missed from Samson's company number on one to the notice of intent. Samson also pointed to a similar mistake being made in relation to their address in the Final Notices and to Newham writing two letters of their name in upper case rather than lower case. Samson argue that the date of each Notice of Intent is important as Newham need to establish that they were in breach of their obligations on 27th February 2017 and they have only submitted evidence in relation to the position at 22nd February 2017.

15. Samson acknowledge that they should have belonged to a redress scheme whilst managing the residential block but that they only became aware of this after the Trading Standards Officer informed them on 22nd February 2017. They stated that no detriment had been suffered by any leaseholder during the period of more than two years in which they had been managing the block of flats.
16. Samson argue that Newham have been very heavy handed in pursuing the penalties. Samson repeated that they cannot afford the £11,000 penalties imposed by Newham and they will probably be forced into liquidation. Samson made further submissions in which they enclosed their 2017 accounts and repeated that they could not afford to pay the penalties imposed by Newham. The 2017 accounts had been filed at Companies House. The accounts showed a turnover for Samson of £102,953 in 2017 and £80,040 in 2016. Samson had profits of £3,836 in 2016 and £4,309 in 2017. Staff costs were very low; £9,481 in 2016 and £25,970 in 2017, but consultancy charges of £2658 in 2016 and £23,455 in 2017 were also paid. The net worth of the company at the end of 2016 was £10,146 and at the end of 2017 was £4,455.
17. Samson final submission asked the tribunal to recognise that it was not intending to break the law, it had sought to comply with the Newham's requirements and asked that the fine be forgiven on this occasion.
18. Newham provided a witness statement from the relevant Trading Standards Officer in which, amongst other matters, she confirmed that the photo frame displaying Samson's fees had not been found and put on display before she left the premises on 22nd February 2017. She confirmed the failings relating to Samson's website set out above and enclosed screen shots of Samson's website on 22nd February 2017. Correspondence with the providers of approved redress schemes was provided. She confirmed that the representations submitted by Samson in response to the Final Notices were considered and taken into account by the panel in Newham who made the decision to issue the Final Notices. As a result of the representations, Newham reduced the aggregate penalties to £11,000 in total.

E. *Conclusions on the facts and law*

19. In reaching a decision in this case I have had regard to all of the written submissions, evidence and other documentation provided by both parties during the course of this appeal.
20. I have considered Samson's various arguments about the form of, and errors within, the Notices of Intent and the Final Notices. These arguments have no merit. There is no requirement that the name of the relevant business must be set out in upper case or lower case. A mistake in recording the company registration number in the Notice of Intent or the Final Notice does not affect the validity of the Final Notice. The date of the Notice of Intent is important and I have reviewed the three Notices of Intent and I do not accept that they are dated 27th February, rather than 22nd February. The quality of the copies included in the bundle is poor in parts and it is difficult to discern the date in one of the places where it is inserted in two of the three Notices of Intent. However, in these two instances the date could be either 22nd February or 27th February. In any event the date is included at a second place on these two Notices of Intent and is clearly set out as 22nd February 2017. I note that Samson received the Notices of Intent and the Final Notices at their premises and on the dates recorded by Newham. I conclude that the form of the Final Notices and the process preceding their issues comply with the requirements of the Act and the Order
21. With reference to the Redress Notice, the submissions of the parties indicate that they agree that on 22nd February 2017, Samson were carrying out property management work and letting agency work and they were a member of an approved redress scheme. The authorised redress scheme they had joined, the Property Ombudsman, confirmed in an e-mail to Newham dated 22nd March 2017 that Samson's membership;
"covers them for Residential Sales and Lettings, Commercial Sales and Lettings and Property Management",
but stated that they did not hold membership for Residential Leasehold Management.
22. Newham were clear that Samson's failure to take out membership of the redress scheme that covered residential block management formed the basis for the Redress Notice. The parties agree that at the time of the Notice of Intent Samson was carrying out property management work, that it was required to belong to an approved redress scheme under the Order and that it was a member of such a scheme. The e-mail from the Property Ombudsman referred to above indicates that the membership of the redress scheme provided cover for some property management work. In order for the breach of section 83 of the Act set out in the Redress Notice to be established, Newham need to establish that Samson's membership of the Property Ombudsman was insufficient to meet their obligations under the Order.
23. It is easy to see that there is a distinction in commercial terms between different forms of property management and in particular, between managing individual

properties and managing a large block of flats. However, it is not clear that the Order imposes an obligation to join different elements of an approved redress scheme in order to provide redress for different types of property management work. Newham have not provided any explanation of why the obligation of Samson under the Order goes beyond obtaining the membership that they held on 22nd February 2017 in respect of property management work. In this case Newham has not provided evidence about the different property management activities that Samson was carrying out on 22nd February 2017, nor has it explained the difference in the categories of membership offered by the Property Ombudsman for businesses undertaking property management work.

24. Section 84 of the Enterprise and Regulatory Reform Act 2013 sets out a single definition of “property management work” and provides for a number of exceptions. Neither section 84, nor the Order distinguish between categories of property management work that fall within this single definition. Section 84 (3) (b) states that the Order may provide for the duty on those carrying out property management work to belong to a redress scheme to apply-

“only in relation to specified descriptions of such work”

Article 5 (1) of the Order states

“A person who engages in property management work must be a member of a redress scheme for dealing with complaints in connection with that work.”

There is no express term in the Order that requires that different categories of membership of a redress scheme must be taken out in order to cover any subdivision of property management work that an approved redress scheme provider may choose to operate in practice.

25. I conclude that there is insufficient evidence for me to find that on 22nd February 2017 Samson’s membership of the Property Ombudsman Scheme in connection with property management work was insufficient to meet their obligations under the Order.
26. With reference to the Website Notice, I find that on 22nd February 2017 Samson was engaged in lettings agency work within Newham and had a duty, which they were failing to meet, to publish the fees that they charged to tenants and landlords on their website and to publish whether or not they were a member of a client money protection scheme. I understand that Samson accepts this conclusion but argue that they had remedied the failing before the Final Notice was issued. I confirm that prompt remedial work can be relevant in relation to the reasonableness of any penalty that is to be imposed, however it does not affect a conclusion that Samson was in breach of its legal obligations on 22nd February 2017. I find that Samson was aware of the duty on them with regard to the publication of their fees and their membership or otherwise of a client money protection scheme on their website and they had failed to undertake the necessary work by 22nd February 2017. I therefore conclude that on that day Samson were in breach of their obligations under sections 83 (3) and 83 (6) of the Act.

27. With reference to the Premises Notice, the submissions of the parties appear to agree that Samson's fees and clarification of their membership or otherwise of a client money protection scheme were not displayed when the Trading Standards Officer from Newham attended Samson's office on 22nd February. There is a dispute over whether this failure arose due to a temporary oversight that was immediately remedied, or whether it took Samson some time to find the required display. On the balance of probabilities, I conclude from the evidence and submissions that; Samson had produced an acceptable display of their fees and of the information about their membership of a client money protection scheme, the display was available in their office, it had been displayed in the recent past, on 22nd February it was not on display and Samson were still sufficiently unfamiliar with the need to display the information required by the Act that they had not noticed and could not immediately locate the missing display frame. I conclude that Samson were in breach of sections 83 (2) and 83 (6) of the Act on this date.

F. Penalty

28. Under the Website Notice Newham imposed a penalty of £2,000 for Samson's failure to publish a list of fees on their website, as required by section 83(3) of the Act, and a further fine of £2,000 for failing to include a statement concerning membership of a client money account protection scheme on their website, as required by section 83(6) of the Act.

29. Under the Premises Notice Newham imposed a penalty of £2,000 for Samson's failure to display a list of fees on their premises, as required by section 83(2) of the Act, and a further fine of £2,000 for failing to include a statement concerning membership of a client money account protection scheme at their premises, as required by section 83(6) of the Act.

30. I note that subsections 83 (6) of the Act states that; *"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"*.

I conclude from this provision that the Act treats the duties created by subsections 83 (6) as being part of the duty imposed under subsections 83 (2) and 83 (3).

31. Section 87 of the Act sets out the basis upon which penalties can be levied for breaches of subsection 83. Section 87 (6) states that:

"Only one penalty under this section may be imposed on the same letting agent in respect of the same breach"

Although this section appears to be primarily intended to avoid different local weights and measures authorities imposing penalties for the same breach, it can also be construed as having a wider effect.

32. Subsection 87 (7) limits the amount of any financial penalty under section 87 to £5,000. Schedule 9 of the Act sets out the power of the Tribunal on appeal and states

that a final notice may not be varied by the Tribunal so as to impose a financial penalty of more than £5,000.

33. The Guidance states in Section 3 that a fine of up to £5,000 can be imposed where a letting agent has failed to “publish their fees and other details”. The “other details” in this context can only refer to the information required to be published under section 83 other than that about fees, such as information about membership of a client money protection scheme.
34. I conclude that Samson’s failure on 22nd February 2017 to display their fees and a statement of whether or not they were a member of a client money protection scheme to which they belong at their premises should properly be regarded as giving rise to a single breach for which the maximum penalty is £5,000. I reach the same conclusion in respect of the two equivalent failings listed in the Website Notice.
35. Samson has also argued in their appeal that the amount of the monetary penalty is unreasonable. In deciding that issue, which is left open by the primary legislation, I accept that it is helpful and appropriate to have regard to the Guidance. The Guidance says the expectation is a “*fine*” (i.e. penalty) of £5,000 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 extenuating circumstances; however, it goes on to indicate some considerations that may be relevant. It recognises that an issue that should be considered in this regard is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is clear that the Act must take precedence over the Guidance and that, in any event, enforcement authorities such as Newham must consider the issue of reasonableness and proportionality of a penalty in the round and that they should not follow the advice in the Guidance to the exclusion of all other matters.
36. The Act is intended to reduce harm and the risk of harm to consumers from letting agents. The penalty needs to be set at a level that reflects the public benefit in ensuring compliance with the Act whilst being proportionate to the scale of the business and the severity of the failure.
37. I have considered the financial information provided by Samson in order to determine if a further reduction in the penalties is appropriate. The information provided by Samson in its 2017 accounts indicates that it lacks the profitability or net assets to pay penalties totalling £8,000. The profits and net assets have not been reduced by significant payments to owners or staff. I find that there is a risk that Samson may go out of business if faced with penalties of this scale.
38. I have also noted that Newham have taken considerable steps to assist Samson in complying with its obligation under the Act and that it is unclear that Samson would have become compliant on its own initiative. I conclude that Samson had no

reasonable excuse for permitting the breaches to remain remedied and it is appropriate that the penalties in this case should act as deterrent. In all of the circumstances I conclude that a single penalty of £2,000 should be paid under each of the Website Notice and Premises Notice giving an aggregate penalty of £4,000.

F. Decision

39. By virtue of paragraph 5(5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.
40. I find, for the reasons set out above, that the breach set out in the Redress Notice is not made out and I order that the Redress Notice be quashed
41. I find, for the reasons set out above, that Samson failed on 22nd February 2017 to discharge their obligations under section 83 of the Act to display at their premises and publish on their website their fees and a statement of whether or not they were a member of a client money protection scheme and that a financial penalty of £2,000 in respect of each such breach is reasonable and proportionate.
42. The Website Notice is varied so as to substitute a single penalty of £2,000 in place of the aggregate penalty of £4,000 originally imposed.
43. The Premises Notice is varied so as to substitute a single penalty of £2,000 in place of the aggregate penalty of £4,000 originally imposed.

Peter Hinchliffe
Judge of the First-tier Tribunal
16 April 2018
Promulgation Date: 19 April 2018

ANNEX A

The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees and other information. This is achieved by sections 83 to 86:-

A. Duty of Letting Agents to Publicise Fees

“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.”

B. Enforcement

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."

C. Financial penalties

3. The system of financial penalties for breaches of section 83 is set out in Schedule 9 to the 2015 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 Final 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 final 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 final notice in writing to the letting agent on whom the final notice was served.

D. Appeals

4. 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 final notice to--
- (a) the First-tier Tribunal, in the case of a final notice served by a local weights and measures authority in England, or
 - (b) the residential property tribunal, in the case of a final 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.

ANNEX B

1. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 (the 'Act') provides:

'(1) The Secretary of State may by order require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work which is either –

- (a) a redress scheme approved by the Secretary of State, or
- (b) a government administered redress scheme.'

2. Section 83(2) provides:

'(2) A 'redress scheme' is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person.'

3. Subject to specified exceptions in subsections (8) and (9) of section 83, lettings agency work is defined as follows:

'(7) In this section, 'lettings agency work' means things done by any person in the course of a business in response to instructions received from-

- (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy ('a prospective landlord');
- (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it ('a prospective tenant').'

4. Section 84(1) enables the Secretary of State by order to impose a requirement to belong to a redress scheme on those engaging in property management work. Subject to certain exceptions section 84 (6) provides that;

“ 'property management work' means things done by any person ('A') in the course of a business in response to instructions received from another person ('C') where-

- (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C's behalf, and
- (b) the premises consist of or include a dwelling-house let under a relevant tenancy.”

5. Pursuant to the Act, the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) England

Order 2014 (SI 2014/2359) (the 'Order') was introduced. It came into force on 1 October 2014. Article 3 provides:

'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.'

6. Article 5 imposes a corresponding requirement on a person who engages in property management work.
7. Article 7 of the Order provides that it shall be the duty of every enforcement authority to enforce the Order.
8. Article 8 provides that where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme, the authority made by notice require the person to pay the authority a monetary penalty of such amount as the authority may determine. Article 8(2) states that the amount of the penalty must not exceed £5000. The procedure for the imposition of such penalty is set out in the Schedule to the Order. This requires a 'notice of intent' to be sent to the person concerned, stating the reasons for imposing the penalty, its amount and information as to the right to make representations and objections. After the end of that period, the enforcement authority must decide whether to impose the monetary penalty, with or without modification. If it decides to do so, the authority must serve a final notice imposing the penalty, which must include specified information, including about rights of appeal. (See Paragraph 3 of Schedule to the Order).
9. Article 9 of the Order provides as follows:

'Appeals

9.—(1) A person who is served with a notice imposing a monetary penalty under paragraph 3 of the Schedule (a 'final notice') may appeal to the First-tier Tribunal against that notice.

(2) The grounds for appeal are that —

(a) the decision to impose a monetary penalty was based on an error of fact;

(b) the decision was wrong in law;

(c) the amount of the monetary penalty is unreasonable;

(d) the decision was unreasonable for any other reason.

(3) Where a person has appealed to the First-tier Tribunal under paragraph (1), the final notice is suspended until the appeal is finally determined or withdrawn.

- (4) The Tribunal may –
- (a) quash the final notice;
 - (b) confirm the final notice;
 - (c) vary the final notice.

10. The Schedule to the Order provides as follows:

“Final notice

3.

(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the monetary penalty, with or without modifications.

(2) Where an enforcement authority decides to impose a monetary penalty on a person, the authority must serve on that person a final notice imposing that penalty.

(3) The final notice must include –

- (a) the reasons for imposing the monetary penalty;
- (b) information about the amount to be paid;
- (c) information about how payment may be paid;
- (d) information about the period in which the payment must be made, which must not be less than 28 days;
- (e) information about rights of appeal; and
- (f) information about the consequences of failing to comply with the notice.