



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

**Appeal References: PR/2018/0035
PR/2018/0036**

Decided without a hearing
on 14th December 2018

Between

LANCASTER ESTATES (UK) LTD T/A CAVENDISH ROWE

Appellant

and

WESTMINSTER CITY COUNCIL

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Final Notice

1. Lancaster Estates (UK) Limited ("Lancaster") appealed against two final notices dated 7th June 2018 served on it by Westminster City Council ("Westminster"). The first is a final notice in respect of breaches of sections 83(1) and 83(3) of the Consumer Rights Act 2015 (the "Act") with the reference number 10/00488/FAIRTR/CRA/FEES (the "Fees Notice"). The second is a final notice in respect of breaches of sections 83(3) and 83(6) of the Act with the reference number

10/00488/FAIRTR/CRA/CMP (the "Client Money Notice"). Westminster is the local enforcement authority for Lancaster's premises at 32 Craven Road, London W2 3QA. The Fees Notice and Client Money Notice (the "Final Notices") set out Westminster's conclusion that between 1st March and 15th March 2018 Lancaster was engaged in letting agency work and in breach of the following obligations under the Act:

(i) The Fees Notice;

You have failed to:

- *Publish a list of your relevant fees, on your website in accordance with section 83(3) and 83(1) of the Act.*

- *Display the said fees in relation to properties (dwelling houses) located in Westminster"*

(ii) The Client Money Notice

"You have failed to:

- *Display or publish on your website, with a list of fees, a statement of whether you are a member of a client money protection scheme in accordance with section 83(6) of the Act.*

- *Do this in relation to properties (dwelling houses) located in Westminster"*

2. Westminster imposed a penalty on Lancaster of £4,500 under the Fees Notice and a penalty of £4,500 under the Client Money Notice.
3. Westminster stated in the Final Notices that they had issued two notices of intent to Lancaster on 15th March 2018 (the "Notices of Intent") giving details of the breaches referred to above and the likely penalties for such breaches. Westminster invited representations from Lancaster in response to the Notices of Intent. In the Notices of Intent and in a covering letter delivered with the Final Notices, Westminster confirmed that the website operated by Lancaster is www.cavendishrowe.co.uk. Cavendish Rowe is the trading name of Lancaster.
4. Lancaster submitted representations in response to the Notice of Intent on 4th April stating that it was small independent family run business with a good reputation that gains the majority of its business by word of mouth. They are loss-making and trying desperately to stay afloat and had resorted to borrowing to achieve this, which had proved expensive. Lancaster stated that they did not deny that the fees were not displayed in the correct manner on their website, but this had been rectified.

B. Legislation

5. The sections of the Act that are referred to in this decision or that are of greatest relevance to these appeals are set out below in Annex A, which forms part of this decision.
6. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under section 83, it may impose a financial penalty under section 87. It 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.

7. Schedule 9 paragraph 5 to the 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

C. Guidance

8. Section 83 of the Act is the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government (the "Guidance"). Local authorities are required to have regard to the Guidance under subsection 87(9) of the Act. The sections of the Guidance that are of greatest relevance to these appeals are set out below in Annex B which forms part of this decision.

D. The Appeals

9. Lancaster submitted appeals dated 6th July 2018 against the Fees Notice and the Client Money Notice. The appeals and all subsequent submissions by both parties deal with both Final Notices together as if they were a single decision. In the notice of appeal Lancaster state that they are a small family run business that has suffered from difficult market conditions since 2016. Their remaining staff are working part-time and the business is running at a loss. The monetary penalty imposed in the Final Notices will threaten the future of the business. Lancaster state that they had clearly displayed their fees to clients in their offices. However, with regard to the fees on their website Lancaster state;
"we do not deny that they were not displayed in the correct manner on our website."
They explain that such failing was not intentional or designed to mislead. They co-operated immediately with Westminster's Trading Standards department to rectify the position with regard to the display of their fees and a statement about their membership of a client money protection scheme.
10. Lancaster indicate in the appeals that they want the monetary penalties imposed by the Final Notices to be dropped. Lancaster supplied a copy of their bank statements from 16th December 2017 to 15th March 2018 showing that the balance in their bank account varied between a credit of a little under £1000 and an overdraft of a little less than £5,000 throughout this period.
11. Lancaster state that they wished the appeals to be heard on the papers. Westminster confirmed that they also wished to proceed on this basis. Having considered the subject matter of the appeals, the evidence and submissions provided by the parties and the capability of the parties I consider that the appeals are suitable for determination on this basis.

12. Westminster submitted a response dated 15th August 2018 to the grounds of appeal. They stated that they had reviewed Lancaster's website and found that fees to tenants or landlords were not published and no statement about Lancaster's membership of a client money protection scheme was visible. This was 33 months after the Act had come into force. Westminster had accepted that Lancaster had acted quickly in rectifying the information about fees and their membership of a client money protection scheme and had reduced the monetary penalty in order to reflect this response by Lancaster. However, Westminster do not accept that Lancaster is a small letting agency business; they point out that they had more than 40 properties to let in August 2018 and Lancaster's account for the year to 30th September 2017 confirm that it had capital and reserves of £67,509. Westminster state that the bank account statements provided by Lancaster show considerable funds being paid out each month to 4 or 5 members of staff. Westminster does not accept that the penalties totalling £9,000 will lead to Lancaster going out of business.
13. Westminster submitted two witness statements: One from Chuma Akpom, the Manager of the Trading Standards Service at Westminster, who made the final decision to issue the Final Notice and to impose the two penalties of £4,500 after considering the representations received from Lancaster. The second witness statement was submitted by Alexandra McKeown, a Trading Standards officer at Westminster, who examined Lancaster's website, visited their premises and issued the Notices of Intent. Ms McKeown submitted a hypercam video recording of Lancaster website at 12th March 2018 and clarified that the website did not contain any details of their fees for landlords and referred only to a single administration fee of £200 to be paid by tenants with no breakdown or clarification of this fee. No information was included on the website about whether Lancaster was a member or not of a client money protection scheme.
14. Lancaster responded to Westminster's response with a "Summary Brief" in which they state that they had promptly remedied the issues raised by Alexandra McKeown on 15th March 2018 and that their finances were strained and that they have had to borrow to survive. Lancaster accepted their failure to comply with their duty to publicise their fees on their website, whilst pointing out that they had shown fees on their website but without showing a breakdown. Overall, they state that the fine is excessive and should be reduced to a level that is sustainable for their business.

D. Conclusions on the facts.

15. In reaching a decision on these appeals I have had regard to all of the written submissions, evidence and other documentation provide by both parties during the course of the appeals.
16. The parties agree, and I concur, that from 1st to 15th March 2018 Lancaster was engaged in lettings agency work within Westminster and had a duty under the Act, to publish the fees that they charged and whether or not they were a member of a

client money protection scheme on their website. I understand that Lancaster is not denying that Westminster is correct to conclude that they had not met these duties during this period. I have reviewed the evidence submitted by Westminster regarding the contents of the website at the relevant time and find that it supports a conclusion that the website did not list any fees for landlords, that it set out a single fee for tenants in the form of an “administration fee” that was not otherwise detailed or explained and that the website did not include a statement of whether Lancaster is a member of a client money protection scheme.

E. Conclusions on law

17. I conclude that Westminster has followed an appropriate procedure in the issue of the Final Notices and that Lancaster’s appeal is to be treated as having been submitted in time.
18. The reference on Lancaster’s website to tenants paying an administration fee is insufficient to meet the requirement of section 83(3) of the Act. This section requires that a description of each fee must be 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. A single general and vague description such as “administration” does not provide a client or prospective client with an adequate understanding of what they are paying for.
19. In the light of my findings on the facts and my conclusions on the inadequacy of the description of the fees for tenants, I find that the evidence establishes that from 1st to 15th March 2018 Lancaster failed to comply with their obligation to publish on their website a list of the fees for their letting agency service as required by section 83(3) of the Act.
20. Section 83(6) of the Act sets out an obligation on a letting agent to publish on their website, with the list of fees, a statement of whether the agent is a member of a client money protections scheme “*if the letting agent holds money on behalf of persons to whom the agent provides services*”. Neither party has directly addressed the question of whether Lancaster holds money on behalf of landlords. I have reviewed the recording of Lancaster’s website on 12th March 2018 provided by Ms McKeown and I note from the pages that promotes its services to landlords that Lancaster states that it collects rents for landlords. I conclude that Lancaster was required to meet the requirements of section 83(6) in the first half of March 2018 and that it failed to publish on their website, with the list of fees, a statement of whether they were a member of a client money protection scheme as required by section 83(6) of the Act.
21. Westminster chose to issue the Fees Notice and the Client Money Notice and to impose separate penalties for the breach of sections 83(3) and 83(6). Lancaster has appealed against each of these Final Notices. I note that subsection 83(6) 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 phrasing that the Act treats the duty created by subsection 83 (6) as being part of the duty imposed under subsection 83 (3).

22. 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. Subsection 87 (7) limits the amount of any financial penalty under section 87 to £5,000. Subsection 87(8) states that Schedule 9 of the Act shall have effect and Schedule 9 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.

23. 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.

24. Having reviewed the legislation and taken account of the Guidance, I conclude that Lancaster’s failure from 1st to 15th March 2018 to publish on their website both their fees and a statement of whether or not they were a member of a client money protection scheme put them in breach of their obligation under section 83 (3) and should properly be regarded as giving rise to a single breach at that time and not two separate breaches. The maximum penalty that can be imposed in respect of a breach of s. 83 (3) is £5,000. In coming to this conclusion I have considered other decisions by the First Tier Tribunal on this issue and I have taken particular note of the decision of the Chamber President, Judge Alison McKenna, in Hamilton’s Sales And Lettings Ltd vs Westminster City Council [2018] UKFTT PR 2018 0001 (GRC) (18 June 2018) which concludes that:

“S. 83 (3) imposes a duty to create and publicise on the website a single " list", which list must include both the fees required by sub-section (4) and, in relevant cases, the additional details required by sub-sections (6) and (7). S. 87 (2) then refers back to breach of that duty (in the singular), and s. 87 (6) provides that a single financial penalty may be imposed in respect of one breach. S.87(7) limits the amount of that single penalty to £5,000.”

F. Conclusion on Penalty

25. Lancaster has argued in their appeal that the amount of the monetary penalty is unreasonable and unaffordable. In deciding on the reasonableness of the penalty, 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 Westminster 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.

26. 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.
27. I have considered the financial information provided by Lancaster in order to determine if a further reduction in the penalties is appropriate. The financial information provided by Lancaster and Westminster does not suggest that Lancaster would be unable to pay a penalty of £5,000. It had total net assets of £67,509 at the year-end prior to the issue of the Notice of Intent. The bank account statements that Lancaster have provided show that it is operating within a modest overdraft, but that the financial position was relatively stable in the period running up to the issue of the Notices of Intent. Lancaster has had the opportunity to provide further evidence supporting its contention that the level of its financial difficulties amount to extenuating circumstances that justify a reduction from the maximum penalty for the breaches of section 83 of the Act. It has not done so. Lancaster had no reasonable excuse for permitting the breaches to take place and to remain remedied. However, I recognise that Lancaster acted promptly to remedy their failures and has been ready to acknowledge their shortcomings since then. In all the circumstances of these appeals I find that a penalty of £4,500 in aggregate for the failures identified in the Final Notices is reasonable and should act as deterrent.

F. Decision

28. By virtue of paragraph 5(5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.
29. I find that Lancaster’ failure to publish on their website between 1st March and 15th March 2018 a list of the fees that they charged customers of their letting agency business and a statement of whether they were a member of a client money protection scheme gives rise to a single breach of section 83 of the Act and that a financial penalty of £4,500 should be payable in respect of this breach and that such a figure is reasonable and proportionate. The Fees Notice and the Client Money Notice are there-

fore varied so as to be construed as single final notice and an aggregate penalty of £4,500 is imposed in place of the two penalties amounting to £9,000 originally imposed.

Peter Hinchliffe
Judge of the First-tier Tribunal
2nd January 2019
Promulgation Date: 8th January 2019

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. 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

Final 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 Final Notice on the agent of its proposal to do so (a “Final Notice of intent”).

(2) The Final 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 Final 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 Final 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 Final 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 Final 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 Final Notice

4

(1) A local weights and measures authority may at any time--

(a) withdraw a Final Notice of intent or Final Notice, or

(b) reduce the amount specified in a Final 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

Explanatory Notes and Guidance

A. In the present appeal, reference was made to 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

B. 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.”

C. 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”.

D. Other 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”.

Penalty for breach of duty to publicise fees

The enforcement authority can impose a fine of up to £5000 where it is satisfied, on the balance of probability that someone is engaged in letting work and is required to publish their fees and other details, but has not done so.

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.

Primary Authority Advice

E. Under the Regulatory Enforcement and Sanctions Act 2008, eligible businesses can form partnerships with a local authority in relation to regulatory compliance. The local authority is known as the “primary authority”.

F. Pursuant to the 2008 Act, a primary authority partnership exists between Warwickshire County Council Trading Standards, the National Federation of Property Professionals and the Property Ombudsman. In November 2015, Warwickshire Trading Standards issued “Primary Authority Advice” in relation to the question: *“is it misleading for a letting agent not to display tenant and landlord fees in their offices?”*

G. This Advice includes the following:-

“Assured Advice Issued:

Section 83 of the CRA requires letting agents to display their fees for tenants and landlords.

These must be displayed at each of the agent’s premises where people using or likely to use the agent’s services are seen face-to-face. The fees must be displayed in a place where such people are likely to see them. People should not need to ask to see the fees as the list should be clearly on view.

The fees must also be published on the agent’s website, if there is one.

It is considered good practice for agents to check that customers have seen the fees price lists before they enter into any agreements or contracts.

The list of fees must include a description of each fee that enables people to understand what it relates to and how much it will be. In relation to fees payable by tenants, it should be clear whether each fee is per property or per tenant. Fees should be inclusive of VAT and any other taxes. ...

The list must be clear and comprehensive. Surcharges, hidden fees or vague expressions like ‘admin fee’ are not permitted”.