

IN THE FIRST TIER TRIBUNAL

PR/2019/0007-9

(GENERAL REGULATORY CHAMBER)

BNP PARIBAS REAL ESTATE ADVISORY & PROPERTY MANAGEMENT UK LTD
t/a STRUTT & PARKER

APPELLANT:

and

WESTMINSTER CITY COUNCIL

RESPONDENT:

DECISION

DECISION OF THE FIRST-TIER TRIBUNAL

The Tribunal refuses the appeal.

REASONS OF THE TRIBUNAL

Introduction

[1] This decision relates to an appeal brought under Schedule 9 of the Consumer Rights Act 2015. It is an appeal against three notices issued by Westminster City Council (“the Council”) in which the Council imposed a financial penalty of £5,000 on the Appellant for failing to display the required fees and any information regarding a client money protection or redress scheme.

Legislation

[2] A letting agent is defined in section 84 of the Consumer Rights Act 2015 (‘the 2015 Act’) as follows:

- (1) In this Chapter “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work).
- (2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person’s employment under a contract of employment.
- (3) A person is not a letting agent for the purposes of this Chapter if—
 - (a) the person is of a description specified in regulations made by the appropriate national authority;
 - (b) the person engages in work of a description specified in regulations made by the appropriate national authority.

2. Section 86 further defines ‘letting agency work’:

- (1) In this Chapter “letting agency work” means things done by a person in the course of a business in response to instructions received from –
 - (a) a person (“a prospective landlord”) seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or
 - (b) a person (“a prospective tenant”) seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.
- (2) But “letting agency work” does not include any of the following things when done by a person who does nothing else within subsection (1)
 - (a) publishing advertisements or disseminating information;
 - (b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;
 - (c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.
- (3) “Letting agency work” also does not include things done by a local authority.

[3] Section 83 of the 2015 Act also imposes duties on letting agents:

- (4) A letting agent must, in accordance with this section, publicise details of the agent's relevant fees.
- (5) 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.
- (6) The agent must publish a list of the fees on the agent's website (if it has a website)
 - ...
- (7) 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 for 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.
- (8) Subsections (6) and (7) apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England.
- (9) If the agent holds money on behalf of persons to whom the agent provides services as part of [is required to be a member of a client money protection scheme for the purposes 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 that—
 - (a) indicates that the agent is a member of a client money protection scheme, and
 - (b) gives the name of the scheme].
- (10) 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.

[4] Section 87 imposes a duty on the local weights and measures authority to enforce these provisions in its own area where it is considered on the balance of probabilities they have been breached. Breaches are considered to have occurred in the area of the local authority in which a dwelling house is situated to which any fees relate, but authorities can take enforcement action in the area of another local authority with the consent of that authority. Local authorities have the power to impose monetary penalties not exceeding £5,000 in the event of a breach.

[5] The procedure for the imposition of monetary penalties and the rights of appeal are set out in Schedule 9 of the 2015 Act. The local authority is required to issue a 'notice of intent' to issue such a penalty within six months from the date the authority had sufficient evidence of a breach. The notice must set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the right to make representations within 28 days of the sending of the notice. At the end of that period the authority must decide whether to impose a penalty and the amount of that penalty. The final notice must set out that amount, reasons for the imposition of the penalty and information regarding how to pay and how to appeal. Anyone served with such a notice has the right to appeal within 28 days, on one of four grounds:

- (11) the decision to impose a financial penalty was based on an error of fact,
- (12) the decision was wrong in law,
- (13) the amount of the financial penalty is unreasonable, or
- (14) the decision was unreasonable for any other reason.

Final Notice

[6] In the present case the Final Notices dated 30 November 2018 stated that the Council believed that on 29 June 2018 the Appellant had failed to display the fees, client money protection scheme and redress scheme information at the Appellant's 'Hill Street' office, contrary to section 83(2) of the 2015 Act. Rather than impose three penalties for the three alleged breaches, the Council as a policy chose to treat all the offences as a single breach, and limit the penalty to £5,000. The breach pursued was the failure to display the fees.

The Appeal

[7] In a letter sent with the Final Notices, the Council stated that Mrs Cosgrove and Mr Silcock of its office had visited the Appellant's premises at Hill Street, where she had been informed by a Ms Annabel Cleary that meetings were arranged with clients and landlords at that office. The Council also stated that on the Rightmove property website, several properties gave the contact details for the Appellant company as the Hill Street address.

[8] The Appellant appealed to the Tribunal on 4 January 2019, alleging that the decision to impose the penalty was based on an error in fact, as the office in question is not an estate agency branch with sales and lettings teams, but rather a head office. The Appellant stated that landlords and customers for tenancies do not have access to this office, and provided the details of eight other offices to which such customers are invited. The Appellant argued that Ms Cleary was not employed in a lettings capacity and so was not in a position to give accurate information to the Council about whether landlords or prospective tenants attended at that office. It was conceded that some customers are invited to the Hill Street office, but they were described as "clients of our rural or developments teams and would therefore not be deemed consumers for the purpose of this Act".

[9] The Council has rejected the assertion that it had made a mistake or misunderstood Ms Cleary, who it understood to be the Residential Operational Director based at the Hill Street office. The Council claim that, at no stage did she state to Mrs Cosgrove that she was not in a position to give the information, but rather asserted that while it was not the norm to deal face to face with customers at the office, lettings-related meetings are sometimes held in the meeting room at Hill Street. Mrs Cosgrove and Mr Silcock provided witness statements to the Tribunal, in which they outlined their dealings with Ms Cleary, and with the receptionist on site, who also confirmed that meetings were held with customers on the premises. Mrs Cosgrove also provided images of the Appellant's website, which listed the Hill Street address as containing the "London Residential Development Office" as well as the "London Westend Office".

TRIBUNAL FINDINGS & REASONS

[10] The parties have agreed to an appeal on the papers before me. The wording of the legislation is unequivocal: a letting agent must display a list of fees “at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use services”. I am satisfied on the evidence provided through Mrs Cosgrove and Mr Silcock that employees of the Appellant Company held out to them that such face-to-face meetings occurred at the relevant premises. The Appellant has not provided a witness statement from Ms Cleary clarifying whether or not she made an error in her assertions to the Council or whether she had been misunderstood. Accordingly, I dismiss the appeal.

Brian Kennedy QC

26 JUNE 2019.