



**Appeal number: PR/20190011**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(PROFESSIONAL REGULATION)**

**BOFR LETTINGS LTD**

**Appellant**

**- and -**

**LONDON BOROUGH OF ISLINGTON**

**Respondent**

**TRIBUNAL: HER HONOUR JUDGE ANGELA MORRIS**

**Sitting in Court 7, Field House, 15-25 Breems Buildings, London EC4A 1DZ**

**On Thursday 29<sup>th</sup> August 2019**

### **Decision**

1. The appeal was considered in the Appellant's absence.
2. The Appeal is dismissed.
3. The Final Notice dated 17<sup>th</sup> December 2018 is confirmed.

### **Reasons**

#### **Background**

4. The Appellant (BPFR Lettings Ltd) is a letting agent. The Respondent ("the Council") is the enforcement authority which served a Final Notice on the Appellant on 17<sup>th</sup> December 2018. The Notice imposed a financial penalty of £2,500 for breaches of Section 83(3) and (4) of the Consumer Rights Act 2015, namely the duty to publicise fees on the letting agents website and Section 83(7) that the Appellant belongs to a redress scheme.
5. By its Notice of Appeal dated 14<sup>th</sup> January 2019, the Appellant disputes the facts on which the Council relied when deciding to impose the financial penalties and also submits that the amount of the penalty is unfair and disproportionate.
6. The parties and the Tribunal agreed that this matter was suitable for determination by way of oral hearing.
7. The parties were notified of the time and place for the appeal on 3<sup>rd</sup> July 2019. The Notice of Hearing advised that the matter would be considered at Field House, 15-25 Breems Buildings, London EC4A 1DZ. The Appellant did not attend the hearing. Enquiries made with the Administration Team of the General Regulatory Chamber revealed that after the submission of the appeal, no further communication has been received from the Appellant despite a number of emails sent to the email address provided.
8. Enquiries were made on the day of the appeal to establish whether the Appellant had made contact with either the Administration Team of the General Regulatory Chamber, staff at Field House and the clerk to the Tribunal were

made telephone calls to the landline number found on the appeal documents. The Appellant had made no effort to communicate with the General Regulatory Chamber or the staff at Field House to indicate that he was having travel or other difficulties such that the appeal should be adjourned.

### **Determination of the appeal in the Appellant's absence**

9. I am satisfied that all reasonable steps we taken to establish that the Appellant had been provided with all necessary information with regard to the date, time and venue of this appeal. All communications were sent to the Appellant's email address [info@blettings.co.uk](mailto:info@blettings.co.uk), which was the one provided at the time the appeal was lodged and no question of misdirection or "bounce back" of those emails occurred.
10. The email dated 3<sup>rd</sup> July 2019 warned the Appellant if he failed to attend the hearing, the Tribunal may proceed in his absence. I am satisfied that the Appellant was given reasonable notice of the hearing in accordance with Rules 34 and 36(s)<sup>1</sup>. I heard representations from the Council as to whether it was in the interests of justice to proceed. The Council is a local authority. They are dependent on public finance which is not limitless. They have had to spend valuable resources in time, response to the appeal and attending the hearing today.
11. In light of the Appellant's failure to respond to any notices sent, I am satisfied it is in the interests of justice to proceed with the appeal today.

### **The Legal Framework**

#### *(i) Fees*

12. Section 83 of the Consumer Rights Act 2015 requires letting agents to publicise details of relevant fees at its business premises and on its website. It came into force in May 2015.

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<sup>1</sup> Of the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended)

13. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.

*(ii) Client Money Protection Schemes*

14. Section 83 (6) of the Consumer Rights Act 2015 states that, if a letting agent holds money on behalf of persons to whom the agent provides services, the agent must publish with the list of fees a statement of whether it is a member of a client money protection scheme. It came into force in May 2015.

15. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under s. 83, it may impose a financial penalty under s.87 of that Act. It does so by serving a Notice of Intent and then a Final Notice on the letting agent concerned.

16. Schedule 9 paragraph 5 to the 2015 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.

**Submissions and Evidence**

*(i) Fees*

17. By the Notice of Appeal dated 14<sup>th</sup> January 2019 the Appellant relies on Grounds of Appeal that (i) they had never been approached, advised or cautioned by any Trading Standards Office since the company was formed in 2011; (ii) the original reasons for the “prosecution” were inaccurate and untrue (iii) they were not aware of breaches or that they were subject to the possibility of fines (iv) the company is a small family business and the amount of the fine may result in it going into administration.

*(ii) Client Money Protection Scheme*

18. By the same Notice of Appeal, the Appellant relies on Ground (v) that it is unclear on which website the Appellant has failed to indicate they were members of a client money protection scheme.
19. The Council's Grounds of Opposition are as follows: (i) the legislation relating to the transparency of fees charged and client money protection schemes has been in force since 2015, (ii) although the registered address for the Appellants is Kemp House 160 City Road, London EC1V 2NX, the trading address is Unit 5 Tanners Court, Tanners Lane Romsey in Hampshire and they liaised with their counterparts at the Trading Standards Offices in Hampshire to ensure that no duplicate investigation taking place with regard to the Appellant's letting business, (iii) the tenancy charges and tenant fees were not compliant with the legislation and no client money scheme was identified, (iv) the Appellant was notified on two occasions regarding his lack of compliance and failed to respond to both emails (v) the Appellant was a member of a client money protection scheme but had failed to advertise this on their website.

### **Evidence**

20. Despite the failure of the Appellant to attend the hearing, the tribunal heard evidence from the Council Trading Standards Officer Nora Walsh and Service Manager David Fordham. Both witnesses gave evidence in line with their submitted statements. Further questions which the Tribunal deemed the Appellant may have wanted to ask by way of expansion and clarification were asked of each witness.
21. In short, the evidence was that on 20<sup>th</sup> August 2018, the Council's Officer Nora Walsh, who is a Trading Standards Officer with 40 years' experience, checked the Appellant's website – [www.blettings.co.uk](http://www.blettings.co.uk) - and found no information about fees charged to landlords and tenants and no indication that they were members of a client money protection scheme.
22. The Council's Officer also investigated the company registered address and trading address and found that the registered address was a mail forwarding business within the London Borough of Islington whereas the trading address was located in Romsey, Hampshire.

23. On 20<sup>th</sup> August 2018, Nora Walsh spoke to Hampshire Trading Standards to enquire whether they had any ongoing issues with the Appellant. This is a standard practice where a trader has links outside Islington and avoids duplication of investigation or potential double jeopardy to a business.
24. On 20<sup>th</sup> August 2018, Nora Walsh sent an email to the Appellant at the email address displayed on their website, namely [info@bletting.co.uk](mailto:info@bletting.co.uk). This email identified the issues of non-compliance and also gave links to guidance. She requested that appropriate changes be made to the website and to confirm the same within 14 days. She received no response from the Appellant to this email.
25. On 3<sup>rd</sup> September 2018, Nora Walsh sent another email to the Appellant reminding them that they had not replied to her first email and that no changes had been made to the website to rectify the non-compliance issues. She informed the Appellant that these failures were legislative breaches and that there may be financial consequences of up to £5000 per breach for continued failure.
26. Throughout the course of the investigation, Nora Walsh liaised with her counterpart at Hampshire Trading Standards and advised them that after further continued non-compliance by the Appellant, the Council intended to issue a Notice of Intent to the Appellant. In the interim, further enquires were made and on 12<sup>th</sup> November 2018, Nora Walsh took a snap shot of the pages from the website which showed continued non-compliance with the legislation regarding the charging of fees to the landlord and tenant and in respect of a client money scheme.
27. A Notice of Intent was served by email and post on the Appellant on 12<sup>th</sup> November 2018. In evidence Nora Walsh stated when questioned by the Tribunal that the postal Notices were sent to the registered address at Kemp House and also to the trading address in Hampshire to ensure that the Appellant received it. There was no issue of any email not going through immediately; she did not experience difficulty sending messages via the email address displayed on the Appellant's website and neither of the postal Notices was returned to the Council as unknown addresses or addressees.

28. On 30<sup>th</sup> November 2018 the Council received a letter from the Appellant dated 26<sup>th</sup> November 2018 setting out their response to the Notice. They submitted that they had not knowingly or purposefully breached the regulations or sought to mislead customers. The Appellant submitted that they had adhered to all elements of the fees and transparency regulations and wished to hear from the Council so that they could rectify matters immediately. They submitted that they were members of a client money protection scheme and gave the reference number for it. The Appellant also stated that they are a small company and would find it difficult to pay any fine and because they had not received any warning or opportunity to rectify any issues to ensure compliance such a penalty should not be imposed.
29. Nora Walsh made further investigation of the matters relating to the client money protection scheme and was confirmed by UKALA that the Appellant was a member of the scheme but they had made an error on their website which was due to a confusion between the name of the company and the name of the letting agency. Nora Walsh gave evidence that as an experienced officer she knows what to look for when determining if a letting agent has advertised their membership of a client money protection scheme. She indicated that there are a variety of ways this can happen such as by logo or compliance link or by simply stating that the agent is a member of a named scheme, none of which was identified on the Appellant's website.
30. The Council considered the Appellant's representations and decided to reduce the penalty they might otherwise have issued to £2,500 to take account of the representations made. Davod Fordham gave evidence in accordance with his witness statements and in evidence amplified the basis of the Respondent's determination. He informed the Tribunal that Respondent has a protocol regarding the issuing of penalty notices in particular in respect of micro businesses and that the Respondent has set a maximum ceiling of £8,000 penalties for micro businesses in order to avoid severe financial hardship.
31. David Fordham indicated that despite the lack of information provided by the Appellant in his letter of 26<sup>th</sup> November 2018, the Respondent treated the company as a micro business for the purposes of determining whether there

should be any financial penalty imposed and, if so, at what level. Having considered the contents of the two emails sent to the Appellant in August and September 2018, and the failure to company and/or respond to those matters, it was determined that a Final Notice should be issued.

32. The Final Notice dated 17<sup>th</sup> December 2018 was sent by email and post to both the registered and trading addresses in view of what the Respondent found to be on-going breaches of the legislation.

### **Conclusions**

(i) *Fees*

33. The Appellant’s Notice of Appeal dated 14<sup>th</sup> January 2019 stating that they had “never been approached or advised or cautioned by any Trading Standards office since the company was formed in 2011” is not correct. The Appellant was advised in the clearest terms by Nora Walsh on two separate occasions in August and September 2018 about their non-compliance with the fees and money protection scheme legislation and failed to do anything to rectify the matters or respond to the emails sent.
34. On the Appellant’s own admission, the company had been in existence since 2011 and therefore, there was every reason to know what their duties under this legislation amounted to. These failures were identified in August 2018, some three years after the legislation came into force. The Appellant cannot claim ignorance of its responsibilities under the legislation three years after the event. As the guidance, to which the Appellant was referred, indicates “*In the early days of the requirement coming into force, lack of awareness could be considered<sup>2</sup>*” but that is not the case here.
35. I am satisfied on the basis of the Council’s evidence that they took all reasonable and appropriate steps regarding the service of the Notice of Intent (which was emailed to the address posted on the Appellant’s website and

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<sup>2</sup> My italics – Guidance on Consumer Rights Bill 2015: Duty of letting Agents to Publicise Fees



posted to both the registered and trading addresses) and took account of the representations made by the Appellant before issuing a Final Notice.

36. I conclude that the Appellant was duly notified that it was in breach of its legal duties in relation to the publication of fees and that it remained in breach for a period of time thereafter.
37. I conclude on the basis of the evidence before me and on the balance of probabilities that the Appellant did breach its legal obligations in respect of the publication of fees. The website documents clearly demonstrate the use of ambiguous terms and, even goes so far as to use terms which the guidance prohibits. I am, therefore, satisfied that it was reasonable for the Respondent to impose a financial penalty in the circumstances.
38. I have considered whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation.
39. The Respondent in evidence set out for me its approach to the calculation of penalties and it has been more than generous to the Appellant in light of the limited information on which it had to make its decision in treating the Appellant as a micro business.
40. Taking into account the nature of the breach, its duration, and the absence of mitigating circumstances, I do not consider that it was unreasonable for the Council to impose the penalty of £2,000 in these circumstances.

(ii) *Client Money Protection Scheme*

41. I do not intend to repeat the matters stated in paragraphs 20 to 32 above regarding the facts or paragraphs 33 to 42 regarding my conclusions. I find that the Respondent took all reasonable steps to clarify the position as to whether the Appellant was a member of a client money protection scheme. I am satisfied the Appellant was a member of such a scheme but their legal obligations do not end there. It is the Appellant's duty to display or publish this membership of such a scheme on their website is their responsibility. I am satisfied the Appellant did not publicise their membership of a client money

protection scheme on their website as they are legally obliged to do and this failure continued despite the emails of 20<sup>th</sup> August 2018 and 3<sup>rd</sup> September 2018.

42. I am satisfied the Respondent took account of the Appellant's submissions in this regard when determining the appropriate penalty in this regard and reduced the penalty accordingly.
43. Finally, I am satisfied that the penalties were lawfully and reasonably imposed for each of the breaches which are the subject matter of this appeal.
44. I am not satisfied that the amount of financial penalty imposed by the Respondent was unreasonable in the circumstances.
45. Accordingly, the appeal is now dismissed and the Final Notice is confirmed.

**(Signed)**

**Dated: 29<sup>th</sup> August 2019**

**Her Honour Judge Angela Morris**