



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

Appeal Reference: PR/2019/0033

**Decided at Field House, London
On 11 October 2019**

Appearances:

For the Appellant, Miss Malissa Alvares

For the Respondent, Ms Katherine Forrest

In attendance:

For the Respondent:

Gareth Morris

Nagindar Bilon

Before

JUDGE JACQUELINE FINDLAY

Between

ALVARES ESTATES LTD

Appellant

and

LONDON BOROUGH OF LAMBETH

Respondent

DECISION AND REASONS

Decision

1. The appeal is dismissed. A monetary penalty of £5,000 is appropriate in all the circumstances for the breach of the requirement to publish a list of relevant fees and a statement saying whether the Appellant belongs to a client money protection scheme on the Appellant's website under sections 83(1) and 83(3) of the Consumer Rights Act 2015 ("the Act").

The Legislation

2. Section 83 of the Consumer Rights Act 2015

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 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.

(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 publicized 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.

The Hearing

3. I have considered the Respondent's Response, the bundle of documents numbered 1 to 77 and the additional documents lodged at the hearing. I have heard a submission from Ms Forrest and oral evidence from Miss Alvares.

Background

4. Miss Alvares is the sales and letting manager of the Appellant company. She is the only employee of the company. Mr Flavio Alvares, Miss Alvares' father is the sole Director of the Appellant company. Mr Alvares is unwell and unable to attend the hearing. Miss Alvares is responsible for the day to day running of the company and Mr Alvares has delegated the functions of running the company to her. Miss Alvares is the correct person to appear for the Appellant.
5. The Respondent served two Notices of Intent dated 11 March 2019. One Notice of Intent (page 37) states that the Appellant had committed a breach on 11 March 2019 under section 83 of the Act and states:

“As a letting agent you have failed to display the following required information in your branch:

Your full tenant fees and/or landlord fees. The list of fees must provide 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. 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-hose. The amount of each fee must be 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.

A statement of whether or not you are a member of a client money protection scheme with your list of fees.”

6. The second Notice of Intent (page 38) states that the Appellant had committed a breach on 11 March 2019 under section 83 of the Act and states:

“As a letting agent you have failed to display the following required information on your website:

Your full tenant fees and/or landlord fees. The list of fees must provide 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. 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-hose. The amount of each fee must be 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.

A statement of whether or not you are a member of a client money protection scheme with your list of fees.”

7. A Final Notice was issued on 30 April 2019 (pages 1 and 2) and it states as follows:
“As a letting agent you failed to publish a list of relevant fees and a statement saying whether you belong to a client money protection on the company's website at <https://www.alvaresestates.com/>.”

The Appellant's case

8. The Appellant appeals against the Final Notice which appears at pages 1 and 2. The Appellant puts forward the following grounds:
 - a. When a person clicks on the link to the Appellant's properties they are taken to the Zoopla website. Zoopla has a section for the Appellant as an agent to list the fees with every property. The requirement to list the fees on the Zoopla website has been in existence for some time.
 - b. The client money protection was taken out in time for the government deadline.
 - c. Miss Alvares and her father have dedicated 26 years to the business and have never had any complaints from landlords or tenants.
 - d. The Appellant has a 5 star rating on Google/Facebook etc.
 - e. Mr Alvares became seriously unwell which involved visiting the Accident and Emergency Department on a daily basis prior to his admission to Hospital on 11 March 2019.
 - f. Not enough time was given to enable the Appellant to make the necessary changes to the website due to the family emergency.
 - g. The Appellant barely makes enough money to cover the costs of running the company.
 - h. Miss Alvares takes a very low salary.
 - i. The decision is wrong.
 - j. The monetary penalty is unreasonable.

The Respondent's case

9. The Respondent submits the following points:
 - a. The Appellant does not deny that there was a breach of the Act.
 - b. The Appellant had enough time to meet the requirements of sections 83(1) and 83(3) of the Act. It has been a requirement of the Act to display fees since the legislation came into force on 27 May 2015.
 - c. It is those responsible for running a company to keep themselves up to date with the legislative requirements and obligations.
 - d. The Appellant was advised of the Appellant's failings on 20 February 2019 and given direction about the steps needed to bring the business into compliance.
 - e. The Appellant has not provided any details of the steps taken to comply with the Act between 20 February 2019 and 11 March 2019.

- f. The Appellant joined the Property Redress Scheme on 25 February 2019 but the website was not updated.
- g. The Respondent has sympathy for the family emergency but this has no bearing on the breach which existed before Mr Alvares' admission to Hospital.
- h. The Notice of Intent relating to the requirement to display required information in the branch (page 37) has been withdrawn.
- i. The Appellant has not submitted up to date accounts of bank statements. The micro-accounts submitted to Companies House, and approved in March 2019, show capital and reserves of £20,155 at June 2018

Findings of Fact and Reasons

- 10. The Notice of Intent (page 38) and the Final Notice (pages 1 and 2) contain all the information as required by the legislation and the Notice of Intent and Final Notice are valid.
- 11. The Notice of Intent 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.
- 12. There was a breach of sections 83(1) and (3) in that the Appellant was engaging in letting agent or property management work and there was a duty on the Appellant to publicise 'relevant fees' and there was a failure to publish a list of their fees on their website. There was a failure to state on the website whether the Appellant was a member of a client money protection scheme. The Appellant admits the breaches and stated in oral evidence that she had made a "mistake."
- 13. The onus is on the Appellant to comply with the legislative requirement and keep abreast of all legislation that impacts on the business. The onus is not on the Respondent in this regard.
- 14. The Appellant became a member of the Property Redress Scheme on 25 February 2019 but the Appellant's website was not updated with this information.
- 15. The Appellant used Zoopla to advertise properties. The Appellant had nine live listings of properties between 20 February and 12 March 2019. The Appellant used the Zoopla website by logging into the back-office system to upload properties to the website. There were only two properties that had fees attached to listings and these were added on 11 March at 4.53pm and 4.55pm.
- 16. I accept the witness statement dated 12 September 2019 of Helen Hourquet, a Member of the Compliance Executive of Zoopla Property Group. It is highly unlikely that the information she provided would not be accurate. Miss Alvares has been given the opportunity for Ms Hourquet to be called and questioned and has chosen not to do so. I do not consider it necessary to do so and accept Ms Hourquet's witness statement as a true and accurate of the information provided.

17. When questioned about the information provided by Ms Hourquet, Miss Alvares admitted that she “maybe made a mistake.”
18. The monetary penalty would not put the Appellant out of business and is not disproportionate to the turnover of the Appellant’s business. The Appellant has not provided full and frank financial information about the Appellant’s financial situation. The financial information provided is incomplete. The statements of income and retained earnings for the years ended 30 June 2017 and 30 June 2018 show retained earnings of £35,398 for 2016, £42,692 for 2017 and £20,153 for 2018.
19. Miss Alvares in an email dated 3 September 2019 stated that the company made no profit last year and that she would forward proof of this. She has not done so.
20. Miss Alvares was unable to provide a complete or accurate explanation about the financial situation of the Appellant company. She confirmed that the Appellant company paid her salary, paid for her car and all the running costs and paid her pension contributions.
21. Although there has been no full disclosure of the Appellant’s financial circumstances I find, on the basis of the information provided, that the monetary penalty would not put the Appellant out of business.
22. I find that Miss Alvares received and read the letter from Ms Forrest, a copy of which appears at pages 24 and 25. This is on the basis that she confirmed this to me in oral evidence. She confirmed that she did not do anything in response to the letter and in fact did not do anything or take any advice about complying with the legislation. She did nothing until she received the Notice of Intent. Accordingly, I do not accept that the Appellant was not given sufficient time to remedy the breach and comply with the legislative requirements.
23. I find there are no extenuating circumstances. I have taken into account that Mr Alvares was suffering serious health problems which put additional pressure on Miss Alvares, the sole employee, but she was aware of the legislative requirements and chose not to seek advice or assistance to ensure compliance. Taking into account how long this legislation has been in force the Appellant had ample opportunity to ensure that it was compliant. Miss Alvares states that she made mistakes but on the basis of the evidence I find that she was aware of the obligations on the Appellant company and chose not to take the necessary steps to ensure compliance.
24. Accordingly, the appeal is dismissed.

J R Findlay
First-tier Tribunal Judge
1 October 2019

Signed: 26 November 2019