Appeal number: PR/2019/0035 & 0036

FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PROFESSIONAL REGULATION)

SABLEMANOR LIMITED trading as HOLMES ESTATE AGENTS **Appellant**

- and -

LONDON BOROUGH OF LAMBETH **Respondent**

TRIBUNAL: JUDGE ALEXANDRA MARKS CBE
(sitting as a First-tier Tribunal Judge)

Sitting at Field House, London EC4

Decision

1. The Appeal is allowed in part.
2. Each of the two Final Notices dated 1 May 2019 is varied to reduce the financial penalty from £5,000 to £3,750.

Reasons

Background

3. Razin Omar is proprietor of Sablemanor Limited, trading as Holmes Estate Agents ('Holmes'), a letting agent and the Appellant in this case. The Respondent ('the Council') is the enforcement authority which served two Final Notices on Holmes.
4. Each Final Notice imposed on Holmes a financial penalty of £5,000 for breach of the duty to publicise fees including a statement whether Holmes belongs to a client money protection scheme. The first Notice related to Holmes' business premises in Streatham, and the second to its website.
5. By his Notice of Appeal, Mr Omar submits that the Council's decision to impose these penalties was based on error of fact; was wrong in law; the penalty is unreasonable; and the decision is otherwise unreasonable.
6. Mr Omar asked for a hearing of this matter rather than determination on the papers.
7. At the hearing, Mr Omar attended, and was represented by Maxwell Myers of Counsel. The Council was represented by Katherine Forrest, Trading Standards Officer of the Council. Other members of the Council's Trading Standards team were in attendance.

The Legal Framework

8. Section 83(2) and (3) of the Consumer Rights Act 2015 ('CRA') impose duties on letting agents to publicise details of relevant fees at their business premises and on their website (if they have one). These duties came into force in May 2015.
9. Section 83(6) of CRA 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 whether it is a member of a client money protection scheme.
10. Where the relevant enforcement authority is satisfied on the balance of probabilities that a letting agency has breached its duties under s.83 CRA, that authority may impose a financial penalty under s.87 CRA by serving a Notice of Intent and then a Final Notice on the letting

agent concerned. S.87(6) provides that only one penalty may be imposed on the same letting agent in respect of the same breach.

11. Schedule 9 paragraph 5 to CRA 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.
12. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.

Chronology

13. On 27 February 2019, Ms Forrest, Trading Standards Officer of the Council, inspected Holmes' website and could not find a list of fees there.
14. The same day, she visited Holmes' business premises in Streatham High Road. Mr Omar was not present but she spoke to a Mr R Omar. Ms Forrest could not see a list of displayed fees so gave a guidance letter to Ms Sanchez at the premises.
15. On 13 March 2019, Ms Forrest again inspected Holmes' website but found no fees listed anywhere.
16. Later the same day, she re-visited Holmes' business premises with her colleague, Gareth Morris. Rafiq Omar, who described himself as an employee, went into an office at the rear of the shop and brought out several framed documents which he explained were to be displayed in the front of the shop.
17. Ms Forrest told Rafiq Omar that because her inspection earlier that day of Holmes' website showed no list of fees, nor were any currently displayed in the branch, she would be issuing Notices of Intent that the Council proposed to issue financial penalties.
18. Rafiq Omar became agitated and asked the Council officers to leave the shop. Ms Forrest said she needed to complete some paperwork first – namely the Notices of Intent – which she then handed to Rafiq Omar.
19. On 18 March 2019, Mr (Razin) Omar emailed representations to the Council about the Notices of Intent. He stated that he was not aware that Holmes was in breach until the Council's visit, and that a fine of £5,000 – the maximum possible - was wholly unfair. No warnings or guide had been given and the visiting officer had not even given her name. Since receiving the Notices of Intent, Mr Omar had instigated putting fees on the website, and fees

and scheme memberships were displayed on the premises. The business had been going for 30 years, and had always worked hard to go further than comply with legislation. The fine was crippling to the business, and could not afford this. Business was down due to wider issues such as Brexit. He asked if the Council could take informal action instead.

20. Ms Forrest replied by email the same day, explained that a panel would be convened at least 28 days after the issuing of the Notice of Intent to allow the business time to submit any further representations or supporting evidence. She noted his concerns that a £5,000 penalty would not be affordable, and pointed out that the onus was on the business to provide supporting information for this, such as audited company accounts.
21. On 19 March 2019, Mr Omar replied that he was happy to share such accounts 'as and when required'. He asked for the Council to reconsider its stance as the fine was 'wholly unreasonable'. He announced that his business's list of fees were live on the website, and on display in the office, together with their scheme memberships.
22. Ms Forrest responded the same day that if Mr Omar wished the panel to consider the claim that the monetary penalty was unaffordable, he would need to provide supporting evidence, typically audited accounts. Also, she pointed out that she had issued **two** Notices of Intent: one in respect of the website breach, the other in respect of the branch breach.
23. Mr Omar replied, again the same day, that he was unaware of a further £5,000 fine. He asked why the Council had decided to impose a fine without allowing him a reasonable time to resolve any breaches. He said fines are associated with non-compliance but Holmes *had* complied with the notices. He complained that the Council's actions were unfair, and asked that the Council withdraw the notices.
24. The Council did not respond, considering it unnecessary to do so.
25. On 15 April 2019, a panel was convened and considered a report by Ms Forrest setting out the background to issue of the Notices of Intent; the rationale for issuing them; the business's representations; and Ms Forrest's recommendation – which was to issue two Final Notices for the failure to list fees, one in respect of the website and the other in respect of the branch.
26. The panel decided to issue Final Notices, and reasons for this decision were set out in the Council's covering letter dated 1 May 2019.
27. On 1 May 2019, Ms Forrest again visited Holmes' business premises with Mr Morris, and handed over the covering letter and two Final Notices. While at the premises, Ms Forrest and Mr Morris noted that several framed documents had been displayed at the front of the shop. One was a fees list that was not compliant with the requirements of the CRA, not least for the inclusion of an 'Admin fee' without further description.

Grounds of Appeal, and Grounds of Opposition

28. Mr Omar's Notice of Appeal dated 27 May 2019 sets out Grounds of Appeal, in summary that:

    a. Holmes takes its obligations under CRA extremely seriously.
    b. Holmes has taken all reasonable action since it was notified of the alleged breaches of statutory obligations.
    c. Since the Council's Trading Standards Officer attended Holmes' office in Streatham, Holmes have acted diligently and as quickly as possible to remedy the alleged breaches.
    d. The business is registered with the Property Redress Scheme, all fees are now listed online and displayed in the office.
    e. It has taken slightly longer to arrange for the website to be updated by its provider.
    f. The web provider, which provides service to a significant number of agents, does not have a page listing fees on its standard website layout.
    g. The Council acted wrongly in law by not allowing Holmes time to remedy the alleged breaches within a reasonable time of notice of them.
    h. The amount of the two penalties - £10,000 – is the maximum allowed, and should apply to breaches of the most serious kind. The Council has provided no explanation for imposing the maximum penalty.
    i. The penalty is plainly disproportionate as Holmes had taken all necessary steps to remedy the alleged breaches by the date of the Final Notices, and all such breaches have now been remedied.
    j. The Council's published Trading Standards Enforcement Policy states the Council must take into account the seriousness of the allegations, any relevant past history, the competence of management, the degree of wilfulness, and the consequences of non-compliance.
    k. As the alleged breaches were remedied as soon as practically possible after receipt of notice of them, there can be no conceivable consequences for customers, nor has the Council alleged any.
    l. Holmes simply cannot afford to pay the penalty: due to current uncertainty in the market, profit generated by the practice has been necessarily been limited.
    m. The practice's audited accounts for the year ending 2018 show a profit of £27,743 from which Mr Omar has been required to fund himself and his family.

n. It is unreasonable to impose the maximum penalty on such a small practice, when it has not been given the chance to remedy the alleged breaches.

o. Issuing the Notices without reasonable time to remedy the alleged breaches is disproportionate and impractical as well as contrary to the Council's own enforcement policy: informal action under the policy would have sufficed in this case.

29. The Council's Grounds of Opposition dated 18 June 2019 are in summary:

a. Holmes does not deny either breach but claims they were not given enough time to remedy them.

b. Holmes appears to assert that they only recently became aware of the non-compliance – but they had made this error themselves since it is their responsibility to comply.

c. The breaches were *not* remedied by the date of issue of the Final Notices.

d. The legal obligation to publicise fees (pursuant to s.83 CRA) came into force in May 2015. However, Holmes was found by the Council to be in breach of these duties in February 2019.

e. Holmes had ample opportunity to remedy the breaches: Trading Standards do not have to give any warning or advisory letters before issuing Notices.

f. Holmes did not at any time between the Council's original visit on 27 February 2019 and its follow up visit on 13 March 2019 advise of any alleged difficulties relating to changing its website, not did it offer any reason for the failure to publicise fees in the branch.

g. Holmes did not act 'diligently and as quickly as possible' nor is there any evidence to substantiate this claim.

h. It is the letting agent's responsibility to keep abreast of legislative changes and it is irrelevant that Holmes did not spot the requirements in trade journals nor that its website provider failed to advise of the duty to comply.

i. Government Guidance states that a £5,000 fine should be considered the norm and that a lower fine should only be charged if the enforcing authority is satisfied that there are extenuating circumstances. The Council was not made aware of any such, and the Council is satisfied it did not breach its enforcement policy.

j. The Council asked Holmes for supporting evidence of the claim that the monetary penalties were unaffordable. None was supplied. However, the Council considered Holmes' unaudited financial statements for the year ending 2018 showing growing net assets of £279K compared with the previous year's £260K.

k. When issuing the Final Notices, it was discovered that the fees on both the website and in-store were non-compliant because they included an 'admin fee' equivalent to one week's rent without an accompanying detailed description that enables someone to understand what is covered by the fee. This is contrary to the Tribunal's ruling in the case of *London Borough of Camden v. F Limited (MISC/0156/2017).*

l. The photographs accompanying Holmes' appeal – purportedly showing the fees notice in store – are insufficiently legible to show they comply with CRA. The website is still not compliant. Hence the Council does not accept Holmes' claim that 'all the alleged breaches have now been remedied'.

Submissions

30. In addition to the Grounds of Appeal, Mr Omar's written and oral submissions were, in summary:

    a. <u>Error of fact:</u>

        i. Holmes only became aware of the alleged non-compliance with CRA when the Council visited the premises in February 2019 and then acted diligently to remedy them, including:

            1. displaying a list of fees on the premises and, on 14 March 2019, instructing their web developer to update the website to include all relevant information.
            2. registering with the Property Redress Service, which the Council accepted and therefore did not pursue.

        ii. Thus by 1 May 2019, there were no continuing breaches and the Final Notices should not have been issued on that date.

    b. <u>Error of law</u>:

        i. A company is 'necessarily allowed the opportunity to remedy the alleged breach within a reasonable period'. As soon as Holmes was notified of the alleged breaches, it took appropriate action to remedy them. Holmes had taken all required steps to address and remedy in full the Council's complaints.

        ii. In issuing Final Notices, the Council had ignored all the steps Mr Omar had taken to remedy the breaches. This breached the Council's own Enforcement Policy.

        iii. Failing to consider, or take, informal action before issuing Final Notices also breached the Council's own Enforcement Policy.

iv. The Council erred in law (according to *LB Camden v. F*) by not taking these remedial actions into account, and failing to consider whether informal action would suffice.

c. Penalties are unreasonable:

i. The maximum penalty should be reserved for the most serious breaches yet Holmes had taken all necessary steps to remedy the alleged breaches. In this case (a) there had been no complaint from any customer; (b) Holmes had cooperated fully in remedying the breaches as soon as possible; (c) Holmes had expressed distress at the Council's allegations and had undertaken to comply fully in future; (d) Holmes has no history of non-compliance; and (e) Holmes' accounts show a profit of £27,743 in 2018.

ii. In *Up My Street Ltd v. LB Camden (PR/2018/002)*, the First-tier Tribunal decided that the Government Guidance relied on by the Council to impose the maximum penalty should be reserved for the 'very worst' cases. This was not such a case as none of the factors there mentioned applied here. Mr Myers pointed out that in this instance, unlike the *Up My Street* case, there had been no complaint from a member of the public; the company had evidenced its membership of a redress scheme; and its profit was only £27,743 for the last financial year.

iii. That other London Boroughs might impose the maximum penalty does not excuse the Council from giving an explanation – beyond reliance on the Guidance – for imposing the maximum penalty in this case. In failing to do so, the Council had breached its own Enforcement Policy that decisions should be 'fair, balanced and transparent'.

iv. The Council's own correspondence with Holmes recognised there was a sliding scale of the amount of penalty by referring to a penalty of 'up to' £5,000.

v. As a result of the above, imposing the maximum permissible penalty is inappropriate and disproportionate.

d. Decision was otherwise unreasonable:

i. in light of Mr Omar's impecuniosity, he simply cannot afford to pay. As sole director of Holmes, he relies on the profits to sustain his family and a fine of £10,000 would leave him with just £17,743 from the annual profit which is less than the annual London Living Wage. Holmes' net assets would take a

significant time to realise, and certainly not within the 28 day period specified in the Final Notices.

ii. Secondly, the decision was unreasonable because the Council breached its own enforcement policy when considering the seriousness of the allegations by failing to take into account:

- past history (of which there are no previous complaints);
- history of non-compliance (of which there is none);
- competence of management (of which Mr Omar prides himself by subscribing to the Letting Update Journal, being a member of the UK Association of Letting Agents for over 10 years and relying on its expert, property market-leading web provider);
- the degree of wilfulness (Mr Omar believed he was at all times acting reasonably and in full compliance, and relied on its web provider and positive feedback from customers); and
- the consequences of non-compliance (of which there were none, or no material consequences, because all complaints were addressed and remedied promptly).

iii. Given the Council was informed of all these points yet none were referred to in the Notices of Intent or the Final Notices, the Council issued the Final Notices in breach of its own policy and thus acted unreasonably.

iv. A business's profit (in this case £27,743) is a more reliable indicator of Holmes' ability to pay that its net assets figure (£260,408 that year). Such assets would take time to realise.

v. Mr Omar is one of two directors of the business and depends on its profits to sustain his family. His only 'salary' from the business is £14,000 per annum.

vi. There is a risk that payment of these penalties will undermine Holmes' potential as a going concern. This was not taken into account by the Council before issuing the Final Notices.

vii. Any non-compliance was inadvertent, and Mr Omar has undertaken to comply fully with any advances in the law in future.

31. For the Council, Ms Forrest responded as follows:

a. Error of fact

i. Contrary to Mr Myers' claim that her February visit to Holmes' premises was to check compliance, Ms Forrest already knew through her prior investigation of its website that it was in breach of s.83(4). The purpose of her visit was to investigate whether Holmes was *also* in breach of its obligation to display a list of fees on its premises, and to give written as well as oral advice to the proprietor.

ii. In regulatory matters, it is not the taking of all necessary action that counts, but whether those actions are effective in the achievement of full compliance. In this case, Mr Omar's actions did not result in full compliance. While he may well have promptly instructed his web designer to make the necessary changes to the website, there was no evidence what these instructions. It remains Holmes' responsibility to ensure its website meets the legal requirements.

iii. The Council considers Holmes' website was (and still is) non-compliant because, for example, it fails to state that Holmes is a member of client money protection and redress schemes as required by CRA s.83(6) and (7)). In any event, the fact the website was updated *after* the Notice of Intent is irrelevant.

iv. Similarly, although Holmes has since displayed a list of fees at its premises, this list does not meet the legal requirements. For example, 'Tenant admin fee' was insufficiently described to comply with CRA s.83(4)(a) and there was (and remains) no indication whether the fees listed apply to each tenant or each household, as required by CRA s.83(4)(b).

v. These are not mere technical breaches but are core to the regulatory purpose of the legislative scheme, namely to ensure that tenants are not over-charged, double-charged or otherwise exploited by letting agents.

b. Error of law

i. The Council did take informal action – by visiting Holmes' premises on 27 February 2019 and giving both written and oral advice – even though the Council knew in advance of that first visit that Holmes' website was non-compliant. By then, the relevant legislation had been in force for nearly four years.

ii. A Notice of Intent is not a final warning, giving the recipient time to comply. Even if it were a 'warning', Holmes did have time to comply after the Council's February visit. But Holmes has not yet in fact complied as its list of fees is still deficient (as exemplified in paragraph a.(iv) above).

iii. The issue of a Notice of Intent entitles the recipient to make representations within 28 days, and before a Final Notice is issued. That is what happened in this case, and Holmes did make representations by email on 18 March 2019, which the Council took into account before issuing the Final Notices on 1 May 2019.

iv. The Council does not accept that 'all necessary steps had been taken' to remedy the breaches but, even if they had, those steps were ineffective because Holmes is still in breach as regards its most recent list of fees.

v. The Council's Enforcement Policy is aimed at criminal actions, as is made clear by the reference to "Prosecution". The policy is a *guide* to steps to take in dealing with a breach: the Council is not 'absolutely bound' by its policy. In any event, the policy refers explicitly to it being read in association with relevant legislation and approved guidance material, and thus the Council had taken account in this case of the CRA and Government Guidance.

c. <u>Value of penalties</u>

i. The Council's panel looked at the steps Mr Omar had taken, had asked for information about his finances, but was not made aware of any change of circumstances between service of the Notices of Intent and service of the Final Notices relating to the business's finances.

ii. The Council had applied government guidance in imposing the maximum penalty in the absence of evidence of any extenuating circumstances, and acted consistently with the practice of other London Boroughs.

iii. The *Up My Street* case, listed six factors of a 'bad case' of which Mr Omar satisfied four: lack of cooperation with the local authority; failure to take prompt corrective action; lack of remorse and failure to acknowledge obligations; total non-compliance as opposed to partial non-compliance.

iv. The *Up My Street* case referred to turnover, a better indication of a business's health than profit as Mr Myers' argued.

v. Contrary to Mr Myers' submission, the Council set out its reasons for imposing the maximum penalty in its covering letter to Mr Omar which enclosed the Final Notices.

vi. Mr Omar did not take all necessary action to comply: Holmes was still non-compliant by the date of service of the Final Notices.

d. Unreasonable decision

i. Mr Myers submits that Holmes cannot afford the penalty, but when the Council asked Mr Omar for evidence of this it was not provided. The Council obtained for itself Holmes' most recent filed financial statements from Companies House.

ii. According to those statements, unlike the agent in the *Up My Street* case, Holmes has a relatively high turnover, capital and reserves to enable it to absorb the penalties without forcing it into liquidation.

iii. While the Council is sympathetic about Mr Omar's personal situation, it is the business's financial position which counts and the Council does not accept that the business cannot afford the penalties.

iv. The Council did not breach its enforcement policy which deals principally with criminal enforcement. In any event, the Council did pursue informal action first by allowing Holmes time to comply before issuing the Notices of Intent.

v. The Council does not accept that Holmes took all reasonable steps when it is still non-compliant, nor does it accept Holmes has no history of non-compliance when it had failed to comply with the CRA's requirements for the four years since the Act came into force.

vi. Mr Omar had not shown professional diligence because he was unaware of the CRA requirements despite his membership of associations and subscription to trade journals. He had apparently relied on his web designers, and other agents' websites for information about the fees he needed to publicise.

vii. That Mr Omar may not have intended to commit breaches, is irrelevant: he was advised what he needed to do but did not do it.

viii. Similarly, the absence of complaints is irrelevant: the requirement of the CRA is to publish fees for the protection of tenants. It is impossible to know the impact on tenants who used Holmes' service, and whether they overpaid and thus generated income for Holmes due to its non-compliance with the law.

e. Overall, Mr Omar has not demonstrated that any of the four possible grounds of appeal apply

32. In response, Mr Myers argued:

a. The Upper Tribunal in *LB Camden v. F* decided that credit should be given for attempts to comply, even if they were unsuccessful.

b. The Council's letter of guidance to Holmes on 27 February 2019 did not explain that 'admin fee' is impermissible without further description, and when Mr Omar was told this, he remedied the position immediately.

c. Mr Omar took steps to join a redress scheme and amend its website within days of the Council's visit so – despite the absence of conclusive evidence – it can be inferred he also took the much easier steps of ensuring the Holmes' premises were compliant.

d. The Council has not specified precisely what the outstanding issues are.

e. The Council's enforcement policy is not restricted to criminal matters, and the Council's assertion that it was not bound to follow it is close to an admission the policy was not followed here.

f. The practice of other London Boroughs is irrelevant for they too may be acting unreasonably in imposing the maximum penalty.

g. The fact the Council says it now has information which was not provided by Mr Omar is close to an admission that if the Council had held the information earlier, it would have made a difference to its decision.

h. Any suggestion that Mr Omar could have taken down his website completely if he was unable to ensure it was compliant was unrealistic because such a step would have paralysed the business.

i. The explanation the Council gave for imposing the maximum penalty was inadequate and should have set out what specific facts were relied on. In any case, to impose such a penalty was inconsistent with the guidance letter the Council had given Mr Omar in February 2019 which referred to a penalty of 'up to' £5,000.

j. The Council has taken insufficient account of Mr Omar's impecuniosity.

k. The Council was wrong to ignore the absence of complaints which is a factor mentioned in the government guidance and the Council's own policy on the seriousness of breaches.

Discussion

33. There is no dispute that Holmes was at the date of the Final Notices engaged in letting agency work in respect of dwelling houses within the London Borough of Lambeth, that Holmes holds money on behalf of landlords in the course of its business and that Holmes has a website. Accordingly, Holmes is required to comply with the obligations of s.83 CRA to display on its website, and on its premises, a list of fees including a statement whether Holmes is a member of a client money protection scheme.
34. However, Mr Omar claims that the Council made errors of fact and law in issuing the Final Notices; that the monetary penalty was unreasonable; and that the decision to issue the Final Notices was also unreasonable.
35. In reaching a decision in this case, I have considered all the oral submissions at the hearing, and also the written submissions, evidence and other documentation contained in the hearing bundle and provided at the hearing itself.
36. Even if Holmes has now fully complied with its obligations (although this seems still to be in dispute) this is not a permissible ground for appealing against a Final Notice.
37. I conclude on the basis of the evidence before me and on the balance of probabilities that Holmes did breach its legal obligations in respect of the publication of fees on both its premises and its website. I am not satisfied that Holmes was fully compliant even by the date of the hearing, let alone any earlier date, because there is no satisfactory evidence it had included a statement of its membership of a client money protection scheme with its list of fees on its premises or its website. By the date of the Notices of Intent, the requirements of the CRA had been law for nearly four years so I infer that Holmes had been in breach of those requirements for that period.
38. I have considered whether the amount of the financial penalties 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 for each of the two breaches (one relating to the premises, and the other relating to the website). The Council has not set out for me its approach to the calculation of penalties other than by reference to the government guidance which refers to £5,000 being 'considered the norm' and that 'a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances'.
39. Mr Omar has not provided any evidence of extenuating circumstances save to plead 'impecuniosity' and that 'this fine is crippling to our business'. He says that as Holmes' profit last year was under £28,000 a financial penalty of this amount would leave him insufficient to support his family and himself. I do not regard profit as an appropriate measure of the

business's capability to bear the financial penalties imposed. On the basis of the only documentary evidence before me – namely the unaudited financial statements for Holmes for the year ended 31 March 2018 obtained by the Council from Companies House – I do not accept that the financial penalties are disproportionate to Holmes' business based on its turnover and net current assets, nor that payment of such penalties would lead to Holmes going out of business.

40. Despite the long duration of the breaches in this case, and lack of evidence of either extenuating or mitigating circumstances, I nevertheless take into account Mr Omar's efforts to comply and that the breaches outstanding at the date of the Final Notices (statements of Holmes' membership of a client money protection scheme with the list of fees on its website and premises) are not of the most serious nature.

Decision

41. It is not unreasonable for the Council to have decided to serve Final Notices in respect of the breaches it found when it first inspected Holmes premises and website, and which were still subsisting more than two weeks later when it had served Notices of Intent.
42. In the circumstances (briefly set out in paragraph 37 above), I am satisfied that there was no error of fact nor error of law in the Council's decision to impose a financial penalty for both the premises and website breaches. I am therefore satisfied that the Final Notices were lawfully and reasonably served.
43. Noting the approach of the Upper Tribunal in *LB Camden v. F*, I consider that in view of the factors summarised in paragraph 40 above, it would be appropriate to apply a discount of 25% to the maximum penalty. I therefore vary the each of the two Final Notices to impose a penalty of £3,750 instead of £5,000, making a total financial penalty of £7,500. It is open to Mr Omar to explore with the Council whether Holmes might be granted time to pay this penalty
44. This appeal is allowed to that extent, and the Final Notices varied accordingly.

(Signed) **Dated: 18 October 2019**

Alexandra Marks CBE

Sitting as a First-tier Tribunal Judge