



Appeal number: PR/2019/0046

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

DILLON ESTATES LIMITED

Appellant

- and -

LONDON BOROUGH OF BRENT

Respondent

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

**Determined on the papers,
sitting in Chambers, London EC2**

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Decision

1. The Appeal is dismissed.
2. The Final Notice dated 26 July 2019 is confirmed.

Reasons

Background

3. Suresh Varsani is a director of Dillon Estates Ltd ('Dillon'), a letting agent and the Appellant in this case. The Respondent, London Borough of Brent ('the Council') is the enforcement authority which served a Final Notice on Dillon.
4. The Final Notice imposed on Dillon imposed a financial penalty of £2075 for breach of the duty to publish in its branch a complete list of relevant fees, and on its website all relevant fees, including statements whether Dillon belongs to a named redress scheme, and a client money protection scheme.
5. By his Notice of Appeal, Mr Varsani says that the Council's decision to impose this penalty is wrong.
6. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended.
7. The Tribunal considered a bundle of evidence containing 94 pages.

The Legal Framework

8. Section 83(2) and (3) of the Consumer Rights Act 2015 ('CRA') imposes 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. Section 83(7) CRA also requires the agent to publish details of the Redress Scheme of which it is a member (membership being a requirement of letting agents under The Enterprise and Regulatory Reform Act 2013 ('ERRA') and paragraph 3 of The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014).

11. 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.
12. 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.
13. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.

Chronology

14. On 13 March 2019, Denise Power, Principal Enforcement Officer for Brent & Harrow's Trading Standards Service, inspected Dillon's website and found its list of fees was non-compliant with the CRA because it contained items with no fee stated, included 'administration fees' without further description, and included no statements as to membership of client money protection and redress schemes.
15. The following day, Ms Power and her colleague, David Park (Senior Enforcement Officer) visited Dillon's business premises in Queensbury Station Road, Edgware. On the entrance door were stickers indicating membership of the Property Redress Scheme (PRS), Client Money Protect (CMP) and UK Association of Letting Agents (UKALA).
16. A list of fees was displayed in the window and, inside the premises, were certificates of various memberships. On the list of fees, landlord fees were stated to be exclusive of VAT, and some of the services did not match those listed on the website. Tenant fees were also less comprehensive than those on Dillon's website.
17. Mr Varsani introduced himself to the Council officers, and Ms Power explained the non-compliances she had found on the website, including the absence of any statement about membership of a client money protection scheme.
18. Mr Varsani pointed out that UKALA includes client money protection and Ms Power was able to satisfy herself of this while on-site. She was also satisfied that the business was complying with the scheme publication requirements on the premises. However, she pointed out that the

landlord fees on display were quoted exclusive of VAT, contrary to s.83(4) CRA. Mr Varsani said this was an oversight which would be amended accordingly.

19. Ms Power asked Mr Varsani to show her the business's website which he did. She pointed out the inconsistencies between the website list of fees and those displayed in the premises; the services quoted without a fee being attached; and missing information about client money protection and redress schemes. Mr Varsani explained that the missing information was due to a new software package being installed, and that the website was due to be updated.
20. Ms Power responded that, as the business was operating a website, all the information required by the CRA needed to be correct and up to date.
21. Ms Power told Mr Varsani that, because of the multiple non-compliances she had found, she would be issuing a Notice of Intent and that the Council proposed to issue a financial penalty of £5,000. Ms Power gave Mr Varsani a Notice of Intent dated 14 March 2019. She explained the right to make representations, and the process for doing so. She also gave Mr Varsani an advisory letter about his legal obligations as a letting agent – and completed an inspection sheet which she later emailed to him.
22. On 19 March 2019, Ms Power contacted CMP who told her that Dillon's membership had expired on 5 April 2018. CMP is no longer partnered with UKALA so membership of UKALA now provides client money protection through Let Alliance.
23. On 20 March 2019, Ms Power again inspected Dillon's website. Certain changes had been made so items with no fee attached had been removed, but there was still no statement about Dillon's membership of client money protection and redress schemes.
24. On 22 March 2019, Mr Varsani emailed the Council with representations about the Notice of Intent, and included various documents as attachments.
25. On 3 April 2019, the Council reminded Mr Varsani of the deadline for representations and pointed out that, if he was challenging the amount of the penalty as disproportionate to the turnover/scale of the business, he should send in audited accounts for the Council to consider. Mr Varsani responded by email the next day, attaching the same documents as previously but not any accounts.
26. On 10 July 2019, the Council again inspected Dillon's website. Further changes had been made. No tenant fees were displayed but there were still references to administration fees without a detailed description of what these covered. The landlord fees had been updated but still did not include any statement about Dillon's membership of client money protection and redress schemes.

27. On 26 July 2019, the Council issued a Final Notice to Dillon which required it to pay a financial penalty of £2075.

28. On 12 August 2019, Mr Varsani appealed to the Tribunal.

29. *Submissions*

30. Mr Varsani's Notice of Appeal dated 12 August 2019 sets out Grounds of Appeal, in summary that:

- a. Dillon has been a member of UKALA since 2015, and this includes client money protection.
- b. The Council objected to display of the CMP logo on Dillon's website when it is not a member, but Dillon *is* a member.
- c. Fees for both tenants and landlords are now displayed on Dillon's website. At the time of the Council's visit, the website was being updated which is why fees were not displayed then.
- d. No landlords or tenants have complained.
- e. The Council's Trading Standards Service has imposed significantly lower fines for more serious breaches e.g. sale of sub-standard tyres that could kill.
- f. He has always worked closely with the Council, housing a lot of their tenants who have been rejected by other estate agents, but will have to review his relationship from now on.
- g. He only started trading last year from these premises and has had to deal with many issues from the previous agents who left tenants and landlords out of pocket. He has had to sacrifice fees to compensate them.
- h. The fine is unjust because he has abided by all rules and regulations, and simply updating the website has caused this problem.
- i. The cost of the fine will lead to sacrifices, which may ultimately affect his business and staff and ability to continue working with the Council.

31. The Council's Grounds of Opposition dated 9 September 2019 are in summary:

- a. Dillon's membership of client money protection scheme and redress scheme is not disputed. However, there was no statement to this effect with the fees on Dillon's website.
- b. The statutory requirement to include a *statement, with* the fees, of scheme memberships is to ensure clients are aware they can complain to an independent person.

- c. The legislation has been in place since May 2015 so Dillon has had ample time to comply.
- d. Through its UKALA membership, Dillon has client money protection from 'Let Alliance', not CMP – thus Dillon should not be displaying the CMP logo.
- e. Dillon does not dispute that its list of fees was incomplete: updating of its website is not a valid reason for failing to display a compliant list of fees.
- f. Dillon clearly had input into the website changes and could have ensured that all fees and prescribed information was disclosed. Indeed, changes to the website were made between 13-20 March 2019.
- g. In any event, responsibility for compliance falls on Dillon which should have diligently supervised and instructed its website designers.
- h. The inconsistent and incomplete fees displayed put prospective tenants and landlords at risk as they had no ability to calculate what they would be likely to pay for a tenancy.
- i. Although the Council found multiple breaches on both Dillon's website and premises, these were treated as one breach (for which the maximum penalty is £5000).
- j. Dillon put forward no extenuating circumstances which would justify a lower penalty. However, the Council took into account that Dillon took steps to comply with the legislation, and was a member of a client money protection scheme through UKALA before this became a mandatory requirement.
- k. Penalties imposed by Trading Standards for other unrelated offences have no bearing on the penalty imposed in this case.
- l. The Council has no reason to think Dillon cannot afford to pay the penalty because it has received no representations or accounts from Dillon suggesting this is the case.

Discussion

32. There is no dispute that Dillon was at the date of the Final Notice engaged in letting agency work in respect of dwelling houses within the London Borough of Brent, that Dillon holds money on behalf of landlords in the course of its business and that Dillon has a website. Accordingly, Dillon is required to comply with the obligations of s.83 CRA to display on its website, and on its premises, a list of fees and a statement that Dillon is a member of a client money protection scheme and a redress scheme, and the provider of the redress scheme.

33. However, Mr Varsani claims that Dillon is a member of a client money protection scheme; the website did not display tenants and landlords fees at the date of the Council's visit because it was being updated but website currently does display such fees; the fine the Council imposed is much higher than for more serious breaches in other cases.
34. In reaching a decision in this case, I have had regard to all the written submissions, evidence and other documentation contained in the hearing bundle.
35. Mr Varsani accepts that, at the date of the Council's visit Dillon's website was being updated and so did not then include a full list of fees.
36. Mr Varsani has not challenged the Council's evidence that the list of fees displayed on the premises was also incomplete at the date of the Council's visit (though he agreed to amend it to ensure that landlord fees were quoted inclusive of tax as required by the CRA).
37. The Council's Notice of Intent dated 14 March 2019 notified Dillon that it was in breach of its legal duties in relation to the publication of fees at both its premises and on its website.
38. This amounted to two breaches of the statutory obligations for letting agents to display lists of fees: s.83(2) CRA relates to premises, and s.83(3) relates to websites. It was therefore open to the Council to issue a Final Notice in respect of each of these breaches, and impose the maximum financial penalty of £5000 for each, amounting to £10,000 in total.
39. Mr Varsani states Dillon is now compliant with its obligations although this is not clear: there is no up-to-date evidence about the list of fees displayed at Dillon's premises. Dillon's website still refers to an 'administration fee, holding deposit or something similar' but no amount of such fee/deposit is stated, nor any further description given of what such fee/deposit covers. Dillon's website also fails to include any *statement* of membership of client money protection and redress schemes *with* the list of fees. Logos of such schemes and memberships are displayed on Dillon's website, but this is insufficient to satisfy the statutory requirement for a *statement* of scheme membership.
40. Even if Dillon's premises and website are now fully compliant with the requirements of the CRA, subsequent compliance is not a permissible ground for appealing against a Final Notice (see paragraph 12 above).
41. 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 £5000 is the maximum penalty it can impose under the legislation. I note the Council gave Dillon credit for the steps it had taken to comply with the legislation (though I repeat my comment that such steps did not excuse the earlier breaches) and also took into account that Dillon was a member of a client money protection scheme before such a requirement was mandatory. For these reasons,

the Council reduced the amount of the penalty of £5000 indicated in the Notice of Intent to £2075 in the Final Notice.

42. Dillon has not put forward any specific extenuating or exceptional circumstances which would have enabled the Council to consider whether to impose less than the maximum penalty of £5000 which Government guidance states should be regarded as ‘the norm’. Dillon did not provide any accounts to the Council, despite the Council’s invitation to provide these, nor did Dillon explain to the Council or this Tribunal why the penalty imposed is disproportionate to its turnover or the scale of its business.

Decision

43. I conclude on the basis of the evidence before me and on the balance of probabilities that Dillon did breach its legal obligations in respect of the publication of fees, and was in breach on 14 March 2019 when the Notice of Intent was issued and also on 26 July 2019 when the Final Notice was issued. I am satisfied that there was no error of fact or law in the Council’s decision to serve a Final Notice, nor was it unreasonable for the Council to impose a financial penalty in the circumstances.
44. As for the amount of financial penalty imposed by the Council in the Final Notice, I am not satisfied that the amount was unreasonable in the circumstances. I note in particular that the amount of the penalty imposed by the Final Notice was considerably lower than the amount indicated in the Notice of Intent.
45. Accordingly, the appeal is now dismissed and the Final Notice is confirmed.

(Signed)

Dated: 01/11/2019

Alexandra Marks CBE

Sitting as a First-tier Tribunal Judge

