



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

**Appeal Reference: PR/2017/0008**

**Heard at  
Leeds 14 July 2017**

**Before**

**JUDGE JACQUELINE FINDLAY**

**Between**

**AUSTIN BROOKS LIMITED**

Appellant

**and**

**CITY OF YORK COUNCIL**

Respondent

**DECISION AND REASONS**

***A. The requirement for letting agents to publicise details of fees***

1. The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees. This is achieved by sections 83 to 86:-

**“CONSUMER RIGHTS ACT 2015**

**Chapter 3**

## **Duty of Letting Agents to Publicise Fees etc**

### **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 of 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 publicised 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.

#### **84 Letting agents to which the duty applies**

(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.

#### **85 Fees to which the duty applies**

(1) In this Chapter “relevant fees”, in relation to a letting agent, means the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant--

(a) in respect of letting agency work carried on by the agent,

(b) in respect of property management work carried on by the agent,  
or

(c) otherwise in connection with--

(i) an assured tenancy of a dwelling-house, or

(ii) a dwelling-house that is, has been or is proposed to be let under an assured tenancy.

(2) Subsection (1) does not apply to--

- (a) the rent payable to a landlord under a tenancy,
- (b) any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person,
- (c) a tenancy deposit within the meaning of section 212(8) of the Housing Act 2004, or
- (d) any fees, charges or penalties of a description specified in regulations made by the appropriate national authority.

## **86 Letting agency work and property management 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.

(4) In this Chapter “property management work”, in relation to a letting agent, means things done by the agent in the course of a business in response to instructions received from another person where--

- (a) that person wishes the agent to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the person’s behalf, and
- (b) the premises consist of a dwelling-house let under an assured tenancy.”

## **B. Enforcement**

2. Section 87 explains how the duty to publicise fees is to be enforced:-

**“87 Enforcement of the duty**

(1) It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area.

(2) If a letting agent breaches the duty in section 83(3) (duty to publish list of fees etc on agent’s website), that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.

(3) Where a local weights and measures authority in England and Wales is satisfied on the balance of probabilities that a letting agent has breached a duty imposed by or under section 83, the authority may impose a financial penalty on the agent in respect of that breach.

(4) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority’s area (as well as in respect of a breach which occurs within that area).

(5) But a local weights and measures authority in England and Wales may impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales only if it has obtained the consent of that authority.

(6) Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

(7) The amount of a financial penalty imposed under this section--

(a) may be such as the authority imposing it determines, but

(b) must not exceed £5,000.

(8) Schedule 9 (procedure for and appeals against financial penalties) has effect.

(9) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(10) A local weights and measures authority in Wales must have regard to any guidance issued by the Welsh Ministers about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(11) The Secretary of State may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in England;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities.

(12) The Welsh Ministers may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in Wales;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities.”

### ***C. Financial penalties***

3. The system of financial penalties for breaches of section 83 is set out in Schedule 9 to the 2015 Act:-

#### **“SCHEDULE 9**

#### **DUTY OF LETTING AGENTS TO PUBLICISE FEES: FINANCIAL PENALTIES**

#### **Section 87**

#### ***Notice of intent***

**1**

(1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a notice on the agent of its proposal to do so (a “notice of intent”).

(2) The notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent’s breach, subject to sub-paragraph (3).

(3) If the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the notice of intent may be served--

(a) at any time when the breach is continuing, or

(b) within the period of 6 months beginning with the last day on which the breach occurs.

(4) The notice of intent must set out--

- (a) the amount of the proposed financial penalty,
- (b) the reasons for proposing to impose the penalty, and
- (c) information about the right to make representations under paragraph 2.

***Right to make representations***

**2**

The letting agent may, within the period of 28 days beginning with the day after that on which the notice of intent was sent, make written representations to the local weights and measures authority about the proposal to impose a financial penalty on the agent.

***Final notice***

**3**

(1) After the end of the period mentioned in paragraph 2 the local weights and measures authority must--

- (a) decide whether to impose a financial penalty on the letting agent, and
- (b) if it decides to do so, decide the amount of the penalty.

(2) If the authority decides to impose a financial penalty on the agent, it must serve a notice on the agent (a "final notice") imposing that penalty.

(3) The final notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the notice was sent.

(4) The final notice must set out--

- (a) the amount of the financial penalty,
- (b) the reasons for imposing the penalty,
- (c) information about how to pay the penalty,
- (d) the period for payment of the penalty,
- (e) information about rights of appeal, and
- (f) the consequences of failure to comply with the notice.

***Withdrawal or amendment of notice***

**4**

(1) A local weights and measures authority may at any time--

- (a) withdraw a notice of intent or final notice, or
  - (b) reduce the amount specified in a notice of intent or final notice.
- (2) The power in sub-paragraph (1) is to be exercised by giving notice in writing to the letting agent on whom the notice was served.

#### ***D. Appeals***

4. Schedule 9 provides for appeals, as follows.

#### ***Appeals***

#### **5**

- (1) A letting agent on whom a final notice is served may appeal against that notice to--
- (a) the First-tier Tribunal, in the case of a notice served by a local weights and measures authority in England, or
  - (b) the residential property tribunal, in the case of a notice served by a local weights and measures authority in Wales.
- (2) The grounds for an appeal under this paragraph are that--
- (a) the decision to impose a 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.
- (3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the final notice was sent.
- (4) If a letting agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.
- (5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property tribunal may quash, confirm or vary the final notice.
- (6) The final notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £5,000.

#### ***E. Explanatory Notes and Guidance***

5. The Explanatory Notes published in respect of the Consumer Rights Bill (which became the 2015 Act) and the Guidance for Local Authorities issued by the Department for



Communities and Local Government, during the passage of the Bill, concerning the duty to publicise fees.

6. Paragraphs 456 to 459 of the Explanatory Notes read as follows:-

“456. This section imposes a duty on letting agents to publicise ‘relevant fees’ (see commentary on section 85) and sets out how they must do this.

457. Subsection (2) requires agents to display a list of their fees at each of their premises where they deal face to face with customers and subsection (3) requires them to also publish a list of their fees on their website where they have a website.

458. Subsection (4) sets out what must be included in the list as follows. Subsection (4)(a) requires the fees to be described in such a way that a person who may have to pay the fee can understand what service or cost is covered by the fee or the reason why the fee is being imposed. For example, it will not be sufficient to call something an ‘administration fee’ without further describing what administrative costs or services that fee covers.

459. Subsection (4)(b) requires that where fees are charged to tenants this should make clear whether the fee relates to each tenant under a tenancy or to the property. Finally, subsection (4)(c) requires the list to include the amount of each fee inclusive of tax, or, where the amount of the fee cannot be determined in advance a description of how that fee will be calculated. An example might be where a letting agent charges a landlord based on a percentage of rent.”

7. So far as enforcement of the duty is concerned, the Explanatory Notes state:-

“477. Subsection (4) [of section 87] provides that while it is the duty of local weights and measures authorities to enforce the requirement in their area, they may also impose a penalty in respect of a breach which occurs in England and Wales but outside that authority’s area. However, subsection (6) ensures that an agent may only be fined once in respect of the same breach”.

8. Potentially relevant passages of the Departmental Guidance are as follows:-

**“Which fees must be displayed**

All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by the agent in connection with an assured tenancy. This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy. ...

The only exemptions are listed below. The requirement is therefore for a comprehensive list of everything that a landlord or a tenant would be asked to pay by the letting agent at any time before, during or after a tenancy. As a result of the legislation there should be no surprises, a landlord and tenant will know or be able to calculate exactly what they will be charged and when.

... ..

**How the fees should be displayed**

The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill-defined terms such as administration cost must not be used. All costs must include tax.

Examples of this could include individual costs for:

- marketing the property;
- conducting viewings for a landlord;
- conduct tenant checks and credit references;
- drawing up a tenancy agreement; and
- preparing a property inventory.

It should be clear whether a charge relates to each dwelling-unit or each tenant”.

### ***F. Background***

9. Austin Brooks Limited (“the Company”) appeals against the Final Notice served on Mrs Susan Gillman, sole director of Austin Brooks Limited, dated 18 January 2017. The Final Notice which appears at A1 and A8 of the bundle states that “as reviewing officer I have considered the information and have had regard to your appeal. I have found that there is sufficient evidence that there was a breach in the law to serve a Final notice to impose a monetary penalty and that the fine should remain at £5000.”

10. The Notice states in the paragraph headed Breach:

“Mick Wilkinson, Licensing Enforcement Officer visited the commercial premises of the company on 26 September 2016 and found that the fees charged to tenants and landlords were not displayed in the commercial premises in a place which was likely to be seen by such persons in accordance with the Consumer Rights Act 2015 Section 83.2(a) 2(b). Mick Wilkinson also visited the website of Austin Brooks on 20 September 2016 and found that fees charged to landlords and tenants were not displayed, in accordance with the Consumer Rights Act 2015 section 83.3”

11. The Notice states in the paragraph headed Conclusion:

“I have reviewed both the statement by Mick Wilkinson and the contents of your appeal.

The matters I have taken into account when considering the best course of action to take are:

1. “That the fees charged to landlords and tenants were not displayed in your commercial premises.

2. That the fees charged to landlords and tenants were not published on your website.

3. That your firm is a regional if not national firm.”

### ***G. The issues***

12. In the grounds of appeal that appear at B4 of the bundle Mr Gillman, on behalf of the Company, submits that the Company was aware of its obligations under the Consumer Rights Act 2015 and took steps to comply with the legislation. Mr Gillman disputes the suggestion that the Company did not publish its fees as letting agents on the website. Mr Gillman relies on the email which appears at B8 dated 3 September 2015 from the company to [shane@siteart.co.uk](mailto:shane@siteart.co.uk) and, in particular, the final paragraph of that email which states “Also, we need to ask you to add the rental fees schedules on our website.”
13. Mr Gillman submits that on the day of the visit by Mick Wilkinson a member of staff had removed the information from the shop window to update it. This was made clear to Mr Wilkinson but at no time did he ask to see it. There are six people who were in the office who would be able to confirm this. The premises at 90 Tadcaster Road, York are open by appointment only and when Mr Wilkinson attended the premises there were no potential clients in the premises. Mr Gillman submits that the fact that the information had been temporarily been removed for updating would have no adverse effect on any potential customers. Mr Gillman submits that the premises were usually locked to prevent unauthorised access.
14. Mr Gillman submits that he accepts that the information was not on the Company’s website when Mr Wilkinson visited the site and this was because during the summer of 2016 the Company had been subjected to a malicious hack and certain information had been deleted from the site. The email referred to above shows that instructions were given to the website administrator to include the information on the website and the information was then duly added. Mr Gillman submits that it is a misunderstanding to suggest that it would be possible to update the website after it was hacked. Certain parts of the website can be updated by employees such as uploading new properties or removing sold or let properties but the addition of other information such as the letting fees and landlord fees must be undertaken by the administrator.
15. Mr Gillman submits that after it was noticed the site had been hacked it was decided to commission a new website that would be less vulnerable to attack and the invoice to pay for the new website has been settled (B10) but the website had not yet gone live at the date of the hearing.
16. Mr Gillman submits that the monetary penalty is disproportionate taking into account the small nature of the operation, that the Company is not a national company and covers only the immediate region and a penalty of this magnitude would have a devastating effect on the Company.
17. The Respondent submits that the Company committed a breach under the Consumer Rights Act 2015 and that the monetary penalty of £5000 should be confirmed.

#### ***H. Mr Gillman’s oral evidence***

9. Mr Gillman stated that he is a senior property consultant. He is not a Director of the company. The Company was set up in 2012 by Mrs Gillman and she is the 100% shareholder. In September 2016 the company employed two employees. Sixteen self-employed consultants provided services for the Company. Ten of these consultants were retired police officers.

10. The Company has its commercial premises at 20 Tadcaster Road, York. An arrangement made to use offices in Hull has ended.
11. Mr Gillman stated that the Company remains solvent and able to pay all its bills but the Company retains no reserves.
12. Mr Gillman relied on Shane to build the website. Mr Gillman could not remember Shane's surname. Mr Gillman relied on the Company's employees in the office to send the schedules of landlord fees and tenant fees to Shane. The website was originally created in 2015.
13. Mr Gillman was unable to confirm whether the schedule at B10 was the attachment referred to in the email of 3 September 2015 at B8.
14. Mr Gillman stated that he certainly did not check every week to see if the landlord and tenant fees were on the website but would do so maybe every 4/5 weeks or less frequently.
15. Mr Gillman stated that the tenant fees and landlord fees were removed from the website he did not know what else was removed. Mr Gillman stated he was not an IT specialist and relied on others.
16. Mr Gillman said that one of the secretaries was working on the fees at the time that Mick Wilkinson came to the Company's premises. He said that he would have made the amendments by hand and they were on her desk at the time Mr Wilkinson came to the premises. If Mr Wilkinson had asked to see them he would have been shown them. Mr Gillman stated that he felt that Mr Wilkinson just wanted to "catch out" the company.
17. Mr Gillman stated that the fees were absent from the window of the premises for a couple of hours only and that no one comes into that office in any event and on that particular day there were no scheduled meetings. He stated that there are upstairs rooms and people only come by appointment. He stated that only 2/3/4 people would have come to the premises over the last 12 months.
18. Mr Gillman accepted that the responsibility to ensure the Company complied with its statutory obligations fell his shoulders and he described himself as "not very IT savvy". He stated that as he was not a "Techy" he would ask others to ensure the information was put on the website.
19. Mr Gillman stated that he requested someone to put the information on the website and check it and although he did not check it himself he assumed it was there.
20. Mr Gillman explained that the consultant agents received 60% of the fee for a sale and that one agent who had left had earned £47,000 in a year.
21. The deductions from the gross turn over of the Company included the wages, council tax, insurance, fees to Rightmove and Zoopla for the use of their services, electricity, gas and heating costs, and the running costs of two vehicles. No Director's salary was paid.
22. Mr Gillman stated that he and his wife took advice where they needed to in relation to running the Company and had a health and safety officer for risk management. He engaged the services of a Solicitor for human resources purposes and an Accountant for financial matters. Mr Gillman uses the services of an IT expert in

relation to changing passwords and obtaining access to the Rightmove and Zoopla sites.

23. Mr Gillman stated he was aware of the legislation as had looked it up and had been alerted by press announcements.
18. Mr Gillman was not able to confirm unequivocally that the landlord fees and tenant fees would be displayed on the website at the date of the hearing and that he relied on others to do this for him. Mr Gillman stated that he requested someone to put the information on the website and check it and although he did not check it himself he assumed it was there.
24. Mr Gillman was not able to state what changes he made by hand to the documents which were not displayed at the time Mr Wilkinson visited the premises.
25. Mr Gillman stated "I presume the Company is compliant" he stated that he couldn't say "categorically" that it was.
26. Mr Gillman stated the first he knew that the tenant fees and landlord fees were not on the website was when the Respondent raised the matter.

### ***I. Findings of Fact and Reasons***

27. The obligations on the company under the Consumer Rights Act 2015 are not onerous. The purpose of the legislation is to protect the public. At all material dates, there was an obligation on the Company to comply with the relevant statutory obligations. I find that the Company breached its statutory obligations.
28. I find that Mr Gillman is a proper person to represent the Company in these proceedings. I accept that the statutory obligation is on Mrs Gillman, as the sole Company Director and that she has delegated this responsibility to Mr Gillman. He has not sought to shirk his responsibilities and should be given credit for this. I am grateful to him for attending the hearing and giving evidence.
29. I find that, save for a brief period of time when the fees charged to tenants appeared on the website, the Company was not compliant in respect of fees charged to tenants. At no time was the Company compliant in relation to displaying landlord fees. There is an obligation on the company to do this and it is not optional.
30. On the basis of Mr Gillman's oral evidence, I find that there was not at any time and at the date of the hearing was still not a system in place to ensure the Company was compliant with its legislative obligations. The Company at no time had a system in place that was fit for purpose to ensure the Company complied with its statutory obligations. There has been a breach which is properly reflected by the monetary penalty. It would not be appropriate to reduce the monetary penalty for the brief period when the fees charged to tenants appeared on the website. Taking an overall view there was non-compliance and a breach of the obligations.
31. The Company's premises were open to the public albeit that access was by appointment. Accordingly, there is a requirement for the landlord and tenant fees to be displayed at those premises. It is in my view highly unlikely that the fees were displayed at all times save for the brief period when Mr Wilkinson called at the premises as suggested by Mr Gillman. Mr Gillman has in his oral evidence demonstrated that it was not a priority for the Company to be compliant and there was no proper system in place to ensure compliance. If the fees had been only

recently removed from the window and were being amended and updated it is highly unlikely that Mr Wilkinson would not have been made aware of this at the time.

32. In my view it is of no assistance to Mr Gillman or the Company and does not relieve them of their obligations that the landlord and tenant fees were not displayed because the website was hacked. Having discovered the hacking there was a duty on Mr Gillman and the Company to rectify the situation as soon as possible. On the basis of the evidence this was not done. The obligation was on the Company to be compliant and on Mr Gillman as the responsible person.
33. On the basis of Mr Gillman's oral evidence, I do not accept that a fine of £5000 is disproportionate to the turn over and scale of the business or would lead to the Company going out of business. Copies of the accounts have not been submitted but I accept Mr Gillman's evidence about the financial position of the Company.
34. The Company undertakes estate agency work, letting agency work and management work. The self-employed consultants operate mainly from Hull, Whitby, Scarborough, with over half in the York area and one is based in Stokesley. In 2016 the company had about 35 properties to let and at the date of the hearing this had reduced to 11. In December 2016, the Company probably had 26/27 properties to manage. The Company also operates a 'tenant find' business for clients who manage their own properties but return to the Company to find tenants. The gross turn over for the year from 1 June 2016 to 31 May 2017 was £170,000,00. The Company paid corporation tax of £380 for that same period.
35. Mr Gillman tells me that the Company has already scaled down the letting agency business and he tells me that he and his wife are seeking accountancy advice. However, this not evidence that the Company is likely to go out of business.
36. The Company is solvent and taking into account how the company is structured it appears to have a healthy turn over.
37. I find that the initial Final Notice was erroneously sent to Mr Gillman and this was rectified when the Final Notice was reissued and sent to Mrs Gillman who was the Company Director at the time of when the Final notice was served and at the date of the hearing. I find that the Final Notice contains all the necessary information as required.

#### ***J. The Decision***

38. The appeal is dismissed.

Signed J R Findlay

Judge of the First-tier Tribunal

Date: 14 July 2017

Promulgation date 25/08/2017