First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2018/0039

Decided without a hearing
on 8th January 2019

Between

BAKER AND CHASE LTD

Appellant

and

LONDON BOROUGH OF ENFIELD

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Final Notice

1. Baker and Chase Limited ("Baker and Chase") appealed against a Final Notice dated 3rd July 2018 served on it by the London Borough of Enfield ("Enfield"), which is the local enforcement authority for Baker and Chase' premises at 161 Chase Side, Enfield, EN2 0PW. The Final Notice sets out Enfield's conclusion that Baker and Chase was on 28th March 2018 engaged in letting agency work and in breach of two of the requirements imposed on letting agents under section 83 of the Consumer Rights Act 2015 (the "Act"). The Final Notice records these breaches as a failure to include on the list of fees required to be displayed at its premises and on its website

a statement concerning membership of a client money protection statement, as required by section 83(6) and a failure to indicate membership of a redress scheme with details of that scheme as required by section 83(7) and gives the following details:

"No Client Protection Scheme details displayed on premises or on website.
No redress scheme details displayed on website"

Enfield imposed a penalty on Baker and Chase of £6,250 for the two breaches.

2. Enfield stated in the Final Notice that they had issued a notice of intent to impose a monetary penalty of £10,000 to Baker and Chase on 28th March 2018 (the "Notice of Intent") giving details of these breaches and inviting representations from Baker and Chase.

3. Baker and Chase submitted representations to Enfield in response to the Notice of Intent. They pointed out the actions that they had taken in order to address other breaches of the Act that Enfield had identified in relation to the display and publishing of their fees to landlords and tenants in a sufficiently clear format. Baker and Chase stated that the delay in adding the information about their membership of a client money protection scheme and a redress scheme arose from their desire to ensure that it was professionally and consistently presented and their decision to use a graphic/web designer to achieve this. The update to the website was completed promptly after the Notice of Intent had been issued and the information was displayed at their premises at the same time.

4. Enfield state that Final Notice was issued after taking account of these representations and the penalty was reduced to £6,250 in the light of the efforts made by Baker and Chase to comply with the obligations.

B. Legislation

5. The sections of the Act that are referred to in this decision or that are of greatest relevance to this appeal are set out below in Annex A which forms part of this decision.

6. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties under section 83, it may impose a financial penalty under section 87 of that Act. It does so by serving first a Notice of Intent, considering any representations made in response, and then serving a Final Notice on the letting agent concerned.

7. Schedule 9 paragraph 5 to the Act provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are (a) that the decision to impose the financial penalty was based on an error of fact; (b) the decision was wrong in law; (c) the amount of the financial penalty is unreasonable; or (d) the decision was unreasonable for any other reason. The

Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty

C. Guidance

8. Section 83 of the Act is the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government (the "Guidance"). Local authorities are required to have regard to the Guidance under subsection 87 (9) of the Act. The sections of the Guidance that are of greatest relevance to this appeal are set out below in Annex B which forms part of this decision.

D. The Appeal

9. Baker and Chase submitted an appeal dated 27th July 2017 against the decision in the Final Notice. In the notice of appeal Baker and Chase state that they are a small business employing local staff and struggling in a declining market and that the size of the penalty could be catastrophic for them. They had been a member of a redress scheme, the Deposit Protection Scheme, on 28th March 2018 and had subsequently joined a client money protection scheme even though this is not a requirement. They had encountered some delays in implementing the changes required by Enfield to their website and to the display at their premises as they had involved a graphic designer to assist them who had caused some delay. However, they had completed the work promptly. Baker and Chase stated that the amount of the penalty was too high for the business and it would have a huge impact on them and ther ability to employ staff. In bringing the appeal they sought a further reduction in the penalty or a cancellation of the Final Notice. They state that they had enclosed a copy of their company accounts that showed a loss of approx. £10,000. No accounts containing such information were provided to the Tribunal, The accounts of Baker and Chase to 31 March 2017 were provided and these show total net assets value of £10,235, which represented an increase of £3,000 over the value in the 2016 accounts.

10. Baker and Chase state that they wished the appeals to be heard on the papers. Enfield confirmed that they also wished to proceed on this basis. Having considered the subject matter of the appeals, the evidence and submissions provided by the parties and the capability of the parties I consider that the appeals are suitable for determination on this basis.

11. Enfield submitted a response to the appeal entitled "Grounds of Opposition" dated 4th September 2018. They explained that a Trading Standards Officer, Ms Geraldine Hearne, had visited Baker and Chase's premises on 21st February 2018 and advised on the changes that Baker and Chase needed to make in order to ensure that it complied with the requirements of the Act. The Act had come into force on 27th May 2015. When Ms Hearne returned on 28th March 2018 she found that the display of fees at Baker and Chase's premises and on its website, www.bakerandchase.co.uk was satisfactory, but Baker and Chase had failed to display a statement at its premise as to whether it was a member of a client money protection scheme or on

its website and had failed to provide details of the redress scheme of which it was a member on its website. Enfield accepted that Baker and Chase had acted quickly in seeking to comply with the requirements of the Act. As a consequence it had reduced the proposed fine of £5,000 for the failure to display details of a redress scheme on its website by 50% and had reduced the proposed fine of £5,000 for the failure to display and publish a statement as to whether or not it was a member of a Client Money Protection Scheme by 25%. Enfield does not accept that the residual penalty of £6,250 in aggregate is unreasonable. They point to the Guidance and its expectation that a fine of £5,000 is to be imposed unless there are extenuating circumstances.

12. Enfield referred to Baker and Chase's financial position and pointed out that the turnover of the business in 2017 and 2018 was consistent at £122,000-£124,000 and the profit reported had varied from profit of £33,205 in 2017 to a loss of £10,669 in 2018. Enfield believed this to be due to an increase in staffing costs and "other charges" and stated that they would need more information before they could respond to Baker and Chase's claims about the effect of the penalty on their business.

13. Enfield submitted two witness statements: One from Sue McDaid, the Head of Regulatory Services, who made the final decision to issue the Final Notice and to impose the penalty of £6,250 after considering the representations received from Baker and Chase. The second witness statement was submitted by Geraldine Hearne, a Principal Fair Trading Officer at Enfield, who examined Baker and Chase's website, visited their premises and issued the Notice of Intent.

14. I noted that Baker and Chase Ltd had referred in their appeal to "my company accounts showing currently a loss of approx. £10,000" and that Enfield had referred in their response to Baker and Chase's "Draft abbreviated accounts to year ending 31 March 2018". These accounts were not included in the bundle but two copies of the 2017 accounts of Baker and Chase were provided. I therefore asked for the parties to provide a copy of the draft account for 2018. Enfield responded and stated that they had not intended to refer to 2018 accounts and had been referring to the 2017 accounts of Baker and Chase. Baker and Chase responded by providing draft financial statements for the year to 31st March 2018. These are draft unaudited statement showing the balance sheet of the business and not the profit and loss accounts. They show that the net asset value of the business had declined from £10,236 to minus £423. It had been £7031 in the 2016 balance sheet. They also show that a dividend payment of £30,000 was made in 2017. No details of staff or director remuneration are provided.

D. Conclusions on the facts and law

15. In reaching a decision in this case I have had regard to all of the written submissions, evidence and other documentation provide by both parties during the course of this appeal.

16. The parties agree, and I concur, that;
- on 28th March 2018 Baker and Chase was engaged in lettings agency work within Enfield and held money on behalf of clients;
- they had a duty under section 83 of the Act to display at their premises and publish on their website, with the list of their fees, a statement of whether they are a member of a client money protection scheme and a duty to publish on their website, with the list of fees, a statement that indicates that they are a member of a redress scheme and gives the name of the scheme; and
- they had failed to meet these obligations.

17. The Final Notice sought to impose a monetary penalty of £6250 for the breaches of two different obligations under section 83 of the Act on 28th March 2018. I note that subsections 83 (6) of the Act states that; "*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*".
Subsection 83 (7) contains an equivalent provision in respect of the duty to display a statement that give details about whether a letting agent is a member of a redress scheme. I conclude from these provisions that the Act treats the duties created by subsections 83 (6) and 83 (7) as being part of the duties imposed under subsections 83 (2) and 83 (3). Section 87 of the Act sets out the basis upon which penalties can be levied for breaches of subsection 83. Section 87 (6) states that:
"*Only one penalty under this section may be imposed on the same letting agent in respect of the same breach*"
Although this section appears to be primarily intended to avoid different local weights and measures authorities imposing penalties for the same breach, it can also be to be construed as having a wider effect.

18. Subsection 87 (7) limits the amount of any financial penalty under section 87 to £5,000. Schedule 9 of the Act sets out the power of the Tribunal on appeal and states that a final notice may not be varied by the Tribunal so as to impose a financial penalty of more than £5,000.

19. The Guidance states in Section 3 that a fine of up to £5,000 can be imposed where a letting agent has failed to "publish their fees and other details". The "other details" in this context can only refer to the information required to be published under section 83 other than that about fees, such as information about membership of a client money protection scheme or a redress scheme.

20. I conclude that Baker and Chase' failure on 28th March 2018 to display at their premises a statement of whether or not they were a member of a client money protection scheme gives rise to a breach of section 83 (2) and 83 (6) of the Act and their failure to publish on their website on 28th March 2018 a statement of whether or not they were a member of a client money protection scheme and details of the redress scheme to which they belong gives rose to a separate breach of section 83 (3), 83 (6) and 83 (7) of the Act..

21. Baker and Chase have based their appeal on the amount of the monetary penalty being unreasonable. In deciding that issue, which is left open by the primary legislation, I accept that it is helpful and appropriate to have regard to the Guidance. The Guidance says the expectation is a "*fine*" (i.e. penalty) of £5,000 and that a lower sum should be imposed only if the authority is satisfied there are "*extenuating circumstances*". The Guidance does not purport to be exhaustive as to what might constitute extenuating circumstances; however, it goes on to indicate some considerations that may be relevant. It recognises that an issue that should be considered in this regard is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is clear that the Act must take precedence over the Guidance and that, in any event, enforcement authorities such as Enfield must consider the issue of reasonableness and proportionality of a penalty in the round and that they should not follow the advice in the Guidance to the exclusion of all other matters.

22. The Act is intended to reduce harm and the risk of harm to consumers from letting agents. The penalty needs to be set at a level that reflects the public benefit in ensuring compliance with the Act whilst being proportionate to the scale of the business and the severity of the failure.

23. I have considered the financial information provided by the parties in order to determine if a further reduction in the penalties is appropriate. The information provided does not provide much clarity on the turnover or the profitability of the business. The proposed penalty is disproportionate to the net worth of the business, which has been very low for the last three years. However, the business was able to pay a dividend of £30,000 in 2017 according to the draft accounts provided by Baker and Chase. Such a payment would have reduced the net worth. I am not able to discern what other remuneration the owners and managers of the business have received. Baker and Chase has had the opportunity to provide further evidence supporting its contention that the level of its financial difficulties amount to extenuating circumstances that justify a further reduction in the penalty imposed by Enfield. It has not done so. Enfield had taken constructive steps to point out Baker and Chase's obligation under the Act in February 2018. The Act has been in force since May 2015. Baker and Chase had no reasonable excuse for permitting the breaches to continue and to remain unremedied after Enfield had pointed out their breaches of the Act, even if they were awaiting input from a supplier. A penalty should act as deterrent and an aggregate amount of £6,250 for the failures identified in the Final Notice is not unreasonable.

F. ***Decision***

24. By virtue of paragraph 5(5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.

25. I find that on 28th March 2018 Baker and Chase was engaged in lettings agency work and had a duty, which they were failing to meet, to display at their premises and publish on their website, with the list of their fees, a statement of whether they are a member of a client money protection scheme and a duty to publish on their website, with the list of fees, a statement that indicates that they are a member of a redress scheme and gives the name of the scheme. I conclude that on that day Baker and Chase were in breach of their obligations under section 83 of the Act and that the monetary penalty of £6,250 imposed in the Final notice is reasonable.

26. The Final Notice is confirmed.

Peter Hinchliffe
Judge of the First-tier Tribunal
8th January 2019
Promulgation date 11th January 2019

ANNEX A

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

A. Duty of Letting Agents to Publicise Fees

"**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

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 Final 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 final 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 final notice in writing to the letting agent on whom the final notice was served.

D. Appeals

4. Finally, Schedule 9 provides for appeals, as follows.

Appeals

5

(1) A letting agent on whom a final notice is served may appeal against that final notice to--

(a) the First-tier Tribunal, in the case of a final notice served by a local weights and measures authority in England, or

(b) the residential property tribunal, in the case of a final 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.

ANNEX B

Explanatory Notes and Guidance

A. In the present appeal, reference was made to 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

B. 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."

C. 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".

D. Other 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".

Penalty for breach of duty to publicise fees

The enforcement authority can impose affine of up to £5000 where it is satisfied, on the balance of probability that someone is engaged in letting work and is required to publish their fees and other details, but has not done so.

The expectation is that a £5000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the letting agency makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; alternatively an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue that should be considered is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business.