



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

Appeal Reference: PR/2019/0028

**Decided at Field House, London
On 1 October 2019**

Appearances:

For the Appellant, Mr Dusek, Representative

For the Respondent, Mr Brayley, Counsel

In attendance:

For the Appellant:

Mr Al-Katib, Director of Appellant

For the Respondent:

Mr Silcock

Mr Akpom

Mr Pledger

Mr Peterson

Ms Cosgrove

Before

JUDGE JACQUELINE FINDLAY

Between

OLYMPIA ESTATES LIMITED

Appellant

and

WESTMINSTER CITY COUNCIL

Respondent

DECISION AND REASONS

Decision

1. The appeal is dismissed. A monetary penalty of £5,000 is appropriate in all the circumstances for the breach of the requirement to display the required fees on the Appellant's website under section 83 of the Consumer Rights Act 2015 ("the Act").

Legislation

2. The relevant legislation appears in the bundle at pages 412 to 430.

Background

3. Mr Al-Katib is the sole Director of the Appellant company.
4. The Respondent served two Notices of Intent dated 20 December 2018. The Notice of Intent (pages 56 and 57) states that the Appellant had committed a breach from 5 December 2018 to 20 December 2018 under sections 83(1) and 83(3) of the Act and states:

"As a letting agent you have failed to:

- Publicise details of your relevant fees in accordance with section 83(1) of the Act
- Publish a list of your fees on your website in accordance with section 83(3) of the Act
- Do the above in relation to properties (dwelling-houses) located in England."

5. The Notice of Intent (pages 58 and 59) states that the Appellant had committed a breach on 20 December 2018 under section 83(1) and 83(2) of the Act and states:

"As a letting agent you have failed to:

- Publicise details of your relevant fees in accordance with section 83(1) of the Act
- Publish a list of your fees in your office in accordance with section 83(2) of the Act
- Do the above in relation to properties (dwelling-houses) located in England."

6. A Final Notice dated 16 April 2019 was served on the Appellant on that date (pages 390 and 391). The Final Notice states that the Appellant, engaging in letting agency or property management work, failed to comply with the duty to display or publish required information on the Appellant's website in accordance with section 83 of the Act in relation to properties located in England. The dates of the breach are stated as 5 December 2018 to 20 December 2018. The Final Notice states:

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

Your full tenant fees and/or landlord fees. The list of fees must provide a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose for which it is imposed. In the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house. The amount of each fee must be inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated."

The Hearing

7. I have considered the Respondent's Response and the bundle of documents numbered 1 to 430, the further evidence submitted on behalf of the Appellant, the CD of the downloads of the Appellant's website from 18 December 2018, the disc containing a spreadsheet from Mydeposits on 29 March 2019. I have heard submissions from Mr Dusek and Mr Brayley and oral evidence from Mr Al-Katib, Mr Silcock, Ms Cosgrove and Mr Akpom. Mr Dusek confirmed he was not a qualified solicitor although he had a law degree and had completed the Legal Practice Course. Mr Dusek and Mr Al-Katib confirmed they were content to proceed without other representation. Mr Dusek is an employee of the Appellant company. I found no injustice in proceeding in these circumstances.

The Appellant's case

8. The Appellant appeals against the Final Notice which appears at pages 390 and 391. The Appellant puts forward the following grounds:
 - a. Between 5 December 2018 and 20 December 2018, the Appellant did not engage in letting agency work and, therefore, there could be no breach.
 - b. Until 1 February 2019 all tenants and landlords used the letting services of coolcribs.co.uk and between 5 December 2018 and 20 December 2018, the Appellant did not advertise any properties to let.
 - c. From 2016 to 2018 an ex-employee committed fraud which is currently being investigated. The landlord of 18 Star Street used the services of coolcribs.co.uk.
 - a. The Appellant received no fees in the period 5 December 2018 and 20 December 2018 from any prospective tenants or landlords and, therefore, there could be no breach.
 - b. The Final Notice is defective.
 - c. During the period 5 December 2018 and 20 December 2018 none of the landlords paid fees to the Appellant and the Appellant did not advertise any services to landlords.
 - d. The imposition of a monetary penalty does not serve the public interest.
 - e. The Appellant responded promptly to the Notices of Intent in making amendments to the website despite believing it was not necessary for the reasons as stated above.
 - f. The Appellant has no previous history of any serious or recurrent breaches and since September 2018 has "experienced some level of harassment" from the Respondent.
 - g. The Respondent did not offer help, encouragement, dialogue, advice or guidance as it should.

- h. There is insufficient evidence to justify the imposition of a penalty and the level of the monetary penalty is unreasonable.

The Respondent's case

9. The Respondent submits the following points:
 - a. The Appellant was engaged in letting agency work before during and after the period 5 December 2018 and 20 December 2018. In the alternative, the Appellant was at the very least holding itself out as a letting agent.
 - b. Although some tenants find the properties advertised and marketed using the services of coolcribs.co.uk, when interested in a property the tenant is passed to the Appellant to finalise the agreement.
 - c. The Appellant does not have to have undertaken all the activities listed on pages 8 and 9 of the Final Notice to be a letting agent.
 - d. Coolcribs.co.uk does not undertake all the letting agency work for the Appellant.
 - e. The two-limb definition of a letting agent in the Act is very wide and advertising and marketing are only a part of the things that can be done by a letting agent carrying out letting agency work.
 - f. If a letting agent (or their landlord) uses another agent to perform some tasks it does not on its own prevent them from being a letting agent themselves under the definition in the Act.
 - g. It is not accepted that any fraud committed by an ex-employee has impacted on the website or property management agreement signed by the Appellant and the landlord of 18 Star Street.
 - h. It is irrelevant in relation to the breach whether the Appellant received fees or new instructions in the period 5 December 2018 and 20 December 2018.
 - i. The Notices of Intent and Final Notice were valid.
 - j. The Appellant had a duty to comply notwithstanding that the company was letting out or managing only a family owned portfolio of properties. The Appellant should have been aware of the legislative obligations.
 - k. There has been no breach of the Respondent's Corporate Enforcement Policy.
 - l. There is no obligation on the Respondent to offer advice.
 - m. The legislation has been in force for more than three and a half years.
 - n. The monetary penalty is not unreasonable and there are no extenuating circumstances.

Findings of Fact and Reasons

10. Mr Al-Katib is the sole Director and the correct person to represent the Appellant and is responsible for the acts and omissions of the Appellant. The Appellant company is a family business and Mr Al-Katib was appointed the sole Director in January 2018. Mr Al-Katib runs other businesses.
11. At all material times and, in particular, at the time of the breaches the Appellant was acting as a letting agent or holding itself out as acting as a letting agent. This is on the basis of the screen shots of the Appellant's website dated 18 December 2018 at pages 142 to 146.
12. At all material times and, in particular, at the time of the breaches from 5 December to 20 December 2018, the Appellant was undertaking property management work or holding itself out as undertaking property management work. This is on the basis of the screen shots of the Appellant's website dated 18 December 2018 at pages 147, 148 and 155.
13. It is irrelevant that for the period from 5 December to 20 December 2018 the Appellant did not receive any instructions directly from any tenants or landlords and did not charge or receive any fees from tenants.
14. The Appellant used coolcribs.co.uk as a vehicle to undertake some work on behalf of the company but the Appellant was still acting as a letting agent and holding itself out as undertaking such work.
15. Section 86 of the Act states that "letting agency work" means things done by a person in the course of a business in response in instructions received from-
 - 1(a) a person ("a prospective landlord") seeking to find another person wishing to rent a dwelling-house under and assured tenancy and, having found such a person, to grant such a tenancy, or
 - 1(b) a person ("a prospective tenant") seeking to find a dwelling-house to rent under and assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.
16. Sections 86(1)(a) and(b) are satisfied and in this regard. I accept the reasoning set out in the covering letter of 16 April 201 (pages 376 to 389).
17. The Notices of Intent (pages 56 to 59) and the Final Notice (page 390 and 391) contained all the information as required by the legislation and the Notices of Intent and Final Notice are valid.
18. The Notices of Intent set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty and information about the right to make representations.
19. The covering letter dated 16 April 2019 and the Final Notice (pages 376 to 391) set out, as required, the amount of the financial penalty, the reasons for imposing the penalty,

the information about how to pay the penalty, the period for payment of the penalty, information about the rights of appeal and the consequences of failure to comply with the Notice.

20. There was a breach of sections 83(1) and (3) in that the Appellant was engaging in letting agent or property management work and there was a duty on the Appellant to publicise 'relevant fees' and there was a failure to publish a list of their fees on their website.
21. The onus is on the Appellant to comply with the legislative requirement and keep abreast of all legislation that impacts on the business. The onus is not on the Respondent in this regard.
22. The monetary penalty would not put the Appellant out of business and is not disproportionate to the turnover of the Appellant's business. The Appellant has not submitted this is the case and no financial information about the Appellant's financial situation had been provided in any event.
23. I find there are no extenuating circumstances. The Appellant did respond timeously to the Notices of Intent but taking into account how long this legislation has been in force the Appellant had ample opportunity to ensure that it was compliant.
24. The Appellant has urged me to follow the decision of Judge Hamilton in *Up My Street Ltd v London Borough of Camden PR/2018/0002* and find that the starting point for a monetary penalty should be lower than £5000 and that the fine should then be increased or decreased on the basis of "aggravating or mitigating factors". I am not bound by this decision and decline to follow it. Such a system would create a more complex system of penalty calculation than was intended by the legislation.
25. All other matters raised by the Appellant and set out in paragraph 8 are not relevant to the issues before me and my decision.
26. Accordingly, the appeal is dismissed.

J R Findlay
First-tier Tribunal Judge
1 October 2019

Signed: 18 November 2019
Promulgation Date: 19 November 2019