

**Welcome to Landmark Chambers'**

**Property In Quarantine:**

**The Regulation of the Private Rented Sector in England**

**Part 3: Regulation of letting agents**

The recording may be accessed [here](#).

Your speakers today are...



**Justin Bates**



**Kimberley Ziya**

## Overview

- Two main topics: (1) Fees and (2) Wider practices
- Various statutory protections
  - Prohibited fees
  - Duty to publish fees
  - Regulation of unfair trading practices
  - Regulation of service contracts generally
  - Client money protection schemes
  - Redress schemes

## Tenant Fees Act 2019

- Key protection is at s.2:  
*“A letting agent must not require a relevant person to make a prohibited payment to the letting agent [or to a third party] in connection with a tenancy of housing in England”*
- Letting agent = a person who engages in letting agency work: s.27(1)  
 i.e. work done in response to instructions from a landlord seeking to find another person to whom to let housing or a tenant who is seeking to find housing to rent
- Relevant person = tenant, a person acting for them or their guarantor: s.1(9)
- Prohibited payment = any payment not permitted by Schedule 1: s.3(1)
- Tenancy = an AST (but not social housing or long leases), student lettings and licences: s.28(1)

## Schedule 1: Permitted Payments

- **Rent** (Except: rent payable in respect of any relevant period that is more than the amount of rent payable in respect of any later relevant period)
- **Tenancy deposits** (not exceeding 5 weeks' rent, or 6 weeks for tenancies w/ annual rent  $\geq$  £50k)
- **Holding deposits** (not exceeding 1 week's rent)
- **Default payments** (i.e. loss of key / failure to make full rent payment w/in 14 days of due date BUT only if required by the TA and does not exceed costs reasonably incurred by the letting agent as a result of the default and *supported by evidence in writing* provided to the tenant/licencee)
- **Damages for breach of TA or agreement with letting agent**
- **Fees for variation, assignment or novation** (not exceeding the greater of £50 or the reasonable costs incurred by the letting agent)
- **Early termination fee** (not exceeding the reasonable costs of the letting agent)
- **Council tax, utility bills, TV licence fee & phone, broadband or cable TV bills**

## Consequences of non-compliance

- Term of the TA which breaches s.2 is not binding on the tenant/licencee: s.4
- Financial penalty (up to £5,000): s.8
- Recovery of the amount paid + interest by local authority: ss.10-11
- Offence for multiple breaches: s.12
- Tenant can apply to the FTT: s.15
- No s.21 notice until prohibited payment repaid: s.17

## Duty to publicise fees

- Consumer Rights Act 2015 (as amended by the Tenant Fees Act 2019)
- ss.83-88: duty of letting agents to publicise fees
  - Must display list of fees:
  - Detailed requirements on what information must be provided in the list: s.83(4)
  - Must publish statement that LA is a member of a client money protection scheme or redress scheme
  - Fees = fees, charges or penalties payable to the agent by a landlord or tenant in respect of letting agency or property management work or in relation to an assured tenancy (but not rent)
  - Financial penalties can be imposed by the local authority for breach

# M&M Europe Ltd v London Borough of Newham [2018] UKUT 271 (AAC)

- Background:
  - No notices in the reception area when trading standards officer visited on 19/11/16
  - On 17/02/17 authority served a final notice, imposing £5,000 fine for failure to publish list of fees and further £5,000 for failure to publicise membership of client money protection scheme
  - M&M appealed to FTT against final notice; FTT upheld the notice
- UT held:
  - On the facts found by FTT, M&M was in breach
  - Financial state of company should be taken into account in assessing appropriate penalty – but no evidence so as to mitigate penalty here
  - Assumed maximum penalty should be reserved for worst case – here information was displayed in a room that was often locked and where people were waiting in a different room = no adequate mitigation

## Foxtons Ltd v Camden LBC [2017] UKUT 349

- Background
  - Final Notices issued in relation to 3 Foxtons branches and their website for failure to comply with s.83(4) by sufficiently breaking down their fees
  - Foxtons appealed against the notices
  - The FTT reduced each penalty to £3,000 (£12,000 total); Camden appealed
- UT held
  - Use of the phrase “fixed cost fee that can cover a variety of works” was too broad to comply with the legislation
  - An authority should take into account changes made by LAs that are beneficial to consumers before a final notice is issued
  - Here Foxtons should have been given credit for its attempt to revise the wording (although unsuccessful) by way of reduction in penalty

## Unfair trading practices

- Consumer Protection from Unfair Trading Regulations 2008
- Apply where one party is a consumer and the other is a business
- Prohibit engagement in “unfair commercial practices”: Reg. 3
- Unfair means:
  - “contravenes the requirements of professional diligence” and “materially distorts or is likely to materially distort the economic behaviour of the average consumer”; or
  - Falls within Reg. 5 (misleading action), Reg. 6 (misleading omission), Reg. 7 (aggressive practices) or Schedule 1 (practices considered unfair in all circumstances)
- Various offences imposed for breach in Part 3 of the Regs

## Application to letting agents

- **Commercial practices** = operating an online platform, advertising services, offering pre-agreement advice to clients, describing properties available to let, interacting with potential tenants, negotiating lettings, taking holding deposits, managing property, handling consumer complaints
- **Misleading information** e.g. mis-stating how much it will cost a tenant to rent a property or providing inaccurate information about the property
- **Misleading omissions** e.g. failing to present fees clearly and up front, failing to inform a tenant that the property does not include use of a garden that appears to be part of it – NB have to take “reasonable steps” to find out information
- **Acting aggressively** e.g. entering tenant’s property without permission to discuss late rent payment, refusing to return a holding deposit without good reason, threatening eviction as retaliation, telling a tenant you are going to be serving a s.21 notice to make them leave voluntarily when their deposit has not been properly protected
- **Banned practices** e.g. falsely claiming to be a signatory to a code of conduct, advertising a property to let without disclosing reasonable grounds to believe it will not be available

## Consumer Rights Act 2015

- Chapter 4 applies to service contracts b/w a trader and a consumer: s.48
- Terms implied into service contracts:
  - Trader has a duty to perform the service with “reasonable care and skill”
  - Information provided by the trader to the consumer about the trader or **service** (if taken into account by the consumer when deciding to enter into the contract or when making any decision about the service after entering into the contract)
  - The consumer must pay a reasonable price for the service and no more (if not already paid or fixed under the contract)
  - Service to be performed in a reasonable time (again if not specified under the contract)
- Remedies under ss.54-56 (enforcement of implied terms, repeat performance, price reduction)

## Holding client money

- Client Money Protection Schemes for Property Agents Regulations 2019
  - Requirement to belong to an approved scheme is imposed on any property agent who holds client money e.g. a holding deposit
  - Requirement to display, publish and supply certificate of membership
  - Financial penalty of up to £30,000 for failure to belong to scheme

## Redress schemes

- The Redress Schemes for Letting Agency Work and Property Management Work Order 2014
  - Anyone engaging in letting agency work or property management work must be a member of an approved redress scheme for dealing with complaints in connection with that work
  - Financial penalties of up to £5,000 for failure to comply
- G Crawford Management Service Ltd v Tower Hamlets [2019] H.L.R. 43:
  - A leaseholder run management company whose only client was her estate was providing services “in the course of a business” and therefore required to be a member of a scheme
  - Reduced penalty to reflect the fact that there were “genuine and reasonable doubts about the meaning of the legal requirements”

## Q&A

**We will now answer as many questions as possible.**

**Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.**

# Thank you for listening

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