

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



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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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