IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

[2025] UKUT 201 (AAC)

Case No. UA-2024-001014-GLA

Summary: Other general regulatory appeals: 98: (1) Error of law in taking account of an irrelevant matter. (2) Error of law in failing to seek and await financial information.

On appeal from the First-tier Tribunal (Social Entitlement Chamber)

Between: London Residentials Ltd Appellant

and

London Borough of Newham Respondent

Before: Upper Tribunal Judge Perez

Decision date: 22 June 2025
Decided on consideration of the papers

Representation:
Applicant: Jag Chima, director
Respondent: Miss M Mehat, solicitor

DECISION

1. I allow this appeal to the extent of remittal.

2. The decision of the First-tier Tribunal dated 5 September 2022[1] (under references PR/2022/0012 & PR/2022/0013) is set aside. The case is remitted to the Social Entitlement Chamber of the First-tier Tribunal, to be reheard in accordance with the directions at paragraph 42 of this decision.

REASONS FOR DECISION

Introduction

3. This is London Residentials Ltd's appeal against the decision of the First-tier Tribunal. I gave permission on 26 March 2025 to make this appeal.

[1] The decision itself bore year 2022, but the refusal of permission by the same judge said the decision was dated 5 September 2023.

Factual and procedural background

4. The local authority imposed a penalty of £20,000 for a breach of regulation 3 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 (S.I. 2019/386) for failure to be a member of an approved or designated client money protection scheme. The amount of the penalty imposed was £10,000 less than the maximum £30,000 permitted by regulation 6. The local authority also imposed a penalty for a breach of section 83(6) of the Consumer Rights Act 2015 for failure to display or publish, with the list of fees (required by subsection (2) to be displayed), a statement that indicates that the agent is a member of a client money protection scheme, and gives the name of the scheme. The Notice of Intent had said that the penalty would be £5,000. In the event, the penalty was £4,000 (page 551). It was reduced apparently, as Mr Ham accepted, in view of the mitigating factor that the information was being displayed by the time the officer came to "vary" the penalty (page 581, subparagraph (v) and page 583).

5. The appellant appealed to the First-tier Tribunal.

6. The First-tier Tribunal found that regulation 3 had been breached, regulation 4 had been breached, section 83(6) had been breached and that the respondent had gathered evidence as required by the guidance (paragraphs 15 to 20). The First-tier Tribunal went on to find that it was "satisfied that it was reasonable for the Respondent to impose FPs in these circumstances" (paragraph 21). The First-tier Tribunal considered "whether the amount of the FPs was unreasonable in all the circumstances" (paragraph 23). It found that "it was not unreasonable for the Respondent to impose FPs of £20,000 and £4,000 in the circumstances" (paragraph 24).

7. The First-tier Tribunal said at paragraph 43—

> "43. I must consider as there are two FPs whether the total FP is just and proportionate to the breaches. I find that the total FPs are just and proportionate to the seriousness of the breaches.".

8. In relation to the financial impact of the penalties, the First-tier Tribunal said—

> "47. In relation to the financial impact of the FPs on the Appellant's business the FPs must be proportionate to the Appellant's means and must take into account the impact of the FPs on the business.
>
> 48. The Appellant submitted that it has a large deficit in the profit and loss account but has provided no financial information to support this assertion despite having advice from a firm of Chartered Certified Accountants. Mr Shanthakumar stated in response to the Respondent's submission that no information had been provided: "We can provide this as the company has a large deficit in their profit and loss account, as it stands." Despite Mr Shanthakumar asserting that this information could be provided the Appellant chose not to provide any financial information.
>
> 49. Without any financial information I have been unable to consider whether the FPs are disproportionate to the turnover or scale of the business or would be likely to put the Appellant out of business. I have considered whether I should adjourn to enable the Appellant to produce this evidence. I have decided that it is not proportionate to do so. The Appellant has been given ample opportunity to produce

> financial information and has chosen not to do so despite having advice from a firm of Chartered Certified Accountants.
>
> 50. In the circumstances it is appropriate, fair and just to proceed to determine the appeal on the basis of the evidence available.
>
> 51. On the basis of the information available I find that the FPs were not disproportionate to the turnover or scale of the business and would not put the Appellant out of business.".

9. The First-tier Tribunal dismissed the appeal.

10. The First-tier Tribunal refused permission to appeal to the Upper Tribunal. The appellant made an in-time application to the Upper Tribunal for permission to appeal to that tribunal.

11. Upper Tribunal Judge Jacobs refused permission on the papers. The appellant sought an oral reconsideration hearing, which was held by video on 24 March 2025.

Grant of permission to appeal

12. I gave permission, on 26 March 2025, to make this appeal. I did so on the grounds that it was arguable, for the reasons at paragraphs 18 to 39 below, that the First-tier Tribunal had erred in law in the ways set out those paragraphs.

13. I proposed that the Upper Tribunal set aside the First-tier Tribunal decision for the reasons given in my grant of permission. I proposed that the Upper Tribunal remit to the First-tier Tribunal for re-determination entirely afresh by the First-tier Tribunal.

Submissions after grant of permission

14. Both parties agreed to the Upper Tribunal setting aside the First-tier Tribunal decision for the reasons at paragraphs 18 to 39 below, which were the reasons given in my grant of permission. The parties also agreed to the Upper Tribunal remitting for determination entirely afresh by the First-tier Tribunal.

Law

15. Appeals to the First-tier Tribunal against regulation 3 penalties are governed by regulation 10 of, and paragraph 5 of the schedule to, the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019. Appeals to that tribunal against section 83(6) penalties are governed by section 87(8) of, and Schedule 9 to, the Consumer Rights Act 2015. All of those provisions are reproduced in the **annex** hereto.

16. Also in the **annex** are regulations 3, 4 and 6 of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019. I have reproduced regulation 4 to show what the First-tier Tribunal's finding of a breach of it meant.

Analysis

17. It is not disputed, and I find, as follows.

18. The First-tier Tribunal erred in law in two ways: (1) in taking account of an irrelevant matter, and (2) in failing to seek and await further evidence. I take each in turn below.

(1) Taking account of an irrelevant matter

19. The First-tier Tribunal erred in law in taking into account an irrelevant matter. The irrelevant matter is the First-tier Tribunal's finding that there had been a breach of regulation 4.

20. I accept that, as Mr Ham pointed out for the local authority at the permission hearing, the First-tier Tribunal went on to discuss only the facts underlying the breach of regulation 3 and those underlying the breach of section 83(6). But that is countered by the following.

21. First, the First-tier Tribunal was "satisfied that it was reasonable for the Respondent to impose FPs in these circumstances" at paragraph 21. This paragraph immediately followed paragraphs 15 to 20 which included at paragraphs 17 and 18 the finding that there was a breach of regulation 4. The finding that there had been a breach of regulation 4 appears therefore to have been part of the "circumstances" to which the tribunal referred in paragraph 21 as making it reasonable to impose the penalties. The same goes for the First-tier Tribunal's considerations at paragraphs 23 and 24; the tribunal considered "whether the amount of the FPs was unreasonable in all the circumstances", and found that "it was not unreasonable for the Respondent to impose FPs of £20,000 and £4,000 in the circumstances". Again, those "circumstances" prima facie included the irrelevant finding that regulation 4 had been breached.

22. Second, the First-tier Tribunal went on to say at paragraph 43 (my underlining)—

> "43. I must consider as there are two FPs whether the total FP is just and proportionate to the breaches. I find that the total FPs are just and proportionate to the seriousness of the breaches.".

23. The text I have underlined does not say that the First-tier Tribunal was considering whether the total penalty was just and proportionate to the two breaches of regulation 3 and section 83(6). It says "the breaches" without more. That prima face includes the "breach" of regulation 4 which the tribunal found to have occurred.

24. Third, the First-tier Tribunal would not have made a finding that regulation 4 was breached unless the First-tier Tribunal considered that finding relevant.

25. Fourth, I accept that the First-tier Tribunal did not purport to consider whether a separate penalty for a breach of regulation 4 should be upheld (there was no such penalty). But, that does not mean that the finding of a breach of regulation 4 did not influence the First-tier Tribunal's consideration of whether to uphold the amounts of the penalties which were imposed, for breaching regulation 3 and section 83(6).

(2) Failing to seek and await financial information from the appellant

26. It was also an error of law not to seek whatever financial information the First-tier Tribunal considered it needed and give (and wait) a reasonable time for it to be supplied. This overarching error of law includes the errors of law mentioned at paragraphs 27 to 39 below.

27. The First-tier Tribunal found (my underlining)—

> "The Appellant has been given ample opportunity to produce financial information and has chosen not to do so" (paragraph 49).

28. Both of those underlined findings were not supported by the evidence. I say that for the following reasons.

"The Appellant has been given ample opportunity"

29. Mr Ham submitted for the respondent at the permission hearing that the "ample opportunity" was the amount of time that had passed before the tribunal made its decision.

30. The respondent now accepts however, and I find, that that is not so. The mere passage of time was not the giving to the appellant by the tribunal an ample opportunity to provide more information than the appellant had already provided. For that to happen, the tribunal had to give that opportunity and say what further information was needed beyond what the accountants had already said.

31. What the accountants had already said was—

> "The imposition of a penalty may result in the inability for our client's business to continue and force the company into liquidation" (section 5a, notice of appeal to First-tier Tribunal, page 12)

> "Per point 10, the respondent has put forth that our client should provide strict proof of their inability to continue trading if this fine is imposed. We can provide this as the company has a large deficit in their profit and loss account as it stands" (24 May 2022 email to First-tier Tribunal responding to local authority submission, page 370).

32. The First-tier Tribunal never told the appellant that the tribunal did need to take the appellant up on that offer. Nor did the tribunal ever tell the appellant (even in the decision) specifically what financial information was needed and was considered lacking.

33. Those circumstances do not amount to the tribunal giving the appellant an opportunity to provide further information.

"The Appellant … has chosen not to do so"

34. Those circumstances also do not amount to the appellant choosing not to provide further information.

35. The 24 May 2022 email from the accountants cited at paragraph 31 above was sent to the First-tier Tribunal. “We can provide this” suggests that the accountants were waiting to be told that yes, they should do so. As paid representatives (although not lawyers), they would – by collating and supplying additional materials to the First-tier Tribunal – be incurring costs which it was reasonable to expect they would pass on to the client: a client already in a “large deficit” and risking going out of business, according to the evidence before the First-tier Tribunal.

36. It was not unreasonable to wait for the First-tier Tribunal to take them up on that offer. As mentioned above, the tribunal never did so, on what is before the Upper Tribunal. Nor did the First-tier Tribunal ever tell the appellant (even in the decision) what specific financial information was needed and was considered lacking. It was inaccurate to characterise what the appellant did, in those circumstances, as a choice not to supply the information to the tribunal at all. It was a choice not to supply information unless and until the tribunal said it wanted or needed it, which never happened on what is before the Upper Tribunal.

In any event

37. Even if the appellant could be characterised as having chosen not to provide additional information, it was nonetheless an error of law for the First-tier Tribunal not to seek and await further information. First, the tribunal considered that it needed further information. Second, crucially, it was clear to the First-tier Tribunal that to seek and wait for it would not be futile. The accountants had already told the tribunal that the “The imposition of a penalty may result in the inability for our client's business to continue and force the company into liquidation” and that they “can provide” “strict proof” of the appellant’s inability to continue trading if the penalty is imposed “as the company has a large deficit in their profit and loss account”. This told the tribunal that the appellant did have evidence to that effect and was willing to provide it if needed.

38. Moreover, this First-tier Tribunal decision was made on the papers. To pause consideration of the papers to wait for further evidence would not have disrupted an oral hearing list or wasted a slot in that list, or put either party to wasted costs. So it would not have been an “adjournment” in that practical sense. It would have been of minimal trouble to the tribunal to seek and await that further evidence, it seems to me. To do so would not have been disproportionate, contrary to what the First-tier Tribunal found. That is especially so given the amount of the penalty. The company was said to be in a “large deficit in their profit and loss account”. Any amount was “large” in that context. But £24,000 was especially so. It could not, as Mr Chima pointed out to me at the permission hearing, be calculated as a proportion of the profit because there was no profit; there was a loss. And that was already in evidence to the First-tier Tribunal – “large deficit” – without its seeing the actual figures.

39. The failure to seek and wait for the further evidence was material. It would on what was before the First-tier Tribunal have shown that the appellant could not afford to pay the penalty, at the least.

Disposal

40. The parties agreed to remittal to the First-tier Tribunal. I consider that to be the appropriate course.

Conclusion

41. It is for all of the above reasons that I allow this appeal to the extent of setting aside the First-tier Tribunal's decision and remitting to that tribunal.

CASE MANAGEMENT DIRECTIONS

42. I direct as follows—

(1) The case must be reheard entirely afresh by the First-tier Tribunal.

(2) The First-tier Tribunal panel which rehears this case afresh must contain no-one who was on the panel which made the decision dated 5 September 2022.

Rachel Perez
Judge of the Upper Tribunal
22 June 2025

Annex
to Upper Tribunal decision

Legislation extracts

The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019

"Requirement to belong to a client money protection scheme

3.—(1) A property agent who holds client money must be a member of an approved or designated client money protection scheme.

(2) [Revoked].

Transparency requirements

4.—(A1) Paragraph (1) applies if the scheme administrator of an approved or designated client money protection scheme provides a certificate under regulation 8(1) of the scheme approval regulations to a regulated property agent.

(1) The regulated property agent must—

(a) [revoked];

(b) display the certificate—

(i) at each of the agent's premises in England at which the agent deals face-to-face with persons using or proposing to use the agent's services as a property agent; and

(ii) at a place in each of those premises where the certificate is likely to be seen by such persons;

(c) publish a copy of the certificate on the agent's website (if any); and

(d) produce a copy of the certificate to any person who may reasonably require it, free of charge.

(2) A regulated property agent must notify each client in writing—

(a) if the agent's membership of an approved or designated client money protection scheme
is revoked; or

(b) if the agent ceases to be a member of a particular approved or designated client money protection scheme and becomes a member of a different approved or designated client money protection scheme.

(3) A notification under paragraph (2) must—

(a) be given to each established client within 14 days of the event mentioned in paragraph (2); and

(b) if it is given under paragraph (2)(b), give the name and address of the scheme of which the agent becomes a member.

(4) In this regulation—

"client" means—

(a) any person on whose behalf the agent holds client money;

(b) any person not falling within sub-paragraph (a) on whose behalf the agent has an agreement to hold client money; and

(c) any person, not falling within sub-paragraph (a) or (b), from whom the agent is likely to receive client money; and

"established client" means a person who is a client on the day on which the event mentioned in paragraph (2) occurs."

"Penalty for breach of the requirement to belong to a client money protection scheme

6.—(1) Where a local authority in England is satisfied beyond reasonable doubt that a property agent has breached regulation 3, the authority may impose a financial penalty in respect of the breach.

(2) The financial penalty—

(a) may be of such amount as the authority imposing it determines; but

(b) must not exceed £30,000."

"Procedure for and appeals against financial penalties

10. The Schedule to these Regulations (procedure for and appeals against financial penalties) has effect."

Schedule to the regulations

"*Appeals*

5.—(1) A property agent on whom a final notice is served may appeal to the First-tier Tribunal against—

(a) the decision to impose the penalty; or

(b) the amount of the penalty.

(2) An appeal under this paragraph must be brought within the period of 28 days beginning with the day after that on which the final notice was served.

(3) If a property agent appeals under this paragraph, the final notice is suspended until the appeal is finally determined or withdrawn.

(4) An appeal under this paragraph—

(a) is to be a re-hearing of the local housing authority's decision; but

(b) may be determined having regard to matters of which the authority was unaware.

(5) On an appeal under this paragraph the First-tier 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—

(a) £30,000, in respect of a breach of regulation 3; or

(b) £5,000, in respect of a breach of regulation 4."

Consumer Rights Act 2015

"83 Duty of letting agents to publicise fees etc

[…]

(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 is required to be a member of a client money protection scheme for the purposes of that work, the duty imposed on the agent by subsection (2), (3) or (3C) includes a duty to display or publish, with the list of fees, a statement that—

(a) indicates that the agent is a member of a client money protection scheme, and

(b) gives the name of the scheme.

[…]

(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.
- "third party website", in relation to a letting agent, means a website other than the agent's website."

"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.

[…]

(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.

[…]

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

[…]

(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 or the lead enforcement authority (if not 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.

[…]

(14) In this section "lead enforcement authority" has the meaning given by section 24(1) of the Tenant Fees Act 2019."

SCHEDULE 9
to the Consumer Rights Act 2015

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

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) [relates to 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.

[…]

(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."

[End of Annex]