Case Reference: PR/2023/0088/CMP
Neutral Citation Number: [2025] UKFTT 00279 (GRC)

First-tier Tribunal
(General Regulatory Chamber)
Standards & Licensing

Decided without a hearing

Decision given on: 4 March 2025

Before

TRIBUNAL JUDGE BRIAN KENNEDY KC

Between

HARFITT PROPERTY AGENTS

Appellant

and

SHROPSHIRE COUNCIL

Respondent

Representation:
For the Appellant: Paul Harfitt as a Litigant in Person.
For the Respondent: Allan Campbell.

Decision: The appeal is Dismissed.

REASONS

Introduction:

1. This decision relates to an appeal dated 07 November 2023 and brought under Schedule 9 of the Consumer Rights Act 2015 ('the 2015 Act'). It relates to an appeal against a Final Notice issued by Shropshire Council ("the Council"), dated 19 October 2022 ("Ref: 23/00126/ENFORC/1") in which the Council imposed a financial penalty of £8,400 (Ref: CMP/2766) on the Appellant for an alleged Breach of Duty under Regulation 3 of The Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme Etc.) Regulations 2019 for failing to comply with the duty to belong to a client money protections scheme while undertaking property management or letting agency work.

2. In April 2023 the Respondents' Officer Alexandra Cosgrove received confirmation from each of the approved client money protection (CMP) schemes, that Paul Harfitt trading as Harfitts Property Agents were not members of any of the CMP schemes. Alexandra Cosgrove therefore issued a Notice of Intent to impose a monetary penalty totaling £19,250 for failing to join a client money protection scheme.

3. In response to the Appellants representations put forward in emails dated 3rd, 11th and 13th July, the Respondents had due regard to the statutory enforcement guidance for local authorities issued by the Ministry of Housing Communities & Local Government (the 'guidance'), the Council's Better Regulation and Enforcement Policy and the Council's Policy for the Enforcement and Determination of Financial Penalties for Breaches of Relevant Letting Agency Requirements.

4. The Respondents informed the Appellant of the following pertinent matters;

1. Letting agents as professionals are expected to be aware of the law, as it directly impacts upon their business/profession.

2. The guidance states that the penalty may be of such an amount that the authority determines, but it must not exceed £30,000, therefore the level of the penalty in the Notice of Intent is substantially lower than the maximum.

3. A detailed advice letter was sent to the business in December 2022; however, the business did not take any action to ascertain if they should be joining a client money protection scheme despite the fact that you state that you manage two properties. The definition of a letting agent within section 54 of the Housing and Planning Act 2016 was explained.

4. The Respondents explained further there is no exemption in the legislation in relation to solicitors, therefore, as you have acknowledged that you currently manage two properties, as well as carrying out sporadic letting agency work, this all falls within the definition above and you would be required to hold membership with an approved CMP scheme administrator. It is acknowledged that you are members of the Solicitors Regulation Authority and therefore have general client money accounts which are regulated in respect of legal services work and that this would give general protection to clients; however, as a property agent, you would be required to hold approved CMP cover in respect of the letting agency and property management work.

5. As a qualified solicitor, the Appellant would have a greater understanding of the legal obligations that apply to the different businesses run by the Appellant as well as having some expertise in reading and interpreting legislation. However, this does not appear to have considered whether the relevant legislation would apply to the Appellants property agency work.

6. In representation from the Appellant, it is stated that they only manage two properties on behalf of clients, and that they offer a tenant finding service. As already explained, the legislation doesn't solely relate to property management, but it also applies to all letting agency work where you hold money on behalf of the landlord or tenant. Therefore, if an offer to a tenant of finding service and handling a holding deposit or security deposit, then these would be classed as client money, until such times as the security deposit is either passed to the landlord or placed in one of the three deposit schemes.

7. The Respondents have taken into account the fact that the property agency business is extremely small.

8. The Respondents have taken into account the representation that the Appellant was using client money accounts for the receipt of rent. Whilst alone that is not sufficient to meet the requirements of the Regulations for the reasons outlined above, it is recognised that some steps were taken to protect client money.

9. And after careful consideration of the points mentioned above, the legislation, the guidance, our enforcement policy and all the relevant circumstances the Council has therefore decided to substantially reduce the penalty for a failure to join a client money protection scheme as set out in the Final Notice attached - £8,400 for failing to join a client money protection scheme.

5. Further to Case Management Directions the Tribunal have received the following helpful submissions on behalf of the Parties.

Agreed Legislative Background:

6. Regulation 3(1) of the Client Money Protection Schemes for Property Agents (Requirement to Belong to a Scheme etc.) Regulations 2019 ("CMPSR") requires that a property agent who holds client money must be a member of an approved or designated client money protection scheme (see page B.1 of the bundle for the section in full).

7. Both currently and at the time of the alleged breach, six such schemes have been approved by the Secretary of State: Client Money Protect, Money Shield, Propertymark, RICS, Safeagent and UKALA.

8. Regulation 5 of the CMPSR provides that it is the duty of every local authority in England to enforce the requirements of regulations 3 and 4 in its area.

9. The CMPSRs provide that the definition of a 'property agent' is found in section 133(4) of the Housing and Planning Act 2016 ("HPA").

10. Section 133(4) HPA defines a property agent as a person who engages in English letting agency work or property management work within the meanings of section 54 and 55 of the HPA..

11. Section 54 of the HPA provides that letting agency work is things done by a person in the course of a business in response to instructions from (a) a person ("a prospective landlord") seeking to find another person to whom to let housing, or (b) a person ("a prospective tenant") seeking to find housing to rent (see page B.7 of the bundle for the section in full).

12. Section 55 HPA of provides that a property manager is a person who engages in English property management work. English property management work means things done by a person in the course of a business in response to instructions received from another person ("the client"), where (a) the client wishes the person to arrange services, repairs, maintenance, improvements or insures in respect of, or to deal with any other aspect of the management of, premises on the client's behalf and (b) the premises consists of housing in England let under a tenancy (see page B.9 of the bundle for the section in full).

The Respondents Submissions:

13. The Appellant's website was inspected by the Respondent on or about 21st April 2023 and a video recording was taken on the 16th of June 2023. The recording shows that the Appellant advertises as a property agent and their name is 'Harfitts Solicitors and Property Agents'. It also states on their home page that they are both Solicitors and Estate Agents providing a comprehensive range of legal and Estate Agency services all 'Under One Roof'. This is evidenced in the witness statement of Alexandra COSGROVE (page C.1 of the bundle) and exhibit AC/HPA/01 (referred to at page C.7, uploaded separately to the bundle).

14. There was a dedicated page on the Appellant's website headed "Letting Your Property" (captured at 02:45 in exhibit AC/HPA/01) which lists services offered, including the advertising and marketing of properties, collection of rental payments, overseeing the day to day management of a property and paying bills on a landlord's behalf from the proceeds of rent.

15. The services listed would, in the Respondent's view, be regarded as typical letting agency and property management work. Furthermore, at the time of the website capture three domestic properties were listed as let on the Appellant's lettings page (03:41 in exhibit AC/HPA/01).

16. An image of the Appellant's office also featured on the website (01:25 in AC/HPA/01) which showed a significant number of properties being advertised in the window, as would be typical of a business engaging in letting agency work.

17. The Appellant was therefore considered, prima facie, to be a property agent within the meaning of the CMPSR and enquiries were made as to whether they held membership with an approved CMP scheme.

18. On or about the 5th May 2023, the Respondent's officer received confirmation from each of the CMP schemes that the Appellant was not a member of any of the schemes and had never had CMP membership with any of the schemes (evidenced in the statement of Alexandra COSGROVE and exhibits AC/HPA/02 – 07).

19. In their communications with the Council and their Notice of Appeal the Appellant has not denied having offered the services, including letting some properties for clients and collecting rent, albeit asserting that it was only for a modest number of clients (e.g. page A.15).

20. The Appellant has not disputed that they do not hold membership with any of the six approved CMP scheme providers.

21. The Appellant has stated that they only engaged in letting and/or property management work in their capacity as solicitors, being one of a range of services that they offer as a firm of solicitors (e.g. page A.16). In essence, they submit that they are not a property agent for the purposes of the duty under regulation 3 of CMPSR.

22. The CMPSR does not include an exemption for solicitors or legal professionals.

23. The applicable definition of 'property agent' is a person who engages in English letting agency work or property management work within the meanings of section 54 and 55 of the HPA (outlined above). The definitions do not state that the person needs to consider themselves to be a property agent, nor does it require that property agency work needs to be a person's primary area of business for the requirements to apply.

24. It is notable that the definition of 'letting agent' in section 54 specifically states that it means "a person who engages in letting agency work (whether or not that person engages in other work)".

25. The definitions in HPA do not include any exemptions for solicitors or legal professionals.

26. The explanatory notes for the CMPSR and HPA make no mention of such exemptions being intended either.

27. The lack of such exemptions in the CMPSR and HPA is conspicuous when compared to the duty for property agents to belong to an approved redress scheme under The Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 ("the Redress Order"), made under s83 of the Enterprise and Regulatory Reform Act 2013 (the ERR). Article 4 of the Redress Order provides that, for the purposes of s83 of the ERR, 'lettings agency work' does not include any things done by an authorised person within the meaning of s18 of the Legal Services Act 2007.

28. The explanatory memorandum to the Redress Order elaborates on this point at paragraph 7:18:

> *Finally, in the Order, Article 4(3) (b) excludes those authorised or licensed to carry out regulated legal activities under the Legal Services Act 2007. Legal professionals could be considered as carrying out lettings type work, for example when they draft tenancy agreements. They are excluded from the duty as they are already heavily regulated and complaints about their*

services can already be made to the Legal Ombudsman. It would not be appropriate to require them to belong to another redress scheme.

29. The CMPSR (2019) post-dates the Redress Order (2014) and a similar exemption for legal professionals could have been incorporated into the Regulations but was not.

30. Based on the explanatory memorandum to the Redress Order, it would appear that the legislator considered that the redress function of the Legal Ombudsman would be an equivalent protection and render an additional redress scheme membership obsolete.

31. The Appellant argues that they hold membership with the Solicitors Regulation Authority ("the SRA"), retain any client funds in a client money account supervised by the SRA, and hold a professional indemnity insurance ("PII") policy (page A.15 of the bundle). They further suggest that it would not have been the intention of Parliament to include solicitors in the scope of the CMPSR (page A.19 of the bundle).

32. The requirements for approval as a CMP scheme provider include (but are not limited to) that the provider must require their members to hold client money accounts and PII, but also stipulates that the scheme provider themselves must hold appropriate insurance which "covers any foreseeable liability which may arise in connection with the failure of scheme members to account for client money" (regulation 5 of The Client Money Protection Schemes for Property Agents (Approval and Designation of Schemes) Regulations 2018).

33. It is the understanding of the Respondent that the SRA, should they consider activities such as advertising properties to let and the collection of rent to be within their regulatory remit, does not have equivalent insurance backing to ensure the reimbursement of clients. It is considered that the risk to the Appellant's clients was therefore greater than that faced by clients of businesses who did hold membership with approved CMP scheme providers.

34. For the above reasons the Respondent considered that the legislation could only be interpreted as meaning that an SRA-regulated solicitor, such as the Appellant, who engages in letting agency or property management work within the meaning of the CMPSR and HPA and handles client money will be bound by the duty under regulation 3 of the CMPSR.

The Penalty:

35. Regulation 6(2) of the CMPSR states that the financial penalty for a breach may be of such an amount as the authority imposing it determines but must not exceed £30,000.

36. Regulation 5(3) provides that local authorities must have regard to any guidance given by the Secretary of State or the lead enforcement authority (the National Trading Standards Estate and Letting Agency Team, or "NTSELAT") about the exercise of its functions under the Regulations.

37. The Secretary of State has issued enforcement guidance, which is included in the bundle at page D.28 (exhibit GT/2). It provides some direction concerning the determination of appropriate financial penalties (section 6.2 of the guidance) and asserts an expectation that authorities will develop and publish their own policy on determining the level of penalties to impose.

38. NTSELAT have produced their own policy for determining penalty levels, which they have given other authorities the option of adopting and also covers breaches of duties relating tenant fees, publication of fees and redress scheme membership. Shropshire Council have chosen to adopt the NTSELAT policy and said policy is included in the bundle at page D.6 (exhibit GT/2).

39. The process the policy sets out for determining penalty amounts is, in brief, to:

1. Categorise the breach in terms of culpability and harm levels

2. Identify the starting point and range for the penalty on the basis of those levels

3. Apply any aggravating or mitigating factors

4. Consider general principles including fairness, proportionality, punishment and deterrence

5. Issue a Notice of Intent

6. Review the Notice in light of any representations received and reconsider the above factors

7. Decide whether to withdraw, issue or vary it as a Final Notice.

40. The Council's approach to applying the policy and statutory guidance in this case is set out in the witness statement of Grant TUNNADINE and exhibit GT/7, a Financial Penalty Policy Decision Log (page D.72 of the bundle).

41. The potential breach of regulation 3 CMPSR by the Appellant was identified by Alexandra Cosgrove on 21st April 2023.

42. The matter was reviewed by Grant Tunnadine and Allan Campbell in May 2023 and, because it appeared that the Appellant had been advised in writing in December 2022, the breach was classified as medium harm but very high culpability. In accordance with the Council's policy, the penalty starting point was identified as £17,500. A 10% uplift was added as an aggravating factor due to the Appellant's status as a solicitor, as it was expected that their knowledge of legal requirements should be above average. The determined penalty amount at that stage was therefore £19,250.

43. A Notice of Intent was issued by Alexandra Cosgrove on 26th June 2023 (exhibit AC/HPA/09 at page C.29 of the bundle).

44. Multiple representations were received from the Appellant over the course of email correspondence with the Council in July 2023.

45. Those representations were considered by Grant Tunnadine and Allan Campbell (as documented in exhibit GT/7). Significant reductions were made, including:

1. The culpability level was reduced from very high to medium, in recognition that the Appellant did not appear to have deliberately disregarded the law but should have applied reasonable care and skill to avoid committing the breach

2. A 10% reduction was added in mitigation in recognition that the Appellant cooperated with the Council in communicating their representations.

3. Another 10% reduction was made in light of the Appellant's points concerning their use of a client account, PII and SRA regulation mitigating the potential harm

4. A further 10% reduction was applied to account for the Appellant's assertion that they had only a small number of clients for whom they were collecting rent or otherwise handling client money

46. With those factors taken into account, the penalty amount was reduced by more than 50%, from £19,250 to £8400, a figure which is less than one-third of the maximum penalty amount available.

47. The decision to issue a Final Notice for a reduced amount was made by Mr Tunnadine and said notice was issued by Alexandra Cosgrove on 19th October 2023 (exhibit AC/HPA/11 at page C.41 of the bundle).

48. The Appellant argues that the penalty amount of £8400 remains disproportionate and excessive (page A.17 of the bundle). However, it is the Respondent's position that the Council's policy has been followed and all reductions applicable to the circumstances were applied. In setting the final penalty amount the authority must also remain mindful of page 14 of the statutory guidance (page D.42 of the bundle), which reads:

49. Breaching the legal requirements of mandatory client money protection is not a criminal offence therefore agents cannot be prosecuted for non-compliance. In light of this while the civil penalty should be proportionate and reflect both the severity of the breach and previous track record of the agent, it is important that it is set at a high enough level to ensure that it has a real economic impact on the agent and demonstrates the consequences of not complying with legal obligations.

50. No evidence has been supplied by the Appellant which would indicate that the financial penalty would cause the business financial hardship or lead to them going out of business.

51. Prior to issuing the Notice of Intent to the Appellant the Council sent out a general advice letter to a large number of businesses in the authority's area. That letter was sent in December 2022 as a precursor to be carrying out proactive compliance checks in 2023. A copy of the template letter and associated guidance documents are referred to as exhibit GT/3 in the bundle (page D.47).

52. The letter was sent to all identifiable businesses which it appeared might be engaging in letting agency or property management work, irrespective of whether there was any suspicion of them being in breach of any regulations at the time. The Council's records show that one of the business addresses to which the guidance was sent was 'Harfitts Property Agents, The Old Bank, 20 High Street, Wem SY4 5AA', which is understood to be the Appellant's address (albeit not their correct trading name, which should have read Harfitts Solicitors & Property Agents).

53. The letter and guidance covered several areas of legislation applicable to those engaged in letting agency or property management work, including the CMPSR 2019. The CMPSRs had been in force for over three years at that point and had been generally well publicised when they commenced, so it was expected that businesses should be broadly compliant at the point of sending. However, the Council endeavours to follow the general principles of good regulation and so the decision was made to dispense guidance to businesses by post in advance of undertaking the compliance checks which led to the Appellant's breach being identified.

54. The Appellant has asserted that they did not receive the advice letter (e.g. page A.17 of the bundle) and as such were not aware of the CMPSR requirements or that they might apply to their business.

55. Whilst the Council's records indicate that the letter was sent, the possibility that it was for any reason not received has been considered as part of the penalty determination process. Even if the Appellant was not directly advised and was genuinely unaware of the law, that would not preclude a breach of CMPSR.

56. It has been noted above that when the Appellant's representations were reviewed in July 2023 the culpability level was reduced from very high to medium. Under the Council's adopted policy 'very high' would be an intentional breach or flagrant disregard for the law, whereas medium would be a breach committed through act or omission which a person exercising reasonable care or skill would not commit (see page D.13 of the bundle). In the Respondent's consideration that reduction in culpability level will have accounted for the possibility of the advice letter not having been received; it has been accepted that the Appellant did not appreciate that the CMPSR could apply to them, but in the Respondent's view the exercise of reasonable care and skill on their part could have prevented the breach.

57. Furthermore, the Respondent is aware that the question of a Council's issuing of advice has been considered by the Tribunal in other cases, including that of Bensons Ltd and Westminster City Council (a case concerning a breach of the duty to publicise fees in accordance with the Consumer Rights Act 2015), in which Her Honour Judge Angela Morris stated that:

> *"The Council has does not have any legal obligation to advise letting agents of changes to legislation or their obligations under it; that is a public expense which the Council has chosen to bear. The fact the Council took it upon themselves to do so, ensures all letting agents within the London Borough of Westminster have little, if any, excuse for any failure to comply with their obligations. This legislation is neither new nor novel. It as been in existence for over 5 years and over 4 years at the time of these breaches. Furthermore, even if*

the Appellant's did not receive the information, as they assert, that does not abrogate them of their responsibility to ensure compliance with the legislation."

On Breaches of Human Rights Act 1998 ("the HRA")

58. The Respondent does not believe that their actions or their interpretation of the legislation (as discussed above) give rise to any incompatibilities with Convention Rights.

59. Article 6 entitles persons to a fair trial; the Council has endeavoured to be transparent in its decision making, promptly answer any queries that the Appellant has posed and supply a comprehensive bundle to all parties for the purposes of the hearing, including all known relevant documentation that would assist the Tribunal. The matter has been dealt with within the time limits stipulated in the CMPSR and without any undue delays, within the limits of our control.

60. Article 8 entitles persons to a right to respect for private and family life. The Respondent does not believe that any action has been taken in this case which would contravene that right.

The Appellants Submissions:

61. The Property and Estate Agency facilities are part of the services offered by Paul F Harfitt & Co Solicitors. They are not a separate firm or company, but services offered by the legal firm. All services are offered under the same umbrella of Paul F Harfitt & Co Solicitors and and all activities form the basis of each year's.

62. Although not considered lawfully necessary by the Appellant, the Appellants website has now been modified to exclude all reference to letting properties in view of the problems which seem to have arisen by virtue of this case and the extremely limited number of properties to let which the Appellant has ever dealt with over many years.

63. Of the three domestic properties referred to in the Respondent's Submissions, two of those properties belong to the Appellant, and would not, therefore, have been subject to the client money protection scheme in

any event. The third property being let was for an established legal client of the Appellant and had not in fact yet been let. No Client Money Protection Scheme would have been required in any event as that particular client was accustomed to collecting her own rent. In fact, at this time, and throughout the entire period, from the original Council Notice of their intention to take action, up to date, only two properties were being managed by the Appellant for which rent was being collected and paid out on a monthly basis to the Landlords. Both of these Landlords had been longstanding legal clients of the Appellant since 2014 and 2020 respectively. The rents being collected on each property were approximately £500 per calendar month each and the collected rent had been paid out to these two clients on a regular monthly basis, since inception, as an additional legal service following the original preparation by the Appellant as the clients solicitors of their Shorthold Tenancy Agreements - since one of these clients was an elderly lady and the other lived abroad. In view of the stress and difficulties caused to the Appellant arising as a result of this case, both these clients were immediately notified that the Appellant could no longer collect their rent for them. Both clients expressed considerable surprise.

64. The Respondent states in their submissions that the Appellant's office showed a significant number of properties being advertised. That is not surprising as those properties were almost all for sale, rather than to let. The only properties to let were the three mentioned in paragraph 12 above, two of which belonged to the Appellant and the third belonging to a longstanding legal client.

65. It is accepted, prima facie, that the Appellant was operating a very limited letting facility within their legal practice as a service in addition to all their other legal services, but it is not accepted that they were a letting agent as such within the meaning of the CMPSR or that there was a requirement to be a member of an Approved Scheme.

66. The Appellant submits that if they are found to be letting agents within the meaning of the CMPSR then they were not actually holding client money as such under regulation 3(1) of the CMPSR. The Appellant maintains that the only rental monies being held in their solicitor's client account belonged to the two long standing existing legal clients, referred to in paragraph 12 above, as part of the legal service provided to them by the Appellant.

67. It is accepted that the CMPSR does not specifically refer to solicitors or legal professionals, but the Appellant considers this to have been either possibly a drafting error, or was considered by those drafting the CMPSR to be unnecessary in view of the clear reference to the exclusion of legal professionals referred to under the Redress Schemes for Letting Agencies Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 ("the Redress Order").

68. The Tribunal is asked to consider whether a High Street Solicitor's practice (as the Appellant is), is under a legal obligation under CMPSR to join an approved or designated Client Money Protection Scheme, in the event that such firm offers only normal routine legal work, (with no Estate Agency department) which would also no doubt include a Probate Department within its services as well as many other services and activities requiring them to hold large sums of clients' money.

69. It is common knowledge that such Probate Departments of High Street Solicitor's practices, very often deal with administration of estates for deceased testators, in circumstances where the deceased testator also operated as a landlord of domestic properties during their lifetime. During the period of such administration, which can take many months to several years, it is absolutely normal and common practice for the probate solicitor handling the case to receive all payments due to the Estate into the solicitor's practice client account, in the usual way, until it is fully wound up and all expenses and beneficiaries can be paid out. Such payments into the estate may often include regular payments of rent by domestic tenants, due to the estate following the landlord testator's death. However, to the Appellant's certain knowledge firms of solicitors who provide such services do not normally belong to an approved or designated Client Money Protection Scheme under the CMPSR, but rely upon the protection afforded to their client account by the extremely stringent indemnity insurance requirements of the Solicitors' Regulation Authority ("SRA"), which insists that all solicitors who hold client money must be insured, by way of indemnity, with one of a limited number of indemnity insurers, approved and authorised by the SRA, in the sum of £2million as a minimum for any one transaction or matter. Notwithstanding this strict SRA requirement, if the Respondent is correct in their submissions, such solicitors acting in probate matters, and collecting such domestic rents on behalf of executors, would also fit within the definitions suggested by the Respondent and requirements of the CMPSR. This is surely not a consequence of this legislation which parliament would ever have intended and would, in effect, mean that all those solicitors handling probate work involving the

collection of rent for deceased testators were breaking the law by not belonging to an approved CMPSR scheme.

70. The definition of a property agent under Section 133 (4) of the HPA would certainly also include those solicitors engaged only in probate work acting in connection with the administration of estates, involving deceased domestic landlords where rents continued to be collected by such solicitors during the period of administration of the estate.

71. The Appellant submits that the CMPSR and the HPA either did not contain the required exemption as a result either of a mistake in the drafting, or alternatively the drafters view that any reference to an exemption in favour of "anything done by an authorised person within the meaning of Section 18 of the Legal Services Act 2007" needed to be mentioned at all, since such persons were already exempted from the need to comply with these regulations as a result of the Redress Order referred to above.

72. It is submitted that this paragraph of the Redress Order confirms that it is not appropriate for legal professionals to belong to another redress scheme.

73. The applicant considers it pertinent that the only two matters involving the actual collection of rents referred to in paragraph 12 above, and which were actually being operated by the Appellant at the time Notice was served by the Respondent, related to two legal clients of the Appellant, one of whom was an elderly lady, who had preferred the Appellant to collect her rents on her behalf since they prepared the original Shorthold Tenancy in 2014, and the other a client who happened to live abroad, and had again found it easier to request the Appellant to collect the rents, since the Appellant had as his solicitor also prepared his original Shorthold Tenancy Agreement a few years earlier. It is also pertinent to note that, whatever information was provided in the Appellant's website, the fact remains that the Appellant was not, as a matter of fact, holding any other client rent other than for these two legal clients referred to above, and would not therefore have been required to comply with the CMPSR rules relating to the approved Client Money Protection Scheme, either from the date of its inception, or from the date of the Respondents Notice, simply because the Appellant did not, in fact, hold any rental monies (other than for the two

matters referred to above) on behalf of those who specifically instructed the Appellant to let out their property.

74. Property letting has always been a very low-key service indeed and a very small part of the Appellant's general legal practice as solicitors. In any event over the years, most client landlords have managed their own properties and collected their rents in practice. The Appellant's practice was founded in 1982 and whilst it is accepted that the Appellant's website did offer property letting services (until such reference was deleted), it is submitted that very few new clients of any description for any service the appellant offers, have ever approached the Appellant as a result of seeing the website, 99% of new clients have always approached the Appellant by way of recommendation. It is considered by the Appellant that this was either an omission or was not considered necessary. The Appellant contends that the Redress Order would apply to legal professionals.

75. The Appellant states that the Solicitors' regulation requirements for indemnity insurance are very strict indeed and would certainly cover any protection in respect of domestic property rental payments being mishandled or otherwise misappropriated. It is a fact that many high street solicitors practices hold many millions of pounds in their client accounts, under the solicitors regulatory requirements, at any given time, and it is beyond comprehension that there would be any greater risk to the only two rental collection clients for whom the Appellant actually collected rent, than faced by such clients of businesses who did hold membership with an approved CMP scheme providers. It is worth repeating that the Appellant has had no new clients where the rental payments have been collected since the CMPSR came into force, nor since the original Notice in relation to this matter was served on the Appellant by the Respondent. If the Respondent is correct in their definitions, then this would include all solicitors engaged in Probate administration on behalf of executors for domestic properties. Such solicitors and legal personnel undoubtedly do not belong to any such scheme under the CMPSR as a matter of course.

On the Penalty:

76. Notwithstanding the submissions made by the Appellant. if the facts and law stated by the Respondent are accepted by the Tribunal, the Appellant considers and submits that the proposed penalty of £8,400 is any event wholly disproportionate to the very small sums held by the Appellant on behalf of the two rental properties referred to above, which sums were the only client account monies held in this way since the CMPSR scheme came into force, and during the whole course of this case. Indeed, if the Tribunal should find in the circumstances

outlined by the Appellant there should be no need for a membership of CMPSR scheme, then there should of course be no penalty in any event.

77. As a result of the enormous stress and pressure caused to the Appellant as a result of this case, all reference to advertising a letting service was removed from the Appellant's website immediately after the Notice was served, and appeal initiated as the miniscule amount of work involved did not justify the huge amount of aggravation which has been caused to the Appellant as a result of this matter. No letting service has been offered or provided by the Appellant to the general public since that time.

78. The Appellant is a small firm of solicitors consisting of 1 solicitor (Paul Harfitt), a part time bookkeeper and a part time receptionist. We presently also have two other full-time fee-earning staff, both of whom will be leaving us on 13th September. We offer general Legal and Property selling services. We have a modest turnover and income and a fine of £8,400 would be a very severe blow to our resources. At the time of making these submissions, it is unclear what the future holds for this firm.

79. It is accepted that the Council sent out a general advice letter to a large number of businesses in the authority's area in December 2022. However, no such letter was ever received by the Appellant.

80. It is accepted that the Respondent sent a letter to all identifiable businesses which it appeared might be engaging in letting agency or property management work, and that they may well have sent such a letter to the Appellant, but it is denied that the Appellant ever received such a letter. It would seem highly likely that if, as the Respondent submits, the letter was actually sent, ii may well have been lost in the Christmas post.

81. The Appellant was never in any doubt at the time that the CMPSR requirements for client money protection did not apply to them, as they already belonged to such a scheme as solicitors under the usual Solicitors Regulatory Authority requirements for indemnity insurance to protect all clients' interests and furthermore the Redress Order applied.

82. In view of the facts involved here the penalty proposed by the Respondent is considered to be wholly disproportionate.

83. The Appellant confirms that there was certainly no intentional breach nor disregard for the law, and that any clients involved in rental matters were wholly and fully protected by the indemnity insurance provided under the Solicitors Regulatory Authority requirements and the Legal Ombudsman Service. It was never considered by the Appellant that there was any need to join an additional client protection scheme, in view of the provisions referred to in the Redress Order and the Appellant has always considered, and still does, that the rules under the CMPSR scheme for client money protection do not apply in the circumstances of this case. However, if the Respondent is shown to be correct in their views as to membership of a CMPSR scheme, then it is submitted that that the Appellant's culpability is of a very low level indeed in the circumstances outlined.

Conclusions:

84. The Tribunal notes that the Appellant properly accepts much by way of the Respondents submissions and where he does not it is by way of query rather than any evidence-based assertions or legal authorities.

85. I accept that there is no exemption in the legislation in relation to solicitors. The Respondent has acknowledged that they currently manage two properties, as well as carrying out sporadic letting agency work and this requires the Appellants to hold membership with an approved CMP scheme administrator. The Appellant are members of the Solicitors Regulation Authority and therefore have general client money accounts which are regulated in respect of legal services work and that while this would give general protection to clients however, as a property agent, they are also required to hold approved CMP cover in respect of the letting agency and property management work.

86. As a solicitor, the Appellant has a greater understanding of the legal obligations that apply as well as having some expertise in reading and interpreting legislation. The Appellant is aware that there are wayward

solicitors and that is why protection for the consumer is required and provided by the legislation engaged herein.

87. The legislation doesn't solely relate to property management, but it also applies to all letting agency work whereas agent or solicitor acting for and holding money on behalf of the landlord or tenant, he offers a tenant finding service and handles a holding deposit or security deposit, then these would be classed as client money, until such time as the security deposit is either passed to the landlord or placed in one of the three deposit schemes.

88. There is clear responsibility here and non-compliance has been proven by the Respondent. Furthermore, there has been a review where the Respondents have properly and fairly considered the representations made by the Appellant. I find that the Respondents have acted reasonably in mitigating the Penalty in the manner that they have done so. I have not been provided with any or sufficient evidence that the imposition of the revised penalty will cause undue hardship, and I am not persuaded that the revised penalty is unfair or unreasonable in all circumstances.

89. In light of the above I also find that there has not been any infringement of the Appellants Article 6 or Article 8 rights under the HRA 200.

90. Accordingly, I must dismiss this appeal.

Signed: Brian Kennedy KC **Date: 24 January 2025.**