FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/00FY/HMF/2024/0001**
Property	**:**	**26 Cottesmore Road, Nottingham NG7 1QE**
Applicant	**:**	**Purple Frog Asset Management Ltd**
Representative	**:**	**Anthony Gold Solicitors LLP**
Respondent	**:**	**Bristol City Council (Lead Enforcement Authority)**
Representative	**:**	**National Trading Standards Estate and Letting Agency Team**
Type of Application	**:**	**Appeal against a financial penalty –and Appeal against request to repay a prohibited payment, under paragraph 6 of Schedule 3 of the Tenant Fees Act 2019**
Tribunal Members	**:**	**Judge M K Gandham** **Mr A Lavender CIEH, Dip Law, Dip Surv**
Date of Hearing	**:**	**22 July 2024**
Date of Decision	**:**	**26 September 2024**

DECISION

Decision

1. The Tribunal quashes the Final Notice dated 8 March 2024, as it finds that Purple Frog Asset Management Limited did not receive a prohibited payment. As such, Purple Frog Asset Management Limited is also not required to repay to Miss Sadia Alam the sum of £125.00.

Reasons for Decision

Introduction

2. By an application dated 19 March 2024, Purple Frog Asset Management Limited ('the Applicant') appealed, under paragraph 6(1) of Schedule 3 of the Tenant Fees Act 2019 ('the Act'), against a financial penalty imposed upon them by Bristol City Council ('the Respondent').

3. The Applicant is a letting agent. The Respondent is the lead enforcement authority, who has power, under the Act, to levy a financial penalty upon a letting agent that contravenes certain of its provisions.

4. The Respondent's imposition of the financial penalty was made pursuant to section 8 of the Act. This permits a penalty to be imposed where an enforcement authority (or in this case a lead enforcement authority) is satisfied beyond reasonable doubt that there has been a contravention of section 1 or 2 or Schedule 2 of the Act.

5. In this instance, the financial penalty was for an amount of £1,980.00 and was imposed by way of a final notice dated 8 March 2024 ('the Final Notice') for an alleged breach of section 2(1) of the Act, which prohibits a letting agent from requiring a "*prohibited payment*" to be made.

6. The Final Notice also demanded the sum of £125, the prohibited payment, be repaid to Miss Sadia Alam, a former tenant of the property known as 26 Cottesmore Road, Nottingham NG7 1QE ('the Property') in respect of a novation agreement dated 27 June 2023 ('the Novation Agreement').

7. Directions were issued on 21 March 2024 and, in compliance with those directions, the Respondent submitted a bundle on 12 April 2024 and the Applicant submitted a bundle on 2 May 2024.

8. The Tribunal did not carry out an inspection of the Property and a hearing was held remotely, via the HMCTS Video Hearing Service (VHS), on 22 July 2024.

The Law

9. The Act is one of a number of pieces of legislation enacted to enhance tenants' rights and places a prohibition on landlords and letting agents from charging certain payments associated with a tenancy.

10. Much of the structure of the Act is built on the concepts of "*prohibited payments*" and "*permitted payments*". Section 3 of the Act defines a payment as a prohibited one "*unless it is a permitted payment by virtue of Schedule 1*". Payments associated with a tenancy are, therefore, prohibited unless an exception specifically permits them.

11. Schedule 1 contains a list of permitted payments and paragraph 6 of Schedule 1 deals with payment on variation, assignment or novation of a tenancy. It states:

> *"Payment on variation, assignment or novation of a tenancy*
>
> *6 (1) A payment is a permitted payment if it is a payment—*
> *(a) to a landlord in consideration of the variation, assignment or novation of a tenancy at the tenant's request, or*
> *(b) to a letting agent in consideration of arranging the variation, assignment or novation of a tenancy at the tenant's request.*
>
> *(2) But if the amount of the payment exceeds the greater of—*
> *(a) £50, or*
> *(b) the reasonable costs of the person to whom the payment is to be made in respect of the variation, assignment or novation of the tenancy, the amount of the excess is a prohibited payment."*

12. Where an enforcement authority is "*satisfied beyond reasonable doubt*" that there has been a contravention of section 1 or 2 or Schedule 2 of the Act, as previously stated, a financial penalty can be imposed pursuant to section 8 of the Act. By section 10 of the Act, a direction may also be given by the enforcement authority to require the repayment of any prohibited payment to a third party.

13. Section 6(4) of the Act confirms that:

> "*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 the exercise of its functions under this Act.*"

14. To lawfully impose a financial penalty, the procedure set out in Schedule 3 of the Act must be followed. Broadly, this requires the service of a notice of intent, an opportunity for the person receiving the notice of intent to make representations, a consideration of the representations by the enforcement authority, and then, should they decide to issue a penalty, the issue of a final notice.

15. Under paragraph 6(1) of Schedule 3 of the Act:

> *"(1) A person 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."*

And paragraph 6(4) confirms that:

"(4) An appeal under this paragraph—
(a) is to be a re-hearing of the authority's decision, but
(b) may be determined having regard to matters of which the authority was unaware."

16. As such, the appeal is a re-hearing of the authority's decision and the First-tier Tribunal (FTT) may consider matters that the Respondent was unaware of the time of reaching its decision, although any such matters must have been in existence at the time of its decision to impose the financial penalty (*London Borough of Waltham Forest -v- Nasim Hussain* [2023] EWCA Civ 733).

17. Under paragraph 6(5) the FTT may quash, confirm or vary the final notice.

18. Accordingly, when deciding whether to quash, confirm or vary the final notice imposing the financial penalty and requirement to repay, the issues for the Tribunal to consider will, or may, include:
    - whether the Tribunal is satisfied that the Applicant's conduct amounts to a breach of section 2 of the Act;
    - whether a financial penalty should have been imposed;
    - whether the enforcement authority has complied with all the necessary requirements of Schedule 3 of the Act and procedures relating to the imposition of the financial penalty; and/or
    - whether the financial penalty is set at an appropriate level, having regard to any relevant factors, for example:
        - the severity of the breach
        - the degree of culpability
        - the deterrent effect of the penalty
        - any history of offending or non-compliance
        - any harm caused to the tenant
        - aggravating and mitigating factors
        - fairness and proportionality.

19. The FTT may also have regard to any official guidance published from time to time, including the Government's consumer guidance on the Act, Statutory Guidance for Enforcement Authorities, the Authority's Private Housing Enforcement Policy, the Authority's Policy on deciding on a financial penalty amount, but the Tribunal is not bound by such guidance when making its decision by the Act.

Hearing

20. Mr Patrick Garratt, the managing director of the Applicant company attended the hearing, and the Applicant was represented by Mr Robin Stewart from Anthony Gold Solicitors (the Applicant's Representative). Miss Sabrina Courts (an Operations Director for the Applicant) and Miss Rebecca Price (an Operations Administrator for the Applicant) were also in attendance.

21. The Respondent was represented by Mrs Kate Burnham-Davies, a solicitor with Bristol City Council. Miss Emily Taylor (an Investigator with the National Trading Standards Estate and Letting Agency Team) and Mrs Emma Cooke (a Policy and

Information Manager with the National Trading Standards Estate and Letting Agency Team) also attended on behalf of the Respondent.

Background

22. The background of the case did not appear to be in dispute. On 13 March 2023, Miss Alam entered into an assured shorthold tenancy agreement with the Applicant in respect of the Property. The start date of the tenancy was 1 August 2023, with the tenancy ending on 31 July 2024. Miss Alam was sharing the Property with five other tenants, and she had paid a security deposit of £400.00 for her room. Her monthly rental payments were approximately £586.00 per month.

23. Prior to the tenancy starting, Miss Alam decided that she no longer wished to move into the Property. She found an alternative tenant and contacted the Applicant regarding a novation of the tenancy. The Novation Agreement was signed by all relevant tenants by 1 July 2023. On 31 July 2023, Miss Alam received an automated credit from the Applicant of £225.00. A deduction of £175.00 had been made from her original deposit for a novation fee.

24. Miss Alam made a complaint to Nottingham City Council in respect of the fee charged, believing the same to be a prohibited fee. The Respondent, following an investigation, found that a prohibited fee exceeding £50.00 was paid by Miss Alam in respect of the novation and that the total amount of the prohibited payment was £125.00, being the difference between the £175.00 which was charged and the £50.00 which was a permitted payment under the Act.

25. A Notice of Intent, dated 30 November 2023, was served on the Applicant. Following representations, the Final Notice was served on the Applicant.

26. As there were no issues raised regarding procedural errors in the issuing of the notices, the only questions for the Tribunal were:

    (i) whether a prohibited payment had been taken from Miss Alam; and
    (ii) if a prohibited payment had been taken, should the Respondent have imposed a financial penalty in this matter and was the amount of the penalty imposed reasonable.

The Submissions

Applicant's Submissions

27. The Applicant's bundle included a statement of reasons for the appeal, witness statements from Mr Garratt, Miss Courts and Miss Price, a copy of representations made to the Respondent on 10 January 2024, a copy of extracts from the Applicant's website, together with information on fees charged by other agents. The bundle also included a printout from the Bank of England's inflation calculator detailing that, based on CPI inflation data, a sum of £50.00 in 2019 would, in March 2024, have cost £61.69.

28. Mr Stewart, on behalf of the Applicant, submitted that there was nothing in the legislation to support that the £50.00 referred to in paragraph 6(2)(a) of Schedule 1 to the Act was a statutory limit on costs of a novation and that the appeal raised a question of statutory interpretation of the term "*reasonable costs*" at paragraph 6(2)(b).

29. Mr Stewart suggested that the Respondent's approach to the interpretation of paragraph 6 was that "*something extra or extraordinary*" would be required to justify reasonable costs of a novation exceeding £50.00 and had cited statutory guidance, non-statutory guidance and decisions of the FTT to support that approach.

30. Although Mr Stewart accepted that it was the Respondent's duty to have regard to statutory guidance, he contended that this could not alter the clear meaning of the legislation and did not usurp the judiciary's function to interpret that legislation. He submitted that the Act permitted a landlord or letting agent to charge whichever was the higher of an amount of either £50.00 or its reasonable costs in respect of a variation, assignment or novation of a tenancy.

31. Mr Stewart noted that the permitted payments dealt with at paragraph 6 covered a range of request by the tenants, some of which might be simple, such as the variation of the term of a single clause in the agreement, to something much more involved. He suggested that there was no reason to consider that Parliament intended that the fee for all of these matters should be the same. He also pointed to the fact that there was no mechanism in the legislation by which the sum of £50.00 referred to in paragraph 6(2)(a) could increase, even in line with inflation.

32. Mr Stewart submitted that the correct approach when considering paragraph 6 should be to look at whether the sum charged actually exceeded the reasonable costs of the landlord or agent. In deciding this, Mr Stewart contended that the Respondent should have taken into account the fact that even a minor or inadvertent breach of section 1 or 2 could expose the landlord or agent to a financial penalty and, potentially, prosecution for an offence under section 12 of the Act. As such, he stated that the Respondent should have been satisfied "*beyond reasonable doubt*" that the £175.00 payment in this case was a prohibited payment.

33. Mr Stewart stated that, as it appeared that the Respondent had not properly considered the amount of work carried out in this case, but simply based their arguments on an example given in the 'Tenants Fees Act 2019: Guidance for Landlords and Agents' booklet ('the Guidance for Landlords') – which referred to it being unlikely that a fee of more than £50.00 could be charged if a tenant had found a suitable replacement tenant – the Respondent had subjectively failed to meet the test required to show that the £175.00 charged was a prohibited payment. As such, he submitted that the Final Notice should be quashed.

34. Should the Tribunal find that a prohibited payment had been taken, Mr Stewart submitted that the Tribunal ought, firstly, to consider whether it was proportional and just to impose a financial penalty at all and, if assessing the amount of any penalty, have significant regard to the fact that the payment had been taken in good

faith by the Applicant and with a reasonable belief that it was a permitted under the Act.

35. Mr Garratt confirmed that he was the director of the applicant company but that he had no personal involvement with this particular matter. He confirmed that the Applicant's business was focused on student accommodation and that they dealt with a number of novations every year.

36. Mr Garratt stated that changes to tenancy agreements involved a significant amount of administrative work and that it was unlikely that a landlord would cover the cost of the same should a change be requested by a tenant. He stated that, when a landlord instructed them to carry out a service outside of their usual services, this would be charged at an hourly rate. In his witness statement he confirmed the hourly charges which applied were as follows:

Director	£395.00
Head of Department	£125.00
Branch Manager	£70.00
Assistant Branch Manager	£60.00
Senior Property Manager	£60.00
Senior Tenancy Administrator	£60.00
Property Manager	£45.00
Tenancy Administrator	£45.00
Accounts Assistant	£45.00
Maintenance Assistant	£45.00

37. Mr Garratt stated that, on the introduction of the Act, the company took time to consider what fees could be charged to a tenant and, if fees were to be charged, what those fees should be in order to comply with the legislation. He submitted that the novation fee was not a blanket fee, but was worked out based on the amount of work normally required to deal with the process.

38. He stated that, having carried out a cost evaluation, the company considered that the work involved, even in a straightforward novation, would always cost more than £125.00. As such, they decided to use this figure as a base fee, knowing that it would always comply with the legislation as it would be less than their actual costs. As the amount of work involved would invariably be greater when dealing with more tenants, the company thought it would be fair to make the fee variable by charging an extra £10.00 for each additional tenant.

39. Mr Garratt stated that if a fee of only £50.00 could be charged for a novation, the company would be carrying out this work at a significant loss due to the number of administrative steps involved. He stated, in that instance, it would make no commercial sense to agree to a tenant's request, which would leave tenants in a much worse situation, as they would remain contractually liable to pay the rent for the term detailed in their tenancy agreement.

40. Mr Garratt confirmed that details of their fees were set out on their website, as well as in the tenancy agreements, to ensure that there was no ambiguity, and that tenants and members of the public would be clear as to how their fees were charged.

41. Miss Courts confirmed that her only involvement in Miss Alam's novation was in processing payments and refunds to Miss Alam towards the end of the process. She confirmed that she did, at the request of Mr Garratt, collate information to produce a schedule of works ('the Schedule') detailing the timeline of actions that had been taken in this matter, by looking at information logged on their database.

42. As time spent was not generally logged when dealing with such matters, she worked on an average of five minutes per email - not wanting to overestimate the time taken to deal with them – and allocating other tasks the amount of time it would generally take to complete them.

43. The Schedule [which was attached to her written statement] concluded an estimate of time taken to deal with Miss Alam's novation as follows:

Position	Time	Hourly charge out rate	Cost
Tenancy Administrator	04:24	£45	£198.00
Senior Tenancy Administrator	00:10	£60	£10.00
Operations Director	00:30	£195	£97.50
Company Secretary/Director	00:10	£195	£32.50
Managing Director	00:10	£395	£65.83
TOTAL	05:24		£403.83

44. In relation to any items listed on the Schedule which may not have been necessary in Miss Alam's case, such as checking for rent arrears as the tenancy had not yet started, Miss Courts confirmed that a detailed tick box process was carried out in relation to all novations to ensure that no steps were missed.

45. Miss Courts confirmed that the Applicant would deal with approximately 500 tenancies a year and around 5 to 10 novation requests a month. Miss Courts also confirmed that Miss Alam had, in the middle of December, completed a new novation agreement, to become a tenant of the Property again. She confirmed that a fee of only £50.00 had been charged to the outgoing tenant due to the current proceedings.

46. Miss Price confirmed that she had personally been involved in dealing with Miss Alam's novation request. She stated that, although Miss Alam's novation was a fairly quick in comparison to other novations she had dealt with, as there had been minimal chasing of tenants, the Schedule was a fair and accurate assessment of the amount of time that had been taken.

47. Miss Price stated that, though they dealt with the student market, not all of the tenancy agreements were the same, as there might be differing clauses in respect of payment for utilities, security and deposits. As such, she confirmed that it was important to check each tenancy agreement carefully when drafting a novation agreement to ensure that these details were accurately reflected in the same.

Respondent's Submissions

48. The Respondent's bundle included a statement of case signed by Mrs Burnham-Davies, a witness statement from Miss Taylor (with a number of exhibits, including extracts of correspondence between Miss Alam and the Applicant), a witness statement from Mrs Cooke, a copy of Miss Alam's tenancy agreement, the Novation Agreement, Bristol City Council's Enforcement Policy relating to the Act, a copy of the Notice of Intent and Final Notice (together with the financial penalty calculations for the same) and five previous decisions by the FTT in which prohibited payments had been ordered to be repaid under the Act.

49. In the statement of case, Mrs Burnham-Davies confirmed that, after the deduction of the £175.00 from her deposit, Miss Alam had requested a comprehensive explanation from the Applicant as to why such a fee had exceeded £50.00. She stated that Miss Alam was simply informed that the £175.00 related to administration costs required to process the change and that, although the Applicant had listed several tasks that had been completed during the process (including preparing and sending the novation agreement, checking documents and making changes to the deposit protection scheme), no corroborating evidence had been supplied to justify the higher fee.

50. Following her complaint being forwarded to the Respondent, Mrs Burham-Davies stated that Miss Taylor began an investigation which found that the excess of £125.00 was a prohibited payment, as the Applicant had failed to provide evidence of reasonable costs to justify the same.

51. Mrs Burham-Davies referred to the Act, the 'Statutory Guidance for Enforcement Authorities' and the Guidance for Landlords, copies of which were exhibited to Miss Taylor's statement. She also referred to relevant questions posed and answered within the Guidance for Landlords relating to novation agreements, including, whether a tenant could be charged for a change of sharer, the answer to which referred to providing evidence of costs incurred above £50 "*in the form of receipts or invoices*"; and whether if the tenant had found a suitable replacement tenant, a charge of more than £50 could be made for the change in sharer fee, to which the answer was:

> "*It is unlikely that you could justify charging a fee above £50 in this circumstance. The costs involved in referencing the replacement tenant, re-issuing the tenancy agreement and protecting the tenancy deposit should be small. You could also ask the tenant to obtain such a reference voluntarily (although you cannot require a tenant to do this as a condition of granting them a tenancy) to further reduce the costs incurred. There are several third-party organisations which will carry out professional referencing checks at a small cost - for example, a full tenant reference check can cost up to £30.*
>
> *You should be able to demonstrate to a tenant that any fee charged above £50 is reasonable and provide evidence of your costs. Any costs that are not reasonable are a prohibited payment.*"

52. Mrs Burham-Davies stated that the Respondent considered novation of a tenancy to be everyday work by letting agents and that the provision in the Act for reasonable costs related to if there was "*something extra or extraordinary involved in a particular case"* but that *"there was nothing out of the ordinary in the present case*."

53. Mrs Burham-Davies stated that the Respondent did not accept that the length of time or the hourly charging rates detailed in the Schedule were reasonable for this type of work and that no evidence had been provided to justify the breakdown of the time spent. As such, she submitted that the Respondent took the view that, unless the Applicant was able to demonstrate that any fee over £50.00 was reasonable and provide evidence of costs incurred in the form receipts or invoices for any amount above £50.00, the excess would be a prohibited payment.

54. Mrs Burham-Davies reiterated that the statutory guidance *must* be taken into account by the Respondent when enforcing the Act and that the guidance clearly prohibited a blanket policy of charging prohibited payments, which could never fully take into account the actual, and reasonable, costs involved in the particular circumstances of an individual case.

55. In relation to the FTT decisions included within the bundle, although Mrs Burnham-Davies accepted that such decisions were not binding on the Tribunal, she referred in particular to the FTT decision in LON/00AM/HTC/2021/0010, where £50.00 was considered a maximum charge unless anything "*out of the ordinary*" could be established [paragraph 11]. She also referred to the decision in CAM/38UC/HTC/2020/0004, where the FTT considered a reasonable time taken in relation to novation was an hour, as opposed to the 5 hours 24 minutes work referred to by the Applicant.

56. In relation to the amount of the penalty, Mrs Burham-Davies stated that the Notice of Intent confirmed that the proposed financial penalty for the offence had originally been £3,575.00. Following representations, the Culpability Assessment was reduced from 'high' to 'medium' as, although the Applicant had reviewed their charges and policies in light of the Act, the reduced fee was still not in line with the Act or guidance documentation. The Harm Assessment was also reduced from 'high' to 'medium', as the fee was set out as an express term at the start of the tenancy and was modest in comparison to what the Applicant may have charged prior to the Act.

57. The uplift for aggravating factors was also reduced, taking into account the Applicant had considered their charging structure and reduced their fees in light of the Act, and noting that the Applicant had co-operated with the tenant by accepting her request for novation. Consequently, the final penalty had been substantially reduced to £1,980.00.

58. At the hearing, it was clear that Miss Taylor and Mrs Price had not carried out a detailed, line by line, assessment of the Schedule but had simply considered that all of the items referred to on the same should have taken less time than stated. Miss Taylor referred to much of the work listed as being routine administrative tasks for which charges should not have been made, and that the drafting of the novation

agreement should have been a simple "*copy and paste*" task taking no more than 15 minutes.

59. Miss Taylor stated that the matter before the Tribunal was directly comparable with the example given in the Guidance for Landlords and that, as Miss Alam had found a suitable replacement tenant, the charge should have been £50.00.

60. Both Miss Taylor and Mrs Cooke confirmed that they were not letting agents and Mrs Cooke stated, when questioned by Mr Stewart, that she "*can't be certain that £175.00 was not a reasonable fee*", but that the correspondence provided by Miss Alam suggested that the novation had been a straightforward matter.

61. Mrs Cooke confirmed that, following the investigation into the prohibited fee, she made the decision to proceed to issue the Notice of Intention and that, after she had considered and reviewed the representations made by the Applicant, had approved the Final Notice with the reduced penalty figure.

62. In relation to the final penalty, Mrs Cooke referred to Miss Alam as being a vulnerable person, as she was a student with little income. She stated that the prohibited payment was a breach that a person exercising reasonable care would not have committed and that the Harm Assessment was detailed as 'medium' as she believed that Miss Alam had been adversely affected by the interactions with the Applicant. She stated that Miss Alam had constantly chased both the Applicant and the Respondent, which indicated that she was suffering with stress, although she accepted that she had not been provided with any medical evidence from Miss Alam to confirm the same.

63. At the hearing, both Mrs Cooke and Miss Taylor confirmed that they had been unaware of the fact that Miss Alam had made contact with the Applicant in December 2023 and completed a further novation agreement to become a tenant of the Property again.

The Tribunal's Deliberations

64. In reaching its determination the Tribunal considered the relevant law, in addition to all of the evidence submitted, which is briefly summarised above.

Was a prohibited payment made?

65. The Tribunal, firstly, considered whether any part of the payment requested by the Applicant was a prohibited payment under paragraph 6(2) of Schedule 1 to the Act.

66. The Tribunal noted that the wording quite clearly refers to the amount of payment exceeding the "*greater of*" £50.00, or the reasonable costs of the person to whom the payment is to be made. As such, the wording does not limit the amount of the costs for a variation, assignment or novation to £50.00 but, instead, adds a test of reasonableness should such costs exceed £50.00.

67. The Tribunal accepts that section 6(4) of the Act confirms that an enforcement authority "*must have regard*" to any guidance issued by the Secretary of State or the

lead enforcement authority, however, the guidance referred to relates to "*the exercise of its functions under this Act*." Accordingly, it is the 'Statutory Guidance for Enforcement Authorities' which is the relevant guidance which must be taken into account.

68. In relation to novations, this guidance, at clause 4.1(e), states the following:

> "***payments on assignment, novation or variation of a tenancy when requested by the tenant capped at £50, or reasonable costs incurred if higher;***
>
> *If the tenant requests a change to their tenancy agreement, for example, a change of sharer, a landlord or agent is entitled to charge up to £50 for the administration involved in amending the tenancy agreement or the amount of their reasonable costs, if that is higher. Any charge above that amount is a prohibited payment. The general expectation is that this charge should not exceed £50. In any case, a landlord or agent should be able to demonstrate to the tenant that any fee charged above £50 is reasonable and provide evidence of their costs. Evidence could be provided through invoices or receipts."*

69. Again, although the clause states that "*the general expectation*" is that a charge should not exceed £50.00, the wording does not suggest that it must be something "*extra or extraordinary*" which would justify the higher figure. In addition, it only states that evidence "*could*" be provided through invoices or receipts, rather than limiting any evidence to these items.

70. In relation to the third example given in the Guidance for Landlords (which is not binding on the enforcement authority) in relation to the '*Changes to a Tenancy*' section, the Tribunal notes that the example refers to costs involved in referencing the replacement tenant, re-issuing the tenancy agreement and protecting the tenancy deposit as being "*small*". It is unclear in the example given how many additional tenants there might be. It goes on to state that, if a higher fee is charged, the person charging such fee should be able to "*demonstrate to a tenant that any fee charged above £50 is reasonable and provide evidence of … costs*".

71. In this matter, although the Tribunal noted that the Applicant did not provide a detailed cost schedule to Miss Alam, it did provide the Schedule submitted to the Tribunal to the Respondent with its representations following the issuing of the Notice of Intent. As such, the Respondent was in receipt of this information prior to issuing the Final Notice.

72. It was quite clear from the hearing, that neither Miss Taylor nor Mrs Cooke had carried out a detailed assessment of the costs detailed in the Schedule. From the evidence given, it appeared that Miss Taylor considered that the novation in this case was directly comparable to the example given in the Guidance for Landlords and that no fee in excess of £50.00 was justified.

73. The Respondent had provided several FTT decisions in the bundle, and although the Tribunal is not bound by the same, it did note that in CAM/38UC/HTC/2020/0004, the FTT accepted the agents hourly rate as £60.00 per hour and allowed a permitted

payment of £100.00, despite the respondent's evidence being mainly "*assertion*" and in CHI/00ML/HTC/2022/0002, costs to the amount of £363.00 were considered reasonable when allowing a tenant to break his tenancy agreement early, having found a replacement tenant.

74. The appeal to the Tribunal, under paragraph 6(4), is a rehearing of the authority's decision, as such the Tribunal does not accept that a failure on the part of the Respondent to properly consider the reasonableness of the Schedule should result in the Final Notice having to be quashed. Instead, the Tribunal considered the items detailed on the Schedule itself, and whether they provided sufficient evidence that the Applicant's reasonable costs amounted to £175.00.

75. Although the Tribunal noted that the Applicant did not carry out a contemporaneous log of the time taken to carry out the work in this matter, it accepted that the Schedule did detail the steps that had taken place. Neither Miss Taylor nor Mrs Cooke had disputed that the items in the Schedule were carried out - their queries related to whether all of the items had been necessary and the amount of time detailed to complete them.

76. The Tribunal found that it was perfectly reasonable for the Applicant's employees to carry out a tick box exercise to ensure that no matter was overlooked, taking into account that a novation is a legally binding document and that agents are entrusted with dealing with monies belonging to third parties.

77. With regard to the time taken, although the Tribunal accepted that many of the steps were simple administration tasks, it found that such tasks would still have taken time for which the Applicants were entitled to charge their reasonable costs, the request for a novation being a request from a tenant which a landlord does not have to accept and a service which, without payment, a letting agent does not need to provide. The Tribunal also noted that, in this matter, there were five additional tenants who were named on the tenancy agreement, all of whom had to be informed of, and sign, the novation agreement, and that the Applicant had to carry out checks regarding the incoming tenant's status and guarantor's information, as well as dealing with the deposits.

78. Having considered the Schedule and the 51 steps taken (2 items had not be charged for as they related to website submissions), the Tribunal accepted that it would reasonably have taken at least 15 minutes to check the tenancy agreement and draft the novation agreement, with an average of 5 minutes each for the other items. As such, even if all items had been completed by a Tenancy Administrator at an hourly charge out rate of £45.00 per hour, the cost would have been nearly £200.00. (For the avoidance of doubt, the Tribunal accepted that some steps, such as signing off the Novation Agreement and dealing with funds would have required more senior input, so the reasonable costs would have been higher).

79. Accordingly, the Tribunal found that the fee of £175.00 did not exceed the reasonable costs of the Applicant in this matter, so a prohibited payment had not been made.

80. The Applicant should note that the Tribunal's decision was based on the facts of this particular case and the work as evidenced in the Schedule and that, by charging a base fee of over £50.00, it will be incumbent on the Applicant to show, in each case, that a sum charged does not exceed the Respondent's reasonable costs.

The Financial Penalty

81. As the Tribunal has found that a prohibited payment was not made, it finds that a breach of section 2 of the Act has not occurred and quashes the Final Notice.

82. Although the Final Notice has been quashed, had the Tribunal found that a prohibited payment had been made and that a financial penalty should have been imposed, the Tribunal would have only assessed the Applicant as having a 'low' Culpability Assessment and a 'low' Harm Assessment. Based on the evidence provided, the Tribunal accepted that the Applicant had made efforts to set a base fee at a level which would have been less than the costs it incurred, so it could not be said that the company had not used "*reasonable care*". In addition, the Applicant had not misled the public or Miss Alam, having clearly detailed the costs of a novation in her tenancy agreement as well as on their website; and there was little evidence of any adverse effect on Miss Alam, her having reverted to the Applicant to carry out a further novation in respect of the Property within a few months after making her complaint.

Appeal Provisions

83. If either party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

M K GANDHAM
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Judge M K Gandham