First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2016/0013

Held on the papers

Before

JUDGE CLAIRE TAYLOR

Between

HYDE PARK PROPERTIES (LEEDS) LIMITED

Appellant

and

LEEDS CITY COUNCIL

Respondent

Decision

This appeal is dismissed.

Legislation

1. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 (the 'Act') provides:

   '(1) The Secretary of State may by order require persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work which is either—
   (a) a redress scheme approved by the Secretary of State, or
   (b) a government administered redress scheme.'

2. Section 83(2) provides:

   '(2) A 'redress scheme' is a scheme which provides for complaints against members of the scheme to be investigated and determined by an independent person.'

3. Subject to specified exceptions in subsections (8) and (9) of section 83, lettings agency work is defined as follows:

   '(7) In this section, 'lettings agency work' means things done by any person in the course of a business in response to instructions received from-
   (a) a person seeking to find another person wishing to rent a dwelling-house in England under a domestic tenancy and, having found such a person, to grant such a tenancy ('a prospective landlord');
   (b) a person seeking to find a dwelling-house in England to rent under a domestic tenancy and, having found such a dwelling-house, to obtain such a tenancy of it ('a prospective tenant').'

4. Section 84(1) enables the Secretary of State by order to impose a requirement to belong to a redress scheme on those engaging in property management work. Subject to certain exceptions, 'property management work':

   'means things done by any person ('A') in the course of a business in response to instructions received from another person ('C') where-
   (a) C wishes A to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises in England on C's behalf, and
   (b) the premises consist of or include a dwelling-house let under a relevant tenancy' (section 84(6)).

5. Pursuant to the Act, the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) England Order 2014 (SI 2014/2359) (the 'Order') was introduced. It came into force on 1 October 2014. Article 3 provides:

   'Requirement to belong to a redress scheme: lettings agency work

> 3.—(1) A person who engages in lettings agency work must be a member of a redress scheme for dealing with complaints in connection with that work.
> (2) The redress scheme must be one that is—
> (a) approved by the Secretary of State; or
> (b)designated by the Secretary of State as a government administered redress scheme.
> (3) For the purposes of this article a 'complaint' is a complaint made by a person who is or has been a prospective landlord or a prospective tenant.'

6. Article 5 imposes a corresponding requirement on a person who engages in property management work.

7. Article 7 of the Order provides that it shall be the duty of every enforcement authority to enforce the Order. It is common ground that, for the purposes of the present appeal, the relevant enforcement authority is Leeds City Council ('the Council').

8. Article 8 provides that where an enforcement authority is satisfied on the balance of probabilities that a person has failed to comply with the requirement to belong to a redress scheme, the authority made by notice require the person to pay the authority a monetary penalty of such amount as the authority may determine. Article 8(2) states that the amount of the penalty must not exceed £5000. The procedure for the imposition of such penalty is set out in the Schedule to the Order. This requires a 'notice of intent' to be sent to the person concerned, stating the reasons for imposing the penalty, its amount and information as to the right to make representations and objections. After the end of that period, the enforcement authority must decide whether to impose the monetary penalty, with or without modification. If it decides to do so, the authority must serve a final notice imposing the penalty, which must include specified information, including about rights of appeal (Article 3).

9. Article 9 of the Order provides as follows:

> 'Appeals
> 9.—(1) A person who is served with a notice imposing a monetary penalty under paragraph 3 of the Schedule (a 'final notice') may appeal to the First-tier Tribunal against that notice.
> (2) The grounds for appeal are that—
> (a) the decision to impose a monetary penalty was based on an error of fact;
> (b) the decision was wrong in law;
> (c) the amount of the monetary penalty is unreasonable;
> (d) the decision was unreasonable for any other reason.
> (3) Where a person has appealed to the First-tier Tribunal under paragraph (1), the final notice is suspended until the appeal is finally determined or withdrawn.

(4) The Tribunal may —
(a) quash the final notice;
(b) confirm the final notice;
(c) vary the final notice.

Final notice

10. In the present case, the final notice of 22 April 2016, stated that the Appellant, Hyde Park Properties (Leeds) Limited, which carried out lettings agency work and/or property management work, was required to be a member of a redress scheme, pursuant to the relevant legislation. However, the Appellant had not become such a member until 16 March 2016, despite there being a requirement in place to do so from 1 October 2014. The amount of the penalty was stated to be £2,500. A fine of £5,000 had been specified by the Council in its earlier notice of intent of 6 November 2015. On 14 November 2015, the Appellant was registered as a member of a redress scheme. In accordance with the Council's policy, the fine was reduce by half as a result.

The appeal

11. The Appellant appealed to the Tribunal. Both parties were content for the matter to be determined without a hearing. I am satisfied that, in all the circumstances, I can justly do so. I have read and considered all material presented to me, even if not specifically referred to below.

12. Mr Mazin Ahmed Mackey of the Appellant made various points as follows (which I have organised for ease of reference):

    a) He had not been aware of the legal requirements and the only information received from the Council had been that received in November 2015. He had joined the redress scheme on 11 May 2015 and sent a copy to the Council. ('Ground A').
    b) Most of last year he had been abroad, and as he settled back into Leeds he was more focussed on building works to renovate his properties. As such he had had no communication with people in the business. ('Ground B').
    c) The Appellant is a small family run business managing its own properties and only a few landlords' properties who are family friends. All properties that he manages have been managed a long time, (he mentioned 15 years), without having 'hardly taken' on any new property. ('Ground C').

13. The Council's reply to the Appellant's case includes the following arguments:

Ground A

a. The Appellant had not contested the requirement to join the scheme. The Council was concerned that he had been in business a long time and unaware of the regulatory obligations appertaining to it.
b. On 5 November 2915, the Council had carried out checks on the Appellant that confirmed that it had not joined a redress scheme. The Appellant had submitted representations at the appropriate time between the notice of intent and final notice, and had joined a scheme with effect from 14 November 2015. In accordance with Council policy, it reduced the penalty by 50%. It considered this a proportionate fine in recognition of the company having readily accepted non-compliance and acted to become a member after the notice of intent.

Ground C

c. The Council took into account the representations under this ground, but had done land registry checks on seven currently advertised properties, excluding flats. None had been registered in the name of Mr Mackey or the Appellant.

Findings

14. It is accepted by the Appellant that it had failed to comply with the legislation set out above. Therefore, there was a legal basis for the Council to impose a financial penalty on the Appellant. The issues before me are whether, in all circumstances (as found by me), the amount of the penalty was unreasonable or the decision to fine the company was unreasonable for any other reason. On making a finding, I may quash, confirm or vary the final notice.[1]

15. On these issues, I prefer the evidence and submissions of the Council.

16. As regards Ground A, I do not see that a lack of awareness of the regulations was a ground for the fine being unreasonable. The Council had taken into account that speedy response by the Appellant to register with a scheme once it had received notice of intent, and this seems to me to be adequate recognition for the Appellant's willingness to join the scheme once aware of the requirements. Essentially, it is for the professional to ensure compliance of regulations appertaining to its business. Whilst the Appellant is stated to have joined a scheme in May 2015, this appears to be a mistake, as the certificate of membership contained in the bundle has a start date of 14 November 2016.

[1] See paragraph 9.

17. I cannot find anything in the Appellant's Ground B that indicates to me an argument as to why the amount of the penalty was unreasonable or the decision to fine the company was unreasonable for any other reason. Accordingly, as regards this ground, I do not find that the £2,500 fine was unreasonable.

18. As regards Ground C, I accept the Council's reasons. Whilst the Appellant states that it is a small business, I have nothing before me (such as accounts) to indicate that the fine is disproportionate to the business or would put it out of business. The requirement to be a member of a scheme is not altered by the Appellant mainly carrying out work for friends that are landlords. I accept the evidence of the Council, that the Appellant was advertising properties not belonging to it.

19. The Department for Communities and Local Government, '*Improving the Private Rented Sector and Tackling Bad Practice – A Guide for Local Authorities (2012)*' ('the Guide') states:

    a. 'The expectation is that a £5000 fine should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.' (See page 53 of the Guide.)

20. This Guide is not statutory, but is important and I have had it in mind when considering what is reasonable. The Guide indicates an expectation of a penalty of £5,000 to be the norm. Having taken into account all the evidence and submissions, I find that in all the circumstances, a fine of £2,500 is not unreasonable.

Decision

21. Accordingly, I dismiss the appeal.

Judge Claire Taylor

Dated	**28 December 2016**
Promulgation Date	**30 December 2016**