



**First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation**

Appeal Reference: PR/2017/0002

**Appellant: Campbell Property UK Ltd
Respondent: Portsmouth City Council**

Judge: Annabel Pilling

DECISION AND REASONS

For the reasons given below, the Tribunal allows the appeal and quashes the Final Notice dated 16 December 2016.

Introduction

1. This is an appeal against a Final Notice issued under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to belong to a Scheme etc.) (England) Order 2014 (the 'Order') to the Appellant company by Portsmouth City Council (the 'Council') on 16 December 2016 imposing a penalty of £5000 for failing to join a redress scheme as required by the Order.

Legislative background

2. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 (ERRA) provides that 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. Section 83(2) of ERRA defines "redress scheme". Section 83(7) defines "lettings agency work". Section 84 of ERRA provides the same in respect of persons who engage in property management work.

3. Pursuant to ERRA, the Secretary of State has made the Order, which came into force on 1 October 2014.
4. Article 3 provides as follows:
 - (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.*
5. Article 5 provides the same in respect of persons who engage in property management work.
6. Pursuant to article 7 of the Order it is the duty of every enforcement authority, here the Council, to enforce the Order.
7. Article 8 of the Order 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 under articles 3 or 5 it may by notice require the person to pay a penalty not exceeding £5000.
8. The procedure for imposing any penalty is set out in the Schedule to the Order. This requires a Notice of Intent to be served on the person, which must include the reasons for imposing the penalty, the amount of the penalty and information as to the right to make representations and objections within 28 days. After the end of that period, the enforcement authority must decide whether to impose the penalty, with or without modifications. Where it decides to impose a penalty, it must serve a Final Notice on the person which must include reasons for imposing the penalty, the amount of the penalty, information about how payment may be made, the period in which the payment must be made (not less than 28 days), information about rights of

appeal and information about the consequences of failing to comply with the Notice.

9. Article 9 of the Order provides for the right to appeal to the First-tier Tribunal against a Notice. The grounds for appeal are that:

- (i) The decision to impose a penalty was based on an error of fact;
- (ii) The decision was wrong in law;
- (iii) The amount of the penalty is unreasonable;
- (iv) The decision was unreasonable for any other reason.

10. When considering an appeal, the Tribunal may quash, confirm or vary the Final Notice.

The appeal to the Tribunal

11. The Appellant appealed to the Tribunal following the issue of the Final Notice. All parties agreed that this was a matter that could be dealt with by way of a paper hearing.

12. The Tribunal was provided in advance of the hearing with an agreed bundle of material, and written submissions from the parties. I cannot refer to every document and submission but have had regard to all the material when considering the issues before me.

Issues for the Tribunal

13. The Appellant company has appealed against the Final Notice on the following grounds:

- (i) That the decision was based on an error of fact as Campbell Property UK Ltd was a member of a redress scheme at the relevant time and had been since September 2014;
- (ii) That the decision was wrong as law as there is no requirement for every office/site to be registered individually with the redress scheme;

- (iii) That the amount of the monetary penalty is unreasonable; to impose the maximum fine when the company had not intended to avoid membership is disproportionate and/or the company makes very little profit from its property management and letting activities and the amount of the fine would be detrimental;
- (iv) That the decision was unreasonable as the company had been member of the Property Redress Scheme (PRS) in advance of the Order coming into force and has remained a member since. During that time the PRS has dealt with complaints emanating from various sites/offices, all submitted centrally by the company, without requiring the company to register an individual local site/office. Reference is also made to the good working relationship between the company and the Council, and the query over whether the Notice of Intent had in fact been served, the company maintaining that it only became aware of the Council's intention following a telephone call on 15 December 2016 the day before the Final Notice was issued. The company also refers to the fact that it did register the Southsea office individually on 19 December 2016 and has subsequently registered all regional sites with the PRS, at considerable expense, despite the fact that the PRS cannot identify any specific requirement to do so.

14. The Council submits that the Southsea branch of Campbell Property UK Ltd was not a member of a redress scheme. Campbell Property UK Ltd had, at the relevant time, only registered their head office and Sheffield branch with the PRS.

15. As no representations were received to the Notice of Intent received within 28 days the Council submits that it was entitled to issue the Final Notice. The amount of the penalty is reasonable as the company was not a new business, had registered the head office and Sheffield branch with the PRS so was aware of the requirement to be a member of a redress scheme, had not mentioned any specific information that could be considered to reduce the financial penalty or mention any extenuating circumstances that a £5000 fine would be disproportionate to its turnover/scale of business or would lead to the company going out of business.

Was the Appellant a member of a redress scheme?

16. The first issue to decide therefore is whether on the balance of probabilities it has been shown that the appellant company committed a breach of the relevant legislation by failing to be a member of a redress scheme before the Final Notice was issued.
17. The Council has not provided any submissions in response to the grounds of appeal but provided a “witness statement” from the team leader for housing standards at the Council who has delegated authority to determine whether it is appropriate to impose a monetary penalty on a person who, on the balance of probabilities, has failed to join a redress scheme. She states that Campbell Property UK Ltd had registered only their head office and the Sheffield branch with the PRS. She is satisfied that the company had not joined a redress scheme for the Southsea branch, was in breach of the requirement under the Order and determined that it was appropriate to impose a monetary penalty. Accordingly, the individual with delegated authority to determine the amount of that penalty decided it was appropriate to impose a monetary penalty of £500 in line with guidance issued by the central government.
18. The Council submits that the PRS has stated to it that there is a legal requirement for all letting agents to register all branches and referred the Council to section 7e of the “terms and conditions”.
19. There are no “terms and conditions” but a copy of the Application form and the Terms of Reference for the PRS have been exhibited. There are two “Membership Options”, the entry model and the enhanced model. Each has a subscription fee set per application (head office) and per extra branch.
20. Paragraph 7e of the Terms of Reference deals specifically with membership subscription for “Other branches”, including at (i) that *“The Member must register and pay for all actively trading branches (other offices) associated with the company with the PRS.”*
21. At (iv) of paragraph 7e of the Terms of Reference the consequences of failing to register and pay for each other branch are set out. This makes it clear that if the PRS discovers a failure to register an actively trading branch, the PRS will investigate why it is not registered. *“Generally the PRS will invoice for the discovered branch from the beginning of the Member’s subscription period.”*

Failure by the Member to pay the invoice may result in cancellation of the Member's PRS Membership."

22. *"Member" is defined in Appendix 4 as "Property Agent or Professional with a live membership with the PRS (this includes all members of staff of the company.)"*
23. It is clear from the above that failure to pay the register and pay the subscription fee for all other actively trading branches does not automatically invalidate the membership for the Member, the head office, here, the Appellant company Campbell Property UK Ltd. This could be the result only after non-payment of an invoice following an investigation by the PRS.
24. The Terms of Reference deal with Membership Cancellation/Expiry at paragraph 8 and Disciplinary matters at paragraph 9. These appear to be the only provisions dealing with cancellation of membership. If a Member breaches any of the PRS Terms of Reference, the PRS Compliance Officer will be required to investigate a Member's conduct. The Compliance Officer will then make a recommendation to the PRS Head of Redress and Managing Director as to whether the Member have their Membership cancelled. If the Head of Redress and Managing Director agree, then the Member will be informed and provided with the reasons for the cancellation. There is no suggestion that there has been any investigation by the PRS Compliance Officer in this case, any recommendation for the Appellant's Membership to be cancelled or the Appellant informed.
25. The Appellant has also explained that pursuant to its membership of the redress scheme, the PRS has dealt with a number of complaints relating to work undertaken by some of their other branches. These complaints have been referred centrally by the head office to the PRS, dealt with by the PRS and the PRS has not taken any issue with the payment of individual subscription fees. I accept this evidence.
26. On the evidence before me I am not satisfied on the balance of probabilities that the Appellant was not a member of a redress scheme as required. The issue of individual branch registration is a matter of the relevant subscription fee to be paid to the PRS and not a breach of the requirement of the Order.

27. It follows that the decision to impose a penalty on the Appellant was based on an error of fact. In light of this decision I have not gone on to consider the other grounds of appeal advanced by the Appellant.

28. The appeal is allowed and I quash the Final Notice dated 16 December 2016.

Signed:

1 June 2017