First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2017/0014

Heard at Fleetbank House, London
on 7th September 2017

Before

TRIBUNAL JUDGE PETER HINCHLIFFE

Between

RIDGEMOOR PROPERTIES LIMITED

Appellant

and

READING BOROUGH COUNCIL

Respondent

DECISION

1. The Appeal is allowed. The Final Notice served on Ridgemoor Properties Limited ("Ridgemoor") by Reading Borough Council dated 30th March 2017 was wrong in law in concluding that Ridgemoor was engaged in the activity of either letting agency work or property management work and was therefore required in law to belong to a redress scheme.

REASONS

A. Background

2. Ridgemoor appealed against a Final Notice reference PE / Redress / Lettings / 003027 dated 30th March 2017 (the "Final Notice") served on it by Reading Borough Council ("Reading"), which is the enforcement authority for letting agents and property managers carrying on business in Reading. The Final Notices refers to the office of Ridgemoor located at 91 Wokingham Road, Reading, RG6 1LH, which is within the area covered by Reading. The Final Notice requires Ridgemoor to pay a penalty charge of £5,000 in respect of its failure on 30th January 2017 to meet its duty under Regulation 3 of The Redress Scheme for Lettings Agency and Property Management Work (Requirement to Belong to a Scheme etc. (England) Order 2014 (the "Order") to belong to an approved redress scheme.

B. Legislation

3. The Order was issued in order to permit the exercise of the powers conferred by the Enterprise and Regulatory Reform Act 2013 (the "Act"). The sections of the Act and the Order that are referred to in this decision or that are otherwise relevant to this appeal are set out below in the Annex, which forms a part of this decision.

C. Guidance

4. The Act and the Order are the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government in March 2015 (the "Guidance"). The Guidance is non-statutory but the relevant enforcement authority is expected to have regard to it. The section of the Guidance that is of greatest relevance to this appeal is set out below:

> "*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.)

The Guidance is not statutory, but Reading is expected to have it in mind when considering what fine is reasonable for a breach of the Order.

D. The Appeal

5. Ridgemoor submitted a Notice of Appeal dated 27th April 2017 setting out the grounds of its appeal against the Final Notice. The main points of Ridgemoor's grounds of appeal are that they were not engaged in property management work as defined by the Act. They were a tenant of superior landlords offering sub-leases to tenants. Therefore, they were not obliged to register with an approved redress scheme.

6. In support of the appeal Ridgemoor submitted witness statements from Mr Isabor who is a director and the owner of Ridgemoor and Mr Khan a director of Cintra Estates together with letting agreements and assured shorthold tenancy agreements signed by Ridgemoor for each of four properties in Reading, at least three of which have been counter-signed on behalf of Contra Estates as guarantors.

7. Reading submitted a response to the appeal and provided a witness statement from Mr Evans, a Senior Trading Standards Officer employed by Reading. Reading also provided a copy of Guidance for Local Authorities on Lettings Agents and Property Managers issued by the Department for Communities and Local Government in October 2014 (the "2014 Guidance"), the Notice Of Intent issued to Ridgemoor on 30th January 2017, correspondence between Reading and Ridgemoor, screenshots of Ridgemoor' websites, a Fire Certificate issued to Ridgemoor and a witness statement from the Deputy Chief Executive of Ombudsman Services: Property an approved redress scheme

E. The Hearing

8. The hearing of the appeal took place on 7th September 2017. Ridgemoor was represented by Mr Isabor, the owner and director of Ridgemoor and Mr Khan of Cintra Estates ("Cintra"). Reading was represented by Mr Evans, a Senior Trading Standards Officer for Reading, who took on this role when the solicitor who was due to represent Reading was unwell and unable to attend.

9. It was common ground between the parties at the hearing that:
   - Ridgemoor was carrying on business within Reading.
   - On 30th January 2017 Ridgemoor was not a member of a redress scheme approved under the Act.
   - On 30th January 2017 Ridgemoor was not carrying on lettings agency work as defined in section 83 of the Act.
   - If Ridgemoor was carrying on "property management work" as defined in section 84 of the Act on 30th January 2017 it would have been obliged to be member of an approved redress scheme.

- Ridgemoor did not fall into any of the exclusions from the definition of "property management work" provided for in section 84 (7) of the Act.
- Ridgemoor applied to join the approved redress scheme operated by Ombudsman Services: Property on 31 January 2017 and was accepted as a member on 1st February 2017.

10. The issue in dispute between the parties to the appeal was whether Ridgemoor was carrying on a property management work at the times referred to in the Final Notice.

F. Submissions

11. The parties agreed that Reading would open by explaining the basis upon which they had issued the Final Notice. Mr Evans explained that he had become aware of Ridgemoor following a complaint by students occupying a property in Reading. He had considered with a colleague the definition of "property management work" in the 2014 Guidance and had concluded that Ridgemoor were carrying out property management work. Ridgemoor take instructions from landlords and, in many instances, from a lettings agent in order to manage residential properties. He pointed to the advertisement by Ridgemoor of their services on their website in which they state :

"*Ridgemoor properties specialise in solving landlords problems. Our company has one clear goal: The smooth and efficient management of properties in Reading ……..Don't worry about maintenance. We carry out most work such as painting and small repairs at our own expense. If major work needs to be done we liaise with you to arrange it."*

Reading take the view that the contractual arrangements between Ridgemoor and landlords are immaterial in considering whether the definition of "property management work" has been met.

12. Mr Evans referred to his dealings with Ridgemoor over the period from July 2016, when he received a complaint about them from a tenant, up to the issue of the service of the Final Notice. He provided a copy of correspondence and of notes of phone calls between Reading and Ridgemoor. Mr Evans also referred to a conversation with Mr Khan of Cintra on 30th November 2016, where Mr Khan indicated that Mr Isabor was out of the country and that he, Mr Khan, was helping Mr Isabor to set up his own business. He maintained that Ridgemoor were carrying out property management work, within the definition set out in the Act and the difference between what they paid the landlord of each property and what they charged the sub-tenants was effectively their property management fee.

13. Mr Isabor explained that Ridgemoor does not act on behalf landlords and does not take instruction from them. They do not sign management or letting agency agreements with landlords. Ridgemoor only has to be a member of a redress scheme if they act on behalf of a third party and they do not. He believes that Ridgemoor act as a landlord to the tenants. He confirmed that he is the director and sole shareholder in Ridgemoor. In response to my questions Mr Isabor explained the Ridgemoor business model in the following terms: Ridgemoor signs a three or five

year ‘corporate let’ with landlords and guarantees the rent that the landlord will receive. Ridgemoor pays the rent irrespective of the occupation of the premises. Ridgemoor has no right to terminate the lease of the property if there are no tenants. Initially Ridgemoor had advertised on their website for occupants for the properties, but Mr Isabor had then come into contact with Cintra and asked them to find tenants for Ridgemoor. Cintra found occupants, who were nearly all students. Cintra are well established in Reading as letting agents and managing agents. Mr Isabor explained that nearly all tenants and all landlords now come to Ridgemoor via Cintra. Tenants contact Ridgemoor for all issues. For major issues Ridgemoor will contact landlords and liaise with them. All contracts that Ridgemoor sign say that they are landlords. A witness statement was provided from one of the landlords, Mr D Russell the owner of 103 Cholmeley Road Reading, who confirmed that Mr Isabor had “commercially leased” his property and that Mr Isabor does not act as a managing agent so far as Mr Russell is aware.

14. In response to my questions, Mr Isabor explained that some of the property leases were for only one year as some landlords were cautious and wish to see how the arrangements worked. He estimated that 80% of the properties taken on by Ridgemoor were signed up for 3-5 years and 20% were with landlords testing the water for a year. He was referred to agreements in relation to a property in which the assured shorthold tenancy agreement appeared to be signed before the Corporate Let Agreement. He denied this and pointed out that the corporate let is always signed first, but both agreements would be signed before the assured shorthold tenancy began as students will typically sign up a long time in advance of the commencement of the tenancy and landlords will worry if they have not found a tenant some time in advance.

15. Mr Evans referred to the property at 103 Cholmelely Road, Reading in respect of which a complaint had been received and which was owned by Mr D Russell. He had met Mr Russel, Mr Kahn and Mr Isabor at the property in order to deal with the complaint and he had to assess who was the managing agent in order to assess who had the responsibility for a house in multiple occupation under the Housing Act 2004. Such a manager has to be fit and proper and named on the licence for the house in multiple occupation. Mr Evans referred to the form completed by Mr Isabor in which he had accepted that Ridgemoor was the manager of such property. Mr Evans accepted that the criteria for identifying a “manager” under the Housing Act is different to those for identifying someone carrying out property management work under the Act.

16. Mr Evans stated that nearly all properties that Ridgemoor deal with are referred to them by Cintra. Tenants go to Cintra to find a property. They are then introduced to Ridgemoor. Cintra is not liable to either the tenant or the landlord if there is subsequently a problem with property. Mr Evans said that the effect of the business model proposed by Ridgemoor would be that no redress would be available to the occupiers of the property from either Ridgemoor or Cintra.

17. In response to my questions, Mr Evans said that the guarantee of payment of rent by Ridgemoor to the landlords irrespective of occupation was not unique to Ridgemoor. Other managing agents will offer to guarantee rents.

18. Mr Isabor said that Ridgemoor. would bear all of the cost of repairs of the property and it would pay Council Tax if the property is not occupied. This would not happen if he was merely a managing agent. He argued that Ridgemoor's arrangements are totally different to those of a managing agent; only major faults were referred to landlords under the corporate let agreement.

19. Mr Isabor asked that Mr Kahn be permitted to speak on behalf of Ridgemoor and Mr Khan stated that Cintra was a lettings agent and had registered with an authorised redress scheme. Ridgemoor was following a new business model. In a corporate let agreement, for example that between Mr Russel and Ridgemoor, Mr Khan said that it is clear that Mr Russell is the landlord and Ridgemoor is their tenant. Cintra preferred to act at letting agents and had transferred all of the properties that it used to manage to Ridgemoor. Their fee for introducing such properties varied depending upon the duration for which the property was to be let to Ridgemoor; 1, 3 or 5 years.

20. Mr Evans asked Mr Khan to clarify if Ridgemoor's business address was within Cintra's premises. Mr Khan confirmed that Ridgemoor operated from a property owned by Citra.

21. Mr Isabor denied that he was introduced to tenants and to a property at the same time in a complete deal prepared by Cintra.

22. I referred Mr Isabor and Mr Evans to the definition of "property management work" in section 84 (6) of the Act. (This section is set out in the Annex). Neither had seen it before and copies were made in order that the parties could make submissions. Mr Isabor confirmed that all properties that Ridgemoor deal with are let out on assured shorthold tenancies. Mr Isabor repeated that Ridgemoor does not take instruction from a superior landlord. He makes all the decisions about a property once it has been let by the landlord to Ridgemoor. Mr Evans said that in applying the definition in section 84 (6) of the Act; Ridgemoor deals with properties let out on assured shorthold tenancies and acts in the course of its business in undertaking the day to day management of these properties in accordance with instructions from the landlord or Cintra, where Cintra is the letting agent.

23. I was provided with copies of agreements covering five properties in Reading. Each of the properties was the subject of a "Company Let Agreement" under which an individual landlord let the property to Ridgemoor as a tenant and Cintra acted as the guarantor of Ridgemoor's obligations to the landlord. In one case Cintra is not named as the guarantor but the signature on behalf of the guarantor is the same as that for Cintra in some of the other agreements. The provisions of the five Company Let Agreements follow a standard format. They use the terminology of landlord and

tenant throughout. The landlord agrees to insure the property and to repair the structure and exterior of the property. The tenant is required to keep the premises and the contents listed in an inventory in good repair, to maintain the security of the property and to pay a deposit and the rent for the full term. One agreement is for 60 months, one for 36 months, one for 24 months and two for 12 months. Ridgemoor's obligation to repair and maintain the property and to pay rent are those of a conventional tenant. Although Cintra acts as the guarantor of Ridgemoor in the agreement there is no express provision requiring Ridgemoor to act in accordance with the instruction of the guarantor. For each property a copy of an assured shorthold tenancy agreement is provided signed by a small number of individuals as tenants for a 12 month period and counter-signed by Ridgemoor as the "landlord".

G. Findings

24. In reaching a decision in this case I have had regard to all of the oral submissions at the hearing and also to the written submissions, evidence and other documentation contained in the hearing bundle.

25. The common ground between the parties means that there is only one issue of substance for me to decide in order to determine this appeal; whether Ridgemoor activities on 30th January 2017 fell within the definition of "property management work" as set out in section 84 the Act.

26. The evidence confirms that each of the premises that Ridgemoor deal with is "*a dwelling-house let under a relevant tenanc*y." Mr Evans argued that this was the case and Mr Isabor accepted that each property was residential and the tenants occupied it under assured short term tenancies. It is also clear from the evidence and accepted by the parties that Ridgemoor undertakes or arranges "*services, repairs, maintenance, improvements or insurance* in respect of the properties. It is also common ground that Ridgemoor is not the owner of the freehold or a long leasehold interest in the properties. Ridgemoor does not fall within any of the exceptions to the definition of "property management work" under the Act.

27. Therefore, it is necessary to determine whether, in undertaking the management of properties, Ridgemoor is acting on behalf of, or in response to instructions received from, another person. Reading suggests that this other person could either be Cintra or the landlord of the relevant property.

28. I have considered the possibility that Ridgemoor is acting in accordance with the instructions of Cintra and the close relationship between the businesses is striking. It is possible to see Ridgemoor as the vehicle through which Cintra offers a property management service to its letting agency clients. This was denied by Mr Isabor and Mr Khan. Even if this conclusion were to be reached it is difficult to say that Ridgemoor is acting on behalf of Cintra in carrying out any of the property management tasks. The evidence does not support a conclusion that Cintra has any responsibility to carry out any management tasks itself. These tasks are carried out by

Ridgemoor and Ridgemoor is contractually liable to the landlords should it fail to undertake certain tasks and to the tenants should it fail to undertake others. Cintra has guaranteed that contractual liability and therefore has a financial interest in Ridgemoor's performance, but there is no evidence that it has any control as a consequence of this obligation. In order to reach a conclusion that Ridgemoor undertakes the management of the properties on behalf of, and to the instruction of, Cintra, it would be necessary to ignore the conventional interpretation of the express terms of the Company Let Agreements and the conventional legal relationship of a guarantor to the party that they guarantee and to infer from the entirety of the relationship between Ridgemoor and Cintra that a different arrangement exists between them. I find on the balance of probabilities that the evidence that I have seen and heard in this particular appeal does not support such a conclusion.

29. I have considered if Ridgemoor are acting on behalf of and to the instruction of the landlord. Mr Isabor is running Ridgemoor on the basis that it will accept a significant liability as the tenant of the properties, which it off-sets by sub-letting the property at a higher rent to successive tenants and by securing a guarantee from Cintra. Where the agreement with the landlord is considerably longer than that with the tenant this business model carries significantly greater risk than that of a property manager or managing agent. It is also a materially different arrangement for the landlord, in terms of risk and reward, from that which they may conclude with a managing agent. The relationship between the landlord and Ridgemoor is set out in the Company Let Agreements and reflects conventional terms applying between a landlord and a tenant. Ridgemoor carries out its property management responsibility in order to discharge its obligation to the landlord under the Company Let Agreement and to the sub-tenant under the shorthold assured tenancy agreement. To construe the arrangement between the parties as one in which Ridgemoor carries out work on behalf of the landlord and to their instruction would involve a significant departure from established property law and the evidence in this particular case does not justify such a conclusion.

30. As a consequence of the findings set out above, which are particular to this appeal, I find that Ridgemoor was not engaged in property management work on 30th January 2017.

H. ***Decision***

31. By virtue of Article 9 of the Order, the Tribunal may quash, confirm or vary a Final Notice.

32. The Final Notice served on Ridgemoor contained an error of law in concluding that Ridgemoor were carrying out property management work on 30th January 2017 and accordingly I quash the Final Notice.

33. The Appeal is allowed.

Peter Hinchliffe
Judge of the First-tier Tribunal
10 October 2017
Promulgation date – 16 October 2017

ANNEX

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 section 84 (6) provides that;

> " '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."

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 Reading Borough 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. (See Paragraph 3 of Schedule to the Order).

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.

10. The Schedule to the Order provides as follows:

"Final notice

3.(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the monetary penalty, with or without modifications.

(2) Where an enforcement authority decides to impose a monetary penalty on a person, the authority must serve on that person a final notice imposing that penalty.

(3) The final notice must include—

(a) the reasons for imposing the monetary penalty;

(b) information about the amount to be paid;

(c) information about how payment may be paid;

(d) information about the period in which the payment must be made, which must not be less than 28 days;

(e) information about rights of appeal; and

(f) information about the consequences of failing to comply with the notice.