



**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation**

Tribunal Reference: **PR/2017/0026**
Appellant: **Rockpole Ltd**
Respondent: **London Borough of Redbridge**

Judge: **Claire Taylor**

DECISION NOTICE

1. This appeal is dismissed such that I find in favour of the Council, for the reasons set out below.

Legislation

2. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 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.’

3. 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.’

4. 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').'

5. 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)).

6. Pursuant to the 2013 Act, the Secretary of State has made 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 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.'

7. Article 5 imposes a corresponding requirement on a person who engages in property management work. Article 7 of the Order provides that it shall be the duty of every enforcement authority to enforce the Order.
8. It is common ground that, for the purposes of the present appeal, the relevant enforcement authority is the London Borough of Redbridge ('the Council').
9. 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.

10. 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

11. In the present case, the final notice dated 18 July 2017, addressed to the appellant, Rockpole Ltd, stated that the appellant, 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. The amount of the penalty was stated to be £2,500. The appellant became a member on 1 June 2017, following a notice of intent served by the Council dated 31 May 2017. The Council had reduced the fine from £5,000 specified in the earlier notice of intent, after considering representations from the appellant.

The appeal

12. Both parties were content for the appeal to be determined without a hearing and I am satisfied that, in all the circumstances, I can justly do so.

13. Mr Haleem of the Appellant stated that the penalty is unreasonable:

- a. He had joined a scheme as soon as he had become aware. (Ground A)
- b. The penalty is unreasonable for a small growing company. The fine will be extremely difficult to manage by the company causing serious damage to the survival as there have been recent losses due to the change in rental market and amount of income received. (Ground B)

- c. He was new to the industry and unaware of the seriousness of the need to join a redress scheme. He had received no warning or indication to make him aware. He had learnt of several cases of local authorities warning unaware businesses, and not fining them when satisfied that they had acted appropriately. (Ground C).

14. The Council's case includes the following:

- a. The fine of £2,500 is half that which is considered the norm in The Department for Communities and Local Government, *'Improving the Private Rented Sector and Tackling Bad Practice – A Guide for Local Authorities (2012)'* ('the Guide'). This followed a panel meeting decision of 11 July 2017.
- b. As regards Ground B, the Council took into account the company's turnover/profits and considered the fine was reasonable given submitted annual profits of £35,000.
- c. As regards Ground C, there is no requirement for the Council to remind an agent of the legal requirements and Mr Haleem should have been aware of the requirements. The Council had conducted a significant publicity campaign and given a grace period before enforcing the legislation. The company had come to the Council's attention following an investigation of one of its properties where there had been numerous and serious breaches of housing regulations. Rockpole had entered into a management agreement with the landlord and subsequently sub-contracted out to another agent, the management of the property without the knowledge of the landlord. The property was unlawfully converted to a house of multiple occupation without knowledge of the landlord. The conversion was substandard and did not meet minimum safety standards. The landlord was therefore exposed to risk of prosecution and not able to take advantage of the complaints procedure and adjudication process provided by a redress scheme. In the case of failure to belong to a redress scheme in the presence of aggravating factors such as receipts of complaints and other breaches of legislation, the Council had a policy to proceed straight to issuance of a notice of intent. This was regarded by it to be fair and proportionate.

15. On these issues, I prefer the evidence and submissions of the Council. The Appellant does not contest that it failed to be a member of a scheme and there are no arguments before me that the Council's decision to impose a monetary penalty was based on an error of fact or was wrong in law. I turn to whether the decision itself or amount of the monetary penalty is unreasonable.

16. As regards Ground A, the appellant clearly joined a scheme as soon as it received the notice of intent. This counts in its favour, but was sufficiently taken into account in reducing the fine.

17. The arguments in Ground B address whether the amount of the monetary payment is unreasonable. The appellant has not provided its accounts or

evidence to support the contention that the fine would result in significant financial hardship or is disproportionate to the turnover/scale of the business. The Council made clear at page 87 of the papers and in its response that it assessed the annual turnover or profits to be £35,000. The appellant has not contested this.

18. As regards Grounds C, I prefer and adopt the reasoning of the Council. In this case, the Council has identified that the appellant's failure to join a redress scheme has had consequences. Given the 'aggravating factors', the Council proceeding without warning to issue a notice of intent was reasonable and ensured compliance with the legal requirements was secured as quickly as possible. In any event, the notice of intent provided some form of warning. It is clear from the notes of the Council's meeting on pages 87 and 88 of the papers that the Council fairly and carefully considered the individual circumstances of the case and took into account that the business was relatively new, when deciding to reduce the fine by a reasonable amount.
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:

'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. Since the Guide considers a £5000 to be the norm, and is a figure imposed by the legislation, it cannot be considered to be disproportionate to the offence. It is not clear from Mr Haleem, how long he has been in business. There has been a legal requirement for agents to join a redress scheme since 1 October 2014. The appellant should have done when it started its business. Accordingly, there was good reason to impose a fine. Having considered all the evidence and submissions, I do not find that the penalty of £2500 is unreasonable.

Claire Taylor

Judge

Dated 29 December 2017

Promulgation date 4 January 2018