



First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2018/0041

Decided without a hearing
On 10 April 2019

Before

JUDGE JACQUELINE FINDLAY

Between

JJM (HOLDINGS) UK LIMITED

Appellant

and

WESTMINSTER CITY COUNCIL

Respondent

DECISION AND REASONS

The Legislation

The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

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.

Exclusions: lettings agency work

4.—(1) For the purposes of section 83 of the Act, “lettings agency work” does not include the things described in this article.

(2) “Lettings agency work” does not include things done by —

(a) the employer, where the prospective tenant is an employee;

(b) the person for whom the prospective tenant provides work or services, where the prospective tenant is a worker;

(c) the person for whom the prospective tenant provides work or services, where the prospective tenant is —

(i) an employee who provides work or services under the contract of employment to a person who is not the prospective tenant’s employer; or

(ii) a worker who provides work or services under the worker’s contract to a person who is not a party to that contract;

(d) the hirer, where the prospective tenant is an agency worker;

(e) the person for whom the prospective tenant provides services under a contract for services.

(3) “Lettings agency work” does not include things done by —

(a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992(a);

(b) an authorised person within the meaning of section 18 of the Legal Services Act 2007(b).

(4) In this article the following have the same meaning as the Agency Workers as the Agency Workers Regulations 2010(c) —

“agency worker”

“contract of employment”

“employee”

“employer”

Enforcement authority

7.

—(1) It shall be the duty of every enforcement authority to enforce this Order.

(2) The duty referred to in paragraph (1) applies to the enforcement of the Order within the authority’s area.

Penalty for breach of the requirement to belong to a redress scheme

8.—(1) 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 article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work), the authority may by notice require the person to pay the authority a monetary penalty (a “monetary penalty”) of such amount as the authority may determine.

(2) The amount of the monetary penalty must not exceed £5,000.

(3) The Schedule provides for the procedure relating to the imposition of a monetary penalty.

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.

Recovery of monetary penalty

- 10.—(1) The enforcement authority may recover the monetary penalty on the order of a court, as if payable under a court order.
- (2) In proceedings for the recovery of the amount due, a certificate which is—
 - (a) signed by the enforcement authority’s chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989(a)); and
 - (b) states that the amount due has not been received by a date specified in that certificate, is conclusive evidence of that fact, and a certificate to that effect and purporting to be signed is to be treated as being signed, unless the contrary is proved.
- (3) Sums received by an enforcement authority under a monetary penalty may be used by the authority for any of its functions

Procedure for imposition of a monetary penalty

Notice of intent

- 1.—(1) Where an enforcement authority proposes to impose a monetary penalty on a person, the authority must serve on that person a notice of what is proposed (a “notice of intent”).
- (2) The notice of intent must be served within 6 months of the date on which the enforcement authority is first satisfied that the person has failed to comply with article 3 (requirement to belong to a redress scheme: lettings agency work) or article 5 (requirement to belong to a redress scheme: property management work).

The Notice of Intent must include—

- (a) the reasons for imposing the monetary penalty;
- (b) the amount of the penalty;
- (c) information as to the right to make representations and objections within 28 days beginning with the day after the date on which the notice of intent was sent.

Making representations and objections

2. A person on whom a notice of intent is served may within 28 days beginning with the day after the date on which the notice was sent make written representations and objections to the enforcement authority in relation to the proposed imposition of a monetary penalty.

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.

Withdrawing or amending a notice

4. The enforcement authority may at any time by giving notice in writing —

(a) withdraw a notice of intent or final notice;

(b) reduce the amount specified in the notice of intent or final notice.

The Final Notice

1. The Final Notice dated 24 July 2018 was sent to the Appellant with a covering letter from Chuma Akpom (page 33 to 38). The Final Notice given by Alexandra McKeown states as follows:

“I, an authorised officer of Westminster City Council Trading Standards, believe that you have committed a breach under Article 3 of the Redress Schemes for Letting Agency Work and Property Managements Work (Requirement to belong to a Scheme etc) (England) Order 2014.

It is a requirement under the above legislation for persons who are engaged in letting agency work to belong to a government approved redress scheme for dealing with complaints in connection with that work. The Council is satisfied, on the balance of probabilities that you are or have been engaged in lettings agency work whilst not being a member of a government approved redress scheme and you are therefore in breach of the above legislation. Date of breach: 26th March 2018 to 11 April 2018.

Details of breach: No record of having membership of an approved property redress scheme.”

The appeal

2. I have determined this appeal on the papers at the request of the parties. I am satisfied that, in all the circumstances, I can justly do so. I have considered the Respondent’s Response and bundle of documents numbered 1 to 85. I have considered it is fair and just to determine this appeal on the basis of the papers taking into account rules 2 and 32 of The Tribunal Procedure (First-tier Tribunal)(General Regulatory Chamber) Rules 2009. The parties have consented to a determination on the papers and I am satisfied I can properly determine the appeal without a hearing

3. The Appellant invites me to allow the appeal and submits the following grounds in support of the appeal:

a) The Appellants mistakenly believed that since the only properties they were managing were the family owned portfolio of properties that they did not need to be registered with an approved redress scheme. This was notwithstanding the fact that the company had previously been registered in the scheme but had discontinued this at a time when the company had considered that it would not be involved in lettings of property.

- b) The Appellant mistakenly overlooked that fact that when they started letting out properties belonging only to members of the family they would have to register with an approved redress scheme.
- c) The Appellant has always ensured that all deposits that were taken from tenants were placed in an approved tenancy deposit scheme.
- d) As soon as the Notice of Intent was served the Appellants ensured compliance with the requirement to register with the appropriate scheme.
- e) The penalty imposed is severe in the circumstances and for a first-time offence when although not belonging to a redress scheme the tenants' monies were adequately protected.

4. The Respondent invites me to dismiss the appeal and submits that the monetary penalty is appropriate taking into account the following factors:

- a) The Government Guidance states that the expectation is that a £5000 monetary penalty should be the norm and a reduction should only be considered if there are extenuating circumstances. The Appellant's grounds of appeal do not amount to extenuating circumstances.
- b) The Appellant has not submitted that there would be financial consequences or that the Appellant would be put out of business by the monetary penalty.
- c) Although it is accepted that the Appellant joined a redress scheme after receiving the Notice of Intent the Appellant had been in breach of its statutory duty for a significant period of time and would have remained non-compliant save for the intervention of the Respondent and prospective tenants would not have been provided with the required protection of a complaints mechanism if there had been a dispute.
- d) The Appellant is a business carrying out letting agency work as defined under the relevant legislation.
- e) Even if this was a genuine mistake this would not assist the Appellant. The Appellant had previously been a member of a redress scheme and knew of the existence of the redress scheme.
- f) The relevant legislation has been in existence for about 4 years.
- g) The monetary penalty of £5,000 is reasonable.

Findings of fact and reasons

- 5. On 6 December 2017 the Respondent received a complaint from a tenant that the Appellant was not a member of a redress scheme.
- 6. Ms McKeown, a Trading Standards Officer, visited the Appellant's premises on 11 April 2018 to issue a Notice of Intent under the Redress Schemes for Letting Agencies

Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) order 2014.

7. The Notice of Intent (pages 20 and 21) dated 11 April 2018 stated that the breach was dated 21 March 2018 and was continuing and that as a letting agent the Appellant had failed to comply with the duty to belong to an approved redress scheme.
8. The Notice of Intent was amended by hand to accurately refer to the Appellant as JJM (Holdings) UK Limited.
9. There is no issue as to the Final Notice containing any error of law or fact. The Notice of Intent and the Final Notice include all the information required by the legislation.
10. The issue in the appeal is entirely about whether the penalty of £5,000 is, in all the circumstances, reasonable.
11. From at least 21 March 2018 until 4 May 2018 the Appellant was engaged in letting agency work as defined and did not belong to a government approved redress scheme as required by the legislation. This is on the basis of the information provided by the Appellant's Operations Manager (page 29).
12. The Appellant is not a managing agent. The Appellant is a family company and there are properties owned by several members of the same family and the properties are in the names of several different legal entities with different directors ((page 29).
13. The Appellant joined the Property Redress Scheme on 4 May 2018.
14. The Appellant knew about the scheme at the time of the breach as had previously been a member.
15. At all material dates the Appellant should have been aware of the requirement that a company engaged in letting agency work must belong to an approved redress scheme even if letting out properties belonging only to family members.
16. There was at all material dates a duty on the Appellant to comply with the statutory requirements.
17. A genuine mistake is not an extenuating circumstance.
18. It is not an extenuating circumstance that this is the first time that the Appellant has breached its statutory obligations.
19. The fact that the Appellant took action on receiving the Notice of Intent does not assist the Appellant. There is nothing to suggest that the Appellant would have taken steps to rectify the situation if not contacted by the Respondent. The Appellant had been in breach for some considerable time.
20. The monetary penalty of £5,000 will not put the Appellant in financial difficulties or lead to the Appellant going out of business. This has not been submitted by the Appellant and such a proposition is not supported by the financial statements which

appear at page 69 to 72. The Appellant has had ample opportunity to lodge financial documents and information in support of any argument that the Monetary Penalty would lead to the company going out of business but has failed to do so. I have made the decision on the basis of the evidence available as it is fair and just to do so.

21. There are no extenuating circumstances to support a reduction in the Monetary Penalty of £5,000.
22. Having considered all the evidence I do not find that the penalty of £5,000 is unreasonable

Signed J R Findlay

Judge of the First-tier Tribunal

Date: 10 April 2019

Promulgation Date 18 April 2019