



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

Tribunal Reference: PR/2015/0016
Appellant: Chew Valley Estates (N Rowland-Fry and S. Newport)
Respondent: North Somerset Council

Judge: Peter Lane

DECISION NOTICE

Legislation

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

“(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 that:-

“(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 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."

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 North Somerset 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 £5,000. 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.

The Appeal

10. The appellant, Chew Valley Estates (N. Rowland-Fry and S. Newport), appeals against a final notice dated 21 August 2015 from the Council, imposing a penalty charge of £5,000 in respect of a breach of Article 5 of the Order.

11. Both the appellant and the respondent were content for the decision to be made without a hearing. In all the circumstances, I am satisfied that I can properly do so. In reaching a decision I have had regard to all the materials contained in the bundle prepared by the respondent, together with the notice of appeal.

12. The requirement to belong to a relevant redress scheme came into effect on 1 October 2014. It came to the Council’s attention in May 2015 that the appellant was not such a member. A notice of intent was issued to the appellant on 5 June and on 23 June 2015 the appellant re-joined the Property Ombudsman redress scheme (its former membership having lapsed prior to 1 October 2014). It is, accordingly, common ground that the appellant was in breach of the relevant legislation.

13. The appellant contends that the penalty of £5,000 is unreasonable and would result in the business ceasing to trade, with consequent effects on individuals engaged in the business.

14. Government guidance issued in connection with the legislation states that “the expectation is that a £5,000 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 is for the enforcement authority to decide what those circumstances might be. One example given is that in the “early days” of the requirements, a lack of awareness could be considered. 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”.

15. Although the guidance is non-statutory, in deciding what is reasonable it is appropriate to have regard to it. So far as “early days” are concerned, I do not consider that this has any relevance. The appellant was carrying on business in breach of the law over seven months after the relevant requirements came into effect. Had the matter not come to the Council’s attention, there is nothing to suggest that the appellant would have rejoined the scheme.

16. The documentation makes it plain that the Council offered the appellant the opportunity of submitting financial information regarding the turnover and scale of its business, with a view to deciding whether the £5,000 fine would have a disproportionate effect. The appellant has seen fit not to provide that information, either to the Council or to the Tribunal. In the circumstances, I do not find that it can be said to be unreasonable to impose the £5,000 penalty by reference to any effect this might have on the business. There is nothing to show, on balance, that there would be any disproportionate affect, whether leading to cessation of the business or otherwise.

17. I have considered whether there is any other factor that might make the imposition of the £5,000 penalty unreasonable. I do not consider that there is. I have had regard to the fact that the appellant was, in the past, a member of a redress scheme. The appellant, however, let that scheme lapse, for reasons unknown and, as I have found, traded in breach of the law for a significant period of time.

Decision

18. This appeal is dismissed.

Peter Lane

Chamber President

Dated 23 December 2015