FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Tribunal Reference:	**PR/2015/0023**
Appellant:	**Cactus Property Management Limited**
Respondent:	**Sheffield City 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 Sheffield City 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.

Final notice

10. In the present case, the final notice dated 9 September 2015, addressed to the appellant, Cactus Property Management Limited, stated that from 1 October 2014 there had been a requirement under the 2014 Order for a letting/management agent to be a member of a redress scheme. The notice stated that the Council was satisfied that the appellant had been engaged in property management work and letting agency work but that had it not been a member of an approved redress scheme from 1 October 2014 to 29 January 2015. The notice indicated that, having regard to the representations and objections made by the appellant to the notice of intent, the Council had decided to issue a final notice imposing a monetary penalty of £2,200. I note that the initial intention, prior to receiving the appellant's representations, etc., had been a penalty of £5,000. An earlier notice of intent, dated 1 July 2015, had reduced that figure to £3,000.

Discussion

11. From the documentation before me, contained in the bundle prepared by the Council, it is plain that the Council, in coming to the conclusion that the appropriate penalty should be £2,200, had regard to the following matters. First, the Council was satisfied that the appellant had been under the impression that

its membership of a landlord association was such as to satisfy the requirements of the relevant legislation. There was, however, no question in the Council's mind that the appellant had not complied with the relevant law up to 30 January 2015. That conclusion is, I find, plainly correct. So far as concerns mitigation on the basis of the appellant's misunderstanding of the significance of it being a member of a landlord association, I accept that the association in question, the "Association of Residential Letting Agents" produced information for its members about the need to comply with the legislation. From the material set out at pages 96 to 97 of the bundle, taken from the association's website, it is manifest that the association was not in any way suggesting to its members that they did not need to join a redress scheme; quite the opposite.

12. It also strikes me as significant that on 2 December 2014 the Council sent a letter to approximately 85 letting and management agents in Sheffield, including the appellant, providing information about the Order. I accept the Council's evidence that "the overwhelming majority of letting and managing agents in Sheffield had indeed complied with the Regulations [ie Order] within the first few weeks" of their coming into effect.

13. As indicated on page 45 of the bundle, the Council, in deciding to reduce the amount of the penalty, took greater account of "representations made by the company regarding the impact it was claimed the penalty would have on staffing". The representations in question appear to be those on page 36 of the bundle. Here, in an e-mail of 30 July 2015, the appellant stated that:

> "Since we formed the business it has grown to 6 full-time members of staff and this week taken on a junior member who was unemployed but the financial penalty will result in us having to lose this new member of staff as we cannot sustain both the penalty and staff member".

Essentially the same submission is relied on by the appellant in its grounds of appeal to the Tribunal. Both parties were content for the appeal to be determined without a hearing and I am satisfied that the Tribunal can properly do so without one.

14. I am not aware that any audited accounts have been put forward by the appellant in order to make good its assertion regarding the effect of the penalty, as now proposed, upon its business; in particular, upon its ability to retain staff. The fact that the company, in addition to its two owners, has at least six members of staff strongly suggests (in the absence of evidence to the contrary) that the appellant's businesses are substantial, in terms of its turnover. I find that it has not been proved on balance that the imposition of a financial penalty of £2,200 would cause the appellant no longer to be able to employ the junior member (or any other particular member) of staff.

15. Viewed overall, I consider that the Council's decision to impose a monetary penalty of the £2,200 was entirely reasonable. No basis has been shown for disturbing the final notice in this or any other respect.

Decision

16. This appeal is dismissed.

Judge Peter Lane
Chamber President
Dated 9 February 2016
Promulgation Date 9 February 2016