FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Tribunal Reference:	**PR/2015/0019**
Appellant:	**Matthew Lee (Westside Lettings)**
Respondent:	**Sheffield City Council**
Judge:	**Peter Lane**

DECISION NOTICE

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. The final notice, addressed to the appellant, dated 10 September 2015, contended that the appellant had been engaged in property management work and letting agency work from 1 October 2014 to 27 July 2015, without being a member of an approved redress scheme. The monetary penalty was stated to be £2,100. This had been reduced from the £5,000 contemplated in the Council's earlier notice of intent (27 July 2015), as a result of the Council having taken into account the representations made by the appellant, "including the points you have raised about how you generally conduct your business, the size of your business, the impact a penalty will have and that you join the enhanced scheme very promptly on receiving the first notice".

The appeal

11. The appellant appealed against the final notice to the First-tier Tribunal. A hearing of the appeal took place in Darlington Magistrates' Court on 1 March 2016. Mr Lee appeared in person. Ms Littlewood of the Council's Legal Services Department represented the Council. I heard oral evidence from Mr Lee and from Mr Hickling, the Council's Legal and Policy Officer.

12. In reaching a decision in this appeal, I have had regard to all the submissions and oral and written evidence. The written evidence is contained in a bundle of documents, which runs to 119 pages.

13. The appellant's representations, to which reference has already been made, are dated 28 July 2015. They were relied upon by the appellant at the

hearing. In them, the appellant records that he has worked in financial services for over 28 years, in various roles. He is a sole trader, operating a group known as Westside Independent Financial Services LLP. The appellant's main income comes from the provision of financial services, including mortgage advice. The appellant told me that the extension of his operations into lettings arose because existing financial services clients needed someone to manage properties let out by them, including as part of their pensions portfolios. He said he managed only some fifteen properties at any one time. The lettings and property management side of the business had a gross turnover of only some £10,000 to £11,000 per annum.

14. Both in his written submissions and in oral evidence, the appellant stressed his strong belief in ethics, standards and qualifications. He had honestly not heard of the requirement to belong to a redress scheme until he had been informed about it by the Council. He questioned why the Council had not informed him and others in his position within the Council's area earlier of the new legal requirements.

15. The appellant explained that he employed the part-time services of a "negotiator/administrator" (as described in the representations of 28 July 2015) and that the imposition of a penalty would mean that he would "seriously have to consider the closure of Westside Lettings which would affect not only the person directly, but also the team of trusted contractors who work on my behalf to a very high standard and have done so for a considerable time".

16. In oral evidence, it emerged that the part-time negotiator/administrator is an independent contractor, who works as the appellant's personal assistant, not just in relation to the lettings and property management side of his business but also in relation to the financial services elements. The lady in question spends about five or six hours a week on lettings work.

17. Questioned by Ms Littlewood, the appellant agreed that he ought to have known about the change in the law. He had not, at that stage, been a member of a relevant professional association, which the appellant accepted might have led to his being informed of the relevant legal requirements. The appellant was keen to stress that he was heavily regulated by the relevant regulatory regime relating to the provision of financial services and had always complied with the regulator's requirements. In that area of his work, the appellant said that the regulator in question informed those concerned in advance of relevant legal requirements; a position which he said contrasted with that of the Council, which had not publicised the law relating to membership of redress schemes.

18. The appellant accepted that he had not provided any accounts relating to Westside Independent Financial Services LLP or the Westside Lettings aspect. The appellant's case, nevertheless, was that, whilst a penalty of 10% of the turnover of £10,000 to £11,000 might be reasonable, even the reduced penalty of £2,100 was not reasonable.

19. In evidence, Mr Hickling said that the Council's approach to reducing the fee from the starting point of £5,000 (as indicated in relevant government guidance) had been to take at face value what the appellant had said about his lettings and property management business. It was accepted that that business was smaller than average. Account was also taken of the general approach of the appellant towards conducting his business, and to the fact that the appellant had joined a relevant redress scheme as soon as being notified by the Council.

20. Mr Hickling said that about 50 properties was an average size for those concerned in the lettings and property management business. The reduction to £2,100 had arisen as a result of a broad brush approach, involving reduction of £1,000 in respect of "impact"; a further £1,000 to reflect the size of the business; and a further £900 to reflect the way in which the appellant generally conducted his affairs and his apparent "contrition" at being in breach of the law.

21. In closing submissions, the appellant said that if 50 properties was the average, and assuming a rent of £600 or so for each property, then an average agency would have a turnover of around £35,000 per annum. The appellant's turnover was a third of that. Accordingly, the appellant suggested that the appropriate penalty should be in the region of £693.

Discussion

22. In the present case, there is no doubt that the appellant was in breach of the law. This breach continued for more than nine months after the new requirements came into force, on 1 October 2014. There is no indication that the appellant would have taken any steps of his own accord to discover the true legal position, had the Council not contacted him about the matter.

23. There is no issue as to the final notice containing any error of law or fact. The issue in the appeal is entirely about whether the penalty of £2,100 is, in all the circumstances, reasonable. The Council has, as indicated in Mr Hickling's evidence, made a significant deduction to take account of the smaller than average size of the relevant business. In so doing, the Council has had regard to the turnover figure given by the appellant. It is, however, plain that the lettings and property management side of the business cannot be looked at in complete isolation, in the way for which the appellant contends. Those activities are closely linked with the overall financial services business carried on by the appellant, as to which the appellant has chosen not to give the Tribunal any accountancy or, indeed, other financial details.

24. What was said by the appellant in his submissions of 28 July 2015 regarding the position of the lady who turns out to be his personal assistant did not paint a complete picture of how she spends her time, most of which involves the financial services aspects of the business (as well as, apparently, her own lettings and property management portfolio). I do not consider that, on the totality of the evidence, it is more likely than not that the lady in question would suffer from

any change in the current terms and conditions of her contract for services with the appellant, were the proposed penalty to be confirmed.

25. By the same token, I am not satisfied on the evidence that it is more likely than not that the appellant would decide to withdraw from the lettings and property management aspects of the business, were the penalty to be imposed. The reasons that led the appellant to embark upon lettings and property management would still be operative; that is to say, existing financial services clients would continue to want the appellant to assist them in these areas.

26. Although necessarily broad brush, the evidence of Mr Hickling regarding the three factors that resulted in the reduced penalty of £2,100 seemed to me to be, in the circumstances, appropriate. Subject to one issue, they appear to have been appropriately applied. The issue in question concerns the fact that, as I understand the matter, the Council decided not to impose a full £1,000 reduction in respect of the appellant's "contrition" and the manner in which he conducted his business but, rather, to make a reduction of £900.

27. Having heard the appellant, I am fully satisfied that he is endeavouring to abide by the high standards required of a person in his position. I accept that, so far as financial services are concerned, the appellant is, and always has been, compliant. There was no obligation on the Council to inform him of any change in the law and, in retrospect, I believe that the appellant now realises that a better eye needed to be kept on the lettings and property management aspects of the business. Given matters as a whole, I can see no reason why, in the circumstances, the appellant should not have been accorded the full £1,000 discount in respect of this matter.

Decision

28. Accordingly, I allow the appeal to the extent that the appropriate penalty is £2,000, rather than £2,100.

29. At the hearing, the Council helpfully confirmed that it would be willing to discuss with the appellant arrangements whereby, in order to assist the cash flow of the business, the penalty might be paid in instalments. Although the Tribunal has no power to make any order in this regard, I nevertheless consider it to be helpful to the parties to record that confirmation.

Judge Peter Lane

Chamber President

1 April 2016

Paragraphs 13 and 18 amended under rule 40: 8 April 2016