



**First-tier Tribunal  
(General Regulatory Chamber)  
Professional Regulation**

**Appeal Reference: PR/2016/0045**

**Held on the papers**

**Before**

**JUDGE CLAIRE TAYLOR**

**Between**

**LISA MARIE LETTINGS AND PROPERTY MANAGEMENT LTD**

Appellant

**and**

**BRISTOL CITY COUNCIL**

Respondent

**Decision**

This appeal is allowed to a limited extent.

## **Legislation**

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

2. 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.'

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 Act, 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') was introduced. It 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 Leeds 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 £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. (*See Paragraph 3 of Schedule to the Order*).
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.

10. The Schedule to the Order provides as follows:

“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. “

11. 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:

- a. ‘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.)

12. This Guide is not statutory, but is important and I have had it in mind when considering what is reasonable.

### ***Final notice***

13. In the present case, the final notice of 10 November 2016, stated that the Appellant, Lisa Marie Lettings and Property Management Ltd, was not a member of a redress scheme on 11 October 2016, and had committed a breach of duty under articles 3 and 5 of the Order. The amount of the penalty was stated to be £3,000. A fine of £5,000 had been specified by the Council in its earlier notice of intent of 11 October 2016. On 12 October 2016, the Appellant was registered as a member of a redress scheme. The Council reduced the fine taking into account the Appellant's prompt response, her immediately joining a scheme and that she had no history of poor management or complaint with the Council.

### ***The appeal***

14. The Appellant appealed to the Tribunal. Both parties were content for the matter to be determined without a hearing. I am satisfied that, in all the circumstances, I can justly do so. I have read and considered all material presented to me, even if not specifically referred to below.
15. Ms Lisa Motton made various points as follows<sup>1</sup> (which I have organised for ease of reference):

---

<sup>1</sup> These include those derived from the Appellant's letter of 16 November 2016 addressed to the First-tier Tribunal (Property Chamber).

- a) It was a genuine oversight. She had not been aware of the legal requirements and joined immediately that she became aware. She is not sure how a small business is supposed to keep aware of such changes. As a one-man band Ms Motton tries to do everything by the book. ('Ground A').
- b) The amount of fine is unfair and disproportionate to the £199 plus VAT fee to join the scheme. The Appellant is a small business and in the current climate cannot afford to pay such a large amount without putting her business at risk. All properties that she manages have been managed a long time, without having 'hardly taken' on any new property. The next year's accounts would be reduced further as a large portfolio being managed was sold off. ('Ground B').
- c) The Final Notice had stated the wrong information for making an application to appeal (including the wrong name of the Tribunal, address and phone number. Had she not chased up her appeal letter to the wrong Court, nothing would have been done. ('Ground C')

16. From the information provided in the Bundle, the Council's case includes the following arguments:

#### Ground B

- a. Bristol City Council became aware, that Lisa Marie Lettings were operating a business letting and managing properties in Bristol, as they were named as managers of a property in an application for a Selective Licence. On checking the three redress providers on 11th October 2016 it was found that they were not a member of a redress scheme.
- b. The Appellant made representations on receipt of the notice of intent stating that the company was unaware of the requirement to belong to a scheme and had joined as soon as they were made aware. They also said that the business had been run without complaint for many years. The Appellant had included details of the operation of the business and a full set of accounts to year ended 2015.
- c. On the 1 November 2016 the Council's email to the Appellant of 1 November 2016 included:

"...You claim to have a small business with a reducing portfolio...You provided a full set of unaudited accounts. From the accounts

provided for year ending October 2015 we have deduced the following;

There was a profit of £35,766  
 You were paid a Director Salary of £10,000  
 A dividend was paid of £30,500  
 Vehicle expenses were covered to the tune of £4,650

You indicated in your submission that your portfolio is now reduced and therefore profits will be reduced for this year. If you believe the reduction will be significant for the year ending 2016 can you please forward these accounts and we will consider this."

- d. Ms Motton for the Appellant responded:  
 "the accounts for year end 2016 wont be done until the new year I am afraid I'm sorry but I cant have this worry until then."

#### Ground C

- e. The Council acknowledge that the Final Notice provided the address of the First-Tier Tribunal Residential Property Chamber. However, it did include adequate information on appeal rights that were sufficient enough to allow the Appellant to submit her appeal within the time limit allowed. The Appellant had sufficient information about their rights of appeal to contact the First-Tier Tribunal - Residential Property Chamber which led to submitting this appeal.

### **Findings**

17. It is accepted by the Appellant that it had failed to comply with the legislation set out above. Therefore, there was a legal basis for the Council to impose a financial penalty on the Appellant. The issues before me are whether, in all circumstances (as found by me), the amount of the penalty was unreasonable; the decision to fine the company was unreasonable for any other reason; or whether there was a procedural irregularity making the final notice void. On making a finding, I may quash, confirm or vary the final notice.<sup>2</sup>
18. As regards Ground A, I do not see that a lack of awareness of the regulations is a ground for the fine being unreasonable. The Council had taken into account that speedy response by the Appellant to register with

---

<sup>2</sup> See paragraph 9.

a scheme once it had received notice of intent, and this seems to me to be adequate recognition for the Appellant's willingness to join the scheme once aware of the requirements. Essentially, it is for the professional to ensure compliance of regulations appertaining to its business.

19. As regards Ground B, I cannot find any support for reducing the fine based on the Appellant's argument that the amount of fine is disproportionate to the £199 plus VAT fee to join the scheme. The Guide states an expectation that a £5000 fine should be considered the norm. (*See above*). The Council has considered representations made by the Appellant and reduced that fine. The Guide notes that the Council may decide to consider whether a £5,000 fine would be disproportionate to, for instance, the turnover/scale of the business, but not whether it is disproportionate to the fee for joining a scheme, and I see no reason for taking the joining amount of the joining fee into account.
20. Likewise, I see no support for a further reduction on the grounds that that all the company's properties have been managed a long time as it is not a reason not to be a member of a redress scheme. This is particularly where the Council have already reduced the fine to take into account that no complaints have been made about the Appellant. I also see no evidence of any significantly reducing portfolio or that the fine would put it out of business. According to the unaudited accounts, for the year ended 2014, the turnover was £54198, dividends £18,000, director's remuneration £5833 and retained profit £10,247. For the year ended 2015, the turnover was £56455, dividends £30,500, director's remuneration £10000 and retained profit £5266. There are no accounts provided for 2016.
21. As regards Ground C, The Schedule to the Order states that the Final Notice must provide "information about rights of appeal;" (*See above*.) The Final Notice made clear there was a right to appeal but provided an incorrect name and contact details for this Tribunal.
22. In *Newbold v Coal Authority* [2014] 1 WLR 1288 it was held that:

" In all cases one must construe the statutory or contractual requirement in question. It may require strict compliance with a requirement as a condition of its validity... against that, on its true construction a statutory requirement may be satisfied by what is referred to as adequate compliance. Finally it may be that even non-compliance with a requirement is not fatal. In all such cases it is necessary to consider the words of the statute ... in the light of



the subject matter, the background, the purpose of the requirements, if that is known ... and the actual possible effect of non-compliance on the parties. We assumed that Parliament in the case of legislation ... would have intended as sensible ... commercial result.

23. I do not consider the Council's information as to the appeal rights to have been adequate. Nonetheless, the Appellant was able to find out where to send her appeal documents and was not materially prejudiced by this. It is noted that Ms Motton had to do find the correct details on her own initiative and with some effort required.
24. Taking into account all the evidence and submissions, and in view of the errors on the Final Notice, I find that it is reasonable for the Final Notice to be varied, so that the financial penalty payable in respect of it is the sum of £2,750, rather than £3,000.

***Decision***

25. Accordingly, I allow the appeal to a limited extent.

**Dated**  
**Promulgation Date**

**Judge Claire Taylor**  
**2 June 2017**  
**2 June 2017**