



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

Tribunal Reference: **PR/2015/0003**  
Appellant: **APS Estates Limited**  
Respondent: **London Borough of Islington**  
  
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 the London Borough of Islington ("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.

10. The appellant, APS Estates Limited, appeals against the final notice dated 22 January 2015 from the Council, imposing a penalty charge of £5,000 in respect a breach of articles 3 and 5 of the Order. Both parties are content for the appeal to be determined without a hearing, on the basis of the documentary materials, and I am satisfied in the circumstances that I can properly determine the issues without a hearing.

11. Guidance has been issued by the Department for Communities and Local Government to local authorities in the form of a document entitled “Improving the Private Rented Sector and Tackling Bad Practice”. This guidance, published in March 2015, had its origins in a draft document produced in 2014. The guidance states that “the expectation is that a £5,000 should be considered the norm and that a lower fine should only be charged in the enforcement authority is satisfied that there are extenuating circumstances”. In this regard, the guidance notes that an issue that 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.”

12. The guidance is non-statutory. It is, however, of some relevance in that is relied upon by the Council, in effect, to support its conclusion that, in the circumstances, the imposition of the maxim penalty of £5,000 was not unreasonable.

13. It is common ground that the Council was entitled to impose a penalty. The appellant accepts that it was not covered for residential lettings and property management work; although it had been covered by a redress scheme in respect

of its sales work. The appellant, however, contends that the amount of the monetary penalty is unreasonable.

14. I am satisfied on balance from the evidence that the appellant was notified on the impending legislative requirement in May 2014 and, again, in September 2014. I also find that a visit was made to the appellant's business by representatives of the Council on 15 October 2014, to further advise the appellant. Further reminders etc were sent to the appellant on 6 and 20 November, before a notice of intent was served on 10 December. Although the appellant indicated in December 2014 that it was joining the redress scheme for the specified activities, on 22 January 2015 the appellant was still not a member. It seems membership occurred on 23 January. The date of breach is recorded as 10 December.

15. I take account of the fact that the guidance issued by the Department is non-statutory. I consider, however, that it is a useful indicator of whether, in all the circumstances, the amount of the penalty can be said to be unreasonable. In the present case, I agree with the Council that the appellant cannot be heard to say that it was unaware of the relevant legal requirements. I also agree that there is nothing to suggest that, having regard to the appellant's turnover (which has not been disclosed) the imposition of the maximum penalty would be disproportionate. In its letter of 24 March 2015, the appellant merely says that the penalty would "affect an independent business such as ourselves".

16. I do not regard lack of awareness or disproportionate effect by reference to turnover to be the only grounds on which the Council might properly decide to reduce the penalty. The Council must have proper regard to any other relevant matter put before it (such as good evidence of the illness or other incapacity of a sole proprietor at or around the time of required compliance). However, in the present case, I can see no such relevant matter. The fact that the appellant has been a member of a redress scheme in respect of sales does not strike me as relevant. The appellant had ample notice that the law was changing but took no proper timely steps to comply. The mere fact that a £5,000 penalty would have an effect on the business is also immaterial. The penalty is intended to do just that, provided it is not disproportionate. The appellant has chosen to provide no yardstick by which to judge whether the effect would be disproportionate.

17. On the basis of the evidence and submissions, I do not find the penalty to be unreasonable.

18. This appeal is accordingly dismissed.

19. The Council on 28 April 2015 applied to be awarded its legal costs in the sum of £624.80 in respect of "Investigation costs". The Tribunal's Registrar by email dated 28 April 2015 gave directions, which do not appear to have led to any further reaction from the Council. As the Registrar explained, the Tribunal's powers to award costs are limited and, in the circumstances, I do not consider that there can be said to be any wasted costs or that the appellant has acted

unreasonably in bringing the appeal. In any event, I do not consider that the costs of the "Investigation" – presumably the work done up to the issue of the final notice - constitute costs referable to these proceedings. I therefore make no order as to costs.

**Peter Lane**

**Chamber President**

**Dated 3 June 2015**

**Promulgation Date 5 June 2015**