FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Tribunal Reference:	**PR/2015/0010**
Appellant:	**London Sweet Homes Limited**
Respondent:	**London Borough of Camden**
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 Camden ("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 29 May 2015, addressed to the appellant, London Sweet Homes Limited, asserted that the appellant, which engages in lettings agency work, failed to become a member of an approved redress scheme, despite the legal requirement to do so from 1 October 2014. On 3 February 2015 the Council wrote to the appellant advising them of the need to be such a member. The letter gave the appellant 28 days in which to complete registration with one of the three government approved redress schemes. A search on 4 March 2015, however, revealed that the appellant was still not a member. On 9 April 2015, Ms McKeown of the Council visited the appellant's premises and issued the appellant with a notice of intent to impose a monetary penalty. Although the appellant subsequently did not make representations on what were regarded as "relevant grounds", the decision was taken by the Council to reduce the penalty from £5,000 (the maximum) to £2,500.

The appeal

11. The appellant's grounds of appeal contend that the decision to impose the financial penalty was unreasonable, since the appellant was unaware of the new legislation and it was therefore unreasonable for it to be expected to take action when it had not been notified of that legislation. The appellant had, however, joined an approved redress scheme as soon as they were notified.

12. The grounds went on to complain that there were allegedly contradictory penalty charge notices, in different sums, issued by Council and that the

appellant's business was a relatively new one. In the previous year it had helped 40 landlords and tenants to let and rent property. The appellant, besides remunerating two "entrepreneurs who work hard to develop the business" also supported two employees who worked on a commission basis. The proposed penalty would not only put "a strain on the company's tight finances" but would also "more crucially, send a message to the business community that those within Camden Council responsible for implementing legislation are willing to impose fines that threaten the existence of a business (and loss of people's livelihoods)". New businesses would, as a result, be deterred from starting. The Legislative and Regulatory Reform Act 2006 aims to remove or reduce burdens or overall burdens resulting from legislation, including burdens comprising a financial cost.

13. Both parties have consented to the appeal being determined without a hearing. In all the circumstances, having regard to the materials, I am satisfied that the Tribunal can justly do so.

The evidence

14. A witness statement from Alexandra McKeown records that she visited the appellant's premises on 9 April 2015 and issued a "notice of intent" stipulating an intended fine of £5,000. On the same occasion, she also issued a penalty charge notice for £1,000, in respect of an entirely separate breach of the Estate Agents (Redress) Scheme Order 2008, made under section 23A of the Estate Agents Act 1979. She explained to the representatives of the appellant that these were two totally separate penalties for different breaches. The estate agent penalty cannot be appealed to the First-tier Tribunal but, rather, has to be challenged in the County Court. It seems that the appellant made a payment to the Council of £1,000, in apparent part payment of the invoice of £2,500 in respect of the lettings agency and property management legislation.

15. On 9 April, Ms McKeown spoke to a lady who stated that she was the owner of the appellant but who refused to give her name. She said that she had received the Council's letter of 3 February 2015 and knew she was supposed to join a scheme. She then started speaking in what Ms McKeown took to be a foreign language to another individual, who was apparently a client of the appellant. The lady then, according to Ms McKeown, changed her mind and said that she had not received the letter of 3 February 2015. Ms McKeown explained the process of how to make written representations regarding the proposed £5,000 penalty. The lady in question refused to sign the relevant documentation but an employee of hers eventually did so.

16. On 10 April 2015, the appellant submitted its written representations to the Council. In these, they did not include any financial information or give any grounds as to why they had not been a member of the scheme. However, given that the appellant had had to pay two separate fines and because they were a small company, the Council nevertheless reduced the £5,000 penalty to £2,500,

even though the appellant had failed to provide any evidence in relation to turnover.

17. On 29 May 2015, Ms McKeown returned to the appellant's offices to inform them that the £5,000 fine had been reduced to £2,500. She again explained the nature of the two separate penalties, although the lady owner of the appellant again refused to speak to Ms McKeown. The staff member with whom Ms McKeown did speak said that he was a manager, who indicated that he had "been brought in to clean up issues with the business as he was well versed in their obligations as a letting agent and as an estate agent". He told Ms McKeown that he understood that the penalties were separate ones, as regards the lettings agency/property management work, on the one hand, and the estate agent work on the other. Because of the payment of £1,000, £1,500 of the penalty remains outstanding.

18. There was also a witness statement from Becky Harmon of the Council. She accompanied Ms McKeown on the visit on 9 April. She confirmed that the owner of the appellant stated that she had received a letter detailing the requirement to join the scheme, although she subsequently said that she had not received the letter. Ms Harmon confirmed that Ms McKeown handed the appellant a "notice of intent" in respect of a proposed penalty of £5,000. She also confirmed that Ms McKeown made it clear that she was also issuing a penalty charge notice in respect of the Estate Agents (Redress) Scheme Order 2008. The owner refused to sign the notices but one of her employees agreed to sign the relevant documentation.

19. A statement from Elizabeth Smead of the Council records that she accompanied Ms McKeown on the visit to the appellant on 29 May 2015, when Ms McKeown handed the appellant the relevant documentation and said that she was there to tell the appellant the outcome of the written representations that it had made to the Council regarding the £5,000 fine. The female owner of the appellant refused to speak to Ms McKeown and Ms Smead. However, Ms McKeown went through the relevant paperwork with a male member of staff, explaining that the £5,000 penalty had been reduced to £2,500. The staff member, according to Ms Smead, said that he understood the obligations of a letting agent and an estate agent.

Discussion

20. I am fully satisfied that Ms McKeown's evidence, corroborated as it is by Ms Harmon and Ms Smead, is likely to be correct. I am fully satisfied, on the balance of probabilities, that the appellant was in breach of the relevant legislation until 10 April 2015, following the visit of Ms McKeown on 9 April. I am also satisfied on the balance of probabilities that the appellant did receive the Council's letter of 3 February 2015 and that the subsequent denial of that by the apparent owner of the appellant is unlikely to be true. In any event, the appellant, as a professional business, ought to have been aware of legal requirements, directly

impacting upon its business. There is a dearth of evidence regarding the financial position of the appellant. In all the circumstances, I consider that the Council acted reasonably (indeed, generously) in reducing the penalty from £5,000 to £2,500. I find that no further reduction is warranted, whether by reference to the appellant's alleged financial position or otherwise.

Decision

21. This appeal is dismissed.

	Peter Lane
	Chamber President
Dated	**10 November 2015**
Promulgation Date	**23 November 2015**