FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Tribunal Reference:	**PR/2015/0012**
Appellant:	**Relish Residential Properties Ltd**
Respondent:	**Darlington Borough 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 Darlington Borough 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 12 June 2015, addressed to the appellant, Relish Residential Properties Ltd, stated that the appellant, which carried out property management work, was required to be a member of a redress scheme, pursuant to the relevant legislation. However, the appellant had not become such a member until 13 March 2015, despite being required to do so from 1 October 2014. The amount of the penalty was stated to be £3,000. In the previous notice of intent, the Council had specified £5,000, being the maximum permitted penalty; but this was reduced following representations from the appellant.

The appeal

11. Both parties were content for the appeal to be determined without a hearing and I am satisfied that, in all the circumstances, I can justly do so.

12. The case for the appellant is as follows. Mrs Julie Hamilton, who was the director of the appellant until 31 March 2015, when the company was sold to Mr Carl Hall, stated that the appellant had not received any notification from the Council of the need to join a redress scheme. Mrs Hamilton said that Mr David Burrell, an officer of the Council, had admitted that it was the Council's responsibility to notify letting agencies; but the Council did not have the resources to implement this. As soon as the appellant was made aware of the need to join, it had done so. The appellant was only a "relatively small letting agency" and the profit from the company was "minimal and includes an extremely low wage bill as my personal earning/drawings from the company have been minimal". Copies of accounts were supplied. Mrs Hamilton said that

the appellant had been managing her own property portfolio and the business had evolved from that.

13. Draft accounts stated to be "for the year ended 31 October 2015" recorded a net profit for 2013/14 of £9,706 and (what I assume is an estimated) profit for 2014/15 of £7,601. There was a wage bill of £21,722 for 2013/14 and £8,883 for 2014/15. Directors' salaries were recorded as £5,749 for 2013/14 and £2,410 for 2014/15.

14. There is a dispute between the parties as to what Mr Burrell said to Mrs Hamilton in April 2015. Mr Burrell is clear that Mrs Hamilton was not told it was the Council's obligation to notify relevant agents and managers of the new legislation. Rather, the Council's evidence states that Mrs Hamilton was informed there was insufficient resource available for the Council to undertake that task and that national publicity and information provided via professional bodies had been regarded as sufficient.

15. On this issue, I prefer the evidence of the Council. What Mr Burrell says is effectively corroborated by Ms Booth. Furthermore, it would have been odd for Mr Burrell to have stated that it was the Council's responsibility, when there is no indication of that either in the legislation or in the guidance for local authorities prepared by the Department for Communities and Local Government in connection with that legislation. I accordingly find it more likely than not that Mrs Hamilton misapprehended what she was being told by the Council. In any event, the position is that there is, in reality, no such obligation on the Council.

16. In the circumstances, I do not consider that the appellant can properly secure any exemption from or diminution in the financial penalty, as a result of the Council not having informed agents and managers within its area. I am satisfied that the existence of the new legislative requirements was publicised on the government's website. I further consider that it was appropriate of the Council to form the view that professionals working in this area would keep abreast of legislative changes, whether from that website or those run by relevant professional bodies and associations.

17. I also have regard to the fact that the Council adopted a policy of not seeking to penalise those who were not members of relevant schemes between 1 October 2014 and 1 January 2015. The appellant was, however, still not a member over two months after the expiry of this "grace period".

18. I have considered whether the revised penalty of £3,000 is, in all the circumstances, reasonable. In so doing, I have had regard to the appellant's submission that contends Mrs Hamilton "took a very low wage from the company of £482 per month" and that the dividend "was only a payment of £6k and hardly substantiates a large salary or cost effectiveness of running the business on a 40 hour week" for her. Mrs Hamilton states that 44 of the 62 properties under management by the appellant are owned by her. It appears

from page 84 of the bundle that Mrs Hamilton's properties are not to be managed by the appellant, following the sale to Mr Hall.

19. Having considered all the evidence and submissions, I do not find that the penalty of £3,000 is unreasonable. According to the draft accounts there is likely to be a net profit (after payment of wages and directors' salaries) for 2014/2015 of £7,601 (or, if one takes the profit and loss account figures on page 31 of the bundle, £6,032; being the profit after tax). Although the imposition of a penalty of £3,000 would be significant, I do not consider it to be in all the circumstances disproportionate, given the overall size of the company and its net profitability, even taking account of the current position. There is, in this regard, no proper information regarding the effect of the removal of Mrs Hamilton's properties from the appellant's portfolio. It is unclear whether Mr Hall has properties of his own, which he intends to add to that portfolio, or whether he has other plans for the business. I do, however, find it is more likely than not that Mr Hall would not have purchased the company in March 2015 if he had not seen any financial advantage in doing so.

20. This appeal is dismissed.

Judge Peter Lane

Chamber President

Dated 10 November 2015

Promulgation Date 13 November 2015