First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal References: PR/2018/0045
PR/2018/0046
PR/2018/0047

Decided without a hearing
On 1st March 2019

Between

ULTRA ESTATES (SJW) LTD

Appellant

and

WESTMINSTER CITY COUNCIL

Respondent

Judge

PETER HINCHLIFFE

DECISION AND REASONS

A. The Appeal and the Final Notices

1. Ultra Estates (SJW) Ltd ("Ultra") has brought appeals against final notices dated 12th July 2018 served on it by Westminster City Council ("Westminster"), which is the local weights and measures authority for Ultra's premises at 61 Rossmore Road, London NW1 6RB. The final notices set out Westminster's conclusion that Ultra was

between 21st March 2018 and 11th April 2018 engaged in letting agency work and failed to meet the following obligations imposed on lettings agents:

(i) Requirement to display on its website a list of fees as required by sections 83 (1) and (3) of the Consumer Rights Act 2015 (the "Act").
(ii) Requirement to display on its website a statement about membership of a client money protection scheme as required by sections 83 (3) and (6) of the Act.
(iii) Requirement to display on its website details of their membership of a redress scheme as required by sections 83 (3) and (7) of the Act.
(iv) Requirement to belong to an approved redress scheme under The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc. (England) Order 2014 (the "Order") .

2. Westminster imposed a penalty of £5,000 on Ultra under each of the final notices set out above.

3. Ultra submitted three Notices of Appeal dated 10th August 2018 against the final notices referred to above and also referred to a further penalty notice issued by Westminster under the Estate Agents Redress Scheme Order 2008.

4. An appeal against the penalty notice issued by Westminster under the Estate Agents Redress Scheme Order 2008 does not fall within the jurisdiction of this tribunal and is not considered further in this appeal or in this decision.

5. The position of the parties has evolved during the course of these proceedings in the manner set out in more detail in this decision. The final notices referred to at 1 (i) above, (Appeal PR/2018/0047), and 1 (iii) above, (part of Appeal PR/2018/0046), have been withdrawn or are not being enforced by Westminster.

6. As a consequence this decision relates to the appeals against the final notices referred to at 1 (ii) above, (part of Appeal PR/2018/0046), and 1 (iv) above, (Appeal PR/2018/0045), (together the "Final Notices").

7. Westminster now seek to impose a penalty of £4,300 in respect of the alleged failure by Ultra to display on its website a statement about membership of a client money protection scheme as required by section 83 (3) and (6) of the Act and a penalty of £3,800 in respect of the alleged failure to belong to an approved redress scheme as required by the Order

B. Legislation

8. Section 83 of the Act and other sections of the Act that are referred to in this decision or that are of greatest relevance to these appeal are set out below in Annex A to this decision. Where the relevant enforcement authority is satisfied on the balance of probabilities that a letting agency has breached its duties under section 83 of the Act, it may impose a financial penalty under section 87 of the Act. It does so by serving

first a notice of intent, considering any representations made in response, and then serving a final notice on the letting agent concerned.

9. The Order was issued in order to permit the exercise of the powers conferred by the Enterprise and Regulatory Reform Act 2013 (the "Act"). The sections of the Order that are referred to in this decision or that are otherwise relevant to this appeal are set out below in the Annex B, which forms a part of this decision. Where the relevant enforcement authority is satisfied on the balance of probabilities that a letting agency has breached its duties under the Order, it may impose a monetary penalty under article 8 of the Order. It does so by serving first a notice of intent, considering any representations made in response, and then serving a final notice on the letting agent concerned.

10. The Order and Schedule 9 paragraph 5 to the Act provide that a letting agent upon whom a financial penalty is imposed may appeal to this tribunal. The permitted grounds of appeal are (a) that the decision to impose the financial penalty was based on an error of fact; (b) the decision was wrong in law; (c) the amount of the financial penalty is unreasonable; or (d) the decision was unreasonable for any other reason. The tribunal may quash, confirm or vary the final notice which imposes the financial penalty.

C. Guidance

11. The Act and the Order are the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government in March 2015 (the "Guidance"). The Guidance is non-statutory but the relevant enforcement authority is expected to have regard to it when considering what fine is reasonable for a breach of the Order. The sections of the Guidance that are of greatest relevance to this appeal are set out below:

> "*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.*

In relation to the Order the Guidance goes on to say:

"The enforcement authority can impose a fine of up to £5,000 where it is satisfied, on the balance of probability that someone is engaged in letting or management work and is required to be a member of a redress scheme, but has not joined.

………………..

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.)

D. The Appeal

12. Ultra stated in their Notice of Appeal that it had always been a member of the PRS redress scheme and that "*a Director resigned last year and failed to renew the policy. Of which I was unaware. Once I was informed, I immediately renewed the Policy*." In their representations in response to the Notice of Intent issued by Westminster and received by Ultra on 11th April 2018, Ultra had provided the same explanation. In a subsequent letter to Westminster dated 12th July 2018 and in Ultra's "Reply to Respondent's Bundle" Mr Haarris Peracha on behalf of Ultra repeated that a director had left due to the financial circumstances of Ultra and that as a consequence their membership of the PRS redress scheme was not renewed and e-mails about this went to the e-mail address of the individual who had left the business. I understand that Ultra is therefore accepting that between 21st March 2018 and 11th April 2018 it was in breach of its obligation to belong to an approved redress scheme as required by the Order. Ultra ask for a number of factors to be taken into account in respect of this failure and these are considered below.

13. In its appeal Ultra did not make any references to the allegation that it did not display on its website a statement about membership of a client money protection scheme. In the "Reply to Respondent's Bundle" Ultra stated that at the moment it is not a member of a client money protection scheme, but that it will do so when this becomes mandatory in April 2019. It did not otherwise respond specifically to this allegation. I can find no denial or admission in respect of this alleged failure in any of Ultra's submission or correspondence.

14. Ultra have concentrated their arguments in this appeal on their inability to pay the level of fine required by Westminster due to the limited funds they hold and the financial difficulties affecting their business. In their Notice of Appeal Ultra stated that they had insufficient funds to pay the fines that then stood at £20,000 in aggregate. Ultra submitted their accounts for the year to 31st August 2017, which showed a loss of £4,900 for the year to 31st August 2017 and negative capital and reserves of £4,008. Expenditure on wages, director's salaries and commissions was less that £25,000 in total. Ultra repeated in the "Reply to Respondent's Bundle" that they could not afford

to pay the fines and that a loan of £15,000 had been made to the Ultra in March 2018 in order to permit it to survive. Ultra provided heavily redacted bank statements for the period from March 2018 to January 2019, which it states show the outstanding loan and their lack of funds and provides evidence that the proposed penalties would lead to the bankruptcy of Ultra. Ultra has also stated that it had three employees at that time whose jobs are at risk.

15. Westminster responded by pointing out that the bank account of Ultra showed a credit balance of between £11,732 and £24,562 between July and November 2018. In an e-mail dated 18th February 2019 Ultra confirmed that the accounts and the bank account for Ultra included a loan of £14,000 that was made in 2017 prior to the loan in March 2018. Ultra also confirmed that their bank account included rental payments made by clients to the business account before being transferred to their client account. Mr Haarris Peracha stated that Ultra had made losses in 2018 as well as 2017 and that even the reduction in the penalties now proposed by Westminster to a total of £8,100 would be enough to "result in the company going bankrupt".

E. Proceeding without a hearing

16. In their appeal Ultra indicated that they wished the appeal to be heard on the papers. Westminster has not sought an oral hearing. Having considered the subject matter of the appeal, the evidence and submissions provided by the parties and the capability of the parties I consider that this appeal is suitable for determination on this basis.

F. Conclusion on Liability

17. Westminster proved a video recording of Ultra's website on 3rd April 2018 which did not include a statement of whether they were a member of a client money protection scheme. Westminster provided a witness statement from a Civil Advice Officer who stated that he viewed Ultra's website between 21st March 2018 and 11th April 2018 and found that it did not display a statement of whether Ultra were a member of a client money protection scheme. Ultra have not denied that they were in breach of this requirement of the Act during the course of this appeal. I conclude on the basis of the evidence that Ultra were in breach of the requirement to display on its website a statement about membership of a client money protection scheme as required by sections 83 (3) and (6) of the Act.

18. I also conclude that Ultra has accepted that between 21st March 2018 and 11th April 2018 it was in breach of its obligation to belong to an approved redress scheme as required by the Order and this acceptance is supported by the evidence.

G. Conclusion on Penalty

19. Ultra has argued in their appeal that the amount of the monetary penalty is unreasonable and unaffordable. In deciding on the reasonableness of the penalty,

which is left open by the primary legislation, I accept that it is helpful and appropriate to have regard to the Guidance. The Guidance says the expectation is a "*fine*" (i.e. penalty) of £5,000 for a breach of the Act or Order and that a lower sum should be imposed only if the authority is satisfied there are "*extenuating circumstances*". The Guidance does not purport to be exhaustive as to what might constitute extenuating circumstances; however, it goes on to indicate some considerations that may be relevant. It recognises that an issue that should be considered in this regard is whether a £5000 fine is disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is clear that the Act must take precedence over the Guidance and that, in any event, enforcement authorities such as Westminster must consider the issue of reasonableness and proportionality of a penalty in the round and that they should not follow the advice in the Guidance to the exclusion of all other matters.

20. The Act is intended to reduce harm and the risk of harm to consumers from letting agents. The penalty needs to be set at a level that reflects the public benefit in ensuring compliance with the Act whilst being proportionate to the scale of the business and the severity of the failure.

21. I have considered the financial information provided about Ultra in order to determine if there are extenuating circumstances that might lead to a further reduction in the penalties. The accounts for the year to 31 August 2017 provided by Ultra show that Ultra had a turnover of £81,566, staff costs of £22,144 and it incurred a loss of £4,900. As stated above, Ultra has a very weak balance sheet with net assets of minus £4,008. Ultra has not provided any information about their current finances, other than to say that the accounts for 2018 will show a loss and an even larger negative reserve and they felt it necessary to take on the loan of £15,000 referred to above in March 2018. Ultra indicated that up to February 2019 the market in which they operate is difficult with Brexit dampening demand. Nevertheless Ultra remains in business and now have three members of staff. In the circumstances I accept that their poor financial position constitutes extenuating circumstances that justify a penalty below the "norm" proposed by the Guidance.

22. Westminster have recognised that Ultra faces financial difficulties and offered a 14% discount to the penalty originally proposed to reflect these difficulties and Ultra's efforts in undertaking training on their legal obligations. This discount reduced the penalty to £4,300 for the failure to display on its website a statement about membership of a client money protection scheme. The penalty in respect of the failure to belong to a redress scheme was also reduced to this level and then further reduced by £500 to reflect Ultra's prompt rejoining of the PRS redress scheme when it became aware that they had not renewed their membership.

23. Ultra ask that I take into account that no client has suffered a loss, that they seek to provide a very high level of customer service, that good progress has been made in staff training and that clients are told about fees before they engage with Ultra. I note

these factors and I accept that their failure to renew their membership of a redress scheme appears to be as a consequence of staff change rather than any deliberate avoidance or any prolonged failure. However, even after taking account of all of these factors and their poor financial position, I find that it is not appropriate to reduce the penalties to nil as Ultra seeks. The Act has been in force since May 2015. I conclude that Ultra had no reasonable excuse for failing to comply with the requirement of the Act until March 2018. A financial penalty is appropriate given the potential harm to consumers of prolonged non-compliance with the Act. I conclude that the penalty of £4,300 proposed by Westminster for the breach of the Act is reasonable in all of the circumstances of this case. The penalty for the breach of the Order is however unreasonable given the poor financial position of the Ultra and the inadvertent failure to renew their membership of a redress scheme. In the circumstances I find that it would be reasonable to reduce this penalty to £1,500.

F. ***Decision***

24. By virtue of paragraph 5 (5) of Schedule 9 to the Act, the Tribunal may quash, confirm or vary a Final Notice.

25. With regard to Appeal reference PR/2018/0045 I conclude that Ultra's failed between 21st March 2018 and 11th April 2018 to belong to an approved redress scheme and was therefore in breach of the Order and a financial penalty of £1,500 should be imposed in respect of this breach and such a penalty is reasonable and proportionate. The relevant final notice is therefore varied so as to substitute this reduced penalty.

26. With regard to Appeal reference PR/2018/0046 I conclude that Ultra's failure between 21st March 2018 and 11th April 2018 to include on their website a statement of whether they are a member of a client money protection scheme gives rise to a breach of section 83 (3) and (6) of the Act. Westminster have withdrawn their decision that Ultra was in breach of the requirement to display on its website a list of fees as required by sections 83 (1) and (3) of the Act and I find that the final notice is varied to reflect this outcome. A financial penalty of £4,300 is reasonable and proportionate in respect of the single breach of section 83 (3) and (6) of the Act and the relevant final notice is therefore varied so as to substitute this reduced penalty.

27. Appeal reference PR/2018/0047 succeeds as Westminster wish to withdraw the relevant final notice, which is hereby quashed.

Signed

Peter Hinchliffe
Judge of the First-tier Tribunal
11th March 2019
Promulgation Date 11 April 2019

ANNEX A

The Consumer Rights Act 2015 imposes a requirement on all letting agents in England and Wales to publicise details of their relevant fees. This is achieved by sections 83 to 86:-

A. Duty of Letting Agents to Publicise Fees

"CONSUMER RIGHTS ACT 2015

Chapter 3

Duty of Letting Agents to Publicise Fees etc

83 Duty of letting agents to publicise fees etc.

(1) A letting agent must, in accordance with this section, publicise details of the agent's relevant fees.

(2) The agent must display a list of the fees--

(a) at each of the agent's premises at which the agent deals face-to-face with persons using or proposing to use services to which the fees relate, and

(b) at a place in each of those premises at which the list is likely to be seen by such persons.

(3) The agent must publish a list of the fees on the agent's website (if it has a website).

(4) A list of fees displayed or published in accordance with subsection (2) or (3) must include--

(a) a description of each fee that is sufficient to enable a person who is liable to pay it to understand the service or cost that is covered by the fee or the purpose of which it is imposed (as the case may be),

(b) in the case of a fee which tenants are liable to pay, an indication of whether the fee relates to each dwelling-house or each tenant under a tenancy of the dwelling-house, and

(c) the amount of each fee inclusive of any applicable tax or, where the amount of a fee cannot reasonably be determined in advance, a description of how that fee is calculated.

(5) Subsections (6) and (7) apply to a letting agent engaging in letting agency or property management work in relation to dwelling-houses in England.

(6) If the agent holds money on behalf of persons to whom the agent provides services as part of that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement of whether the agent is a member of a client money protection scheme.

(7) If the agent is required to be a member of a redress scheme for dealing with complaints in connection with that work, the duty imposed on the agent by subsection (2) or (3) includes a duty to display or publish, with the list of fees, a statement--

(a) that indicates that the agent is a member of a redress scheme, and

(b) that gives the name of the scheme.

(8) The appropriate national authority may by regulations specify--

(a) other ways in which a letting agent must publicise details of the relevant fees charged by the agent or (where applicable) a statement within subsection (6) or (7);

(b) the details that must be given of fees publicised in that way.

(9) In this section--

"client money protection scheme" means a scheme which enables a person on whose behalf a letting agent holds money to be compensated if all or part of that money is not repaid to that person in circumstances where the scheme applies;

"redress scheme" means a redress scheme for which provision is made by order under section 83 or 84 of the Enterprise and Regulatory Reform Act 2013.

84 Letting agents to which the duty applies

(1) In this Chapter "letting agent" means a person who engages in letting agency work (whether or not that person engages in other work).

(2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person's employment under a contract of employment.

(3) A person is not a letting agent for the purposes of this Chapter if--

(a) the person is of a description specified in regulations made by the appropriate national authority;

(b) the person engages in work of a description specified in regulations made by the appropriate national authority.

85 Fees to which the duty applies

(1) In this Chapter "relevant fees", in relation to a letting agent, means the fees, charges or penalties (however expressed) payable to the agent by a landlord or tenant--

(a) in respect of letting agency work carried on by the agent,

(b) in respect of property management work carried on by the agent, or

(c) otherwise in connection with--

(i) an assured tenancy of a dwelling-house, or

(ii) a dwelling-house that is, has been or is proposed to be let under an assured tenancy.

(2) Subsection (1) does not apply to--

(a) the rent payable to a landlord under a tenancy,

(b) any fees, charges or penalties which the letting agent receives from a landlord under a tenancy on behalf of another person,

(c) a tenancy deposit within the meaning of section 212(8) of the Housing Act 2004, or

(d) any fees, charges or penalties of a description specified in regulations made by the appropriate national authority.

86 Letting agency work and property management work

(1) In this Chapter "letting agency work" means things done by a person in the course of a business in response to instructions received from--

(a) a person ("a prospective landlord") seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or

(b) a person ("a prospective tenant") seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.

(2) But “letting agency work” does not include any of the following things when done by a person who does nothing else within subsection (1)--

(a) publishing advertisements or disseminating information;

(b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;

(c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.

(3) “Letting agency work” also does not include things done by a local authority.

(4) In this Chapter “property management work”, in relation to a letting agent, means things done by the agent in the course of a business in response to instructions received from another person where--

(a) that person wishes the agent to arrange services, repairs, maintenance, improvements or insurance in respect of, or to deal with any other aspect of the management of, premises on the person’s behalf, and

(b) the premises consist of a dwelling-house let under an assured tenancy.”

B. Enforcement

Section 87 explains how the duty to publicise fees is to be enforced:-

“**87 Enforcement of the duty**

(1) It is the duty of every local weights and measures authority in England and Wales to enforce the provisions of this Chapter in its area.

(2) If a letting agent breaches the duty in section 83(3) (duty to publish list of fees etc. on agent’s website), that breach is taken to have occurred in each area of a local weights and measures authority in England and Wales in which a dwelling-house to which the fees relate is located.

(3) Where a local weights and measures authority in England and Wales is satisfied on the balance of probabilities that a letting agent has breached a duty imposed by or under section 83, the authority may impose a financial penalty on the agent in respect of that breach.

(4) A local weights and measures authority in England and Wales may impose a penalty under this section in respect of a breach which occurs in England and Wales but outside that authority's area (as well as in respect of a breach which occurs within that area).

(5) But a local weights and measures authority in England and Wales may impose a penalty in respect of a breach which occurs outside its area and in the area of a local weights and measures authority in Wales only if it has obtained the consent of that authority.

(6) Only one penalty under this section may be imposed on the same letting agent in respect of the same breach.

(7) The amount of a financial penalty imposed under this section--

(a) may be such as the authority imposing it determines, but

(b) must not exceed £5,000.

(8) Schedule 9 (procedure for and appeal against financial penalties) has effect.

(9) A local weights and measures authority in England must have regard to any guidance issued by the Secretary of State about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(10) A local weights and measures authority in Wales must have regard to any guidance issued by the Welsh Ministers about--

(a) compliance by letting agents with duties imposed by or under section 83;

(b) the exercise of its functions under this section or Schedule 9.

(11) The Secretary of State may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in England;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities.

(12) The Welsh Ministers may by regulations made by statutory instrument--

(a) amend any of the provisions of this section or Schedule 9 in their application in relation to local weights and measures authorities in Wales;

(b) make consequential amendments to Schedule 5 in its application in relation to such authorities."

C. Financial penalties

3. The system of financial penalties for breaches of section 83 is set out in Schedule 9 to the 2015 Act:-

"SCHEDULE 9

DUTY OF LETTING AGENTS TO PUBLICISE FEES: FINANCIAL PENALTIES

Section 87

Final Notice of intent

1

(1) Before imposing a financial penalty on a letting agent for a breach of a duty imposed by or under section 83, a local weights and measures authority must serve a Final Notice on the agent of its proposal to do so (a "Final Notice of intent").

(2) The Final Notice of intent must be served before the end of the period of 6 months beginning with the first day on which the authority has sufficient evidence of the agent's breach, subject to sub-paragraph (3).

(3) If the agent is in breach of the duty on that day, and the breach continues beyond the end of that day, the Final Notice of intent may be served--

(a) at any time when the breach is continuing, or

(b) within the period of 6 months beginning with the last day on which the breach occurs.

(4) The Final Notice of intent must set out--

(a) the amount of the proposed financial penalty,

(b) the reasons for proposing to impose the penalty, and

(c) information about the right to make representations under paragraph 2.

Right to make representations

2

The letting agent may, within the period of 28 days beginning with the day after that on which the Final Notice of intent was sent, make written representations to the local weights and measures authority about the proposal to impose a financial penalty on the agent.

Final Notice

3

(1) After the end of the period mentioned in paragraph 2 the local weights and measures authority must--

(a) decide whether to impose a financial penalty on the letting agent, and

(b) if it decides to do so, decide the amount of the penalty.

(2) If the authority decides to impose a financial penalty on the agent, it must serve a Final Notice on the agent (a "Final Notice") imposing that penalty.

(3) The Final Notice must require the penalty to be paid within the period of 28 days beginning with the day after that on which the Final Notice was sent.

(4) The Final Notice must set out--

(a) the amount of the financial penalty,

(b) the reasons for imposing the penalty,

(c) information about how to pay the penalty,

(d) the period for payment of the penalty,

(e) information about rights of appeal, and

(f) the consequences of failure to comply with the Final Notice.

Withdrawal or amendment of Final Notice

4

(1) A local weights and measures authority may at any time--

(a) withdraw a Final Notice of intent or Final Notice, or

(b) reduce the amount specified in a Final Notice of intent or Final Notice.

(2) The power in sub-paragraph (1) is to be exercised by giving Final Notice in writing to the letting agent on whom the Final Notice was served.

D. Appeal

4. Finally, Schedule 9 provides for appeal, as follows.

Appeal

5

(1) A letting agent on whom a Final Notice is served may appeal against that Final Notice to--

(a) the First-tier Tribunal, in the case of a Final Notice served by a local weights and measures authority in England, or

(b) the residential property tribunal, in the case of a Final Notice served by a local weights and measures authority in Wales.

(2) The grounds for an appeal under this paragraph are that--

(a) the decision to impose a financial penalty was based on an error of fact,

(b) the decision was wrong in law,

(c) the amount of the financial penalty is unreasonable, or

(d) the decision was unreasonable for any other reason.

(3) An appeal under this paragraph to the residential property tribunal must be brought within the period of 28 days beginning with the day after that on which the Final Notice was sent.

(4) If a letting agent appeal under this paragraph, the Final Notice is suspended until the appeal is finally determined or withdrawn.

(5) On an appeal under this paragraph the First-tier Tribunal or (as the case may be) the residential property tribunal may quash, confirm or vary the Final Notice.

(6) The Final Notice may not be varied under sub-paragraph (5) so as to make it impose a financial penalty of more than £5,000.

ANNEX B

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 section 84 (6) provides that;

> " '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."

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.

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.