



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

**Tribunal Reference:** PR/2015/0009  
**Appellant:** Pars Impex Property Ltd  
**Respondent:** London Borough of Camden  
  
**Judge:** Peter Lane

**DECISION NOTICE**

***The 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 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 may 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.

***The final notice***

10. The appellant, Pars Impex Property Limited, appeals against the final notice dated 29 May 2015 from the Council, imposing a penalty charge of £5,000 in respect of a breach of Article 3 of the Order. In its notice of appeal, the appellant requested an oral hearing. However, the appellant did not appear at the hearing on 26 October 2015 at Field House, London. I was satisfied that the appellant had been duly notified of the date, time and place of the hearing. There was no explanation as to why the appellant had chosen to be absent. In all the circumstances, having regard to the overriding objective in rule 2 of the Tribunal Procedure (First Tier Tribunal) (General Regulatory Chamber) Rules 2009, I decided to proceed in the absence of the appellant or any representative. Ms McKeown, the case officer from the Council’s trading standards department, appeared on behalf of the Council. She confirmed the contents of her statement dated 10 September 2015 contained in the bundle of documents prepared for the hearing. I have had regard to the contents of that bundle in reaching my decision.

***The guidance***

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 relevance in that it is relied upon by the Council, in effect, to support its conclusion that, in the circumstances, the imposition of the maximum penalty of £5,000 was not unreasonable.

### ***Findings***

13. The appellant has not begun to show that the factual matters set out in Ms McKeown's statement are incorrect. I find as a fact that the appellant was informed by letter on 3 February 2015 of the requirement to register with one of the approved redress schemes. I find that on 24 February 2015 Ms McKeown visited the offices of the appellant at 130 Finchley Road, serving a further copy of the letter of 3 February 2015. Mr Aryan Tofigh told Ms McKeown that he was the director and manager of a previous company, Phoenix European Property Services Ltd, and she informed him how to join one of the schemes, leaving a hand-written non-compliance notice with Mr Tofigh. That gave the appellant a further 14 days in which to join the scheme.

14. On 7 April 2015, Ms McKeown undertook a search which revealed that the appellant was not registered with any of the relevant schemes. The following day she visited 130 Finchley Road again and spoke this time to Mr Noel, a work experience lettings negotiator, who was in charge on that occasion of the appellant's office. I am satisfied that Mr Noel told Ms McKeown that the appellant "had not got round to" joining a scheme. I am satisfied that Ms McKeown explained the appeal process and grounds of appeal to Mr Noel, including the possibility of the appellant contending that the proposed penalty of £5,000 would be unreasonable, having regard to the financial position of the appellant. She also told Mr Noel that if anyone from the appellant wished to discuss the grounds of challenge, they could contact her.

15. Written representations were submitted by the appellant to the Council on 17 April 2015. This letter contended that the appellant only became aware of the requirement to register following the visit by Ms McKeown on 24 February 2015. It is then said that Mr Aryan Tofigh, described by Mr Afshin Tofigh (director of the appellant) as "a member of our staff" was told to register the appellant with the Property Ombudsman. The letter goes on to that "unfortunately despite our

Company taking all reasonable steps to meet the statutory requirements, our member of staff failed to register the company as he had been unequivocally instructed to do". A subsequent "investigation" revealed that Mr Aryan Tofigh had been confused regarding the statutory provisions. He was said to have taken full responsibility for the omission "and has as a result discontinued his relationship with the company". The representations went on to say that it was unfair, unreasonable and inequitable in the circumstances for any monetary penalty to be imposed. It was also contended that the amount of the penalty was disproportionate.

16. The Council was not persuaded by these submissions. In its notice of appeal to the Tribunal, the appellant reiterates the submission that its employee had admitted sole responsibility, stating that he did not follow instructions given by his employer.

17. Even if, which I do not accept, the appellant failed to receive the letter of 3 February, by 24 February at the latest, it could have been under no doubt that the legal requirement to register existed and that it was in breach. There is no witness statement from Mr Aryan Tofigh. In any event, as someone who is or was the company secretary of Phoenix European Property Services Limited (with Mr Afshin Tofigh as director), I do not accept that Mr Aryan Tofigh lacked experience of the property lettings industry. Like Mr Afshin Tofigh, he should have been aware of the relevant legislation governing the activities of such agents.

18. Even if Mr Aryan Tofigh was at fault, the appellant must take responsibility for his actions and omissions. There is no suggestion that the appellant kept the matter under review and checked the position with Mr Aryan Tofigh, before the visit on 8 April 2015. Mr Noel's observation to Ms McKeown that "they had not got round to it" is, I consider, likely to be an accurate description of the position. It indicates a problematic attitude on the part of the appellant towards its statutory responsibilities.

19. Although the appellant complains it was not given an opportunity by the Council of providing "financial details" in an attempt to mitigate the penalty, it has still not done so. There is no reliable evidence before the Tribunal to begin to show that the imposition of a £5,000 penalty on the appellant would be disproportionate, having regard to the appellant's turnover and general financial position.

20. In conclusion, I find on the facts that there are no mitigating circumstances, such as to make it appropriate to reduce the amount of the penalty. The Council was correct to issue the notice in the sum of £5,000.

21. This appeal is dismissed.

**Peter Lane**

**Chamber President**

**Dated 18 November 2015**

**Promulgation Date 23 November 2015**