



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

**Tribunal Reference:** PR/2015/0017  
**Appellant:** Meridian Properties Leeds Ltd  
**Respondent:** Leeds City 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 Leeds City 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.

***The final notice***

10. The appellant appeals against the final notice dated 4 September 2015 from the Council, imposing a penalty of £2,500 in respect of a breach of the Order. Both parties were content for the appeal to be determined without a hearing and, in all the circumstances, I considered that I could justly do so. I have regard to all the materials in the bundle prepared by the Council which includes materials from the appellant.

11. In the present case, the notice of intent of 8 July 2015 indicated that the Council intended to impose the penalty of £5,000. However, following representations from the appellant, this was reduced to £2,500. It appears that the matters set out in the appellant’s grounds of appeal to the Tribunal cover the same ground as its earlier submissions to the Council, which resulted in the reduction of the penalty.

***Discussion***

12. The requirement to be a member of a relevant redress scheme came into force in October 2014. Checks carried out by the Council on 1 July 2015 indicated that the appellant has not joined any such scheme. The appellant, however, joined later in July.

13. The appellant's case is that all information about the redress scheme prior to January 2015 was said to have been sent to a person who was then a director but who subsequently ceased to be one. Mr Sadiq, who was in charge of the appellant, says that he did not become aware of the legal requirement until he received an email from the Council dated 21 April 2015. Mr Sadiq asked a friend of his who, from March 2015, was said to have been helping organise the appellant's back office (without charge) to deal with the matter. The friend obtained details of a suitable redress scheme. The friend then emailed the appellant on 24 April, attaching details of the application pack and brochure, as provided by the UK Association of Letting Agents. Unfortunately, the appellant's email system was out of action for "some 10 days from 24 April until early May", with the claimed result that the email did not arrive. The friend's medical condition was said to be such that he suffered from a poor memory and forgot to do anything further about the matter.

14. As the Council points out, however, there are records of the Council communicating by email with the appellant at the relevant email address from September 2014, in which the appellant specifically mentioned the requirement to belong to a redress scheme. These emails began in September 2014 and do not cover periods where, according to the appellant, its email system was out of operation. It is difficult to see how the termination of the directorship of Mr Ali in January 2015 has any material bearing. Even if Mr Sadiq had not received any relevant communications about the redress scheme prior to 31 January, he could and should have made arrangements for any such communications to be forwarded to him by Mr Ali.

15. In any event, the appellant's assertion that the friend's email of 24 April 2015 did not reach Mr Sadiq is undermined by the letter from BITAC Solutions, at page 14 of the bundle, in which it is stated that BITAC Solutions left the appellant without an email facility "for some 10 days up to 2nd April. At the same time it was not possible to retrieve lost/missed emails". According to this letter, therefore, there is no suggestion that any overhaul of the appellant's IT system was causing difficulties on 24 April 2015.

16. Overall, even if all the submissions made by the appellant were true (and I do not consider they are), it is plain that the appellant failed to comply with its legal obligations by failing to become a member of an approved redress scheme, despite the fact this failure was specifically drawn to its attention. However well-intentioned the actions of Mr Sadiq's friend may have been, Mr Sadiq could and should have made better arrangements.

17. As I have said, the Council has reduced the penalty from £5,000 to £2,500, having regard to the appellant's representations. In all the circumstances, that reduction was entirely reasonable (even generous). No further reduction is called for. This appeal is dismissed.

**Peter Lane**

**Chamber President**

**Dated 24 February 2016**