



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

Tribunal Reference: **PR/2015/0021**  
Appellant: **Mohammed Asif Butt (Catlows Lettings Agents)**  
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 the 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."

***Final Notice***

10. In the present case, the final notice, dated 13 October 2015, addressed to the appellant, Mohammed Asif Butt (Catlows Lettings Agents), stated that the appellant had engaged in property management work, without being a member of a redress scheme, as required by the 2014 Order. In view of this failure to comply with the law, a financial penalty of £2,500 was to be imposed. I note that this compared with a proposed financial penalty of £5,000, in the notice of intent dated 29 July 2015. It appears that the reduction was a result of the Council taking into consideration the appellant's email of 30 July 2015. In this, the appellant said that:-

"I was completely not aware of this legislation I was not sent any letter addressing me that I had to be a member and if I didn't I would be fined as I said to you over the phone that I'm not a person that takes interest in the news or checks the internet regularly because you say this has been advertised on the internet so on the basis that you Leeds city council or the government or the membership bodies haven't wrote to me I think it is unfair that I should be fined for something I didn't even know about ... I took over this business in December 2014 from another person who had originally owned Catlows in the previous address we was only left with a small number of properties this fine could really have a bad effect on my business as of today I have took out the membership with prs my membership number is ..."

11. These representations are relied upon by the appellant in connection with his appeal to the Tribunal against the final notice.

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

13. I am satisfied on the evidence that the appellant was not a member of a redress scheme from October 2014, when it became a mandatory requirement to be such a member, until 30 July 2015. I am also satisfied on balance that the Council sent a number of communications to the appellant, beginning in September 2014, informing him of the relevant legislation and the obligations it imposed. In particular, an email sent to the appellant, at the email address provided by the appellant, dated 2 September 2014, contained links to advice/information pages regarding the introduction of the redress scheme. A further email giving a link to a press release was sent to the appellant on 4 June 2015.

14. Even if this had not been the case, it would not have meant that the appellant was not, in law, in breach of the law. Any responsible agent could and should have made themselves aware of the position, by looking at relevant professional websites, and so forth. As it is, I found that the Council in the present case did specifically seek to draw the existence of the legislation to the attention of the appellant. I agree with the Council that it is frankly surprising that the appellant, as a professional letting agent, does not take any interest in the news or check the internet regularly (or, it seems, his own emails). In any event, the appellant's excuse carries no force. So far as the alleged effect on the appellant's business is concerned, no financial information has been put forward by the appellant to substantiate the bare assertion that the fine "could really have a bad effect on my business". In the circumstances, I am not prepared to accept this assertion as constituting reliable evidence.

15. In all the circumstances, I consider that the Council's decision to impose a penalty of £2,500 is, frankly, generous. It cannot possibly be said, on behalf of the appellant, that the sum is unreasonable. I find no other reason to quash or vary the final notice.

### ***Decision***

16. This appeal is dismissed.

**Peter Lane**

**Chamber President**

**24 February 2016**