



**First-tier Tribunal  
(General Regulatory Chamber)  
Professional Regulation**

**Appeal Reference: PR/2018/0024**

**Decided without a hearing  
on 30th August 2018**

**Before**

**TRIBUNAL JUDGE PETER HINCHLIFFE**

**Between**

**KENNETH LLOYDS (E1) LTD**

Appellant

**and**

**LONDON BOROUGH OF TOWER HAMLETS**

Respondent

**DECISION**

1. The Appeal is refused. The final notice served by the London Borough of Tower Hamlets ("Tower Hamlets") on Kenneth Lloyds (E1) Ltd ("Kenneth Lloyds") dated 1<sup>st</sup> May 2018 was correct in identifying a breach by Kenneth Lloyds of their duty to become a member of an approved redress scheme whilst engaging in lettings agency

work and property management work and imposed a monetary penalty that was reasonable in all of the circumstances of this appeal.

## REASONS

### *A. Background*

2. Kenneth Lloyds appealed against a final notice dated 1<sup>st</sup> May 2018 served on it by Tower Hamlets (the “Final Notice”), which is the enforcement authority for letting agents and property managers carrying on business in Tower Hamlets. The Final Notice is addressed to Kenneth Lloyds at its business address at 91 Burdett Road, London E3 4JN, which is within Tower Hamlets. The Final Notice requires Kenneth Lloyds to pay a monetary penalty of £5,000 in respect of its failure on 8<sup>th</sup> March 2018 to meet its duty under The Redress Scheme for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc. (England) Order 2014 (the “Order”) to belong to an approved redress scheme whilst engaged in lettings agency work and property management work.

### *B. Legislation*

3. 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 Act and the Order that are referred to in this decision or that are otherwise relevant to this appeal are set out below in the Annex, which forms a part of this decision.
4. 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.
5. The Order provides 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 monetary 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*

6. 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 section of the Guidance that is of greatest relevance to this appeal is set out below:

*“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.*

.....

*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. 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 and the Response***

7. On 25<sup>th</sup> May 2018 Kenneth Lloyds submitted a Notice of Appeal to Tower Hamlets setting out their grounds of appeal against the Final Notice. The main points of Kenneth Lloyds’ grounds of appeal are:
  - The liability to pay the fine is not disputed.
  - They are in severe financial difficulties. They are in arrears with their debts, have Court fines to pay and Mr Kamali, the principal of Kenneth Lloyds, has not been able to draw wages. They therefore seek a significant reduction in the fine.
8. Kenneth Lloyds stated in their appeal that they would submit their accounts and other evidence of their financial hardship in order to support their appeal. No additional information has been received since then.
9. Tower Hamlets submitted a response to the appeal in which they noted that the appeal was in relation to the amount of the penalty only. Tower Hamlets referred to the Guidance and the expectation that a penalty of £5,000 is the norm unless there are extenuating circumstances. Tower Hamlets acknowledged that the Guidance indicated that a fine which would be disproportionate to the turnover/scale of the business or would lead to the organisation going out of business may be disproportionate. Tower Hamlets referred to the circumstance in which the failure by Kenneth Lloyds had arisen, which are set out below, and stated that in the light of the continuing breach of their obligations and the detriment to tenants and landlords that may arise they did not believe a reduction in the penalty was appropriate.

### *E. Proceeding without a hearing*

10. In their appeal Kenneth Lloyds indicated that they wished the appeal to be heard on the papers. Tower Hamlets also asked for the appeal to be decided on the papers in their response to the appeal. I considered the submissions and evidence from the parties and concluded that the appeal was suitable for determination on this basis.

### *G. Findings on liability*

11. In reaching a decision in this case I have had regard to all of the written submissions, evidence and other documentation contained in the hearing bundle.
12. I note that Kenneth Lloyds have not sought to challenge Tower Hamlets' conclusion that Kenneth Lloyds was carrying on lettings agency work and property management work in Tower Hamlets on 8<sup>th</sup> March 2018 and needed to be a member of an approved redress scheme at that time. The submission and evidence of both parties appears to support such a conclusion and I accept that this was the position on that date.
13. Both parties also agree, and I accept, that Kenneth Lloyds was a member of The Property Redress Scheme ("PRS"), an approved redress scheme under the Order, until 26<sup>th</sup> January 2018. At that time it was expelled from membership for failing to comply with a decision of PRS awarding compensation to a tenant of Kenneth Lloyds. Kenneth Lloyds stated that they paid the award before 5<sup>th</sup> April 2018. Tower Hamlets state that it was paid on 28<sup>th</sup> March 2018. Both parties agree that the award was paid following the issue by Tower Hamlets of a notice of intent dated 8<sup>th</sup> March 2018 ("Notice of Intent") referring to Kenneth Lloyds being in breach of the Order by reason of its failure to be a member of approved redress scheme on 8<sup>th</sup> March 2018 and stating an intention to impose a penalty of £5,000.
14. I conclude that on 8<sup>th</sup> March 2018 Kenneth Lloyds was engaged in lettings agency work and property management work and was required under the Order to be a member of a redress scheme for dealing with complaints in connection with that work and that it was not a member of such a scheme. Kenneth Lloyds was therefore in breach of its obligations under the Order and Tower Hamlets was justified in issuing the Final Notice and imposing a monetary penalty.

### *H. Findings on penalty*

15. I have considered whether the amount of the monetary penalty is unreasonable. In deciding that issue, 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 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 Tower Hamlets 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. The Act is intended to reduce harm and the risk of harm to consumers from letting agents and property managers. 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.

16. In this case Kenneth Lloyds ceased to be a member of a redress scheme on 26<sup>th</sup> January 2018 due to their failure to fulfil their obligations as a member of the redress scheme. It is the responsibility of any business to understand the legal obligations that it must comply with in the markets in which it operates. In his representations to Tower Hamlets in response to the Notice of Intent, Mr Kamali explained that he was unaware of the complaint being pursued by a client against Kenneth Lloyds under the PRS scheme, which eventually led to their being expelled as a member of the PRS. This was because all of the correspondence was going to an old office of Kenneth Lloyds at 220 Commercial Road, London E1 and that they were unable to contact the tenant in order to return the balance of the rent due to him and they were not contacted by the tenant. Mr Kamali stated that the award was paid after the Notice of Intent had been issued by Tower Hamlets and Kenneth Lloyds has applied for readmission as a member of PRS.
17. Tower Hamlets state that the address at 220 Commercial Road remains Kenneth Lloyds' correspondence address at Companies House and that PRS had, in any event, communicated by e-mail and so Kenneth Lloyds would have received the relevant correspondence about their tenant's complaint from the PRS. Tower Hamlets also state the PRS had informed them that Kenneth Lloyd had communicated with them during the protracted complaint process. Furthermore, Tower Hamlets explained that their "Housing Options" team had corresponded with Kenneth Lloyds about the relevant tenant and so there was a way for Kenneth Lloyds to communicate with such tenant. In addition Tower Hamlets state that the compensation awarded to the tenant was the return of the funds he had paid by way of rent and which Kenneth Lloyds should have had to hand. Kenneth Lloyds have not responded on these points, which raise doubts over the veracity of their representations.
18. It is against this background that I must consider the evidence relating to the financial hardship claimed by Kenneth Lloyds. The inability of a business to pay a penalty imposed under the Order is likely to be an extenuating circumstance giving rise to a reduction in the penalty. However, it is up to the business to persuade the local authority or the tribunal that the level of a penalty is such that it will pose a risk to their continued ability to trade or is otherwise disproportionate. Given Kenneth Lloyds history of failure to comply, within the required timescale, with the demands

of PRS and of the Order, it is a concern that Kenneth Lloyds stated in their appeal that they would provide additional financial information to support its claim of financial hardship and then failed to do so. The failure by Kenneth Lloyds to address the doubts raised by Tower Hamlets over the accuracy of its claims with regard to the circumstances in which it failed to pay an award by the PRS increases the concern over the accuracy of Kenneth Lloyds' claims with regard to its financial position. Kenneth Lloyds has failed to provide any evidence to substantiate such claims.

19. I note that the failure to be a member of an approved redress scheme arose from a failure to pay an award by that scheme. PRS notified Kenneth Lloyds of the award and of their expulsion in January 2018. The award was only paid after Tower Hamlets visited Kenneth Lloyds and presented the Notice of Intent, which made it plain to Kenneth Lloyds that its failure to retain its membership of an approved redress scheme would lead to a financial penalty. This behaviour suggests that Tower Hamlets are correct to be concerned about Kenneth Lloyds' future compliance with the Order and that they may pose a risk to tenants and landlords.
20. In all of the circumstances of this case, I conclude that: Kenneth Lloyds would have known of the breach of the Order by January 2018, but did not remedy it until some time after 8<sup>th</sup> March 2018. The breach arose from their failure to honour an award by a redress scheme, which adds to the gravity of the breach. Kenneth Lloyds have failed to substantiate the extent of the financial difficulties that it may suffer as a consequence of paying a penalty of £5,000. I find that, on balance, Kenneth Lloyds have not established that there are extenuating circumstances in this case that make the amount of the penalty unreasonable and I conclude that the level of the penalty is not disproportionate to the breach of Kenneth Lloyds' legal obligation set out in the Final Notice and is reasonable.

#### *H. Decision*

21. By virtue of Article 9 of the Order, the Tribunal may quash, confirm or vary a final notice.
22. I conclude that the Final Notice was correct in identifying a breach by Kenneth Lloyds of their duty to be a member of an approved redress scheme on 8<sup>th</sup> March 2018 whilst engaging in lettings agency work and property management work and that the monetary penalty of £5,000 imposed in the Final Notice is not unreasonable in all of the circumstances of this appeal.

**Peter Hinchliffe**  
**Judge of the First-tier Tribunal**  
**7<sup>th</sup> September 2018**  
**Promulgation Date 14 September 2018**

## ANNEX

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.