

**YASIR & CO LTD**

**Appellant:**

and

**LONDON BOROUGH OF NEWHAM**

**Respondent:**

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**DECISION**

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**DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal refuses the appeal.

**REASONS OF THE TRIBUNAL**

**Introduction**

1. This decision relates to an appeal brought under Schedule 9 of the Consumer Rights Act 2015. It is an appeal against a Final Notice issued by London Borough of Newham (“the Council”), in which the Council imposed a financial penalty of £5,000 on the Appellant company for undertaking property management or letting agency work without being a member of a government approved redress scheme.

**Legislation**

2. Article 3 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 (“the 2014 Order”) requires that any person engaged in letting agency work be a member of an approved redress scheme for dealing with complaints in connection with that work.

3. A letting agent is defined in section 84 of the Consumer Rights Act 2015 ('the 2015 Act') as follows:
  - (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.
  
4. Section 86 further defines 'letting agency 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.
  
5. Section 87 imposes a duty on the local weights and measures authority to enforce these provisions in its own area where it is considered on the balance of probabilities they have been breached. Breaches are considered to have occurred in the area of the local

authority in which a dwelling house is situated to which any fees relate, but authorities can take enforcement action in the area of another local authority with the consent of that authority. Local authorities have the power to impose monetary penalties not exceeding £5,000 in the event of a breach.

6. The procedure for the imposition of monetary penalties and the rights of appeal are set out in Schedule 9 of the 2015 Act. The local authority is required to issue a 'notice of intent' to issue such a penalty within six months from the date the authority had sufficient evidence of a breach. The notice must set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the right to make representations within 28 days of the sending of the notice. At the end of that period the authority must decide whether to impose a penalty and the amount of that penalty. The final notice must set out that amount, reasons for the imposition of the penalty and information regarding how to pay and how to appeal. Anyone served with such a notice has the right to appeal within 28 days, on one of four grounds:
  - (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.

## **Final Notice**

7. In the present case the Final Notice dated 25 August 2017 stated that the Council was satisfied that on 23 August 2017 the appellant committed a breach of its duty to belong to an approved redress scheme, contrary to Article 3 of the 2014 Order.

## **The Appeal**

9. The Appellant appealed to the Tribunal on 25 September 2017. Mr Yasir Sheik on behalf of the Appellant stated that the decision to impose the penalty was unreasonable, as the Appellant's interpretation of the legislation was that it only needed to display or publish a statement concerning membership of a client money protection scheme if it were actually a member of such a scheme. In any event, the Appellant Company was now a member of a scheme as of 24 July 2017, and requested that, should the Tribunal find against it, any penalty be the minimum possible to be paid in "easy instalments".

10. Mr Yasir Sheikh on behalf of the Appellant informed the Tribunal that the business began operations in July 2015 before moving to its current address in October 2016. He explained the difficulties faced in setting up the business in its new premises and recruiting staff. When reminded by the Council, a list of fees and charges was displayed, but Mr Sheikh believed that the omission of any mention of membership of a client money protection scheme should have indicated that the Appellant company was not a member of any such scheme. He apologised for the delay, and provided details on the membership of a scheme as of 24 July 2017.

### **Council's Response**

11. Mr Meredith Howell-Morris for the Council gave a chronology of events leading up to the Final Notice:

<i>21 Dec 2016</i>	Council sends Appellant a letter regarding responsibilities under the 2015 Act
<i>18 Jan 2017</i>	Inspection of premises shows no requirements of 2015 Act met. Advice provided
<i>13 June 2017</i>	Inspection of premises showed no display of details of any client money protection scheme. Non-compliance notice issued.
<i>4 July 2017</i>	Inspection of premises showed continued non-compliance. Notice of Intent issued.
<i>12 July 2017</i>	Letter from Appellant appealing Notice of Intent
<i>9 August 2017</i>	Council Panel convenes and decides to uphold Notice
<i>25 August 2017</i>	Mr Howell-Morris hand-delivers the Final Notice to Appellant.

12. The level of penalty is set at the maximum recommended by government, and as the Appellant provided no financial accounts there is no justification for varying the penalty. Three weeks for non-compliance with repeated advices is not reasonable, and the penalty is justified.

13. The Tribunal has considered the papers herein and does not find that the Appellant has identified any error of Law or fact on the part of the Respondent in this case, and is satisfied that the penalty conforms with the norm in such circumstances as have pertained in this particular case. Further the Appellant has not provided to the

Respondent, or this Tribunal sufficient evidence of circumstances that warrant mitigation of the imposed penalty downwards. The appellant has also failed to adequately demonstrate any exceptional financial hardship that will be imposed by the time allowed for demand of payment made. The appeal process in this failed has already extended the time allowed considerably.

14. Accordingly the Appeal is dismissed.

Brian Kennedy QC 21 March 2018.

Promulgation date 23 March 2018