



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

Tribunal Reference: **PR/2016/0002**
Appellant: **Meridian Relocations**
Respondent: **City of Bradford MDC**

Judge: **Claire Taylor**

DECISION NOTICE

1. This appeal is dismissed such that I find in favour of the Council, for the reasons set out below.

Legislation

2. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 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.’

3. 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.’

4. 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').
5. 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)).
6. 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.'

7. Article 5 imposes a corresponding requirement on a person who engages in property management work.
8. 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 City of Bradford Metropolitan Council ('the Council').
9. 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 (article 3).

10. 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

11. In the present case, the final notice dated 7 December 2015, addressed to the appellant, Meridian Relocations, stated that the appellant, which carried out lettings agency work and property management work, was required to be a member of a redress scheme, pursuant to the relevant legislation. However, the appellant had not become such a member until 16 December 2015, despite being required to do so from 1 October 2014. The amount of the penalty was stated to be £5000. This had been specified by the Council in its earlier notice of intent, and it had received no representations from the appellant petitioning to reduce it.

The appeal

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

13. The case for the Appellant is as follows. Mr Salim Khan of the Appellant stated that:

- a) The task of joining the redress scheme was originally given to a junior member of staff who failed to do so and no longer worked for the appellant. (Ground A)
 - b) The Council having imposed a maximum fine is attempting to make money out of the scheme for little or no effort, and have failed to justify the imposition of such an onerous fine. The case of 'Hemming v Westminster City Council' should be borne in mind where the council had sought to profit from the administration of a licensing scheme. The fine for a first time offence is entirely disproportionate to the nature of the offence. (Ground B)
 - c) The Council was negligent in failing to include appeal provisions within their notice and correspondence, obstructing any recipient and denying them basic human rights. (Ground C).
14. On these issues, I prefer the evidence and submissions of the Council. As regards Ground A, the witness statement on behalf of the Council by Ms Graham explained that she had hand delivered the notice of 2 November 2015 and then telephoned and spoke with Ms Tai who stated that she was aware that the timescale had passed and that she had filled in the application but was waiting for Mr Salim to fill in payment details. I see no incentive for Ms Tai not to have been telling the truth, and this was the explanation given at the time rather than after the event, such that I prefer the evidence of the Council on this point. In any event, the onus for paying membership of a scheme is on the company, and it is not an excuse that a staff member failed to do so.
15. The arguments in Ground B, address whether the amount of the monetary payment is unreasonable. The Council gave a number of warnings before imposing the maximum penalty. On 14 April 2015, the Council sent a letter to the Appellant explaining the requirement to join a redress scheme and the Council's policy to impose a £5000 fine for failure to do so. On 2 November, the Council notified the Appellant by hand of its intention to issue a Penalty Notice for £5000. However, it stated that if the firm joined a scheme within 28 days, the fine would be reduced to £391.10. This sum represented the costs the Council assessed. The Notice informed the Appellant of the right to make written representation and objections to contest the monetary penalty before 2 December. From the papers before me, there is no evidence that the Appellant made any objections to the Council. On 3 December, Ms Graham contacted the Appellant and verified that the agents were aware that the 28 day notice period had passed.
16. The Department for Communities and Local Government, '*Improving the Private Rented Sector and Tackling Bad Practice – A Guide for Local Authorities (2012)*' ('the Guide') states:
- a. '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.)

17. This Guide is not statutory, but is important. If by the Council's policy, its only extenuating circumstance is to allow a reduction to £391.10, this would seem a somewhat restrictive policy. On the other hand, in this case, the Appellant has provided no valid extenuating circumstances to consider and the option to pay the lesser sum represents a significant reduction that is open to all and the relevant agency is given fair opportunity to avail itself of the lower fine. It is clear from this that the Council's motivation is to ensure all relevant agents are members of a redress scheme. Since the Guide considers a £5000 to be the norm, and is a figure imposed by the legislation, it cannot be considered to be disproportionate to the offence. It is assumed that the Appellant refers to the Supreme Court decision of *R (on the application of Hemming (t/a Simply Pleasure Ltd) and others) (Respondents) v Westminster City Council (Appellant) [2015] UKSC 25*. It is not clear why it would be relevant to this case, as the facts differ and that case does not seem to have been properly summarised by the Appellant. In any event, the £5000 is allowed by legislation, as set out above.
18. As regards Ground C, from the papers before me, it is clear that the Appellant was given notice of appeal provisions in the correspondence from the Council on 2 November and 7 December 2015. I am satisfied that the existence of the new legislative requirements was sufficiently publicised as was the opportunity to appeal the Council's decisions.
19. I have had regard to the fact that the Appellant is now a member of a redress scheme and that this counts in its favour. However, it has been a legal requirement for the Appellant to join a redress scheme since 1 October 2014. The Council appears to have given a grace period until April 2015 before seeking to penalise those who were not members of relevant schemes. The Appellant was, however, still not a member over 8 months after the expiry of this 'grace period'.
20. Having considered all the evidence and submissions, I do not find that the penalty of £5000 is unreasonable. This appeal is dismissed.

Claire Taylor

Judge

Dated 21 July 2016

Promulgation Date