



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

Tribunal Reference: **PR/2016/0017**
Appellant: **Pick N Move Properties Ltd**
Respondent: **Kirklees Council**

Judge: **Angus Hamilton**

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. For the purposes of the present appeal, the relevant enforcement authority is Kirklees 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 appeal

10. The appellant, Pick N Move Properties Ltd, appeals against a final notice dated 13 July 2016 from the Council, imposing a penalty charge of £5,000 in respect of a breach of Article 3 of the Order.

11. The appeal was dealt with on written submissions only.

12. In his statement of 12 August 2016 Mr Jeremy Maguire, a Team Manager employed by the Council, set out the Council’s reasons for imposing the maximum permissible penalty of £5000 in this case. The Council received a complaint from the tenant of a property in relation to which the appellant was the agent. The complaint related to repairs at the property. On 8 June 2016 the Council contacted the appellant and during the course of that conversation it became apparent that the appellant was not a member of an appropriate redress scheme. The Council also examined the government approved redress scheme websites to double-check that the appellant was not a member. On 9 June 2016 a notice of intent was served on the appellant stating that the Council intended to impose a penalty of £5000 for non-compliance. The appellant joined a redress scheme on 10 June and also submitted representations to the Council asserting that the company had been trying to join a scheme ‘for the last four months’.

13. The Council rejected the representations indicating that the Council believed that appellant had only joined a redress scheme in response to the Council’s

intervention. The Council also rejected the suggestion that the appellant had 'been trying' to join a redress scheme for 4 months. By inference the Council relied on the fact that the appellant had been able to join a redress scheme 2 days after the Council's contact with the appellant on 8 June 2016. The Council therefore imposed the full civil penalty of £5000 in a final notice dated 13 July 2016.

14. In the Grounds of Appeal the Mr Iroegbu, a director of the appellant company, relied upon the contents of letter written on 19 July 2016 and addressed to the Tribunal. In this the he repeated the assertion that the company had tried to join a redress scheme '4 months ago' but provided no detail as to what had prevented him joining. The appellant went on to assert that the financial circumstances of the company meant that the £5000 penalty might result in the closure of the company. The letter made reference to a loan of £24,000, rent of £325 a month and an apprentice's salary of £399 per month. No supporting documents were provided although the letter stated that the appellant's accountant could provide details of income and expenditure.

15. I took the view that if the appellant was going to assert financial instability as a reason for mitigating the financial penalty then this assertion needed to be supported by documentation. Consequently, on 27 October 2016 I issued a direction to the following effect:

Within 28 days of the date of this note Mr Iroegbu must provide the following documents:

- 1. A complete or draft set of accounts for his first year of trading. Although Mr Iroegbu's business is new it completed its first year of trading in March 2016 and I would expect by now that draft or full accounts from an independent accountant will have been prepared.**
- 2. Business bank account statements from the date of the establishment of the business until 30 September 2016.**
- 3. Documentation relating to the £24,000 loan showing the sum borrowed and the rate of repayment**
- 4. Rental agreement for the business premises showing rent payable.**

If no or partial documentation is provided I will draw such inferences as I think are fair and reasonable in all the circumstances

16. Documentation was provided to me by email on 25 October 2016. Unfortunately, the appellant has largely failed to comply with the very clear directions given. A set of business accounts were provided but these show no information about income, expenditure or profitability - despite the appellant's original assertion that an accountant could provide details of income and expenditure. Some evidence of salary payments was provided but this relates only to payments made in October and November 2016 and to an apprentice apparently engaged in October 2016 and I do not see any basis for expenditure

incurred at this time being mitigation for a penalty imposed in July 2016. Evidence of rent of £325 per month has been provided but in the absence of other information about the income and expenditure of the company it is impossible to determine what weight to give to this.

17. No documentation directly evidencing the loan of £24000 was provided. Instead the appellant has provided a mixture of personal and business bank account statements. There is no clear accompanying narrative but the statements bear some handwritten comments. Some of the payments out of Mr Iroegbu's personal bank account have been annotated as a loan repayment but as this is coming from his (and his wife's) personal bank account and no other documentation has been provided it is impossible to establish that this is a loan relating to Pick N Move Ltd. It could have been a loan taken out by Mr Iroegbu (and his wife) for any number of reasons. Quite bizarrely, in my view, Mr Iroegbu has additionally marked several random payments into his personal account as loan repayments. It may be that Mr Iroegbu means that these are sums to pay off an overdraft although the term 'loan repayment' is still used when the account is not in overdraft. Furthermore, the connection between these payments and any liability Pick N Move Ltd may have is not established in any way at all.

18. The appellant has failed largely to provide the documentation sought – there is some evidence of monthly loan repayments in the order of £1050 per month, but the connection between the loan and Pick N Move Ltd has not been evidenced. No clear information as to the income, expenditure and profitability of Pick N Move Ltd has been provided.

19. In these circumstances I am not prepared to mitigate the financial penalty because of any claimed risk that this might cause Pick N Move Ltd to close. That risk has simply not been established although the appellant has been given ample opportunity to demonstrate this. I also do not accept the unexplained assertion that the appellant had been trying for 4 months to join a redress scheme.

20. Having said that I think that the appellant can claim some mitigation for joining a redress scheme almost immediately after being contacted by the Council. I can see some argument that the maximum financial penalty should be reserved for the worst of cases – for example where after such contact an intransigent agent still fails to join a redress scheme. On that basis I have come to the conclusion that the appropriate penalty should be £4,000.

21. This appeal is accordingly allowed to that extent.

Angus Hamilton
Tribunal Judge

Dated 28 November 2016