

GILLIAN CRAWFORD

and

LONDON BOROUGH OF TOWER HAMLETS

REVIEW DECISION

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 Ref 00011 issued by the London Borough of Tower Hamlets (“the Council”), in which the Council imposed a financial penalty of £5,000 on the Appellant for operating as a letting agent without being a member of an approved redress scheme. The initial decision referred to the incorrect legislation. The Tribunal has reviewed the decision, and the references have been corrected accordingly.

Legislation:

2. Section 84(1) of the Enterprise and Regulatory Reform 2013 provides that
“(1) The Secretary of State may by order require persons who engage in property management 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 84(2) explains that ‘redress scheme’ means the same as outlined in Section 83(2), which states:-

“(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 subsection (7) of section 84, property management work is defined as follows:-

“(6) In this section, “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 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”). The Order came into force on 1 October 2014. Article 5 of the Order provides:-

“Requirement to belong to a redress scheme: property management work

3.—(1) A person who engages in property management 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.”

6. Article 6 provides specific exclusions of certain actions from the definition of ‘property management’ for the purposes of the legislation.

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 London Borough of Tower Hamlets.
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 may 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 a 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 and its amount and giving information as to the right to make representations and objections within 28 days beginning with the day after the date on which the notice of intent was sent. 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).

Final Notice:

9. In the present case the Final Notice dated 14 December 2017, addressed to Gillian Crawford of G Crawford Management Services Ltd, stated that the Council believed that on 12 October 2017 there was no record of the Appellant being member of an approved redress scheme contrary to section 83(7) of the 2015 Act.

The Permission to Appeal/Review:

10. The Appellant appealed to the Tribunal on 16 January 2018, alleging that the decision to impose the penalty was based on an error in fact, as G Crawford Management Services Ltd (“the Company”) does not fall under the provisions of the 2015 Act. The Appellant explained that the Company is a “non-business non-trading” entity established solely to allow the Appellant to be remunerated for administrative work undertaken for the landlord of the estate.

11. The Company was described by the Appellant as “not a business” as it uses its income (the “service charge receipts”) “for the maintenance and benefit of those leaseholders on the estate” without making a profit. She claimed that the Company’s accounts were filed with Companies House “on a non-trading basis”.
12. The Appellant explained that she was a director and board member of the Freeholder until 10 October 2017, when shareholders removed her as a director and expressed preference for external management agents to be appointed. In the resultant transition period, the Appellant stated that she agreed to respond to instructions on behalf of the Freeholder in an administrative rather than directorial role. She claims that she performs no work on behalf of the Company that is not under the direction of Lockes Field Management Company Ltd (“the freeholder”).
13. The Council provided correspondence in which the Appellant described herself as akin to “a salaried employee” of the Freeholder who performed services as directed by the Freeholder. In fact, the Council stated that the Appellant had incorporated her company on 5 August 2013 in order to receive a fee for services that she claims she had been providing to the Freeholder since 2009. These services were “to arrange services, repairs, maintenance, improvements or insurance or to deal with any other aspect of the management of premises” on the Freeholder’s behalf. By October 2015 the Appellant was a managing agent on behalf of the Freeholder, receiving a fee of £10,000pa. The Company was a vehicle to allow the Appellant to receive payment for her work without adding to the tenants’ service charges. She insisted that the board of directors of the Freeholder was responsible for the management of the estate, and the board did not delegate management responsibilities to her.
14. On 3 August 2017 the Council received a complaint from a long leaseholder of two properties on the Freeholder’s estate. The Complainant stated that her understanding was that the Appellant had been appointed at a fee to manage the estate on behalf on the Freeholder. The Complainant had made numerous requests for a copy of the full insurance policy and service charge accounts, as they were a requirement of her mortgage company. Despite serving a s30A Notice, her attempts at correspondence

were ignored. The Property Ombudsman advised the Complainant to contact the Council, as her own powers to deal with the complaint were limited.

15. Ms Tudor, on behalf of the Respondent, explained that on 4 August 2017 she had checked the membership list of the three approved redress scheme providers and found no record of the Appellant's company. Companies House notes the occupation of the company to be "managing agent". On this basis, Ms Tudor wrote to the Appellant to advise her to rectify the situation. After some correspondence on the matter, Ms Tudor then took the decision to issue a Notice of Intent on 12 October, as the Appellant was still not listed as a member of a redress scheme.

16. On 30th October Ms Tudor received a letter from the Appellant on the headed paper of the Company "on behalf of Lockes Field Management Company Ltd". In the letter the Appellant reiterated that, following the taking of professional advice, she did not consider that she required membership. She also requested that the Council identify any party or parties that made complaints to the Council, as it was her intention to report these individuals to the police as constituting harassment. The Council considered her representations and decided to issue the Final Notice.

Tribunal Findings:

17. In her submissions, the Appellant stated the following:

The 2014 Redress Scheme Order legislation states:

"Resident management companies are not explicitly excluded from the requirement although, in many cases, these are not caught by the legislation. Where the resident management company owns the freehold and manages the block itself there is no requirement for the company to join a redress scheme".

It should be noted that the quoted phrase does not appear anywhere in either the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014, nor the Explanatory Memorandum.

18. The actions undertaken by the Appellant, in the view of the Tribunal, are clearly property management work. None of the s84 or Article 6 exemptions apply, and any person engaging in property management work, even under the delegation of another, must be a member of an approved redress scheme. The legislation does not require the Appellant

to be a “business” in the sense that the Appellant understands that term to mean ‘trading’. This is not an example of someone ‘helping out’ in a benevolent or charitable fashion; rather, it is a commercial transaction between the Appellant and the property owners, that the Appellant perform these functions in return for a fee.

19. The Tribunal is aware of Guidance for Local Authorities published by the Department for Communities and Local Government in March 2015, in which it is stated that the expectation is that the imposition of the maximum fine should be the norm, save where there are clear extenuating circumstances. Local Authorities are obliged to consider this Guidance under s.87(9) of the Act. The Appellant initially made no representations regarding the level of the fine, but subsequently argued that it was her “genuine and reasonable belief” that s84 did not apply to her, and as she is not engaging in such work presently, there is no on-going interest in requiring her to join a scheme.

20. Accordingly the Application for permission to Appeal sought on a review on the merits is refused.

Brian Kennedy QC

12 September 2018.