



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

**Tribunal Reference:** PR/2014/0001  
**Appellant:** Rosewood Residence Ltd  
**Respondent:** London Borough of Newham  
  
**Judge:** Peter Lane

**DECISION NOTICE**

***The legislation***

1. Section 83(1) of the Enterprise and Regulatory Reform 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. 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.”

5. 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 London Borough of Newham (“The Council”).

6. 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 required 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).

7. 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***

8. The appellant, Rosewood Residence Ltd, appeals against the final notice dated 12 November 2014 from the London Borough of Newham (“the Council”), imposing a penalty charge of £2,500 in respect of a breach of the duty to belong to an approved redress scheme. A hearing of the appeal took place at Field House on 4 June 2015, when the appellant was represented by Ms Saida Abasheikh, with Ms Z. Abasheikh also in attendance. The Council was represented by Ms A. Cafferkey, counsel.

9. Mr M. Howell-Morris gave evidence on behalf of the Council. He adopted his witness statement of 9 March 2015, in which he described letters and visits to the appellant’s office, in connection with the obligation to belong to a redress scheme. Warning letters had been issued to the appellant, stating that it had until 29 October 2014 to complete registration, after which penalty notices would be issued. During a “follow up” visit of 6 October 2014, a representative of the appellant said that she understood what was involved and that the matter would be addressed. Having heard from Ms Saida Abasheikh that the appellant would need a few more days in which to comply, Mr Howell-Morris indicated that the deadline would be extended until 3 November 2014 but that the appellant would need to be a member of a redress scheme by that day. A search undertaken by Mr Howell-Morris on 3 November indicated that the appellant was not a member. On 6 November 2014 Mr Howell-Morris and Metropolitan Police officers visited the appellant’s office, which was closed. A notice was accordingly posted.

10. The appellant claimed that payment had been made to the Property Ombudsman on 3 November 2014 but, according to Mr Howell-Morris, this did not result in registration with that Ombudsman’s redress scheme because incorrect documentation was provided by the appellant. It appears that the appellant became a member of the scheme on 7 November.

11. In the light of representations made by the appellant, the amount of penalty was reduced from £5,000 to £2,500.

12. Ms Saida Abasheikh said that the company had been researching three different schemes. The Property Ombudsman had told the appellant that the insurance document provided were not correct. She had not previously been told that she needed to provide insurance documents.

13. Ms Abasheikh stated that she could barely make ends meet at present. She had made two lettings so far this year. She could not even afford to get a new door for the office, after it had been broken.

14. At the hearing, I gave directions for the appellant to serve on the Tribunal and the respondent a copy of each of the two most recent sets of annual accounts of the appellant, together with a copy of any communication between Mr Dick of the Council and the appellant regarding the time by which the appellant was told to comply with the relevant law.

15. A direction was given to the Council to serve on the Tribunal and the appellant any response to those accounts and any such communication, following which the Tribunal would make its decision.

16. I have received accounts documentation from the appellant but nothing relating to the issue of timing. On the totality of the evidence, I find on balance that the company was not registered by 3 November 2014 and was in breach of the relevant law, as applied by the Council.

17. The reason I directed accounting details to be provided was in order to ascertain whether the fine of £2,500 was, in all the circumstances, proportionate, having regard to the financial position of the appellant.

18. From the submitted accounts, which cover 2011/2012 and 2012/2013, we see that the appellant's turnover increased from £33,715 to £38,549, whilst the wage bill increased from £7,422 to £12,895. This increase in wages occurred at the same time that the appellant apparently faced an increase in rent (to an unknown landlord) from £5,000 to £12,000.

19. I find myself in agreement with Ms Cafferkey that, although the net profit for both accounting periods is modest, the gross profit before such things as wages, is plainly healthy and, indeed, almost doubled over those periods. The net profit is some one third higher.

20. Taking everything into consideration, I find that the appellant plainly was in breach of its legal obligations. I find that, whatever differences of detail there might be regarding what was said at certain enforcement visits, the Council gave ample warning to the appellant of the need to comply with the law. The appellant appears to have left matters too late, so that there was no time to deal with the detailed requirements of the provider of the redress scheme, chosen by the appellant.

21. In all the circumstances, the reduction from £5,000 to £2,500 is, I consider, entirely reasonable and no further reduction is appropriate. In so finding, I have had regard to the financial picture painted by the accounts. I find that the appellant has not shown on balance that it would be driven out of business by having to pay the penalty or that it would otherwise be disproportionate to require it to pay the penalty.

22. This appeal is dismissed.

**Peter Lane**

**Chamber President**

**Dated 10 August 2015**

**Promulgated 11 August 2015**