



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

Tribunal Reference: PR/2015/0002
Appellant: Cameron Adams Ltd (TA Century 21 Cameron Adams)
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 final notice

8. In the present case the final notice dated 12 November 2014 addressed to the appellant said this:-

“From 1 October 2014 to 4 November 2014 the company trading as Century 21 failed to become a member of an approved redress scheme at Unit 2, Ibex House, 4 Leytonstone Road, Stratford, E15 1SE.

On 3 November 2014 I revisited **Cameron Adams Ltd trading as Century 21** and found that the company did not comply with the conditions set out in the legislation above and have committed a breach of the following duty under the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 – **a failure to comply with a duty to belong to an approved redress scheme.**

On 3 November 2014 Newham Council issued you with a notice of intent to impose a monetary penalty giving details of the breach. We are now issuing you with a Final Notice imposing a penalty for the following reasons:-

(a) After considering your representations we have decided to vary the monetary penalty. The reasons for this, are that when we visited your letting agency at Unit 2, Ibex House, 4 Leytonstone Road, Stratford E15 1SE on 3 November you were not a member of an approved redress scheme. We advised you by letter on 22 September 2014, which you acknowledged, by email on 2 October 2014 and by visit and further letter on 6 October 2014. We have a witness statement from the Property Ombudsman, which includes details of your paper application in May 2013 and your recent renewal. At no point did you notify them of your office in Stratford. As you have now joined the scheme, following on from our notice of intent, we have decided to reduce your penalty. Please see details below”.

The penalty charge imposed was £2,500.

The appeal

9. The appellant appealed to the Tribunal. The hearing of the appeal took place at Field House on 28 April 2015. The council was represented by Ms A.

Cafferkey of Counsel. Ms A. Winter and Mr M. Howell-Morris provided witness statements on behalf of the Council. The appellant was represented by Mr K. Younis, a director of the appellant.

The evidence

10. It appears from the written evidence that Cameron Adams became a member of a redress scheme, operated then by the Ombudsman for Estate Agents, in January 2007. This is demonstrated by an application form, as approved by the ombudsman, set out at pages 48 and 49 of the bundle. The trading name was given as Cameron Adams and the "principal office address" as 184 High Road, Leytonstone. At the bottom of page 1 of the form we find this: "branches of firm – if you have more than one office please complete page 4 with their details or attach their details to this form". Page 4 is not before me.

11. A membership renewal form, signed by Mr Younis on 15 May 2013, relates to the Property Ombudsman. The only reference to branches in this form (as set out in the bundle) is that under the heading "your responsibilities", it is stated that "by renewing your membership you confirm that the information you have given is correct and you agree to the following... 6. you will include all branches operating under the same legal entity and help us in any matters that arise in connection with any of your branches".

12. The renewal form with the Property Ombudsman dated 5 January 2012 in respect of the appellant has the following wording under "your responsibilities":-

"6. You will include all branches operating with the same trading name regardless of their legal status (for example, company, partnership, franchise) and help us in any matters that arise in connection with any of your branches (whether owned, separately owned or franchised). Please note that each business must have a separate deed."

13. Above Mr Younis' signature in respect of the 2013 renewal we find this:-

"I confirm that:

- I have read all of this renewal form and the Ombudsman's Terms of Reference and the Privacy Policy, and I am renewing membership for all of our branches under the terms and conditions set out in these documents;
- I (and each of our branches) will keep to the terms and conditions of membership as set out in this renewal form (including the responsibilities set out above) and the Ombudsman's Terms of Reference and the Privacy Policy (including any amendments to these)"

14. The 2012 renewal form has similar wording.

15. Mr Stuart Tasker of the Property Ombudsman has filed a witness statement which confirms that Cameron Adams Ltd, 30 Church Road, Leytonstone joined their scheme on 25 January 2007. He also states "Cameron Adams Ltd, Unit 2, Ibex House, 4 Leytonstone Road, Stratford, E14 1SE – branch added to the membership on 4 November 2014".

16. Mr Tasker exhibits an online application form completed by Mr Younis in 2014 which leaves blank the boxes for "new branches", "updated branches" and "closed branches". Mr Younis asserts that he did fill in the details of the Stratford branch on this on line form but that for some reason this was not recorded.

17. As with previous forms, under the heading "your responsibilities" it is stated that -

"6. You will include all branches operating within the same trading name regardless of their legal status (for example, company, partnership, franchise) and help us in any matters that arise in connection with any of your branches (whether owned, separately owned, or franchised)."

18. The online confirmation stated

"I have read all of this renewal form and your Terms of Reference, Privacy Policy and data sharing agreement and I am renewing membership for all of our branches under the terms and conditions set out in these documents. I (and each of our branches) will keep to the terms and conditions of membership as set out in this renewal form (including the responsibilities set out above) and your Terms of Reference, Privacy Policy, and data sharing agreement (including any amendments to these); and I (and each of our branches) understand that this renewal form is signed as a deed".

19. It is common ground that additional fees are required to be paid in respect of branch offices, of whatever character.

The appellant's case

20. Mr Younis puts his case on two bases. First, he contends that he did take steps to add the Stratford branch office by using the online application form and that, in any event, the Stratford office was recorded by the Property Ombudsman's receipt as having been registered with effect from 1 November.

21. Mr Younis' second submission is that the appellant is not in breach of the legislation, in any event. The appellant is a body corporate and, thus, a person for the purposes of section 83 of the 2013 Act and of the Order. It is a member of the redress scheme run by the Property Ombudsman and has been for some years. Its letting agency work is covered by the scheme. This includes the Stratford office. In this respect, Mr Younis points to a letter dated 14 October

2014 from the Property Ombudsman, adjudicating in respect of a client who, Mr Younis states, had dealings through the Stratford office.

Discussion

22. It is certainly the case that certain of the material produced by the Council gives the impression that section 83 and the Order bite not on persons but on places of business. That is not, however, how the legislation is framed. It applies to persons doing certain work.

23. Ms Cafferkey is correct to lay emphasis on the phrase “in connection with that work” in the provision which requires “persons who engage in lettings agency work to be members of a redress scheme for dealing with complaints in connection with that work...”. As we see from section 83(7), there are two basic components of “lettings agency work”; namely, things done in response to instructions received from a prospective landlord; and things done by a person in response to instructions received from a prospective tenant. If a company was a member of redress scheme which, say, dealt only with work for a prospective landlord, even though the company also did work for prospective tenants, then the company would be in breach of section 83(1).

24. The difficulty, however, arises in trying to apply this to a company which has, say, a main office and a branch office. A person who goes into a branch office may, in practice, find themselves having things done for them, within the meaning of section 83(7), by someone operating at or from the main office. It is, therefore, conceptually difficult to see how, in practice, a redress scheme might work, which compartmentalised lettings agency work by reference to a company’s particular premises.

25. Although I do not consider the appellant is correct to contend that, as a matter of law, section 83(1) *cannot* operate by reference to work of the relevant kind that is undertaken at specific places, the practical difficulty to which I have alluded points to the need to scrutinise with some care the evidence before the Tribunal, in order to see whether, as a question of fact, the arrangement between the Property Ombudsman and the appellant, prior to early November 2014, was such that the appellant was not a member of the Property Ombudsman’s redress scheme in respect of work that could be characterised as being performed from the Stratford office.

26. Having examined the evidence, I find, on the balance of probabilities, that it is not established that that was the nature of the appellant’s membership.

27. Before explaining why I have reached that factual conclusion, I should mention that I find on balance that the appellant has not suffered a break in his membership with the Property Ombudsman, such that there has been any material period of time when the appellant has not been a member at all of the redress scheme. It is plain that no such assertion features in the notices issued by the Council. Ms Cafferkey nevertheless asked me so to find, essentially on the

basis of an email of 20 October 2014 from the Property Ombudsman to Mr Younis, in which it is stated that:

“we have not received a completed renewal for this year. I note that the last contact from yourselves was the paper annual renewal which was sent to us in May 2013. We now require all agents to complete the renewal on line, the form asks you to tick the boxes on the final page to confirm that you agree to our terms of membership. Once the boxes have been ticked the ‘submit’ button appears. You are required to complete this form to inform us of any changes/additions to the membership”.

28. I do not consider that this constitutes evidence that the appellant was not a member at all between May 2014 and late October 2014. No evidence has been adduced to show that membership of the Property Ombudsman scheme automatically ceases upon a failure to go through the annual renewal process. Nor is there any evidence to show on balance that the appellant was informed by the Property Ombudsman that the appellant’s membership was to cease.

29. Given the scheme of the legislation, as set out above, and the practical difficulties in limiting membership of the scheme, for the purposes of that legislation, by reference to particular offices and branches, one would expect to find it clearly articulated in the documentation emanating from the Property Ombudsman if, as the Council contends, the appellant’s membership of the Property Ombudsman’s scheme was limited in this way.

30. As early as 24 September 2014, Mr Younis wrote to Ms Winter to state that the appellant’s membership of a redress scheme “covers both Leytonstone office and Stratford office”. One looks in vain in the materials before the Tribunal for a clear statement from the Property Ombudsman that this was not, in fact, correct. I do not consider that the statement of Mr Tasker constitutes such evidence, when placed against the wording in the various application forms, which I have mentioned earlier. The application form of 22 December 2006 (as set out in the bundle) makes no mention of branch offices. The relevance of branches appears to be a more recent development.

31. The various sets of *pro forma* words under the heading “your responsibilities” in the more recent forms seek to impose an obligation on the member to include all branches within the ambit of the obligations imposed upon a member by the scheme (such as having in place and running an appropriate internal complaints procedure). This is reinforced by the words of confirmation at the end of the form, whereby the signatory confirms that they (each of their branches) will keep to the terms and conditions of membership. According to the online form, the consequences of failing to comply with “your responsibilities” may include the Property Ombudsman notifying any professional body named by the member “and any other relevant authority that your membership is ended and the circumstances surrounding that (including details of the breaches); publish the fact that your membership has ended and details of the circumstances surrounding that (including details of the breaches) by such means as we consider appropriate.”

32. In the light of all this, I find it is more likely than not that the failure of a member of the Property Ombudsman scheme to include a branch (and pay the requisite additional fee) does not mean that lettings agency work associated with that branch (assuming this can be satisfactorily identified) is not covered by the redress scheme; but that a failure by the member to notify the Ombudsman of a branch constitutes a breach of that member's responsibilities to the Ombudsman. Such a breach may lead to the termination of membership, if the Ombudsman sees fit.

33. Mr Younis drew my attention to correspondence concerning the adjudication of complaints, through the Property Ombudsman scheme, involving a person who had been involved with the Stratford office. Ms Cafferkey told me, on instruction, that the Council's understanding was that this was incorrect and that adjudications, in fact, only concerned the Leytonstone office. Counsel was, however, unable to adduce any evidence in that regard and, on this issue, I prefer the evidence of Mr Younis.

34. In conclusion, I do not find that, on the balance of probabilities, it has been shown that the appellant committed a breach of the relevant legislation. It follows that the decision to impose a monetary penalty on the appellant was based on an error of fact. I accordingly quash the final notice issued to the appellant.

Decision

35. The appeal is allowed.

Peter Lane

Chamber President

Dated 2 June 2015

Promulgation Date 5 June 2015