FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
Professional Regulation

Tribunal Reference:	**PR/2015/0013**
Appellant:	**Parks Properties (London) Ltd**
Respondent:	**London Borough of Islington**
Judge:	**Peter Lane**

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. It is common ground that, for the purposes of the present appeal, the relevant enforcement authority is the London Borough of Islington ("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.

Final notice

10. In the present case, the final notice dated 5 June 2015, addressed to the appellant, Parks Properties (London) Ltd, stated that the appellant, which carried out letting agency work, was required to be a member of a redress scheme, pursuant to the relevant legislation. However the appellant had been discovered by the Council on 2 April 2015 that the appellant was not such a member. This discovery had followed from a complaint made by a member of the public. The appellant was a new company, which followed the merger of the businesses formerly carried on by two established letting agents, Mr Christodoulou and Mr Paraskeva, who were now the directors of the appellant. The companies run by each of those gentlemen respectively had been members of a redress scheme. Although membership of such a scheme had been sought on behalf of the appellant, it had not been followed up, despite chasing by staff at the Property Ombudsman. The amount of the penalty was £5,000.

Appeal

11. In its grounds of appeal, the appellant stated that with effect from 1 December 2014, when the appellant began to trade "we had put everything from both companies (i.e. bank accounts, advertising, marketing, indemnity insurance, TPOS …. etc.) into the new company name". Although a new Property

Ombudsman form had been completed and sent off and a BACS payment made, the writer of the grounds (it seems, Mr Christodoulou) "considered the matter closed believing that our new company was now a member of the Property Ombudsman redress scheme". However, it came to the attention of the appellant on 14 April 2015 that it was not a member when Ms Chisholm from Islington Trading Standards Department served the appellant with a notice of intent. When the appellant contacted the Property Ombudsman to find out why it was not a member, it was told that "as a new applicant, bank transfer will not be accepted and that payment could only be made by cheque. We then immediately re-completed the forms and attached a cheque", sending this to the Property Ombudsman, who confirmed the appellant as a member on 23 April 2015. A decision to impose the maximum penalty was said to be "unreasonable and disproportionate to the breach that occurred. Our firm has always adhered to this regulation and made every reasonable effort to rectify the breach as quickly as possible".

Appeal hearing and evidence

12. A hearing of the appeal took place at Field House on 9 November 2015. Mr Christodoulou and Mr Paraskeva appeared on behalf of the appellant. Mr Paterson, solicitor, appeared on behalf of the council. Oral evidence was given by Ms Janice Chisholm, Mr David Fordham and Ms Fiona Exely. I also heard evidence from Mr Christodoulou and Mr Paraskeva. I have taken all the oral and written evidence into account in reaching my decision.

13. I am satisfied on the balance of probabilities that Ms Chisholm spoke to Mr Christodoulou in the autumn of 2015, in order to advise him about the pending legal requirement to be a member of the redress scheme. Mr Christodoulou did not recall being informed about the possibility of being subjected to a £5,000 penalty but, given the purpose of Ms Chisholm's visit, I consider it more likely than not that she did refer to the penalties for non-compliance with the legislation. Ms Chisholm also explained how she had been contacted by a person who had done business with Parks Properties Services, Mr Christodoulou's company (prior to the creation of Parks Properties (London) Ltd). This person had complained to the Council that the appellant (which had taken over the business from the previous company) was not a member of a redress scheme. This had caused Ms Chisholm to make enquiries and to visit the premises of the appellant on 14 April 2015, when she spoke to Mr Paraskeva.

14. He said that he had not been aware that the application for membership had been unsuccessful. A notice of intent was given to the appellant. Subsequently, emails between Ms Petya Georgieva, the appellant's office administrator, and Ms Marie Drewitt of the Property Ombudsman were obtained by Ms Chisholm. From these, it can be seen that on 4 December 2014, Ms Georgieva emailed the Property Ombudsman to say "we would like to inform you that our company has changed as of 1 December 2014. The new name of the company is Parks

Properties (London) Ltd. Please do not hesitate to contact us should you require further details".

15. On 17 December 2014, Ms Drewitt replied to ask if Ms Georgieva would "confirm if you have changed the company registration number or if it is just the company name that has changed. If both have changed then we will need to cease your existing membership and you will need to reapply in the new company name".

16. On 23 December 2014, Ms Georgieva replied to say "yes, but the company name and company registration number have changed. Please advise what the next steps are". On 6 January 2015, Ms Drewitt replied as follows:-

> "We will arrange to cease your existing membership and I attach a link to the Join Scheme page of our website http://www.tpos.co.uk/join-tpo.php where you can apply on line for your new company to join. If you would prefer to apply by post I attach a pdf of the application form. Should you have any queries please do not hesitate to contact me."

17. On 22 January 2015, Ms Georgieva replied as follows:-

> "Please find attached a copy of the signed and completed membership form and a copy of the professional indemnity insurance policy.
> With regards to the payment are we able to pay this via bank transfer. If yes, please confirm bank details.
> I will also be posting hard copies of the form and insurance policy."

18. On 27 January, Ms Drewitt replied to ask if the appellant could "provide page 1 of your Hiscox policy confirming the name of the insured and dates of cover as you have only supplied the page showing the limit of the indemnity and the excess". The email also gave details of how to make a BACS payment. On 13 February 2015, Ms Drewitt wrote again to Ms Georgieva as follows:-

> "Further to my email below and the telephone messages left with your office, I do not appear to have received a response and therefore assume that you no longer wish to join the Property Ombudsman.
> If this is not the case then I look forward to receiving the payment and paperwork as requested."

19. It is common ground that nothing more happened, so far as the appellant was concerned, until Ms Chisholm's visit of 14 April 2015. Ms Chisholm sent a letter to the appellant on 1 May 2015, asking for evidence that the application to the Property Ombudsman was rejected by them and the date on which that application had been made; confirmation as to when the new business actually began trading; the date when the former company ceased trading; and informing the appellant of the government Guidance that:-

> "The expectation is that a £5,000 should be considered the norm and that a lower fine should only be changed 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 a letting agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. Another issue which could be considered is whether a £5,000 would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business."

20. The letter of 1 May concludes by stating that if the appellant had any representations, it was asked to provide evidence to support these by 12 May. No such representations were received. On 14 May 2015, Mr Fordham, Senior Manager in the Trading Standards Department of the Council, conducted a review and confirmed the £5,000 penalty. Mr Fordham tells us this in his witness statement.

21. At the hearing, both Mr Christodoulou and Mr Paraskeva said that Petya Georgieva had been given by them the task of registering the appellant with the Property Ombudsman. Mr Paraskeva said that he was glad that the matter had been brought to his attention, since he was not aware of the fact that the appellant had not become a member of the redress scheme. Mr Fordham was asked, in the light of this, whether, if he had been aware of the appellant's stance at the time, he would have considered reducing the £5,000. Mr Fordham said that he did not consider that it would have been appropriate to do so. Even though a member of staff may have committed an error, it was the responsibility of the Directors to do something about it. This was the case, even though Mr Fordham accepted that, with the creation of the new company out of the businesses of the two former ones, there had plainly been a great deal for the directors to do.

22. Mr Paraskeva said that the appellant had been formed on 31 October 2014 and began trading on 1 December 2014. There had been many things to do and they had done as much as they could by 1 December. Mr Paraskeva had been taken by surprise by how much was involved in setting up the appellant and transferring things to it from the former companies. He had been a director of his previous company since 2005. He was aware that membership of a redress scheme had been compulsory since 1 October 2014. Everyone in the office had been assigned tasks in connection with the establishment of the appellant. Ms Georgieva had had the task of ensuring the appellant was a member of the Property Ombudsman scheme. Mr Paraskeva did not have access to her emails.

23. When Ms Chisholm came to the offices on 14 April 2015, with the news that the appellant was not a member, Mr Paraskeva had immediately gone about remedying the matter. Mr Christodoulou had been primarily involved, as the director giving instructions to Ms Georgieva. There were no formal board meetings but the directors were always discussing matters together. There were just four persons in the office at the time, including the directors and Ms Georgieva. Mr Paraskeva said that he had not checked before the appellant started trading on 1 December 2014 to ensure it had become a member of a

redress scheme. Nor had he checked in January 2015, although he knew that Mr Christodoulou and Ms Georgieva were discussing the matter. He had not checked further before the visit of Ms Chisholm on 14 April. Mr Paraskeva was more on the "marketing" side of the appellant's activities. He had not been aware in January 2015 that an application form was being submitted to the Ombudsman.

24. Mr Christodoulou said (as I have previously noted) that he had not been aware of the £5,000 maximum penalty since "otherwise we would have taken it a bit more seriously". The office had been closed for two weeks over Christmas. He did not deny that the appellant was not a member on 1 December, when it began trading. He had assumed Ms Georgieva would contact the Property Ombudsman and he noted that she had done so on 4 December. When he had asked her about it, she had said that it was "in hand".

25. When asked that it was correct that he had known that the appellant had not been a member from 1 December to 22 January, Mr Christodoulou stated that he did not appreciate the severity of the matter. When asked why he had not chased up the matter, he said that there had been "a million things to do". Both he and Mr Paraskeva had young families and it had not been at the top of Mr Christodoulou's priority list.

26. Ms Georgieva had very recently left the company in order to begin training as a lawyer. He did not know why the email of February 2015 from the Property Ombudsman had not been the subject of a response. When asked about the fact that the email indicated there had also been telephone messages to the appellant left by the Ombudsman's office, Mr Christodoulou said the appellant took 500-600 calls a day and everyone in the office answered the phone. At the time there had been two directors and three members of staff. When asked why he had not checked again until April, Mr Christodoulou said that they had made "a genuine error". It had been "a mistake".

Discussion

27. It is common ground in the present case that the imposition of a penalty of £5,000 would not have any disproportionately adverse effect on the appellant's ability to continue to trade. The evidence from Mr Christodoulou and Mr Paraskeva was, variously, that the appellant has either 200 or 300 landlords on its books and around 600 tenants. The issue, therefore, is whether the appellant has demonstrated any other mitigating factor, such as to make it unreasonable, on all the evidence before the Tribunal, to impose a penalty of £5,000.

28. In the appellant's favour is the fact that each of its directors, in their previous companies, chose to be a member of a redress scheme, before that became a legal requirement of letting agents. Although they both told me that they regarded being a member of a scheme as important, it is difficult to reconcile those

statements with the low priority which was given to ensuring that the appellant became a member of such a scheme. The grounds of appeal are also problematic, in seeking to suggest that the delay in becoming a member was because the Property Ombudsman wished to have payment by cheque. The email of 27 January 2015 makes it clear that that was incorrect.

29. I have considered carefully whether the imposition of the maximum penalty is rendered unreasonable by (a) the fact that the task of becoming a member was entrusted to Ms Georgieva, who failed to carry it out; and/or (b) that the failure occurred during a busy period for the directors, who were having to contend with the consequences of the establishment of the appellant in place of the previous companies. In all the circumstances, however, I have concluded that these factors are not such as to render unreasonable the imposition of the £5,000 penalty.

30. I agree with Mr Paterson, in his closing submissions, that the evidence which has now emerged is troubling, as regards the strategy adopted by the directors. It is plain that both were, in effect, content to see the appellant begin business on 1 December when it was not a member of a redress scheme, despite the alleged importance the appellant claimed to place upon such membership. In fact, Mr Christodoulou, in reality, took a conscious decision to put becoming a member of a redress scheme fairly low in the appellant's order of priorities.

31. The director's management of Ms Georgieva plainly left a great deal to be desired. There does not appear to have been any structured attempt by the directors to take regular stock of position regarding compliance by the appellant with its legal duties. The evidence that the Property Ombudsman made telephone calls in early 2015, chasing up the email of 27 January, was brushed aside by Mr Christodoulou and Mr Paraskeva in a cavalier fashion, by saying that several hundred telephone calls were received by the appellant every day. The fact that the directors did not have access to Ms Georgieva's emails only underscores the fact that they should have put systems in place to check whether the appellant had, indeed, been successfully enrolled as a member of a redress scheme.

32. In the event, several months went by without any appropriate action being undertaken and there is no evidence to show that the position would ever have changed, without the intervention of an outside agency; namely, the complaint made to the Council by a customer of the appellant. Whether there was any merit in that person's underlying complaint about the service he may have received from the appellant is immaterial. The point is that, without it, we do not know how much longer the appellant's breach of the law might have continued. As it was, at the time the complaint was made, the appellant was not able to offer the person concerned, or anyone else, recourse to the redress scheme.

33. I find that there is no factual or legal error in the final notice. The amount of the penalty is, in all the circumstances, reasonable.

34. This appeal is dismissed.

Judge Peter Lane
Chamber President
Date: 23 November 2015

Promulgation date: 26 November 2015