



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

Tribunal Reference: **PR/2016/003**

Appellant: **Neil Cumming**

Respondent: **Leeds City Council**

Judge: **J R Findlay**

**DECISION NOTICE**

**The 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 Leeds City 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 —

(e) quash the final notice;

(f) confirm the final notice;

(g) vary the final notice.

#### **The Final Notice**

10) The Final Notice dated 26 February 2016 addressed to Mr Neil Cumming, South Leeds Lets, 239 Dewsbury Road, Hunslet, Leeds LS11 5HZ stated as follows:

1. Leeds City Council (“the council”) having considered the requirements of the Enterprise and Regulatory Reform Act 2013 and the appropriate article of the above mentioned Order made there under, and further to the service of an intention to impose a monetary penalty notice on you dated 23 July 2015 considers that you have breached the requirements of this Order and so imposes a monetary penalty upon you of £2500.

2. The reasons for imposing the monetary penalty are as follows:

On 23 July you engaged in lettings agency work but failed to become a member of a redress scheme provided by the Secretary of State or, as designated, a Government administered redress scheme, as required under Article 3 and you engaged in property management work but failed to become a member of a redress scheme approved by the Secretary of State or, as designated, a Government administered redress scheme, as required under Article 5 of the Redress Schemes for lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014.

3. You must pay the invoiced amount within two months of the date of this notice. Details of the ways to pay are included on the enclosed invoice. If you fail to pay the invoice within the timescale specified, the council will take proceedings in the County Court to recover the money from you.

4. You have the right to appeal against this notice within 28 days beginning with the day after the date on which the notice of decision was sent. Details of the appeal process are set out overleaf.

## **The Appeal**

- 11) Mr Cumming, on behalf of South Leeds Lets, appealed to the Tribunal. The Tribunal determined the appeal on the basis of the papers only. Neither party requested an oral hearing. Mr Cumming in the Form T98 Notice of Appeal indicated that he wanted the appeal to be determined on the papers only and he did not request an oral hearing.
- 12) The Respondent issued a notice of intention to impose a monetary penalty on 9 November 2015. Checks carried out by the Respondent on 20 October 2015 indicated that South Leeds Lets had not joined any of the three Government approved Redress Scheme. Mr Cumming, on behalf of South Leeds Lets, made no representations during the 28 day representation period. South Leeds Lets joined the Property Redress Scheme on 23 November 2015. On 26 February 2016 a notice of decision to impose a monetary penalty of £2,500 together with a covering letter and an invoice was posted to Mr Cumming. Mr Cumming did not contact the Respondent in response to the letters of 9 November 2015 and 26 February 2016.
- 13) Mr Cumming appeals on the grounds that he runs a small letting agency and that he was not told that the Respondent had contacted Mr Quereshi at Blackstone Estate Agents which operates out of the same address as South Leeds Lets at 239 Dewsbury Road, Hunslet, Leeds LS11 5HZ. He appeals on the grounds that he had no idea that his company needed to be registered with the Redress Scheme but that as soon as he found out he did register. He appeals on the grounds that his letting agency only manages about a dozen properties at anyone time and that a fine of £2,500 would put him out of business.

## **Findings of Fact and Reasons**

- 14) The Tribunal finds that at all material dates South Leeds Lets was undertaking lettings agency work as defined in the Enterprise and Regulatory Reform Act 2013. Mr Cumming is the appropriate and responsible person to act and correspond on behalf of South Leeds Lets. The Tribunal finds that Mr Cumming is the responsible person and responsible for the actions and omissions of South Leeds Lets. The Tribunal finds that Mr Cumming should have been aware of the relevant legislation governing the activities of letting agents. The Tribunal finds that South Leeds Lets was in breach of its statutory responsibility.
- 15) The Tribunal finds that there were mitigating circumstances, that it was appropriate to reduce the amount of the penalty and that the Respondent was correct to issue a notice in the sum of £2,500.
- 16) The Tribunal finds it irrelevant that the Respondent had correspondence with Mr Quereshi and this correspondence cannot amount to mitigation in relation to the penalty imposed.
- 17) It is unquestionably the case that South Leeds Lets was in breach of the legislation. Nowhere in the legislation or in the Government guidance is it stated that a Council is required or expected to take active steps to notify letting agents of the impending or actual coming into force of the relevant legislation. The Tribunal finds that the

Respondent was entitled to expect professional letting agents such as South Leeds Lets to be aware of the legal requirements directly impacting upon their businesses. The changes were advertised in a Government website. The changes were also made known in websites to which Mr Cumming, on behalf of South Leeds Lets, could be expected to have access and to be expected to consult.

- 18) There is no issue as to the final notice containing any error of law or fact. The Notice of Intention for the Imposition of a Monetary Penalty erroneously refers to Mr Cumming as “Mr Neil Cummings” but this is not significant and does not amount to an error of law or fact. Mr Cumming received the notice and acted on it and there has been an appropriate reduction in the level of the penalty to take account of this. The Tribunal finds that the penalty of £2,500 was in all the circumstances reasonable.
- 19) Mr Cumming has indicated that his business is modest and that the fine would put him out of business. Mr Cumming has submitted no documentation about the financial circumstances of South Leeds Lets although has had ample opportunity to do so. He has submitted no accounts or other financial evidence to show how the penalty will adversely impact on the operation of the business.
- 20) The Tribunal finds on the basis of the evidence available that the imposition of the fine would not put South Leeds Lets out of business on the basis there is no evidence to support this proposition. The Tribunal is not persuaded that the penalty will cause South Leeds Lets to go out of business.
- 21) Accordingly the appeal must fail.

**Judge J R Findlay**  
**Dated: 13 October 2016**  
**Signed: 13 October 2016**