



Appeal number: PR/2017/0027

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**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PROFESSIONAL REGULATION)**

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**ALLIYA UMER
(Diverse Lettings Limited)**

Appellant

- and -

KIRKLEES COUNCIL

Respondent

TRIBUNAL: JUDGE ALISON McKENNA

Sitting in Chambers on 10 October 2017

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Decision

1. The Appeal is allowed in part.
- 5 2. The Final Notice dated 13 July 2017 is varied so that the penalty is reduced to £4,500.

Reasons

Background

- 10 3. The Appellant, Alliya Umer, is the proprietor of a lettings agent known as Diverse Lettings Limited. The Respondent (“the Council”) is the relevant enforcement authority which served a Final Notice on the Appellant on 13 July 2017. The Notice imposed a financial penalty of £5,000 for breach of the duty for Diverse Lettings Limited to belong to a redress scheme.
- 15 4. By her Notice of Appeal dated 7 August 2017, Ms Umer accepts that Diverse Lettings Limited was not a member of a redress scheme at the relevant time but submits that the Council’s decision to impose the penalty and the amount of the penalty are both unreasonable.
- 20 5. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended

The Legal Framework

- 25 6. Section 83 of The Enterprise and Regulatory Reform Act 2013 and paragraph 3 of The Redress Schemes for Letting Agency Work and Property Management Work (Requirement to Belong to a Scheme etc.) (England) Order 2014 require a letting agent to belong to a relevant redress scheme. It came into force in October 2014. (S. 83 (7) of the Consumer Rights Act 2015 also requires the
30 agent to publish details of the relevant redress scheme).
7. Where the relevant enforcement authority is satisfied on the balance of probabilities that the letting agency has breached its duties paragraph 3 of the

2014 Order, it may impose a financial penalty under paragraph 8 of the 2014 Order. It does so by serving a Notice of Intent and then, having considered representations made in response to the Notice of Intent, may serve a Final Notice on the letting agent concerned.

- 5 8. Paragraph 9 of the 2014 Order provides that a letting agent upon whom a financial penalty is imposed may appeal to this Tribunal. The permitted grounds of appeal are (a) that the decision to impose the financial penalty was based on an error of fact; (b) the decision was wrong in law; (c) the amount of the financial penalty is unreasonable; or (d) the decision was unreasonable for any
10 other reason. The Tribunal may quash, confirm or vary the Final Notice which imposes the financial penalty.
9. The Tribunal does not have power to consider any grounds of appeal other than those specified in Paragraph 9 of the 2014 Order. In particular, it may not consider public law points such as the Appellant's submissions alleging
15 procedural unfairness or inconsistency of approach with other Councils. A statutory Tribunal has no supervisory jurisdiction - see *HMRC v Abdul Noor* [2013] UKUT 071 (TCC) – such points are more suited to an application for judicial review.

20 *Submissions and Evidence*

10. Ms Umer's Notice of Appeal and Reply rely on extensive Grounds (over 100 pages) which I summarise as follows: (i) she was unaware of the legal requirement for Diverse Lettings Limited to join a redress scheme; (ii) this was due to very difficult personal circumstances at the relevant time (which she has
25 detailed and evidenced, but I do not need to repeat them here); (iii) that the Council failed in its duty to inform her of her obligations prior to taking enforcement action; (iv) that she made a genuine mistake which it is unreasonable to penalise; and (v) that she registered with the Property Redress Scheme on 7 June 2017, so it is unreasonable for the Council to have imposed
30 the maximum penalty. Her certificate of membership of a redress scheme dated 7 June 2017 is at page 225 of the hearing bundle. I understand these grounds to

raise issues (c) and (d) only of the permissible grounds outlined at paragraph 8 above.

11. The Council's Grounds of Opposition are that the Council wrote to all local Letting Agents, including Diverse Lettings Limited, in May 2015 to inform them of their new legal obligations. It gave all the Letting Agents in its area a period of grace until 31 March 2015 before taking any enforcement action, but this had long since expired when it became aware of Diverse Lettings Limited's failure to have registered with a redress scheme. Having discovered that Diverse Lettings Limited was not registered whilst investigating a complaint of disrepair, it served a Notice of Intent on 6 June 2017. Ms Umer made representations but the Council decided to issue the Final Notice dated 13 July 2017, as the representations were to the effect that she had been unaware of her legal obligations, which did not, in the opinion of the Council, amount to a reasonable excuse for non-compliance with the law.

12. The Council also relies on a witness statement made by Jeremy Maguire, Team Manager within the Housing Compliance Team, on 23 August 2017 (page 158 of the bundle). He confirms the facts as set out above, but does not mention that Diverse Lettings Limited joined a redress scheme immediately on receipt of the Notice of Intent or whether this fact was considered before the Final Notice was issued. I note that this fact is also not mentioned in the Council's formal reply to Ms Umer's representations, sent by Stephen Cale on 6 July 2017 (page 7 of the bundle).

13. The Council's case notes (exhibited at page 130 of the bundle) record that it was informed that Diverse Lettings Limited had joined a redress scheme on 7 June 2017 and that it received a copy of the certificate of membership on 9 June 2017.

Conclusion

14. It is accepted in the Notice of Appeal that Diverse Lettings Limited was not a member of a Redress Scheme at the relevant time. It has not been submitted that the Council made an error of fact or of law in issuing the Final Penalty.

15. I conclude on the basis of the undisputed evidence before me that Diverse Lettings Limited was not a member of a redress scheme from October 2014 when the obligation to do so arose, until June 2017. That is a period of 2 years and seven months during which it was in breach of its legal obligations and I am satisfied that it was reasonable for the Council to impose a financial penalty in these circumstances. Although I sympathise with Ms Umer's personal circumstances, I agree with the Council that these do not provide a reasonable excuse for non-compliance with a legal obligation relating to her business.

16. I have gone on to consider whether the amount of the financial penalty was unreasonable. I note that the amount of a penalty is within the discretion of the Council and that £5,000 is the maximum penalty it can impose under the legislation. However, I also note that Ms Umer took immediate steps to address the problem as soon as it was made known to her and that this was promptly communicated to the Council. The Council apparently failed to consider that fact when it reviewed the representations, even though its records show it was aware of the steps taken by Ms Umer. I consider her swift remedial action to be a relevant factor in calculating the amount of penalty, and that this should have been considered by the Council when deciding whether to issue the Final Notice and if so in what amount. In the circumstances, I consider the amount of the penalty imposed to be unreasonable, for failure to take this factor into account. It seems to me that it would be reasonable for the Council to reserve the highest penalty for cases in which there is a continuing breach, rather than to impose it in a case where the Notice of Intent has been responded to appropriately.

17. Nevertheless, the period over which Diverse Lettings Limited was in breach of its legal obligations was a long one, reasonably attracting a high penalty. The remedial action taken by Ms Umer should, in my view, be reflected by a reduction in the penalty of £500.

18. Accordingly, the appeal is now allowed in part on the basis that the amount of penalty was unreasonable and the Final Notice is hereby varied to reduce the penalty to £4500.

(Signed)
Alison McKenna
Principal Judge

Dated: 10 October 2017
Promulgation Date: 13 October 2017