



**First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation**

Appeal Reference: PR/2018/0073

**Determined without a hearing
On 23 May 2019**

FARZAD ZARANDI

Appellant

and

COLCHESTER BOROUGH COUNCIL

Respondent

**JUDGE JACQUELINE FINDLAY
Sitting in Chambers on 23 May 2019**

DECISION AND REASONS

A. The legislation

Enterprise and Regulatory Reform Act 2013

S84 Redress schemes: property management work

(1) The Secretary of State may by order require persons who engage in property management 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) “Redress scheme” and “government administered redress scheme” have the same meanings as in section 83.

(3) The order may provide for the duty mentioned in subsection (1) to apply—

(a) only to specified descriptions of persons who engage in property management work;

(b) only in relation to specified descriptions of such work.

(4) The order may also provide for the duty not to apply in relation to complaints of any specified description (which may be framed by reference to a description of person making a complaint).

(5) Before making the order, the Secretary of State must be satisfied that all persons who are to be subject to the duty will be eligible to join a redress scheme before the duty applies to them.

(6) In this section, “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.

(7) However, “property management work” does not include—

(a) things done by a person who is a social landlord for the purposes of Schedule 2 to the Housing Act 1996;

(b) things of a description, or things done by a person of a description, specified for the purposes of this section in an order made by the Secretary of State.

(8) In subsection (6), “relevant tenancy” means—

(a) a tenancy which is an assured tenancy for the purposes of the Housing Act 1988;

(b) a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977;

(c) a long lease other than one to which Part 2 of the Landlord and Tenant Act 1954 applies;

(d) a tenancy of a description specified for the purposes of this section in an order made by the Secretary of State.

(9) An order under subsection (8)(d) may not provide for a tenancy to which Part 2 of the Landlord and Tenant Act 1954 applies to be a relevant tenancy.

(10) In subsection (8)(c), “long lease” means a lease which is a long lease for the purposes of Chapter 1 of Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 or

which, in the case of a shared ownership lease (within the meaning given by section 7(7) of that Act), would be such a lease if the tenant's total share (within the meaning given by that section) were 100 per cent.

S85 Orders under section 83 or 84: enforcement

(1) An order under section 83(1) or 84(1) may make provision —

(a) for sanctions to be imposed in respect of a breach of a requirement imposed by the order;

(b) for the investigation of suspected breaches of such a requirement.

(2) The sanctions for which provision may be made in the order are—

(a) the imposition of civil penalties;

(b) the making of orders prohibiting a person from engaging in lettings agency work or (as the case may be) property management work or from engaging in a particular description of such work;

(c) the creation of criminal offences in respect of breaches of orders mentioned in paragraph (b).

(3) Provision made for the imposition of a sanction by virtue of subsection (1)(a) must include—

(a) provision for appeals to a court or tribunal against the imposition of the sanction, and

(b) such other provision as the Secretary of State considers appropriate for safeguarding the interests of persons on whom the sanction may be imposed.

(4) Provision made by virtue of this section may confer functions on a person that exercises functions of a public nature.

(5) The Secretary of State may make payments out of money provided by Parliament to a person on whom functions are conferred by virtue of this section.

S87 Approval of redress schemes for the purposes of section 83 or 84

(1) The Secretary of State may by order make provision about the approval of redress schemes for the purposes of section 83 or 84, including provision as to—

(a) the making of applications for approval;

(b) conditions which must be satisfied before approval may be given;

(c) conditions which must be complied with by administrators of approved redress schemes;

(d) the withdrawal of approval.

(2) The order may make provision about the conditions which must be satisfied before a scheme administered by or on behalf of the Secretary of State may be designated for the purposes of section 83 or 84.

Requirement to belong to a redress scheme: property management work

5.— (1) A person who engages in property management 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.

Exclusions: property management work

6.— (1) For the purposes of section 84 of the Act, “property management work” does not include the things described in this article.

(2) “Property management work” does not include things done in relation to premises which consist of or include more than one dwelling-house where the land is registered as commonhold land (whether or not there is a relevant tenancy in relation to any of the commonhold units).

(3) “Property management work” does not include things done in relation to premises which are used wholly or mainly for the accommodation of students where a condition in paragraphs (4) to (6) is met.

(4) The first condition is that the premises are owned or managed by —

(a) an institution within the meaning of paragraph 5 of Schedule 1 to the Local Government Finance Act 1992; or

(b) a body established for charitable purposes only.

(5) The second condition is that the premises are a hall of residence.

(6) The third condition is that the students have been nominated to occupy the premises by an institution or body of the kind mentioned in paragraph (4).

(7) “Property management work” does not include things done in relation to a dwelling-house occupied by students who have been nominated to occupy the dwelling-house by an institution or body of the kind mentioned in paragraph (4).

(8) “Property management work” does not include things done in relation to premises where the conditions in paragraphs (9) and (10) are met.

(9) The first condition is that either of the following applies to the premises —

(a) it is not operated on a commercial basis and its costs of operation are provided wholly or in part by a government department or agency, by a local authority or by a parish council;

(b) it is managed by a voluntary organisation or charity.

(10) The second condition is that the premises are used wholly or mainly for providing accommodation to persons who have been subject to any incident, or pattern of incidents, of —

(a) controlling, coercive or threatening behaviour;

(b) physical violence;

(c)abuse of any other description (whether physical or mental in nature); or

(d)threats of any such violence or abuse.

(11) “Property management work” does not include things done by a person (“A”) during a business—

(a)where the premises are subject to a mortgage and A is the receiver of the income of it; or

(b)where A is —

(i)an authority to which Part 3 of the Local Government Act 1974(1) applies;

(ii)a RTM company exercising the right to manage under Part 2 of the Commonhold and Leasehold Reform Act 2002(2);

(iii)an authorised person within the meaning of section 18 of the Legal Services Act 2007.

(12) “Property management work” does not include things done by a person (“A”) during a business in response to instructions received from —

(a)an authority to which Part 3 of the Local Government Act 1974 applies;

(b)a social landlord for the purposes of Schedule 2 to the Housing Act 1996(3).

(13) For the purposes of this article—

“commonhold land” has the same meaning as in section 1 of the Commonhold and Leasehold Reform Act 2002(4);

“commonhold unit” has the same meaning as in section 11 of the Commonhold and Leasehold Reform Act 2002;

“government department” includes any body or authority exercising statutory functions on behalf of the Crown;

“RTM company” has the same meaning as in sections 71(1) and 73 of the Commonhold and Leasehold Reform Act 2002(5);

“student” has the same meaning as in paragraph 4 of Schedule 1 to the Local Government Finance Act 1992.

“voluntary organisation” means a body, other than a public or local authority, whose activities are not carried on for profit.

Enforcement authority

7.— (1) It shall be the duty of every enforcement authority to enforce this Order.

(2) The duty referred to in paragraph (1) applies to the enforcement of the Order within the authority’s area.

B Procedure

1. I have determined this appeal on the papers on the basis that the parties have consented to the matter being determined without a hearing and I am satisfied that the appeal can be properly determined without a hearing. The parties have had ample opportunity to prepare their cases and there is sufficient evidence to determine the appeal fairly and justly. I have considered the bundle of documents numbers 1 to 35.

C The Issues

The Appellant's Case

2. Mr Zarandi is a landlord in Colchester and the properties he manages are mostly rented to students. He manages some properties that he owns and properties owned by others.
3. Mr Zarandi appeals on the following grounds:
 - a) He has always made every attempt to make the properties he manages meet the requirements set by the Council.
 - b) The Respondent has always been aware of his property maintenance and management activities.
 - c) He has had numerous meetings and conversations with the Respondent's team members regarding health and safety and good practice and he was not made aware of the legislative requirements.
 - d) He was not aware of the Enterprise and Regulatory Reform Act 2013 and the legislative requirements until he received the Notice of Intent dated 14 May 2018.
 - e) The first time he heard of the legislative requirements was during an informal conversation with Mrs Alison Morland on 21 March 2018 who asked if he was a member of a Redress Scheme. He says Mrs Morland said membership was required 'for rental and estate agent work.' He explained that he was essentially a caretaker and the rentals were done by estate agents and Mrs Morland did not raise any further objections.
 - f) He joined the Property Redress Scheme on the day he received the Notice of Intent.
 - g) Apart from the short conversation with Mrs Morland he was never "informed of this development, received any training, say any notices, invited to a meeting" in accordance with the Respondent's 'Private Sector Housing Team Customer Charter.'
 - h) He telephoned the Respondent's offices on 14 May 2018 and 15 May 2018 but no one was able to assist him. One officer had heard of the Enterprise and Regulatory Reform Act 2013 but said he was not familiar with it and advised him to contact Mr Wood and the second officer had never heard of the Enterprise and Regulatory Reform Act 2013.
 - i) He is not an estate or rental agent. He does not have a business address or a website.
 - j) The Respondent's officers had multiple opportunities to make him aware of the Enterprise and Regulatory Reform Act 2013 but failed to do so.
 - k) He has a history of complying with all requests from the Respondent and an alternative to a Notice of Intent would have been more appropriate.
 - l) He had not joined one of the government approved schemes previously not because of the cost but because he was unaware of the requirement to do so.

- m) The email from Mr Torben Wood dated 14 March 2018 went into his junk mail and he only saw it a few days before 25 October 2018.
- n) The monetary penalty is disproportionate and excessive considering that his turnover for the period 23 January to 21 March 2018 was £2502.12. He only makes a small profit from the venture which was done to help two friends.
- o) He does not think that the management of his own properties comes within the scope of Enterprise and Regulatory Reform Act 2013.
- p) There was a genuine lack of awareness on his part as he had very limited resources and relies on appropriate advice and understanding from local authorities. He refers to Section 5 of Effective Enforcement in the PRS published by the National Approved Letting Scheme June 2016 which states:

“Whilst the lettings industry wants to see these laws effectively enforced, we also want councils to actively promote the new requirements amongst agents, landlords and tenants. It is in the interests of consumer protection that all parties understand their rights and responsibilities.”
- q) His research on the internet of the Enterprise and Regulatory Reform Act 2013 was unhelpful.
- r) The monetary penalty should be waived.

The Respondent's case

4. The Respondent submits the following points:

- a) Concerns regarding Mr Zarandi's failure to join a property redress scheme arose following an application for membership to the Student Accreditation Scheme for a property.
- b) Mrs Morland asked Mr Zarandi to which scheme was he a member when carrying out a property inspection on 21 March 2018. Mr Zarandi stated that he was not a member as he did not need to be a member. Mrs Morland advised him that his activities as a manager of rented property mean he was required to join a scheme.
- c) On 23 April 2018 an investigating officer researched the three property redress schemes and could find no listing for Mr Zarandi.
- d) Mr Zarandi manages several rented properties in the Borough.
- e) Mr Torben Wood sent an email to Mr Zarandi on 13 March 2018 warning him about the requirement to join a property redress scheme.
- f) The Respondent submits that a penalty of £5,000 is appropriate in all the circumstances.
- g) There are no extenuating circumstances to support a reduction of the monetary penalty.

- h) Information about the Property Redress Scheme is on the Council's website.
- i) Mr Zarandi manages a substantial portfolio of properties.

D. Findings of Fact and Reasons

5. I find that at all material dates Mr Zarandi was engaged in property management work as defined above and the work does not come within any of the statutory exceptions. This is on the basis of what Mr Zarandi says about the work he undertakes in managing and caretaking properties.
6. I find that Mr Wood sent an email to Mr Zarandi dated 14 March 2018 and the email address used farzad7@me.com was the email address used by Mr Zarandi. That email stated clearly that Mr Zarandi had been identified as a property manager and as such was required to be a member of one of the three government approved schemes. The email contained a link to guidance. The email stated clearly that there was the power to levy a financial penalty for a breach of the legal requirement (page 27).
7. On 21 March 2018 Mrs Morland, a Private Sector Housing Officer, carried out an inspection of 119 Magnolia Drive and 63 Stanley Wooster Way and asked Mr Zarandi which PRS he belonged to. Mr Zarandi stated he did not believe this was relevant to him.
8. Mr Zarandi would have been aware of the obligations on him to belong to a government redress scheme by 21 March 2018 even if he did not see the email of 14 March 2018.
9. On 23 April 2018 Mr Zarandi was not a member of any of the approved schemes.
10. On 14 May 2018 a Notice of Intent was issued setting out that from 23 January 2018 to 21 March 2018 Mr Zarandi was in breach of the legislative requirements (page 1).
11. On 1 October 2018 a Final Notice was issued (page 4).
12. The Respondent served a valid Notice of Intent and Final Notice on the Mr Zarandi and those Notices contained all the information as required.
13. I am required to determine whether the amount of the penalty is reasonable and in doing so I may take my own view of all relevant matters.
14. Mr Zarandi has had ample opportunity to submit documentary evidence and detailed information about the net income from his business of property management. He has chosen not to do so. I am not satisfied that Mr Zarandi has given a complete and accurate account of the financial position of his business. He refers only to the income during a brief period from 23 January to 21 March 2018 which indicates no more than a snapshot of the business and financial situation.
15. On the basis of the evidence available I do not find that the penalty of £5,000 is unreasonable. I do not consider it in all the circumstances to be disproportionate. I am not satisfied on the evidence available that the penalty will cause Mr Zarandi to go out of business.

16. I have considered the fact that Mr Zarandi did join the PRS on 14 May 2018 immediately on receipt of the Notice of Intent. However, I do not consider this is an extenuating circumstance which supports a reduction in the level of the monetary penalty.

17. In reaching this decision I have taken into account that the obligation to comply with the legislation lies on Mr Zarandi and he failed to recognise or meet that obligation until he was given Notice of Intent. He had a conversation with Mrs Morland and was put on notice of the need to be a member of a government redress scheme but he failed to make enquiries or comply. The obligation was on him to find out what were the legislative requirements not to wait to be told or advised. Mr Zarandi had ample opportunity to find out about the obligations on him and comply. He chose not to do so. Mr Zarandi cannot escape the onus on him by saying the Respondent did not tell him.

E. The Decision

18. I dismiss the appeal. I consider that it is reasonable to impose a penalty in the sum of £5,000.

Signed: J R Findlay

Judge of the First-tier Tribunal

Date: 23 May 2018

Signed: 18 June 2019