



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

**Appeal Reference: PR/2018/0012**

**Held on the papers**

**Before**

**Judge CLAIRE TAYLOR**

**Between**

**N JONES PROPERTIES LIMITED (t/a Kath Wells Property Rentals)**

Appellant

**and**

**LEEDS CITY COUNCIL**

Respondent

**Decision**

This appeal is dismissed.

## REASONS

1. N Jones Properties Limited (t/a Kath Wells Property Rentals) (the 'Appellant') appeals against a penalty charge of **£2,500** issued by the Leeds City Council ('the Council') related to failure to be a member of a redress scheme. Both parties were content for the matter to be determined without an oral hearing, and I am satisfied that I may fairly do so on the information before me.

### The Law

2. 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."

3. 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."

4. 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")."

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 ('2014 Order'). Article 3 provides:-

"Requirement to belong to a redress scheme: lettings agency work

(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 7 of the Order provides that it shall be the duty of every enforcement authority to enforce the Order. For the purposes of the present appeal, the relevant enforcement authority is Leeds City Council (“The Council”).
7. 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.
8. 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).
9. Article 9 of the Order provides as follows:-

“Appeals

- (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.”

### **Factual Background**

10. In the present case, a private tenant contacted the Council. They said that they had wished to make a complaint with the ombudsman about the appellant, but had not found that it was a member of a redress scheme. They wished to know what they could do. (Page 49 of the papers.) The Council issued a notice of intent of 29 September 2017 stating an intention to impose a penalty of £5000

for failure to comply with Part 2 Article 3 (Requirement to Belong to a Redress Scheme: Lettings Agency Work) or Part 3 Article 5 (Requirement to Belong to a Redress Scheme Property Management Work) of the 2014 Order. Accompanied to this notice, the Council issued a letter stating that on one August 2017 the company does not appear on any of the schemes' membership lists, and as such were in breach of the Order. The Appellant gave representations that it did belong to scheme. The Council asked for a copy of the membership certificate (page 68) and states that it received no response. After investigations, the Council determined that the Appellant had joined a scheme on 24 October 2017 under the trading names Kath Wells Property Rentals and Kath Wells Estate Agents. In accordance with the Council's policy, the penalty was reduced by 50% to take into account that the Appellant had joined a redress scheme after the notice of intent and prior to the final notice. On 9 January 2018, the Council issued a decision to impose £2500 penalty.

### **Submissions**

11. The Appellant now appeals the penalty. Grounds include the following:
  - a. N Jones Properties Ltd is a member of the Property Ombudsman Scheme under membership number T00433. It disputed that on 1 August 2017 it became a member as it was one.
  - b. It took over the running of the lettings side of Kath Wells Estate Agents Ltd in 2017.
  - c. N Jones Properties Ltd is a new company employing a number of staff. It had to pay £1140 to purchase the business from Kath Wells Estate Agents Ltd which went into receivership. As a new business, it cannot afford to pay the fine.
12. The Council's submissions are extensive and it is not necessary to repeat them in full. They address points including:
  - a. A tenant was prevented from making a complaint or have his dispute considered objectively by an independent approved property redress scheme, because the Appellant was not a member of a scheme.
  - b. The Council carried out checks to see if the Appellant was a member on 1 August 2017 and 15 and 29 September 2017. It was clear from investigations that the business was actively marketing properties for rent and marketing agent and property management services to landlords. A final check was made on 20 December prior to the issue of the final notice. (Copies of checks are shown in the papers.)
  - c. The Appellant joined an approved scheme on 24 October 2017. The Property Ombudsman confirmed this date. (See page 70 where The Property Ombudsman explained that membership does not get backdated.)
  - d. The Council found that the Employer was active in the business without being a member between 1 August 2017 and 23 October 2017. That the Appellant had joined after the notice of intent did not mitigate this failure.

- e. Regarding the Appellant being a new company, the auction notice was dated February 2017. In any event, it was in control and responsible during August to October 2017. Whilst N Jones Properties was incorporated in December 2016, there are previous and ongoing associations with business dating back to at least 1999. (See further page 37). Further, mandatory regulatory compliance is not affected by the age or experience of the business, and the business is responsible for ensuring regulatory compliance.
- f. Regarding the argument that the company cannot afford to pay £2500, in the absence of fully audited accounts, the Council is not satisfied that the company has submitted a true financial picture of the business.
- g. As regard affordability, the Government guidance for the enforcement of the regulations states that "*the expectation is that a £5000 should be considered the norm and that a lower fine should only be charged if the enforcement authority is satisfied that there are extenuating circumstances.*"

## **Finding**

13. The Appellant asserts that it had been a member of a redress scheme on 1 August 2017. On balance, I find it highly unlikely, given that no proof (such as a membership certificate) has been provided in the papers, despite the Respondent having requested it on 27 October 2017. Further, The Property Ombudsman made clear that the membership commenced on 24 October. (Page 70). Given such evidence, it is troubling that the Appellant asserted otherwise, without providing further proof. In short, I accept that the Appellant failed to comply with the legislation set out above. Therefore, there was a legal basis for the Council to impose a financial penalty on the Appellant.
14. The Appellant maintains that the penalty is unreasonable due to the business being new and that it cannot afford it. However, the Respondent noted the absence of accounts, and the company still did not provide them or any other available evidence to support the claim. Accordingly, I am not satisfied that there is a sufficient and reliable basis to support the argument that the Appellant cannot afford the fine.
15. The period for which the Council has noted absence of membership is less than three months. However, a tenant contacted the Council about the failure of membership on 1 August 2017, such that it is likely that the period was longer than that stated in para. 12(d) above. (See page 49). In any event, it is clear that the lack of membership has resulted in a tenant being unable to make use of the redress scheme regime, and this underlines the importance of compliance. Whilst the Appellant asserts that it is a new business, for the reasons given by the Council (and not refuted by the Appellant), the company is running a professional business and should in any event have known the requirements of the legislative regime. (See pages 34 to 38).
16. I have not seen any arguments advanced by the Appellant that I find persuasive and I am more persuaded by the submissions of the Council. In all the circumstances and based on the information before me, I find that the decision to impose a monetary penalty was not based on an error of fact; that the

decision was not wrong in law; and that the decision was not unreasonable for any other reason. I also find that the amount of the monetary penalty was not unreasonable in the absence of compelling evidence or argument to the contrary.

25. Accordingly, I dismiss the appeal.

**Dated**  
**Promulgation Date**

**Judge Claire Taylor**  
**7 September 2018**  
**3 October 2018**