First-tier Tribunal
(General Regulatory Chamber)
Professional Regulation

Appeal Reference: PR/2017/0033

Heard at Leeds ET, 11 Albion St, Leeds
on 16th February 2018

Before

TRIBUNAL JUDGE PETER HINCHLIFFE

Between

GEORGE THOMAS WORSLEY

Appellant

and

LEEDS CITY COUNCIL

Respondent

DECISION

1. The Appeal is allowed. The Notice of Decision to Impose a Monetary Penalty served by Leeds City Council ("Leeds") on George Thomas Worsley ("Mr Worsley") dated 23rd August 2017 imposed a monetary penalty that was unreasonable in all of the circumstances of this appeal and the penalty should be reduced to an amount of £750.

REASONS

A. Background

2. Mr Worsley appealed against a Notice of Decision to Impose a Monetary Penalty reference 17/03086/ERR13D dated 23rd August 2017 (the "Final Notice") served on it by Leeds, which is the enforcement authority for letting agents and property managers carrying on business in Leeds. The Final Notice is addressed to Mr Worsley at 334 Broadway, Horsforth, Leeds, LS9 ONP and relates to a property at 11 Burley Wood Lane LS4 2SU (the "Property"). The Final Notice requires Mr Worsley to pay a monetary penalty of £2,500 in respect of its failure on 15th May 2017 to meet its duty under Article 3 and/or Article 5 of The Redress Scheme for Lettings Agency and Property Management Work (Requirement to Belong to a Scheme etc. (England) Order 2014 (the "Order") to belong to an approved redress scheme, whilst engaged in lettings agency and/or property management work.

B. Legislation

3. The Order was issued in order to permit the exercise of the powers conferred by the Enterprise and Regulatory Reform Act 2013 (the "Act"). The sections of the Act and the Order that are referred to in this decision or that are otherwise relevant to this appeal are set out below in the Annex, which forms a part of this decision.

C. Guidance

4. The Act and the Order are the subject of Guidance for Local Authorities issued by the Department for Communities and Local Government in March 2015 (the "Guidance"). The Guidance is non-statutory but the relevant enforcement authority is expected to have regard to it when considering what fine is reasonable for a breach of the Order. The section of the Guidance that is of greatest relevance to this appeal is set out below:

> "*The expectation is that a £5000 fine 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. It will be up to the enforcement authority to decide what such circumstances might be, taking into account any representations the lettings agent or property manager makes during the 28 day period following the authority's notice of intention to issue a fine. In the early days of the requirement coming into force, lack of awareness could be considered; nevertheless an authority could raise awareness of the requirement and include the advice that non-compliance will be dealt with by an immediate sanction. Another issue which could be considered is whether a £5,000 fine would be disproportionate to the turnover/scale of the business or would lead to an organisation going out of business. It is open to the authority to give a lettings agent or property manager a grace period in which to join one of the redress schemes rather than impose a fine.*' (See page 53 of the Guide.)

D. The Appeal

5. Mr Worsley submitted a Notice of Appeal dated 26th September 2017 setting out the grounds of his appeal against the Final Notice. The main points of Mr Worsley's grounds of appeal are;
   - that he was not a lettings agent;
   - he agreed to manage one property only for a previous customer of his joinery business;
   - the fine is way out of proportion to the £75 a month fee he receives for managing this property; and
   - he immediately joined a redress scheme as soon as he found out that he should have done so.

6. Leeds submitted a response to the appeal in which they provided details of their dealings with Mr Worsley following receipt of complaint from the tenant of the Property on 28 November 2016. Leeds also provided a copy of Guidance for Local Authorities on Lettings Agents and Property managers issued by the Department for Communities and Local Government in October 2014 (the "2014 Guidance"), the Notice Of Intention to Impose a Monetary Penalty issued to Mr Worsley on 24th May 2017, the responses to this Notice of Intention from Mr Worsley and from his sister on his behalf, extracts from searches of the registers of providers of property redress schemes and other relevant documents together with the legislation that relates to the issue of the Final Notice.

E. The Hearing

7. The hearing of the appeal took place on 16th February 2018. Mr Worsley represented himself. Leeds was represented by Mr Comer, a Principal Legal Officer and Mr Dixon a Senior Housing Officer for Leeds.

8. It was common ground between the parties at the hearing that:
   - The Mr Worsley was managing some aspects of the letting of the Property.
   - Mr Worsley was not a member of a redress scheme approved under the Act until 5th July 2017.
   - Mr Worsley was receiving rent on the Property on behalf of the owner and remitting the rent, less a sum of £75 per month, to the owner and that he had agreed with the owner to deal with the tenant in relation to any repairs, maintenance and improvements to the property.
   - The Property is, and was on 15 May 2017, "*a dwelling-house let under a relevant tenanc*y" for the purposes of the Act.
   - The Property is within the area for which Leeds is the enforcement authority under the Act.
   - If Mr Worsley was carrying on "property management work" as defined in section 84 of the Act on 15th May 2017, he would have been obliged to be a member of an approved redress scheme.

9. Mr Worsley stated throughout his dealings with Leeds and at the hearing that the work he undertook in relation to the Property on behalf of the owner was the only such work he carried out. Leeds accepted at the hearing that there was no evidence of Mr Worsley undertaking any such role or a similar role in respect of any other property.

10. The issues in dispute between the parties that are relevant to the outcome of this appeal are; whether Mr Worsley was on 15th May 2017 carrying on a business in property management work or lettings agency work as defined in sections 83 and 84 of the Act respectively and, if so, whether the amount of the penalty imposed by Leeds was reasonable.

F. Submissions on the issues in dispute

11. At the hearing Mr Comer confirmed that Leeds believed that Mr Worsley was carrying out property management work, rather than lettings agency work. I referred the parties to the definition of "property management work" set out in the Act and the 2014 Guidance. Mr Worsley explained that this was the only property that he was managing. He collects the rents and either carried out or arranged maintenance or repair work. He had done it as a favour to a friend, the owner of the Property, who had been a customer of his joinery business. Mr Worsley said that he was a joiner and ran a joinery business. He did not need the £75 a month that he received for looking after the property as he could easily earn this through his joinery activities. He had spoken to lettings agents that he had worked with before taking on the role and he had been alerted to the need to deal properly with the deposit, but no one had mentioned the need to join a property redress scheme. He could not understand why not. The work in respect of the Property was carried out through his joinery business.

12. With regard to the reasonableness of any penalty that may be due, Mr Worsley produced at the hearing a letter from his accountant and his tax return for the year to 5 April 2017. These indicated that his turnover as a self-employed joiner during this year was £58,950 and that, of this amount, only £900 was derived from a management fee, which was 10% of the rent received from a tenant. Mr Worsley confirmed that this was his income from managing the Property. Mr Worsley's net profit from his business was £24,570. He said that this was his only income. He had recently re-mortgaged his property in order to pay off debts, including the amounts that he owed HMRC. His partner worked part time and between them they just managed financially. They have four children. He argued that the size of the proposed fine was out of proportion with the scale of the breach that had taken place.

13. Mr Comer and Mr Dixon stated that the penalty had been reduced to £2,500 in order to reflect Mr Worsley's limited means. The penalty was supposed to be a deterrent and there was no suggestion that Mr Worsley's business could not afford to pay. They noted that the issues had only arisen because of a complaint by a tenant and that the Act was designed to protect tenants and provide them with access to a redress scheme. Leeds had not received the details about Mr Worsleys's income before the

hearing and even now, they felt they had limited information about his finances. They continued to believe that the penalty of £2,500 was proportionate.

G. Findings

14. In reaching a decision in this case I have had regard to all of the oral submissions at the hearing and also to the written submissions, evidence and other documentation contained in the hearing bundle. The common ground between the parties that emerged during the hearing means that there are only two issues of substance for me to decide in order to determine this appeal.

15. I conclude that Mr Worsley activities on 15th May 2017 fell within the definition of "property management work" as set out in section 84 (6) of the Act. Mr Worsley was acting in the course of a business and had agreed with the owner of the Property to arrange or carry out *services, repairs, maintenance or improvements* and to collect rent on behalf of the owner. Mr Worsley did not fall within any of the exclusions from the definition of "property management work" provided for in section 84 (7) of the Act. As a consequence of the above I find that Mr Worsley was engaged in property management work on 15th May 2017.

16. With regard to the reasonableness of the penalty imposed by Leeds, I have accepted that the evidence establishes that on 15th May 2017 Mr Worsley was undertaking property management work for the Property and that his income from this activity was £900 per annum. I accept the arguments put forward by Leeds that Mr Worsley's business could afford to pay the penalty imposed in the Final Notice without the risk of going out of business. It is clear that anyone undertaking property management work as a business needs to make themselves aware of the relevant legal and regulatory responsibilities that they must comply with. In this case Mr Worsley appears to have taken some steps to see what was required of him when he undertook the management of the Property, but these were inadequate. However, I accept that his position is different from someone working full-time in setting up or operating a business whose main focus is property management work or lettings agency work.

17. I find that Leeds is correct to say that the level of penalty must be sufficient to act as a deterrent. In this case the low level of income derived from the limited business activity means that a lower level of penalty is sufficient to act as a deterrent.

18. In the particular circumstances of this appeal, I find that the penalty of £2,500 imposed in the Final Notice was unreasonable and that a penalty of £750 for Mr Worsley's failure to belong to an approved redress scheme whilst engaged in property management work would be reasonable and proportionate.

H. ***Decision***

19. By virtue of Article 9 of the Order, the Tribunal may quash, confirm or vary a Final Notice.

20. I find that the Final Notice served on Mr Worsley imposed a monetary penalty the amount of which was unreasonable and, as a consequence, the Appeal is allowed. The Final Notice is varied so as to substitute a penalty of £750 in place of the penalty of £2,500 originally imposed.

Peter Hinchliffe
Judge of the First-tier Tribunal
9th March 2018
Promulgation date 15 March 2018

ANNEX

1. Section 83(1) of the Enterprise and Regulatory Reform Act 2013 (the 'Act') provides:

> '(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:

> '(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 section 84 (6) provides that;

> " '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."

5. Pursuant to the Act, 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') was introduced. It 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.

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 £5000. 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. (See Paragraph 3 of Schedule to the Order).

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.

10. The Schedule to the Order provides as follows:

"Final notice

3.

(1) After the end of the period for making representations and objections, the enforcement authority must decide whether to impose the monetary penalty, with or without modifications.

(2) Where an enforcement authority decides to impose a monetary penalty on a person, the authority must serve on that person a final notice imposing that penalty.

(3) The final notice must include—

(a) the reasons for imposing the monetary penalty;

(b) information about the amount to be paid;

(c) information about how payment may be paid;

(d) information about the period in which the payment must be made, which must not be less than 28 days;

(e) information about rights of appeal; and

(f) information about the consequences of failing to comply with the notice.