



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

Appeal Reference: PR/2016/0027

**Heard at Huddersfield County Court
On 24 January 2017**

Before

JUDGE J R FINDLAY

Between

FRASER PROPERTY SERVICES LIMITED

Appellant

and

LEEDS CITY COUNCIL

Respondent

DECISION AND REASONS

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.

Decision

- 10) The Monetary Penalty was correctly imposed. The appeal is allowed insofar as the Monetary Penalty is reduced to £500.

The Hearing

- 11) I have considered the bundle numbered 1-B32. I have conducted an oral hearing at which I heard a submission from Ms Feltham, on behalf of the Respondent, and heard oral evidence from Mr Stuart Fraser and Mrs Catherine Fraser. Mr David Thorpe, Private Sector Housing Manager, and Mr Allan Dixon, Private Sector Housing, attended but gave no evidence save

to confirm that the letter containing the typing error referred to at point 10 on page 34 was not within the bundle and was not available.

Background

- 12) The Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (“the Order”) requires persons who engage in lettings agency work and persons who engage in property management work to belong to a redress scheme for dealing with complaints in connection with that work. The Order also makes provision for enforcement of that requirement.
- 13) The Respondent carried out a check on 20 June 2016 which showed that Mr Stuart Fraser and Mrs Catherine Fraser using the business name Fraser Property Services Limited have not joined any of the three Government approved redress schemes.
- 14) A notice of intention to impose a Monetary Penalty and covering letter dated 8 July 2016 were posted to Mr and Mrs Fraser on behalf of Fraser Property Services Limited to their address at 5 Cross Park Street, Dewsbury WF12 8AG and to their registered business address at 29 High Street, Morley, Leeds LS27 9AE.
- 15) Representations were received from Mr and Mrs Fraser within the 28 day representation period.
- 16) On 10 August 2016 a Notice of Decision to impose a Monetary Penalty of £2,500 together with a covering letter and an invoice for £2,500 was posted to Mr and Mrs Fraser at the above addresses.

The Final Notice

- 17) Final Notice dated 10 August 2016 was addressed to Mr Stuart Fraser of Fraser Property Services Ltd, 5 Cross Park Street, Dewsbury, West Yorkshire, WF12 8AG and Mrs Catherine Fraser of Fraser Property Services Ltd, 5 Cross Park Street, Dewsbury, West Yorkshire, WF12 8AG and stated as follows:
 - 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 8 July 2016 considers that you have breached the requirements of this Order and so imposes a monetary penalty upon you of £2500.
 - The reasons for imposing the monetary penalty are as follows:
 - On 20 June 2016 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/or 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.

- 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.
- 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 Issues

- 18) The Respondent submits that the decision to impose a Monetary Penalty of £2,500 was correct on the basis of the evidence that was available. The Respondent took into account the representations made and took into account that Mr and Mrs Fraser joined a property redress scheme following service of the notice of intention to impose a Monetary Penalty. The Respondent invites me to find that the Monetary Penalty of £2,500 is correct.
- 19) Fraser Property Services Limited joined the Property Redress Scheme on 13 July 2016 and the certificate appears at page 31.
- 20) In the notice of appeal Mr and Mrs Fraser urge me to consider the following grounds:
- We do not live or own or manage property in the area under the jurisdiction of Leeds City Council therefore your fine for the alleged crime is invalid.
 - At no point has Leeds City Council given us the opportunity to ‘right the wrong’ of the alleged crime, a basic principal of Civil Law. There are numerous examples of case law where the accused have been found not guilty due to the prosecuting party failing to give the accused the opportunity to right an alleged wrong. This is common practice in Environmental enforcement actions taken by your Council.
 - At no point did Leeds City Council or any other government or official organisation make us, or the general public, aware that membership of any Landlords or similar organisation was mandatory. We have become a member of a recognised organisation as soon as we became aware of our obligation.
 - The fine is extremely draconian in comparison to the fines for similar petty offences imposed by Leeds City Council and similar organisations.
- 21) In support of their appeal Mr and Mrs Fraser lodged at the hearing the audited accounts for Fraser Property Services Limited for the year ended 29 February 2016. The profit and loss accounts for the year ended 29 February 2016 shows a net profit of £2,394 and for the year ended 28 February 2015 a net profit of £2,100.
- 22) Mr and Mrs Fraser lodged a copy of the business current account for Fraser Property Services Limited for the period 9 December 2016 to 24 January 2017.

Findings of Fact and Reasons

- 23) I find that a Monetary Penalty was correctly imposed. I find that the correct procedure was followed and the notices complied with the legal requirements.
- 24) I find Mr Stuart Fraser and Mrs Catherine Fraser to be credible witnesses and I accept their evidence.
- 25) I find that the fine of £2,500 was disproportionate to the turnover and scale of the business and might lead to the company going out of business.
- 26) I find that at all material dates Fraser Property Services Limited was undertaking lettings agency work as defined in the Enterprise and Regulatory Reform Act 2013. Mr and Mrs Fraser are the appropriate and responsible persons to act and correspond on behalf of Fraser Property Services Limited. I find that Mr and Mrs Fraser are the responsible persons and responsible for the actions and omissions of Fraser Property Services Limited. I find that Mr and Mrs Fraser should have been aware of the relevant legislation governing the activities of letting agents. I find that Fraser Property Services Limited was in breach of its statutory responsibility.
- 27) It is unquestionably the case that Fraser Property Services Limited 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. I find that the Respondent was entitled to expect professional letting agents such as Fraser Property Services Limited 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 and Mrs Fraser, on behalf of Fraser Property Services Limited, could be expected to have access and to be expected to consult.
- 28) I find that Fraser Property Services Limited had six properties, two of which belong to Mr Stuart Fraser and Mrs Catherine Fraser and that the registered business address was 29 High Street, Morley, Leeds LS27 9AE. I find that Mr Stuart Fraser and Mrs Catherine Fraser lived at 5 Cross Park Street, Dewsbury WF12 8AG. I find that Fraser Property Services Limited joined the Property Redress Scheme on 13 July 2016 having received the notice of intention to impose a Monetary Penalty.
- 29) I find that Fraser Property Services Limited is a very modest letting agency and business. There is a discrepancy between the Fraser Letting Services Limited website which appears at pages 39-41 of the bundle and the accounts and bank statements. The website gives the impression that the business is substantial dealing with many properties, offering extensive services and employing a number of people. The accounts and bank statements show that the business is small and is run by and provides employment for only Mr and Mrs Fraser.
- 30) The income shown on the bank statements for the business is compatible with the evidence of Mr and Mrs Fraser that at all material dates they were letting out only six properties. I find the bank statements compatible with the profit and loss accounts.
- 31) Taking into the account the modest nature of the business I find that the Monetary Penalty of £2,500 would be likely to put the business at risk and that this amounts to exceptional

circumstances. I consider this to be the situation notwithstanding that arrangements may possibly be made with the Respondent to pay the fine over a period of time.

32) I find that the Respondent was the correct Authority to make this decision taking into account the registered address of Fraser Property Services Limited.

33) It is of concern that Mr and Mrs Fraser were not aware of their obligations but they have indicated that they will take steps in future to ensure they are aware of the legal requirements and obligations upon them.

34) I find that the work undertaken by Fraser Property Services Limited did not come within the exceptions to the Enterprise and Regulatory Reform Act 2013. Fraser Property Services Limited does not come within the explicit or implicit exclusions from the requirement to belong to a redress scheme.

35) Accordingly the appeal succeeds.

Signed Judge J R Findlay
Judge of the First-tier Tribunal
Date: 24 January 2017
Signed: 7 February 2017