

**SILK ESTATES (YORKSHIRE) LTD**

**Appellant:**

and

**LEEDS CITY COUNCIL**

**Respondent:**

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**DECISION**

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## **DECISION OF THE FIRST-TIER TRIBUNAL**

The Tribunal refuses the appeal and amends the penalty upwards.

## **REASONS OF THE TRIBUNAL**

### **Introduction**

1. This decision relates to an appeal brought under Schedule 9 of the Consumer Rights Act 2015. It is an appeal against a Final Notice issued by Leeds City Council (“the Council”), in which the Council imposed a financial penalty of £2,500 on the Appellant company for undertaking property management or letting agency work without being a member of a government approved redress scheme.

### **Legislation**

2. Article 3 of the Redress Schemes for Lettings Agency Work and Property Management Work (Requirement to Belong to a Scheme etc) (England) Order 2014 (“the 2014 Order”) requires that any person engaged in letting agency work be a member of an approved redress scheme for dealing with complaints in connection with that work.
3. A letting agent is defined in section 84 of the Consumer Rights Act 2015 (‘the 2015 Act’) as follows:

- (1) In this Chapter “letting agent” means a person who engages in letting agency work (whether or not that person engages in other work).
- (2) A person is not a letting agent for the purposes of this Chapter if the person engages in letting agency work in the course of that person’s employment under a contract of employment.
- (3) A person is not a letting agent for the purposes of this Chapter if—
  - (a) the person is of a description specified in regulations made by the appropriate national authority;
  - (b) the person engages in work of a description specified in regulations made by the appropriate national authority.

4. Section 86 further defines ‘letting agency work’:

- (1) In this Chapter “letting agency work” means things done by a person in the course of a business in response to instructions received from –
  - (a) a person (“a prospective landlord”) seeking to find another person wishing to rent a dwelling-house under an assured tenancy and, having found such a person, to grant such a tenancy, or
  - (b) a person (“a prospective tenant”) seeking to find a dwelling-house to rent under an assured tenancy and, having found such a dwelling-house, to obtain such a tenancy of it.
- (2) But “letting agency work” does not include any of the following things when done by a person who does nothing else within subsection (1)
  - (a) publishing advertisements or disseminating information;
  - (b) providing a means by which a prospective landlord or a prospective tenant can, in response to an advertisement or dissemination of information, make direct contact with a prospective tenant or a prospective landlord;
  - (c) providing a means by which a prospective landlord and a prospective tenant can communicate directly with each other.
- (3) “Letting agency work” also does not include things done by a local authority.

5. Section 87 imposes a duty on the local weights and measures authority to enforce these provisions in its own area where it is considered on the balance of probabilities they have been breached. Breaches are considered to have occurred in the area of the local authority in which a dwelling house is situated to which any fees relate, but authorities can take enforcement action in the area of another local authority with the

consent of that authority. Local authorities have the power to impose monetary penalties not exceeding £5,000 in the event of a breach.

6. The procedure for the imposition of monetary penalties and the rights of appeal are set out in Schedule 9 of the 2015 Act. The local authority is required to issue a 'notice of intent' to issue such a penalty within six months from the date the authority had sufficient evidence of a breach. The notice must set out the amount of the proposed financial penalty, the reasons for proposing to impose the penalty, and information about the right to make representations within 28 days of the sending of the notice. At the end of that period the authority must decide whether to impose a penalty and the amount of that penalty. The final notice must set out that amount, reasons for the imposition of the penalty and information regarding how to pay and how to appeal. Anyone served with such a notice has the right to appeal within 28 days, on one of four grounds:
  - (a) the decision to impose a 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 other reason.

### **Final Notice**

7. In the present case the Final Notice dated 6 October 2017 stated that the Council was satisfied that on 23 August 2017 the appellant committed a breach of its duty to belong to an approved redress scheme, contrary to Article 3 of the 2014 Order.

### **The Appeal**

9. The Appellant appealed to the Tribunal on 1 November 2017. Mr Ayub Kayat on behalf of the Appellant stated that when "taking over" the Appellant Company he "inadvertently" forgot to update the Council and the redress scheme regarding the change in the company's name. He said that when he was alerted to the oversight he immediately renewed and updated his membership. As such, he states that there is no justification in imposing a fine, but if a fine should be imposed it should be £416, that being the proportion of the fine for the one month that had elapse between the expiry and renewal.

## Council's Response

10. The Council noted that there appear to have been three linked companies in existence bearing variations on the name Silks Estates and involving at various stages Mr Kayat. Silks Estates (Leeds) Ltd had been dissolved on 22 November 2016, and had taken the positive step of cancelling their redress scheme membership early in light of the insolvency of the business. The membership was due for renewal in July 2017, but was cancelled in June 2017.

11. The Council posted the Notice of Intention to impose a monetary penalty on 24 August. The business joined a redress scheme on 30 August, and informed the Council of this on 5 September. Accordingly, reduced the monetary penalty by half. However, the Council disputed that there was only one month wherein the Appellant Company was not a member of a redress scheme; from June to August there was *two* months where the business had no redress scheme membership. The Council therefore requested that the penalty be upheld.

12. At the appeal hearing on 9 March 2018, the appellant made submissions on behalf of the appellant company. However he also properly conceded that ignorance or an oversight *q*=was not a defence to what was a technical breach and the Council were accordingly entitled to impose a fine. The Council described the procedure whereby rectification of the requirement to belong to an approved redress scheme after an offender was given Final Notice in practice resulted in a 50% reduction of the usual statutory fine, to £2,500.00. This procedure was put into effect in this case. The Council received no correspondence before that decision to do so had been made.

13. The Appellant at the appeal failed to provide the Tribunal with any good reason to reduce the fine imposed and also conceded that the appeal had cost time and money to the Council who had had to attend the appeal with lawyer and to wider public funds by bringing the appeal to the Tribunal.

14. The Council when asked by the Tribunal confirmed that the legal costs for attending the appeal were in the region of £500. Accordingly the Tribunal has decided to increase the fine to £3,000.00.

Brian Kennedy QC 21 MARCH 2018 Promulgation date: 22 March 2018

