



Neutral Citation: [2022] UKFTT 149 (GRC)

Case Reference: NV/2021/0030

First-tier Tribunal  
General Regulatory Chamber  
Climate Change Agreement Regulations (as amended)

Decided on the papers

Decision given on: 9 May 2022

Before

TRIBUNAL JUDGE FORD

Between

TAYLOR ENGINEERING AND PLASTICS LTD

Appellant

and

ENVIRONMENT AGENCY

Respondent

On the papers

**Decision:** The appeal is Allowed

**Substituted Decision Notice:** A penalty of £750 is substituted

## REASONS

1. The appellant seeks the cancellation/withdrawal of the financial penalty imposed against the Appellant identified as Unit SEA/T00027 by the Environment agency for failure to report progress against Climate change Agreement targets at all or by the specific date (01.05.2021). The original notice of contravention and intent to impose a financial penalty was dated 4 May 2021. The Notice of financial penalty was dated 20 October 2021. The reason given for the penalty was that the Environment agency said the appellant did not provide a report of their performance data demonstrating progress towards meeting their climate change agreement target for the target period

between 1 January 2019 and 31 December 2020 (Target period 4 or “TP4”) on or before 1 May 2021.

2. The financial penalty imposed by the Environment agency for non-compliance was calculated in accordance with the formula set out in regulation 15 (2) of the CCA (Administration) regulations (as amended) (“the regulations”). The environment agency calculated that the appellant was liable to pay £2,719 being the amount calculated in accordance with the formula set out in regulation 15 (2), i.e., 0.1 (the amount of the climate change levy that would have been payable during the base year of the supplies were not reduced rate supplies - the amount of climate change levy that would have been payable on supplies of taxable commodities to the target unit during the base year if the supplies were reduced rate supplies. In calculating the penalty value, the Environment agency use the energy use information in the climate change agreement register the base year and the rate of climate change levy discount for that base year.
3. The Environment agency said it had also checked whether there had been any structural change to the target unit since the agreement was made and adjusted the penalty as necessary.
4. In addition, the Environment agency required the appellant under regulation 16 (b) to ensure a report of its performance data demonstrating progress towards meeting its climate change agreement target for target period 4 (TP4) on the climate change agreement register.
5. While it was acknowledged that the Environment agency had a discretion to waive the financial penalty, it considered it was not appropriate to do so. The notice states that the Environment agency applied the guidance policy set out in the Environment Agency Enforcement and Sanctions Policy. The appellant was advised to submit the report as soon as possible. Any further submissions the appellant wished the environment agency to take into account were requested by 4 June 2021. The appellant was informed that it had a right of appeal against the notice of financial penalty but not against the requirement to remedy the contravention.
6. In its response the appellant stated that although the notice was dated 4 May 2021, the date it received the decision was 20 October 2021.
7. The appellant acknowledged that the report was submitted late but said that this was unintentional and resulted from the retirement of the previous company secretary who did not highlight the reporting is an issue to be dealt with, the company’s email system filtering out reminders and treating them as spam and the fact that the files relating to the report had been moved into storage and archived.
8. It was submitted that the company had a good record of reporting and making payments on time and the new company secretary stressed that he had taken steps to ensure there would be no further difficulties in future.

9. In its response to the appellant submissions the Environment agency said it had made various efforts to contact the appellant without success from as early as 15 January 2021. The contact details for the company secretary were correctly stated on the CCA register. A reporting template was emailed to the company secretary on 15 January 2021. It was not returned. On 22 April 2021 the Environment agency newsletter to sector associations was issued reminding them of the period 4 reporting deadline for their operators. A final warning email was sent to the company secretary of 25 April 2021. A further chasing email was sent to the company secretary reminding him of the 01 May deadline for performance data to be submitted including a warning of potential financial penalty for failure to submit the report.
10. The new company secretary responded saying “I must apologise as I was unaware of the reporting requirements-this seems to have been missed during my handover on taking on the role. I will remedy the situation as soon as possible”. The Environment agency was informed on 17 May 2021 that sector emails had been going into quarantine in the appellant’s email system.
11. A mitigation email was received from the appellant on 4 June 2021. The TP4 report was submitted to the Environment agency on 15 June 2021, some six weeks after the 01 May deadline.
12. The Environment agency’s case is that the appellant acted negligently in failing to submit its report on time, the Environment agency acted correctly in considering the regulations and in imposing the penalty and the appeal should be dismissed.

### Consideration

13. The appellant was at fault in not filing its TP4 report on time, and that is not in issue. What is in issue is the proportionality of the environment agency response. The factors determining the environment agency’s response to the imposition of civil penalties are set out in guidance the Environment Agency Enforcement and Sanctions Policy that is publicly available.
14. The Environment agency takes into account the nature of the breach, the culpability of the organisation, the size of the organisation, financial gain, any history of non-compliance, the attitude of the non-compliant person and any personal circumstances.
15. The ~~guidance~~ Environment Agency Enforcement and Sanctions Policy states that the nature of the breach assessment is the seriousness of the breach based on the impact it has on the integrity of the scheme. This means the trust in, transparency, reliability and effectiveness of the scheme. It may include the length of time a person has been required to comply with the law. Maintaining the integrity of the scheme is vital to reduce the U.K.’s contribution to climate change.
16. The Penalty notice issued by the environment agency gives little indication of the Agency having considered the mitigating factors that were identified by the

appellant in the notice of appeal and in correspondence with the Environment agency when explaining why the report was filed late.

17. The appellant was certainly at fault and acknowledges the fault. I can see no consideration of the good reporting history of the appellant up until the TP4 report. The handover from one company secretary to another was clearly not handled well and the emails went astray and a reporting deadline for TP4 was missed.
18. But the company history of reporting was good, the report was filed albeit six weeks late and the company showed a clear appreciation of its own failure to comply with the reporting requirements and has identified the steps it has taken to ensure that this does not happen again.
19. I find that the failures were not deliberate and there was no intention to breach the regulations or obligations under those regulations. The oversight was negligent. The Environment agency does not dispute that the problem arose due to negligence which is a lower level of culpability than reckless or deliberate behaviours. It may have considered the size of the organisation but does not make this clear. No express consideration appears to how late the filing of the report actually was and the fact that it was filed within six weeks of the deadline.
20. Whilst I recognise that it is essential to maintain the integrity of the system, I am satisfied that given the level of culpability on the part of the appellant, the acknowledgement of culpability and the taking of immediate steps to rectify the situation once it was realised, combined with the good reporting history of the company, the penalty ultimately imposed by the environment agency was disproportionate.
21. Under Regulation 23 of the CCA (Administration) Regulations 2012 (as amended), the Tribunal can in this appeal, confirm the penalty, reduce the penalty or quash the penalty.
22. Having considered all of the evidence in this case, the Tribunal decides that the amount of the penalty should be reduced to £750 representing a more appropriate figure for a first breach of the reporting requirements under the regulations.
23. I do not accept that the Notice should be quashed because there was clear default in reporting on the part of the Appellant.
24. The appeal is allowed, to the extent that the decision is varied to substitute a penalty of £750 payable within 8 weeks of the date of notification of this decision.

Signed



Date: 05/07/2022

As amended on 05/07/2022

