



NCN [2024] UKFTT 00133 (GRC).

Case Reference: PEN/2023/0194/AE

**First-tier Tribunal  
General Regulatory Chamber  
Pensions**

**Heard: Paper Consideration**

**Heard on: 5 February 2024 in Chambers  
Decision given on: 20 February 2024**

**Before**

**TRIBUNAL JUDGE HAZEL OLIVER**

**Between**

**C P C (WORCESTER) LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision:** The appeal is Dismissed

## **REASONS**

1. By this reference CPC (Worcester) Limited (the “Appellant”) has appealed against a fixed penalty notice issued by the Pensions Regulator (the “Regulator”) on 4 April 2023, requiring the Appellant to pay a fixed penalty of £400 for failure to comply with a compliance notice.
2. The parties have agreed to a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1) (b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. The Pensions Act 2008 (the “Act”) imposes a number of requirements on employers in relation to the automatic enrolment of certain “job holders” in occupational or workplace personal pension schemes.

4. The Regulator has statutory responsibility for ensuring compliance with these requirements. Under Section 35 of the Act, the Regulator can issue a compliance notice if an employer has contravened one of more of its employer duties. Under Section 40 of the Act, the Regulator can issue a fixed penalty notice if it is of the opinion that an employer has failed to comply with a compliance notice. This requires the person to whom it is issued to pay a penalty within the period specified in the notice. The amount is to be determined in accordance with regulations. Under the Employers’ Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”), the amount of a fixed penalty is £400.

5. Notification may be given to a person by the Regulator by sending it by post to that person’s “proper address” (section 303(2)(c) of the Pensions Act 2004 (the “2004 Act”). The registered office or principal office address is the proper address on which to serve notices on a body corporate, as set out in section 303(6)(a) of the 2004 Act (applied by section 144A of the Act). Under Regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. This includes compliance notices issued under the Act.

6. Section 44 of the Act permits a person to whom a fixed penalty notice has been issued to make a reference to the Tribunal in respect of the issue of the notice and/or the amount of the penalty payable under the notice. A person may make a reference to the Tribunal if an application for a review has first been made to the Regulator under Section 43 of the Act. Under Section 103(3) of the 2004 Act, the Tribunal must then “determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it.” The Tribunal must make its own decision following an assessment of the evidence presented to it (which may differ from the evidence presented to the Regulator), and can reach a different decision to that of the Regulator even if the original decision fell within the range of reasonable decisions (*In the Matter of the Bonas Group Pension Scheme* [2011] UKUT B 33 (TCC)). In considering a penalty notice, it is proper to take “reasonable excuse” for compliance failures into account (*Pensions Regulator v Strathmore Medical Practice* [2018] UKUT 104 (AAC)). On determining the reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as it considers appropriate.

7. Under section 11 of the Act, an employer who is subject to automatic enrolment duties must give prescribed information to the Regulator - known as a declaration of compliance. This information is prescribed in Regulation 3 of the 2010 Regulations. The declaration of compliance must be provided within five months of the staging date or duties start date (Regulation 3(1)). A re-declaration of compliance must be provided within five months beginning with the third anniversary of the staging date/duties start date, and then within five months beginning with the third anniversary of the previous automatic re-enrolment date (Regulation 4(1)).

## Facts

8. The facts are set out in the Appellant's notice of appeal document and the Regulator's response document, including the annexes attached to those documents. I find the following material facts from those documents.

9. The Appellant is the employer for the purposes of the various employer duties under the Act. The original staging date was 1 October 2016. The Appellant's second re-declaration of compliance was due to be provided by 4 January 2023.

10. The Regulator sent three letters to the Appellant between May 2022 and January 2023 reminding the Appellant about the automatic re-enrolment duties. The letter dated 20 January 2023 made it clear that the matter was urgent and provided a further 14 days for compliance. The Respondent also sent several emails to the Appellant, but these were returned undelivered.

11. The Regulator issued a compliance notice to the Appellant on 6 February 2023, to the registered office address. This gives the revised deadline for the re-declaration of compliance as 20 March 2023. The notice expressly states, "*If you don't complete your re-declaration of compliance by 20 March 2023, we may issue you with a £400 penalty*".

12. The Appellant did not comply with the compliance notice, and the Regulator issued a fixed penalty notice to the Appellant on 4 April 2023. The Appellant did then submit its second re-declaration of compliance on 11 April 2023.

13. The Appellant applied for a review to the Regulator. The Regulator confirmed the penalty notice, on the grounds that the notices were issued to the correct address and the re-declaration was provided after the compliance notice deadline.

## Appeal grounds

14. The Appellant's appeal grounds are:

- They did not receive a letter reminding them of their duties. They say that only signed for letters are guaranteed as received, and with postal strikes regularly taking place mail was getting lost.
- They moved premises but did not change their details at Companies House to avoid confusion.
- No pension deductions have been made since July 2022.
- The director suffers with anxiety, the business is struggling, and imposing a fine on a small business when it is trying to recover from the difficulties of covid and the cost of living crisis will have a difficult impact on their finances.

15. The Regulator says that the grounds of appeal do not amount to a reasonable excuse for the failure to comply, for the reasons discussed below. The Appellant submitted a reply which is also discussed below.

## Conclusions

16. The declaration of compliance is a central part of the Regulator's compliance and enforcement approach. It is necessary so that the Regulator can ensure that employers are complying with their automatic enrolment duties, and this is why it is a mandatory part of the system. Employers are responsible for ensuring that these important duties are all complied with, and there needs to be a robust enforcement mechanism to support this system.

17. I have considered whether issuing the fixed penalty notice was an appropriate action for the Regulator to take in this case, and find that it was. The Regulator had sent the Appellant information between May 2022 and January 2023 about the need to complete a re-declaration of compliance, including extending the relevant deadline by 14 days. This deadline was extended in the compliance notice. The Appellant failed to comply with the further deadline set out in the compliance notice.

18. I have considered whether the compliance notice was legally served at the Appellant's proper address, and find that it was. Under the 2004 Act, the Regulator can serve this notice on a limited company by sending it to either the company's registered office or to its principal office. According to the documents I have seen, the notice was sent to the Appellant's then registered office address of 4 Bristol Road Quedgeley Gloucester GL2 4ND. This was not changed until 27 April 2023.

19. I do not find that the Appellant had a reasonable excuse for failing to comply with the compliance notice.

20. I have considered the Appellant's appeal grounds as follows.

21. *They did not receive a letter reminding them of their duties. They say that only signed for letters are guaranteed as received, and with postal strikes regularly taking place mail was getting lost.* The Regulator in this case did send a series of clear letters to the Appellant's registered office address, which contained all the information needed to complete the declaration of compliance. The Appellant was also sent the compliance notice, which contained clear information about how to complete the declaration of compliance and an extended deadline.

22. Under Regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. The Appellant has not rebutted this presumption. The fixed penalty notice was received by the Appellant, and this was sent to exactly the same address by the Regulator. The Appellant has provided no explanation as to why the compliance notice may not have been received - in circumstances where it appears to have been sent to the correct registered office address, and the fixed penalty notice was received. A mere assertion that a notice was not received is not sufficient to overturn the statutory presumption of service (***London Borough of Southwark v (1) Runa Akhter & (2) Stel LLC*** [2017] UKUT 0150). I therefore find on balance of probabilities that the compliance notice was received by the Appellant.

23. The Appellant makes the point that only signed-for post has guaranteed delivery. They say in their reply that the standard postal service is not reliable, and there has

been media coverage on this issue. However, the Regulator has good reasons for not using signed-for or recorded delivery, as explained in its response. This would allow recipients to refuse delivery and so avoid service of notices and penalties. The presumption of service and receipt operates instead. A general assertion about postal strikes and reliability of delivery is not sufficient to rebut this presumption. No evidence has been provided that letters or notices were sent during postal strikes. It also appears very unlikely that none of the reminder letters or the compliance notice would have been delivered, but the fixed penalty notice was delivered successfully.

24. The Appellant also says that they are unable to provide evidence that a letter was not received in the post. As set out above, I have found on the balance of probabilities that the compliance notice was received, based on the presumption of receipt and fact that the fixed penalty notice was received. It is also unclear whether the Appellant is disputing receipt of the compliance notice, or simply earlier reminder letters. As noted by the Regulator, the Appellant was able to complete the re-declaration of compliance immediately after receiving the fixed penalty notice, even though the penalty notice does not explain that the breach related to the re-declaration of compliance. This suggests that the Appellant did have the compliance notice and used it to understand what they needed to do.

25. The Regulator is under no obligation to send earlier reminder letters, and so if these were not received the Appellant was still required to comply with the compliance notice. The Appellant notes that the Regulator has admitted email reminders were not delivered, but again these are not required.

26. *They moved premises but did not change their details at Companies House to avoid confusion.* The Appellant's reply confirms that they did change the registered office address in good time, and a postal forward service was paid for. I note that their request for a review says this is how the penalty notice was received. It therefore does not appear that the move of premises would have prevented mail or notices from being received by the Appellant.

27. *No pension deductions have been made since July 2022.* This may be the case, but under the rules it was still necessary to submit the re-declaration of compliance, as it is a critical source of information for the Regulator.

28. *The director suffers with anxiety, the business is struggling, and imposing a fine on a small business when it is trying to recover from the difficulties of covid and the cost of living crisis will have a difficult impact on their finances.* I appreciate that this is still a difficult time for many small businesses. However, this is not a reasonable excuse for failure to comply with these important duties. I also have no discretion to reduce the amount of the penalty. I note that the Regulator has said they would be willing to consider payment options if a single payment would cause financial difficulties.

29. In their reply, the Appellant also says that the re-declaration was submitted as soon as they became aware it had been missed. However, I agree with the Regulator that it is well established that late or eventual compliance is not a reasonable excuse. The penalty is for failure to comply by the extended deadline in the compliance notice.

30. It may well be that the Appellant did not appreciate the importance of this correspondence and made a genuine mistake. I also accept that the automatic enrolment scheme can appear both complex and burdensome for small businesses. However, the re-declaration of compliance is a separate and important part of the system. Employers have an obligation to pay attention to communications from the Regulator and act on them appropriately. Failure to understand the automatic enrolment duties does not provide a reasonable excuse when the Regulator has provided clear information to the employer well in advance of the relevant deadline.

31. For the above reasons, I determine that issuing the fixed penalty notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the fixed penalty notice. No directions are necessary.

**Hazel Oliver**

**Judge of the First-tier Tribunal**

**Date: 19 February 2024**