



NCN [2024] UKFTT 00267 (GRC).

Case Reference: PEN/2023/0173/AE

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

Heard: Paper Consideration

**Heard on: 2 April 2024 in Chambers
Decision given on: 3 April 2024**

Before

TRIBUNAL JUDGE HAZEL OLIVER

Between

QUELINK LIMITED

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The appeal is Dismissed

REASONS

1. By this reference Quelink Limited (the “Appellant”) has appealed against a fixed penalty notice issued by the Pensions Regulator (the “Regulator”) on 1 June 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 or more of its employer duties. A compliance notice requires the person to whom it is issued to take (or refrain from taking) certain steps in order to remedy the contravention, and will usually specify a date by which these steps should be taken.

5. 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.

6. 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.

7. 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.

8. 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

9. 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.

10. The Appellant is the employer for the purposes of the various employer duties under the Act. The original duties start date was 7 October 2019. The Appellant's re-declaration of compliance was due to be provided by 6 March 2023.

11. The Regulator sent several letter and emails to the Appellant about completion of the re-declaration of compliance. The deadline for compliance was also extended in a letter of 20 March 2023.

12. The Regulator issued a compliance notice to the Appellant on 5 April 2023, to the registered office address. This gives the deadline for the re-declaration of compliance as 16 May 2023, and explains the Regulator has no record of it being completed by the deadline. The notice expressly states, "*If you don't complete your re-declaration of compliance by 16 May 2023, we may issue you with a £400 penalty*". The notice also explains how to complete the re-declaration of compliance, including a web link for starting the declaration, postal address and telephone number. The Regulator also attempted to telephone the Appellant and left a message on 19 April 2023.

13. The Appellant did not comply with the compliance notice. The Regulator issued a fixed penalty notice to the Appellant on 1 June 2023. The Appellant applied for a review and the Regulator confirmed the penalty notice.

14. The Appellant did complete the declaration of compliance on 2 June 2023.

Appeal grounds

15. The Appellant's appeal grounds are:

- They did not have employees who wanted to be part of the pension scheme, so they were unsure if they needed to do re-enrolment and tried to contact the Regulator multiple times without getting a response.
- They had submitted the re-declaration as soon as the penalty notice was issued.
- The period for re-declaration covered the "Covid period", they will complete further re-declarations on time, and the penalty will have a significant negative effect during a time they are recovering from covid.

16. The Regulator opposes the appeal.

Conclusions

17. 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.

18. 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 in several letters and emails about the need to complete a re-declaration of compliance, including the relevant deadline. This deadline was extended in the compliance notice. The Appellant failed to comply with the further deadline.

19. 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 registered office address.

20. I do not find that the Appellant had a reasonable excuse for failing to comply with the compliance notice. I have considered the Appellant's grounds of appeal as follows.

21. ***They did not have employees who wanted to be part of the pension scheme, so they were unsure if they needed to do re-enrolment and tried to contact the Regulator multiple times without getting a response.*** The Appellant has not explained whether they received the multiple letters and emails from the Regulator about the need to submit a re-declaration of compliance. These communications made it clear that they were required to do so. The Appellant has also not explained how they tried to contact the Regulator. In any event, the compliance notice made it very clear what was required. The Appellant has not denied receiving the compliance notice. As noted by the Regulator, their application for a review of the Regulator's decision referred to the re-declaration of compliance, although the fixed penalty notice did not state what the compliance notice was about. This indicates that the Appellant must have received some of these communications, including the compliance notice. They had the opportunity to comply in time and avoid the fixed penalty.

22. ***They had submitted the re-declaration as soon as the penalty notice was issued.*** This was submitted one day after the fixed penalty notice. However, late compliance is not a reasonable excuse. These are important employer duties which must be complied with on time. Compliance after a deadline has been missed and a fixed penalty notice is issued is not a reason to set aside that penalty.

23. ***The period for re-declaration covered the "Covid period", they will complete further re-declarations on time, and the penalty will have a significant negative effect during a time they are recovering from covid.*** It is unclear how the period covered by the re-declaration being during the Covid-19 pandemic is relevant to non-compliance. The re-declaration itself was due in March 2023, by which time there were no Covid-19 restrictions in place. An intention to comply in the future is not a reason to set aside the current penalty. It may be that this penalty is burdensome for a small business, but this is set at a level to provide a deterrent to non-compliance, and I do not have any discretion to reduce the amount.

24. 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

Dated: 2 April 2024