



[2022] UKFTT 00283 (GRC)

Case Reference: PEN/2022/0061

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

Heard by: Judge in Chambers on the papers

Decision given on: 16th August 2022

Before

HHJ DAVID DIXON

Between

MASON AND WAKE LIMITED

and

THE PENSIONS REGULATOR

Appellant

Respondent

Decision: The reference is dismissed, and the matter is remitted to the Regulator. The Penalty Notice is confirmed, without any further directions.

REASONS

1. By this reference Mason and Wake Ltd (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 8th February 2022.
2. The FPN was issued under s. 40 of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a compliance notice dated 13th December 2021. The Compliance Notices was issued under s. 37 of the Pensions Act 2008. It directed the Employer to:
 - i) Calculate the unpaid contributions;
 - ii) Contact the pension provider and pay the unpaid sums, and
 - iii) File evidence of compliance with the Regulator by 8th March 2022.No evidence in relation to stage iii) was forthcoming.
3. The Employer referred the matter to the Tribunal on 5th March 2022.
4. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered all the evidence and submissions made by both parties.

The Appeal

5. Under s. 44 of the 2008 Act, a person who has been issued with a FPN may make a reference to the Tribunal provided an application for review has first been made to the Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Regulator to take, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a FPN and when it reaches a decision must remit the matter to the Regulator with such directions (if any) required to give effect to its decision.
6. The Employer’s Notice of Appeal indicates that they were trying to resolve the unpaid payments with the pension provider, there were delays during that process, but everything was resolving. It hadn’t contacted the Regulator due to a misunderstanding of what was required and emails going to a “junk folder.”
7. The Regulator’s Response indicates that the notice of compliance was not forthcoming as required. All of the other steps taken by the Appellant are noted but they don’t excuse the failure to comply. As a result, the FPN was entirely appropriate.
8. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
9. The Tribunal considered a bundle of 64 pages.

Submissions

10. The Appellant seeks to have the penalty removed on the basis they did eventually manage to resolve the unpaid contributions that were caused by difficult trading circumstances. They argue that they didn't fully understand what was required of them but have now complied.
11. The Regulator responds that there is no excuse for the late compliance, let alone a reasonable one here. It is the Employer's responsibility to meet the legal requirements, and a failure to understand what were clear obligations is not a reason to remove the penalty.

Conclusion

12. It seems that the Appellant was in difficulties paying the contributions to the relevant pension scheme and fell behind. It then made efforts to agree a payment plan with the provider to rectify matters when trading conditions improved. Whilst there were delays with that whole process it seems that all contribution were brought up to date and to that extent the CN, that was quite properly issued, was complied with. However, the relevant confirmation of the same was not.
13. The Appellant suggests a degree of misunderstanding and indeed of issues with where emails were received on their own systems. Ignorance of the law is never a defence and the basic situation is that the Appellant was given clear and simple requirements to meet and has failed to do so. The issue over emails being received in a "junk folder" is a systematic problem for the Appellant. The emails were sent and received, but not acted upon as the Appellant didn't give the folder and/or the email sufficient attention. None of this excuses the late service of a compliance certificate.
14. The Appellant did not file a declaration of compliance when required, the FPN that followed was perfectly proper and I can see no basis for finding to the contrary. The appeal against the FPN is without merit.
15. I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
16. No further directions are required

Signed: HHJ David Dixon

DATE: 16th August 2022

Date Promulgated: 17th August 2022