



Neutral citation number: [2022] UKFTT 319 (GRC)

Case Reference: PEN/2022/0084

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

**Heard: Paper Consideration**

**Heard on: 2 September 2022 in Chambers  
Decision given on: 5 September 2022**

**Before**

**TRIBUNAL JUDGE HAZEL OLIVER**

**Between**

**ACE GLAZED PRODUCTS LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision:** The appeal is Dismissed

## **REASONS**

1. By this reference Ace Glazed Products Limited (the “appellant”) has appealed against a fixed penalty notice issued by the Pensions Regulator (the “Regulator”) on 5 April 2022 requiring the appellant to pay a fixed penalty of £400 for failure to comply with an unpaid contributions notice (“UCN”).

2. 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.

3. The Regulator has statutory responsibility for ensuring compliance with these requirements, including the requirement to make pension contributions. Under Section 37 of the Act, the Regulator can issue a UCN if it is of the opinion that relevant contributions have not been made on or before the due date. A UCN requires the employer to make payments of relevant contributions by a specified date and may also require the employer to calculate the amounts of unpaid relevant contributions. A UCN can require an employer to take other steps specified by the Regulator, which may include providing evidence of compliance by a certain date.

4. 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 UCN. 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 from the Regulator 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 UCNs 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 provided that 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.

## Facts

7. 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.

8. The appellant is the employer for the purposes of the various employer duties under the Act. The Regulator sent a UCN to the appellant on 7 February 2022, as contributions due to be paid between 1 August and 31 December 2021 were unpaid.

9. The UCN sets out three steps under the heading “what you need to do now”. Step 1 is to calculate the unpaid contributions. Step 2 is to contact the pension scheme provider and pay the contributions. Step 3 is to provide evidence of compliance. The notice states, “*When you have met the requirements in steps 1 and 2 above, or even if you are of the opinion that the contributions identified in this notice have already been paid, you must provide evidence of compliance to The Pensions Regulator [by email or by post]... For evidence to be acceptable it must include: (i) the relevant contribution schedules with the amount(s) calculated clearly stated AND (ii) proof that these amounts have been paid and the dates on which they were paid. This might be in the form of a letter, email statement from your provider or screenshots from your pension account... You must complete steps 1-3 above by 21 March 2022.*”

10. The notice expressly states, “*If you don’t complete the steps required by this notice by 21 March 2022, The Pensions Regulator may issue you with a £400 Fixed penalty notice*”.

11. The appellant did not contact the Regulator by 21 March 2022, and so the Regulator issued a fixed penalty notice to the appellant on 5 April 2022.

12. The Regulator confirmed the penalty notice in a review decision dated 21 April 2022. This was on the grounds that the Regulator had no record of the appellant providing confirmation of the payments being up to date prior to the deadline in the UCN, and NEST had not marked the late payment report as being resolved.

13. The Regulator now says they were told by NEST that payments were not made until 11 April 2022. I have seen a report from NEST dated 21 April 2022 showing all contributions paid up to date.

### **Appeal grounds**

14. The appellant says that it has a business bank account linked to NEST. The employees opted out after 10 February 2017 when the last payment was made. A new employee joined the scheme on 10 September 2021. The appellant says that all submissions were made on time, but they received notice from NEST in February 2022 that payments had not been successful. The appellant contacted NEST and was advised to set up the direct debit again, even though the bank details had not changed. The payments were all successfully made after this had been done. The appellant says the fine is unfair as they did everything required at their end.

15. The Regulator’s position is that late compliance is not a sufficient basis on which to revoke the fixed penalty notice. The appellant failed to comply with the requirement in the UCN to provide acceptable evidence of compliance, and the relevant contributions were not made until after the deadline in the UCN. The appellant would not have received the penalty if it had followed the instructions in the UCN. If the appellant had difficulties in getting the payment to the provider then as a reasonable employer, it should have contacted the Regulator to ask for more time or help.

## Conclusions

16. Payment of pension contributions is an essential part of the automatic enrolment system. The whole purpose of the system is to provide workers with a pension fund on retirement, and this requires all contributions to be made correctly and at the right time. The use of UCNs and fixed penalty notices is a central part of the Regulator's compliance and enforcement approach. Employers are responsible for ensuring that the important duties are all complied with, and there needs to be a robust enforcement mechanism to support this system. The Regulator must have evidence of compliance in order to ensure that employers are fulfilling all of their duties, and penalties act as an important deterrent to breach of these duties.

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 a UCN which required evidence of compliance to be provided, after contributions had not been paid. The appellant failed to make the missing contributions or provide evidence of compliance until after the deadline had expired and after receipt of the fixed penalty notice.

18. I have considered whether the UCN 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. The UCN was sent to the appellant's registered office and does not dispute that the UCN was received.

19. The key issue is whether the appellant had a reasonable excuse for failing to comply with the UCN. The unpaid contributions were not made until 11 April 2022 (according to information from the Regulator). The failure to comply is the appellant's failure to make the payments before the deadline in the UCN of 21 March 2022, and provide suitable evidence to the Regulator.

20. The appeal is based on the fact that the appellant has now paid the missing contributions, and the fact that the problem was due to an issue with the direct debit system. The question is whether the appellant has a reasonable excuse for this late compliance.

21. I accept that the appellant did not intend to fail to make contributions, and thought that it had done so correctly. I also accept that the expected direct debit payments did not work. NEST may have made an error with the direct debit system. This is an explanation for why payments were missed. However, it is not an explanation for why the appellant failed to resolve the problem after receiving the UCN, or why it did not comply with the requirements in the UCN. It is the appellant who is responsible for the employer duties to make payments on time, not the pension provider.

22. The UCN dated 7 February 2022 makes it clear that contributions have not been paid. The appellant had until 21 March 2022 to resolve the position or contact the Regulator to explain the problem. It appears that the appellant did not contact the Regulator until after it had received the fixed penalty notice. The appellant has not explained why it did not take action in response to the UCN. In particular, the UCN is

clear that the appellant needed to take three steps, which included providing acceptable evidence of compliance to the Regulator.

23. The appeal says that the fine is unfair as the appellant did everything that was required at their end. I do not agree. The appellant did think it had made the contributions correctly and has now made the payments. However, the appellant did not do what was required by the UCN.

24. There is a significant public interest in upholding fixed penalty notices where there has been late compliance and a failure to comply with the requirements of a UCN. This is particularly important where the underlying issue is late contributions, because timely compliance by the employer with the Regulator's requirements is crucial to ensuring that individuals are not missing out on pension contributions over an extended period of time. This includes providing evidence of compliance to the Regulator. The step of providing evidence is critical to ensuring that employers have complied with their duties. The appellant simply did not do what was required by the UCN until after the relevant deadline had expired and has not explained this failure.

25. I therefore find that the appellant did not have a reasonable excuse for failure to comply with the UCN. A reasonable employer should have acted in response to the UCN, and either complied with its requirements or contacted the Regulator to explain the problem.

26. 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 September 2022**