



[2023] UKFTT 00093 (GRC).

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
PENSIONS REGULATION**

Case Reference: PEN/2022/0218

Heard: by determination on the papers
Heard on: 1 February 2023
Decision given on: 1 February 2023
Before: Judge Alison McKenna

Between:

HALLMARK SHEET METAL CO LIMITED

Appellant

- and -

THE PENSIONS REGULATOR

Respondent

DECISION

1. The reference is dismissed, and the matter is remitted to the Regulator. The Escalating Penalty Notice is confirmed.

REASONS

Background

2. By this reference Hallmark Sheet Metal Co Limited (“the Employer”) challenges an Escalating Penalty Notice issued by the Regulator on 7 October 2022.

3. The Penalty Notice was issued under s. 41(1) of the Pensions Act 2008¹. It required the Employer to pay an Escalating Penalty for failing to comply with the requirements of an Unpaid Contributions Notice dated 11 July 2022, which required the Employer to make good its unpaid pension contributions by 22 August 2022. The Regulator has also issued a Fixed Penalty Notice dated 7 September 2022, which is not the subject of this appeal.

4. The Regulator has completed a review of the decision to impose the Escalating Penalty Notice and informed the Employer on 14 October 2022 that the decision was confirmed. The Employer referred the matter to the Tribunal on 20 October 2022. I understand that all enforcement action has been suspended pending determination of this appeal.

5. 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 amended². The Tribunal considered all the evidence and submissions made by both parties in a bundle numbered page 1 to 48.

The Law

6. The Pensions Act 2008 imposed a number of legal obligations on employers in relation to the automatic enrolment of certain “jobholders” into occupational or workplace personal pension schemes. The Pensions Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers, including issuing an Unpaid Contributions Notice and, if this is not complied with, issuing a Fixed and/or Escalating Penalty Notice.

7. Under s. 44 of the 2008 Act, a person who has been issued with an Escalating Penalty Notice 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 an Escalating Penalty Notice and when it reaches a decision, and must remit the matter to the Regulator with such directions (if any) required to give effect to its decision.

Submissions

8. In the Notice of Appeal dated 20 October 2022, the Employer relied on grounds of appeal that it is experiencing financial difficulties and cash flow problems; further that it seeks more time to attract external investment and save employees’ jobs.

9. The Regulator has responded that it has no power to extend time for compliance as requested. It notes that there is no denial from the Employer that contributions have been missed or that notices were received. It confirms that all notices were issued to the Employer’s registered office address. It is submitted in any event that the Employer has not provided any evidence which is capable of rebutting the statutory presumption of service in s. 303(6) (a) of the Pensions Act 2004 and regulation 15 (4) of the Employers Duties (Registration and Compliance) Regulations 2010.

¹ [Pensions Act 2008 \(legislation.gov.uk\)](https://legislation.gov.uk)

² [SI/SR Template \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

10. It is further submitted that the Employer has failed to establish a reasonable excuse for its non-compliance. In the circumstances, it is submitted that the Escalating Penalty Notice was the appropriate step to take.

11. The Employer made a Reply dated 8 December 2022, which reiterated its grounds of appeal.

Evidence

12. The Regulator has provided the Tribunal with copies of all relevant correspondence, addressed to the Employer at its registered office.

13. The Employer has not provided the Tribunal with any evidence to support its case.

Conclusion

14. I am satisfied that the Employer had a duty to comply with the requirements of the Unpaid Contributions Notice but failed to do so. I am satisfied that all the statutory notices were issued to the correct address and thus that the Regulator is entitled to rely on a presumption of service.

15. I am very sorry to hear that the Employer is facing financial difficulties, but it has a legal obligation to make pension contributions which cannot be deferred as it requests. Its financial problems do not amount to a reasonable excuse for its default in law and I conclude that there is no basis on which I could allow this appeal.

16. In all the circumstances, I determine that the Escalating Penalty Notice was the appropriate action for the Regulator to take in this case. I remit the matter to the Regulator and confirm the Escalating Penalty Notice. No directions are necessary.

(Signed)

JUDGE ALISON MCKENNA

DATE: 1 February 2023

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