



**NCN: [2024] UKFTT 65 (GRC)**

Case Reference: PEN/2023/0208 P

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

**Heard by determination on the papers.  
Heard on: 22 January 2024  
Decision given on: 22 January 2024**

**Before**

**TRIBUNAL JUDGE ALISON McKENNA**

**Between**

**STAMFORD GEOMATICS LIMITED**

Appellant

**And**

**THE PENSIONS REGULATOR**

Respondent

## **DECISION**

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

## **REASONS**

### *Background*

2. By this reference, Stamford Geomatics Ltd (“the Employer”) challenges a fixed penalty notice issued by the Regulator on 28 July 2023.

3. The Penalty Notice was issued under s. 40(1) of the Pensions Act 2008<sup>1</sup>. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of an Unpaid Contributions Notice dated 1 June 2023 by the deadline of 13 July 2023. I understand that compliance has subsequently been achieved.

4. The Regulator has completed a review of the decision to impose the Penalty Notice and informed the Employer on 18 August 2023 that the decision was confirmed. The Employer referred the matter to the Tribunal on 12 September 2023. This was out of time, but the Registrar gave the Employer permission to proceed.

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 amended<sup>2</sup>. The Tribunal considered all the evidence and submissions made by both parties in a bundle numbered page 1 to 39.

### *The Law*

6. The Pensions Act 2008 imposed a number of legal obligations on employers in relation occupational or workplace personal pension schemes. The Regulator is responsible for the enforcement of employers' contributions, if necessary, by issuing an Unpaid Contributions Notice and, if not complied with, a Fixed Penalty Notice.

7. Under s. 44 of the 2008 Act, a person who has been issued with a Fixed 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 a Fixed Penalty Notice 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.

### *Submissions*

8. In the Notice of Appeal dated 12 September 2023, the Employer relied on grounds of appeal that it was suffering from financial difficulties and had had to choose between paying wages and making pension contributions. It chose to pay wages.

9. The Regulator has responded that all notices were issued to the Employer's registered office address, and that whilst compliance has now been achieved, this was only after the issue of the Fixed Penalty Notice, further reminders, and a letter before action. If the Employer was suffering from financial difficulties, he could and should have discussed these with the Regulator at the relevant time. He has submitted no evidence to support his case of financial difficulty either to the Regulator or to the Tribunal.

10. The Employer did not file a Reply.

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

<sup>2</sup> [The Tribunal Procedure \(First-tier Tribunal\) \(General Regulatory Chamber\) Rules 2009 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

*Evidence*

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

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

*Conclusion*

13. 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 indeed the Employer has not disputed receiving them. I am also satisfied that, as a review was carried out, the Tribunal has jurisdiction to determine this appeal.

14. In this case, I note that the Employer's case relies on mitigating circumstances, namely financial difficulties. However, no evidence to support the Employer's case has been submitted. I am unable to find in the Appellant's favour in the absence of evidence, as the Appellant bears the burden of proof in bringing an appeal to the Tribunal.

15. In all the circumstances therefore, I must conclude that no reasonable excuse for non-compliance has been established in this case. I therefore determine that the Fixed Penalty Notice was the appropriate action for the Regulator to take. I remit the matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

**(Signed)**

**JUDGE ALISON MCKENNA**

**DATE: 22 January 2024**

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