



**[2022] UKFTT 00478 (GRC)**

Case Reference: PEN/2022/0144

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

**Heard by: Judge in Chambers on the papers**

**Decision given on: 13<sup>th</sup> December 2022**

**Before**

**HHJ DAVID DIXON**

**Between**

**FARNHAM OFFICE CLEANING CO LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

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 Universal Smart Cards Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 18<sup>th</sup> May 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 (CN) issued on 22<sup>nd</sup> March 2022. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 15<sup>th</sup> June 2022.
3. The Employer referred the matter to the Tribunal on 8<sup>th</sup> July 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, dated 8<sup>th</sup> July 2022, indicates that the company didn’t receive the CN. They assert if they had received the notice they would have complied, as they did with the FPN. They challenge the validity and level of penalty imposed indicating it is “ludicrous” and out of proportion to a simple “admin error.” They indicate the penalty can be paid, but “want to make sure this doesn’t happen again to us or others.”
7. The Regulator’s Response indicates that the Appellant failed to provide certification of compliance, as is required; a compliance notice followed, which was sent to the registered office address of the company. The FPN was sent to the same address. The Regulator relies upon the presumptions of service and avers that the CN was corrected delivered and simply the Appellant has failed to act upon it. The Regulator asserts the FPN was just and 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 81 pages.

### *Submissions*

10. The Appellant seeks to have the FPN overturned on the basis that the CN was never received. The level of penalty is also averred to be disproportionate.

11. The Regulator responds that there is no excuse for non-compliance, let alone a reasonable one. It is the Employer's responsibility to meet the legal requirements, and here the Appellant has not provided evidence to reverse the imposition of the FPN.
12. The Regulator maintains that the CN was correctly posted and following the presumptions is deemed to have been received, unless contrary material is shown to rebut the presumptions. The Regulator avers no such material is shown and as such the CN was correctly served.

### *Conclusion*

13. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and here it could have and should have dealt with matters. In accordance with s7 Interpretation Act 1978 presumptions, by sending letters and emails to the Companies Registered address the Regulator had met its obligations and more. The further presumptions within the Employers Duties (Registration and Compliance) Regulations 2010 (SI 2010/5), particularly Regulation 15, further support the Regulator's position. I note that the FPN sent to the same address as the CN was replied to promptly, with a request for a Review and compliance. It seems to me this confirms post was being delivered, and therefore supports the presumption.
14. The Appellant has raised nothing that displaces the presumption of service and therefore I deem the CN was properly served. The failure to comply rests solely with the company for failing to ensure that post sent to its registered office was dealt with.
15. Having failed to comply, the standard penalty was imposed. The penalty is designed to remind companies of the importance of compliance, and I do not see that the penalty in this case is inappropriate or disproportionate to the breach. I note the sustained criticism of the level of the penalty, but this was set by Parliament, doubtless after consideration of a variety of factors. Parliament has deemed that the way to ensure employers comply is to penalise those that don't, and whilst the Tribunal will always consider the proportionality of imposing any penalty, here there is nothing that leads to a view a penalty generally is unfair.
16. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
17. No further directions are required

Signed: HHJ David Dixon

DATE: 13<sup>th</sup> December 2022