



NCN: [2024] UKFTT 001156 (GRC)

Case Reference: FT/PEN/2024/0275

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

**Decided without a hearing
Decision given on: 03 January 2025**

Before

TRIBUNAL JUDGE MATON

Between

PATS IN THE PUB LIMITED, T/A PATS PIZZA

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The appeal is Dismissed.

REASONS

1. This is a reference application in relation of the Regulator's fixed penalty notice number 174421578462 dated 22 May 2024 (the "Fixed Penalty Notice"). For convenience the reference application is referred to as "the Appeal".
2. The Appellant, and the employer for the purposes of this Appeal, is a company, and the Tribunal's decision refers to the company in this way, recognising that in practice the correspondence has been conducted by the owner of the company, Patrick Mundy.
3. The parties agreed to this Appeal being disposed of without an oral hearing. The Tribunal received a bundle of documents which it considered. The Tribunal was satisfied that this was a fair and just way to determine the Appeal.
4. The Tribunal recognises that the imposition of a financial penalty by the Regulator can cause difficulties for employers, but it must decide all appeals in accordance with the relevant law, based on the evidence which is provided to it.

Relevant law

5. Under the Pensions Act 2008 (the “2008 Act”), employers are required to enrol “job holders” in occupational or workplace personal pension schemes.
6. The Regulator ensures compliance with these requirements. Under s35 of the 2008 Act the Regulator can issue a compliance notice if an employer has contravened one of more of its employer duties. A compliance notice requires the employer to take certain steps in order to comply with these duties. It will usually specify a date by which this must be done.
7. The Regulator can issue a fixed penalty notice if an employer has failed to comply with a compliance notice (s40 of the 2008 Act). This requires the employer to pay a penalty within a specified period. The amount of a fixed penalty is £400 (as set by regulation 12 of the Employers' Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”).
8. The Regulator sends notices by post to an employer’s “proper address” (s303(3)(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 on a body corporate, as set out in s303(6)(a) of the 2004 Act (applied by s144A of the 2008 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 compliance notices issued under the Act.
9. An employer can make a reference to the Tribunal in respect of the issue of a notice and/or the amount of the penalty payable under the notice (s44 of the 2008 Act). This is only permitted if the Regulator has reviewed the notice or if an application for a review has been made to the Regulator under s43 of the 2008 Act. Under s103(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 on the evidence presented to it (which may be different from the evidence presented to the Regulator). 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.
10. Under s11 of the 2008 Act, an employer who is subject to automatic enrolment duties must give prescribed information to the Regulator, known as a declaration of compliance. This information, and the time periods in which it must be provided, are prescribed by the 2010 Regulations.

Background

11. There is no dispute that the Appellant employs staff whom it is required to enrol in a relevant pension scheme, or that it received the Fixed Penalty Notice.

12. The Regulator states that:

- a. Having corresponded with the Appellant by letter and email between January and March 2024 regarding the Appellant's duties, it did not receive a declaration of compliance from the Appellant by the required date, and so issued a compliance notice to the Appellant on 27 March 2024 (the "Compliance Notice"), giving a deadline of 7 May 2024;
- b. the Regulator did not receive a declaration of compliance before 7 May 2024, and issued the Fixed Penalty Notice on 22 May 2024;
- c. the Regulator received a declaration of compliance from the Appellant on 17 June 2024;
- d. the Regulator also received an application for a review of the Fixed Penalty Notice from the Appellant on 17 June 2024;
- e. the Regulator determined its review and confirmed this in a letter to the Appellant on 26 June 2024.

13. In its application for this Appeal the Appellant states that:

- a. the Fixed Penalty Notice was the first correspondence it had received from the Regulator, and in particular that it had not received the Compliance Notice;
- b. it had signed up to NEST, which the Tribunal takes to mean the National Employment Savings Trust, and tried to fulfil its duties as an employer;
- c. the Appellant did not know that it needed to comply, or even that the Respondent existed, until it received the Fixed Penalty Notice;
- d. the penalty will cause financial hardship for it as an employer.

Was the Compliance Notice served on the Appellant?

14. By regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. A mere assertion that a notice was not received is not enough to overturn the statutory presumption of service (*London Borough of Southwark v (1) Runa Akhter & (2) Stel LLC* [2017] UKUT 0150).

15. The Regulator has submitted a copy of a letter dated January 2024, and copies of the Compliance Notice and the Fixed Penalty Notice, all of which are addressed to the Appellant, at the address which is its registered address at Companies House.

16. The Regulator submits that it corresponded with the Appellant by post and email and has provided copies of letters and emails in evidence. The Tribunal notes that the Regulator's letter to the Appellant of January 2024 includes an email address which the Regulator held for the Appellant at that time, which is different from the email address used for other correspondence. It is possible that email correspondence

sent to the Appellant at the email address referred to in that letter was not received by the Appellant. However, the Tribunal also notes that copy emails provided by the Regulator use the same email address as the Appellant has used for the purposes of this Appeal.

17. The Appellant has not offered an explanation as to why it might have received the Fixed Penalty Notice but not the previous letter or Compliance Notice, and the Appellant's statements about not receiving these do not go beyond assertions. The Tribunal finds that the Appellant has not rebutted the presumption of service and so finds that the Compliance Notice and the Fixed Penalty Notice were served on the Appellant.

Does the Appellant have a reasonable excuse for non-compliance?

18. Other than assertions that it did not know of the need to comply, including that it did not receive the Compliance Notice, the Appellant has not offered any explanation for its failure to submit a declaration of compliance within the required time.

19. The Tribunal finds that the Appellant has not established that it had a reasonable excuse for failing to comply with its duties.

20. In relation to the Appellant having taken steps to provide pensions for its employees, this is not an issue in this Appeal. The Fixed Penalty Notice was issued in relation to failure to submit a declaration of compliance, rather than any other matter.

21. In relation to financial hardship, this does not amount to a reasonable excuse for a failure to submit a declaration of compliance, as this does not require the payment of a fee.

Conclusion

22. Having considered the parties' submissions and the matters set out above, the Tribunal dismisses the Appeal, and does not require the Regulator to take any action.

Signed

Tribunal Judge Maton

Date:

30 December 2024