



NCN: [2024] UKFTT 1165 (GRC)

Case Reference: FT/PEN/2024/0076

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

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

Before

TRIBUNAL JUDGE MATON

Between

T KEEN ELECTRICAL CONTRACTORS LIMITED

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The appeal is Dismissed.

REASONS

1. This is a reference application in relation to the Regulator's fixed penalty notice number 152881205982 (the "FPN"). For convenience the reference application is referred to as "the Appeal". The FPN was issued by the Regulator in relation to an unpaid contributions notice number 72762682646 (the "UCN"). The Appellant has not appealed the issuing of the UCN.
2. 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.

Relevant law

3. Under the Pensions Act 2008 (the "2008 Act"), employers are required to enrol "job holders" in occupational or workplace personal pension schemes.

4. The Regulator ensures compliance with these requirements. Under s37 of the 2008 Act the Regulator can issue an unpaid contributions notice if it is of the opinion that relevant contributions have not been paid on or before the due date. An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of relevant contributions that have not been paid.
5. The Regulator can issue a fixed penalty notice if an employer has failed to comply with an unpaid contributions 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 the Employers' Duties (Registration and Compliance) Regulations 2010 (the "2010 Regulations")).
6. 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.

Background

7. The Appellant is an employer with duties to enrol job holders in a relevant pension scheme.
8. The Regulator issued the UCN on 21 December 2023 in relation to pension contributions due for the period 22 August to 22 November 2023. The UCN required that the Appellant calculate the amount of the relevant unpaid contributions, contact the scheme provider and pay the unpaid contributions, and provide evidence to the Regulator that it had done so. These steps were required to be taken by 31 January 2024.
9. On 15 February 2024 the Regulator issued the FPN.
10. The Appellant appealed to the Tribunal.
11. The Appeal has been conducted on behalf of the Appellant by its pensions administration agent ("the Agent"), which also carried out correspondence with the scheme provider and the Regulator in relation to matters which are the subject of this Appeal.

The parties' submissions and evidence

12. The Regulator provided the following chronology of events, which is not disputed by the Appellant:

- a. On 9 January 2024 the scheme provider wrote to the Agent advising that contributions due from September 2023 had not been paid;
- b. On 9 January 2024 the scheme provider granted the Agent access to the Appellant's account;
- c. On 3 February 2024 the Appellant submitted a declaration of compliance to the Regulator (although the evidence indicates that this was made the previous day, on 2 February 2024 – the distinction between these two dates is not material for the Appeal);
- d. On 15 February 2024 the Regulator issued the FPN;
- e. On 21 February 2024 the Appellant requested a review of the Regulator's decision;
- f. On 29 February 2024 the Regulator completed its review and upheld its decision to issue the FPN.

13. The Regulator also made submissions to the Tribunal regarding the receipt of the UCN and FPN by the Appellant. The Appellant does not dispute that it received the UCN or the FPN.

14. In its Appeal the Appellant submits that:

- a. the UCN was not ignored and action was taken to comply;
- b. the Agent had been working on the basis that payment would be made in batches and had been unaware that the relevant payment would not be processed by the deadline;
- c. the Agent has experienced similar situations with a different scheme but the scheme provider in this case takes a different approach.
- d. the Agent had difficulties obtaining information from the Appellant's previous agents,
- e. the Agent did not have access to the Appellant's account with the scheme provider until 9 January 2024;
- f. the Appellant had been unaware of outstanding contributions until advised of this by the Agent.

15. The scheme provider confirmed to the Regulator in an email dated 20 March 2024 that contributions were received from the Appellant in relation to August, September and October 2023 on 21 February 2024.

16. The Regulator confirmed in its response to the Appeal dated 14 May 2024 that, as of that date, the Appellant did not have any outstanding contributions.

Discussion

17. There is no dispute between the parties that the contributions referred to in the UCN were not paid by the date set out in the UCN. The Tribunal has considered whether the circumstances indicate that the Appellant had a reasonable excuse for not complying with the UCN by the deadline.

18. The Appellant relies on the fact that the Agent instructed the setting up of payment by direct debit, and the direct debit payments were not taken until after 31 January 2024. The Agent, on behalf of the Appellant, states that “we thought that the [direct debit] would be collected after each submission. It only came to light after the penalty was received that the [direct debit] is collected on the 16th of each month.”

19. The Regulator submits that there is an area of dispute as to whether or not the Appellant (by its Agent) made instructions for one payment in relation to part of its contributions before 31 January 2024. An account statement provided in evidence to the Tribunal shows a number of payments for the relevant period being submitted with dates in January 2024, with one being submitted on 2 February 2024.

20. The Regulator submits that, while employers can delegate the completion of employer duties to others, the failure of an agent to ensure compliance with employer duties should not amount to a reasonable excuse on the part of the employer. The Tribunal accepts that the fact of delegation does not necessarily provide a non-compliant employer with a reasonable excuse; but it does not follow that an employer which has delegated to an agent cannot have a reasonable excuse for non-compliance. The Tribunal must consider the case on its facts.

21. The Agent discussed the issue of outstanding contributions with the Appellant by email in January 2024 and the Tribunal finds that the Appellant was at least aware of the issues relating to unpaid contributions.

22. The Tribunal has seen no evidence that the Appellant or the Agent considered or attempted other methods of payment, which could have reached the scheme provider in time; or that they took steps to assure themselves as to the date by which the direct debit payments would be taken. The Tribunal has seen no evidence that the Appellant sought explicit assurances from the Agent about the timing of payment or took any other steps itself (as opposed to relying on the Agent) to ensure that payment was made on time.

23. In relation to the arguments raised by the Appellant:

- a. Although action was taken to comply with the UCN, the Appellant did not comply in time; the taking of action in itself is not a reasonable excuse;

- b. The Agent's understanding of the timing of direct debit payments was a mistake by the Agent;
- c. The Agent having experienced similar situations with other employers in the past is of no relevance;
- d. As to difficulties co-operating with or receiving information from the Appellant's previous agent, the Appellant has provided no evidence to support its submissions; in any event it is not suggested that the previous agent was responsible for any relevant matter after November 2023; although the Appellant may only have become aware of issues relating to unpaid contributions at a later stage, by 9 January 2024, there was still a period of weeks left within which it could have complied;
- e. although the Agent did not have access to the Appellant's account until 9 January 2024, there was still time to comply;
- f. as above, although the Appellant awareness of the unpaid contributions may have been late, there was nevertheless time remaining for compliance.

24. The Tribunal finds that the failure by the Appellant to pay outstanding contributions by the deadline given in the UCN was due to a mistake by the Agent.

25. In the Tribunal's view the Appellant has not demonstrated a reasonable excuse for failing to comply in time with the UCN. Accordingly, the Appeal is dismissed. The Tribunal does not require the Regulator to take any action.

Signed

Tribunal Judge Maton

Promulgated

Date:

30 December 2024

03 January 2025