



**NCN: [2024] UKFTT 00406 (GRC)**

**Case Reference: PEN-2023-0317**

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

**Heard by: On the papers  
Heard on: 22 May 2024  
Decision given on: 22 May 2024**

**Before**

**JUDGE SOPHIE BUCKLEY**

**Between**

**R M GROUP HOLDINGS 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.

**REASONS**

*Background*

1. By this reference R M Group Holdings Limited (“the Employer”) challenges a Fixed Penalty Notice (“the Penalty Notice”) issued by the Pensions Regulator on 14 November 2023 (Notice number 137463861989).
2. The Penalty Notice 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 an Unpaid Contributions Notice dated 30 October 2023.
3. The Regulator has completed a review of the decision to impose the Penalty Notice and informed the Employer on 7 December 2023 that the Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 22 December 2023.
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 any submissions made by both parties.

### *The Law*

5. 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.
6. Each employer is assigned a duties start date from which the timetable for performance of their obligations is set. From that date an employer has a duty to pay contributions to a qualifying pension scheme under s 3 (automatic enrolment of eligible staff into a pension scheme). The employer must regularly and periodically pay its own and its employees contributions to the managers or trustees of the pension scheme. If the Regulator is of the opinion that an employer has failed to pay relevant contributions the Regulator may issue an Unpaid Contributions Notice requiring the Employer to pay the contributions and to provide evidence to the Regulator that it has done so. The Regulator then has the power to issue a Fixed Penalty Notice for failure to comply with the Unpaid Contributions Notice. The prescribed Fixed Penalty is £400.
7. Under section 44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice may make a reference to the Tribunal provided that 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, considering the evidence before it.
8. 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.

### *The facts*

9. The Regulator received information from the pensions provider, Nest, that contributions due between 6 March 2023 and 20 July 2023 had not been paid. The Regulator issued an Unpaid Contributions Notice on 18 September 2023 with a deadline of 30 October 2023 for calculating and paying the unpaid contributions and for providing evidence of compliance to the Regulator. As the Employer failed to provide any evidence of compliance by the specified date, a Fixed Penalty Notice was issued on 14 November 2023 requiring the Employer to pay a penalty of £400.
10. The Employer requested a review by letter dated 16 November 2023 in which the Employer stated that it had paid any unpaid contributions on 29 September.
11. The review outcome letter dated 7 December 2023 stated that the evidence of compliance provided in the letter of 16 November 2023 was not sufficient and that screenshots of the NEST portal were required. The outcome letter provided specific examples of acceptable evidence. In addition, the letter stated that NEST had not marked the late payment report as being resolved and it was showing as outstanding. The penalty notice was confirmed.
12. Although not the subject of this appeal, as the Employer remained non-compliant an Escalating Penalty Notice was issued on 3 January 2024 with a deadline of 31 January 2024. The Regulator received notification from Nest that there were no outstanding unpaid contributions, and the Escalating Penalty Notice was marked as closed and compliant on 10 January 2024.
13. On 14 December 2023 the Employer wrote to the Tribunal ‘to appeal the fine of £400’ and the Notice of Appeal was filed on 22 December 2024.

### *Submissions*

14. The Notice of Appeal relies on the following grounds:
  - (i) On receipt of the Unpaid Contributions Notice the Employer immediately paid all outstanding contributions on 29 September 2023.
  - (ii) The Nest system that showed outstanding contributions after 29 September 2023 was an error on the Nest system which was not the fault of the Employer
  - (iii) The proof in writing was submitted to the tribunal on 14 December 2023.
15. In its letter to the tribunal on 14 December 2023 the Employer makes the following additional points which I have considered as additional grounds of appeal:
  - (iv) The Employer was unaware that the contributions had been unpaid until the Unpaid Contributions Notice was received.
16. The Regulator’s submits that none of the appeal grounds in this case amount to a reasonable excuse for the failure to comply with the Unpaid Contributions Notice or provide the evidence required by the Unpaid Contributions Notice or indicate that the Respondent has acted unfairly in anyway.
17. The Regulator notes that section 37 of the Pension Act 2008, under which the Unpaid Contribution Notice was issued on provides, at subsection (4), that an Unpaid Contribution Notice “may in particular.... (e) require the employer to take other such

steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate”.

18. It is submitted that this can clearly include ensuring that contributions are paid before the notice deadline and the provision of evidence to the Regulator that a lawfully issued notice has been complied with. The Regulator submits that the Unpaid Contributions Notice provided sufficient time for unpaid contributions to be made, and for the Appellant to demonstrate that payments had been made. The Regulator notes that the contributions had been outstanding for 5 months by the time the Unpaid Contributions Notice was issued.
19. The Regulator submits that it is the requirement to ensure that all unpaid contributions were made by the deadline and to provide the acceptable evidence of compliance on or before 30 October 2023 that the Appellant was required to comply with to avoid the Fixed Penalty Notice being issued.
20. The Regulator states that as a result of these proceedings the it has been in contact with the Appellant’s pension provider and they have confirmed that the full amount of the contributions for the period set out in the UCN of 6 March 2023 to 20 July 2023 was only paid on or around 29 December, after the issue of the FPN and some 17 days after the deadline of the FPN 12 December 2023 (Annexes A and B). The Regulator submits that this is contrary to what the Employer has stated in its notice of appeal. The Regulator submits that the pension provider has also stated that as far as there was aware there was no system failure and that the duty rest with this employer to pay all contributions in time.
21. It is also the Respondent’s position that the pension provider also would have advised this Appellant of the missed payment and that the Employer appears to have ignored these correspondence from a third party and so must have been aware that it had missing unpaid contributions but failed to rectify the matter.
22. The Regulator submits that the requirement to comply and to produce evidence of compliance on time is also an important part of the process which ensures that the Respondent is able to ascertain whether the Appellant remained in breach of or was complying with its duties and whether employees entitled to pension contributions are having them paid. With that legitimate objective in mind, it is submitted that the timely production of evidence of compliance is an important one and departure from it without reasonable excuse justifies the penalty.

### *Conclusions*

23. I accept that the Employer was unaware of the unpaid contributions until the Unpaid Contributions Notice was received and that it took prompt action to pay the contributions once the Unpaid Contributions Notice was received. I accept that most of the contributions were paid on 29 September 2023 apart from one week in relation to which there was some difficulty paying because of the way in which the Nest system operated (either on that occasion or more generally). That final outstanding payment was paid as soon as the matter was resolved by Nest.

24. I note that Regulator makes submissions as to what the pensions provider says about when the contributions were paid and about the lack of any ‘systems failure’. However, the Regulator has not provided any evidence of this, either in the form of a letter from the pensions provider, or the Regulator’s notes of the telephone call or in a short witness statement from the person at the Regulator who spoke to the pensions provider. I cannot make findings of fact based purely on submissions reporting the evidence of third parties.
25. The timely provision of evidence to the Regulator, so it can ascertain whether an employer has complied with its duties under the 2008 Act, is crucial to the effective operation of the automatic enrolment scheme: unless the Regulator is provided with this evidence, it cannot effectively secure the compliance of employers with their duties. I find that issuing the Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer’s failure to comply with the requirements of the Unpaid Contributions Notice.
26. The Unpaid Contributions Notice sets out clearly the three steps that must be taken by the Employer. The third step states ‘When you have met the requirement in steps 1 and 2 above you must provide evidence of compliance to The Pensions Regulator.’ Acceptable evidence is described in detail. The deadline for compliance and the consequences of failing to comply with **all** of the requirements of the notice, including the requirement to provide acceptable evidence to the Regulator, are set out clearly.
27. In the light of this information, it is unclear why the Employer did not provide evidence of compliance to the Regulator by the deadline of 30 October 2023. There is no explanation for this in the grounds of appeal or elsewhere. It may have been an honest mistake by the Employer, but it was not reasonable for the Employer not to realise that there was a separate requirement to provide evidence. It is very clearly set out in the Unpaid Contributions Notice. If there was a mistake I find that this mistake does not amount to a reasonable excuse.
28. For the above reasons I am satisfied that the Employer has not provided a reasonable excuse for not complying with the Unpaid Contributions Notice. I determine that issuing the Penalty Notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the Penalty Notice. No directions are necessary.

Signed **SOPHIE BUCKLEY**

Judge of the First-tier Tribunal

Date: 22 May 2024