



NCN: [2024] UKFTT 00408 (GRC)

Case reference: PEN-2023-0281

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

**Heard: On the papers
Heard on: 22 May 2024
Decision given on: 23 May 2024**

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

MILL HILL MOTORS LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision

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

REASONS

Background

1. In this reference Mill Hill Motors Ltd (“the Employer”) challenges a fixed penalty notice (“the Fixed Penalty Notice”) issued by the Pensions Regulator (“the Regulator”) on 24 October 2023 (Notice number 151687795428).
2. The Fixed 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 a Compliance Notice dated 29 August 2023.
3. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 14 November 2023 that the Fixed Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 16 November 2023.
4. I note at the outset for the benefit of the Employer that the Fixed Penalty Notice is unrelated to and has not been imposed as a result of a non-payment of £17.43 from July 2017. The Fixed Penalty Notice under appeal has been imposed for failing to re-declare compliance (as explained below) by the deadline given in the Compliance Notice.

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. The Employer’s Duties (Registration and Compliance) Regulations 2010 specify that an employer must provide certain specified information to the Regulator within five months of their duties start date. This is known as a ‘Declaration of Compliance’. An employer is required to make a re-declaration of compliance every three years. Where this is not provided, the Regulator can issue a Compliance Notice and then a Fixed Penalty Notice for failure to comply with the Compliance Notice. The prescribed Fixed Penalty is £400.
7. Under s.44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice or an Escalating Penalty Notice may make a reference to the Tribunal provided that a review has been carried out or an application for review has 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 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.

Evidence

9. I read and took account of a bundle of documents.

The facts

10. The Employer's duties start date was 1 January 2017. The Employer completed a declaration of compliance on 22 May 2017. It completed its first re-declaration of compliance on 18 June 2020.
11. In November 2022 the Regulator set a reminder letter to the Employer at its registered office address in which it informed the Employer of the duty to make its next re-declaration of compliance by the deadline of 2 August 2023.
12. The Regulator sent a number of reminder emails to 'lalit@platts.uk.com'. I accept that these emails were not received by the Employer, because they ceased to be the Employer's accountant in June/July 2017. Although it is the Employer's responsibility to inform the Regulator of any change in contact details, I do not know whether or not this occurred. For the purposes of this appeal I have presumed that these emails were not received through no fault of the Employer.
13. The Regulator sent a second reminder letter to the Employer at its registered office address in May 2023 which set out clearly that the Employer should 'Act now' and reminded the Employer that the re-declaration deadline was 2 August 2023. The letter sets out the consequences of failing to complete the re-declaration in bold type: '**If you do not complete your legal duties on time, including your re-declaration of compliance, you may be subject to fines or prosecution**'.
14. The re-declaration of compliance was not completed by the deadline of 2 August 2023. The Regulator sent a third letter to the registered office address on 11 August 2023, giving an extension of 14 days to comply and stating the consequences of failing to do so in bold type in a red box.
15. The Employer did not comply by the extended deadline so the Regulator issued a Compliance Notice on 29 August 2023 with a deadline of 9 October 2023. As this was not complied with, the Fixed Penalty Notice was issued on 24 October 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 21 November 2023.
16. The Fixed Penalty Notice clearly sets out that it has been issued for failing to comply with the Compliance Notice issued on 29 August 2023. Neither the Fixed Penalty Notice nor the Compliance Notice make any mention of a non-payment of £17.43 from July 2017.
17. The Employer submitted a review request on 6 November 2023. The grounds for review state that the Fixed Penalty Notice has been issued for a non-payment of £17.43 from July 2017 which has now been paid.
18. The Regulator upheld the Fixed Penalty Notice on review on 14 November 2023.
19. The Employer completed the re-declaration of compliance on 6 December 2023.

Submissions

20. The Notice of Appeal relies on the following grounds:

- (i) The Employer has not received any notification since July 2017 that ‘this small amount’ was overdue and they would have paid it immediately if they had.
 - (ii) Nothing has been received by post until the Fixed Penalty Notice. The Regulator is asked to provide evidence that correspondence has been signed for.
 - (iii) The amount of the penalty is unjust and unfair ‘as the initial amount due is tiny and over 6 years ago’.
21. The Regulator’s response notes that the Employer appears to be of the view that this matter relates to unpaid contributions. The Regulator confirms that the Fixed Penalty Notice has been issued for the Employer’s failure to file its re-declaration of compliance.
22. The Regulator submits that there is no basis for displacing the statutory presumption of service. The Respondent’s position is that it has no legal duty to send any of its correspondence via recorded delivery.
23. The Regulator submits no reasonable excuse has been advanced by the Employer.
24. The Respondent submits that the decision to issue the Fixed Penalty Notice was fair, reasonable, and proportionate.
25. In its reply the Employer highlights that the reminder emails referred to by the Employer in its response were sent to Platts accountants who ceased to be the Employer’s accountants in June/July 2017. Mr. Roth, the director of the Employer, also states in the reply:
- “I also originally stated that during August and September 2023 when you sent 2 letters, I was not working at the time due to a family crisis and did not read the letters until I returned at the end of September beginning of October and I then took immediate action. I would have paid such a small amount straight away had I known it was outstanding”
26. Despite the Regulator’s response clearly stating that the Fixed Penalty Notice does not relate to unpaid contributions, it is clear that when drafting the reply the Employer was still under the misapprehension that this appeal and the Fixed Penalty Notice related to an outstanding amount from 2017.

Conclusions

27. Any grounds of appeal that relate to the outstanding payment of £17.43 are not relevant to this appeal. It is clear from the Compliance Notice, the Fixed Penalty Notice and the Regulator’s response that this Fixed Penalty Notice has nothing to do with any failure to pay contributions in 2017. It relates purely to the Employer’s failure to file a re-declaration of compliance by the deadline of 3 August 2023.
28. The Compliance Notice was sent to the Employer’s correct registered office address. The Employer has not provided any evidence that might rebut the presumption of service. I have sympathy for the director for the family crisis that meant he was absent

from work in August and September, but that does not prevent the Compliance Notice from being properly served.

29. The presumption of service does not require post to be 'signed for'. I note that signed delivery is not practicable for regulators, because it would enable companies to avoid service by refusing to sign for documents.
30. Taking into account the rebuttable presumption of service, and looking at all the evidence, I find that the Compliance Notice was served on and received by the Employer. This would be that case even if the director did not read it until he returned to work at the end of September/beginning of October.
31. The timely provision of information 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 information, it cannot effectively secure the compliance of employers with their duties. It is for this reason that the provision of a re-declaration of compliance within a specified timeframe is a mandatory requirement.
32. I find that issuing the Fixed Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
33. I conclude that the Employer did not have a reasonable excuse for failing to comply.
34. I have much sympathy for the director, whatever the nature of the family crisis that required him to be absent from work in July and August director. However, even before the director was absent the Regulator had sent two reminder letters setting out clearly that the re-declaration of compliance was due on 2 August 2023.
35. It is incumbent on a reasonable Employer to make sure that systems are in place to ensure that the Employer complies with its legal duties even in the absence of the director. This should include ensuring that letters sent to the registered office address are opened and acted upon. I do not accept that the absence of the Director for two months amounts to a reasonable excuse for failing to comply.
36. For the above reasons I am satisfied that the Employer has not provided a reasonable excuse for not complying with the Compliance Notice. I determine that issuing the Fixed Penalty Notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

Signed **SOPHIE BUCKLEY**

Judge of the First-tier Tribunal

Date: 22 May 2024