



NCN [2024] UKFTT 00422 (GRC).
AE

Case reference: PEN-2024-0026-

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

**Heard: On the papers
Heard on: 24 May 2024
Decision given on: 24 May 2024**

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

FORWARD SECURITY 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 Forward Security Ltd (“the Employer”) challenges a fixed penalty notice (“the Fixed Penalty Notice”) issued by the Pensions Regulator (“the Regulator”) on 20 December 2023 (Notice number 143283458782).
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 25 October 2023.
3. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 13 January 2024 that the Fixed Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 17 January 2024.

The Law

4. 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.
5. 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.
6. 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.
7. 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

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

The facts

9. The Employer’s duties start date was 1 May 2017. The first re-declaration of compliance was filed in 2020. The deadline for the Employer’s second re-declaration of compliance was 2 October 2023. The Regulator wrote to the Employer in January 2023 and July 2023 reminding the Employer of its duties to re-declare compliance, setting out the deadline and the consequences of a failure to comply.

10. Between 5 December 2022 and 18 September 2023, the Regulator also sent 8 email reminders to the email address provided by the Employer. The email address to which those emails were sent is the same as that provided by the Employer in the grounds of appeal.
11. The Employer's second re-declaration of compliance was not filed by the deadline of 2 October 2023 so the Regulator issued a Compliance Notice on 25 October 2023 with an extended deadline of 5 December 2023.
12. On 15 November 2023 the Regulator attempted to telephone the Employer on the number provided to the Regulator in the re-declaration of compliance. I accept on the basis of the summary of that telephone call in the second review outcome letter that the individual answering the call stated that they were aware of their outstanding duties. The individual answering the call then informed the Regulator that this was a private number which should not be used and ended the call before full information could be given.
13. The Regulator then attempted to call using another number provided by the Employer, which is the same as that provided on the notice of appeal. There was no answer and no option to leave a voicemail.
14. As the Employer did not complete a re-declaration of compliance by the deadline in the Compliance Notice, the Fixed Penalty Notice was issued on 20 December 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 17 January 2023.
15. The Employer completed the re-declaration of compliance on 9 January 2024.
16. The Employer submitted a review request on 9 January 2024. The grounds for review state that the Employer had not received any letters or reminders before the Fixed Penalty Notice. The Employer states that the Fixed Penalty Notice does not have any name or department on it, other than the company name and the property. The Employer states that it is in a multi-tenanted building with over 30 single units in the building, plus around 50 virtual offices that all have post sorted into individual pigeon holes, in a communal post room.
17. The Regulator upheld the Fixed Penalty Notice on review on 13 January 2024.
18. The Employer referred the matter to the tribunal on 17 January 2024.
19. The Employer wrote to the Regulator on 17 January 2024 querying how the Regulator could have sent reminder emails because he said that he only provided his email address after a conversation between the director's wife and the Regulator following the issue of the Fixed Penalty Notice. The Employer asserts the director's wife was told that no email had been sent chasing the initial letter because the Regulator did not have the Employer's email address on file.
20. The Regulator conducted a further review and confirmed the notice on 24 January 2024. It confirmed that the agent had stated during the phone call that it did not hold an

email address for the primary contact for the Employer. It did however, have the emails address within its records and it had sent the reminder emails to the correct email address.

Submissions

21. The Notice of Appeal relies on the following grounds:
 - (i) The Employer could not have been sent chaser emails because they informed the director's wife that they did not have his email address on file.
 - (ii) The Employer did not receive the Compliance Notice. The letters are not addressed to an individual, just a company name. The Employer operates in a very busy serviced office and 'I can only think that the letter got mislaid, or put in the wrong pigeon [hole]'
 - (iii) The Employer has no reason to ignore the letter and the director acted on it immediately once it was brought to his attention.
22. The Regulator submits that the Compliance Notice and the Fixed Penalty Notice were sent to the registered office address. This was also the address provided as the address for the Employer in the declaration of compliance and the first redeclaration of compliance. The Regulator relies on the statutory presumption of service.
23. If the Employer is aware that there is a risk of post being misplaced, then as a responsible employer it ought to have put in place measures to rectify the problem or ensure post was being received.
24. The Regulator submits that it has no duty to send reminders. In any event, in the reminder emails were sent to the correct address and, the Regulator sent two reminder letters, marked for the attention of the director, to Employer's registered office address. The Regulator also telephoned the Employer and in the first call, the individual confirmed that they were aware of their outstanding duties.
25. The statutory notices were addressed to the Employer, rather than the director because it is the Employer's duty to comply.
26. The Regulator submits that late or eventual compliance does not excuse the failure or comprise reasonable grounds to revoke a penalty served following expiry of the deadline in a statutory Compliance Notice. Nor does compliance with other automatic enrolment excuse or explain a failure to undertake the duty to re-declare compliance.
27. The Regulator submits that the decision to issue the Fixed Penalty Notice was fair, reasonable, and proportionate.

Conclusions

28. The Compliance Notice was sent to the Employer's correct registered office address. The Employer has provided some evidence in an attempt to rebut the presumption of service. The Employer has provided a photograph of the pigeonholes used for correspondence in the serviced offices, which shows approximately 35 wire trays with name labels. It has also provided a photograph of the list of tenants, which shows that

approximately 24 companies share the services offices. There is no evidence that post regularly goes astray or indeed that post has ever previously gone astray. There is no evidence, for example, of complaints made by the Employer to those responsible for sorting the post.

29. It seems unlikely in those circumstances that both reminder letters and the Compliance Notice happened to be the only letters that went astray.
30. I do not accept that the fact that the statutory notices were addressed to the Employer rather than the director or another named individual makes it more likely that those letters would not be placed in the correct tray by those responsible for sorting the post.
31. I accept that it is a possibility that the Compliance Notice went astray in a busy serviced office. Mistakes are occasionally made by those responsible for those delivering post. I do not accept that this possibility is sufficient to rebut the statutory presumption of service.
32. Taking into account the rebuttable presumption of service, and looking at all the evidence, I find that the Compliance Notice was properly served on the Employer.
33. 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.
34. The fact that an Employer otherwise complies with its duties, and that the re-declaration was filed promptly after the Fixed Penalty Notice was issued does not excuse a failure to comply.
35. 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.
36. I conclude that the Employer did not have a reasonable excuse for failing to comply.
37. Even disregarding the presumption of service, taking into account the evidence set out above, I find on the balance of probabilities that the Employer received the reminder emails, the reminder letters and the Compliance Notice. What was said in the telephone call suggests that the Employer was aware of its outstanding duties before the deadline.
38. I find that it is more likely that the correspondence once received by the Employer, was either not noticed, or was ignored or not acted upon. This does not amount to reasonable grounds for a failure to comply.
39. There is no obligation on the Regulator to send reminders to an Employer. In this case, it did send two reminders by post to the Employer's registered office address and eight email reminders. The Employer should, in any event, be aware of its duties and even in

the absence of any reminders would have been aware of the relevant date for compliance due to having previously redeclared compliance.

40. 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: 24 May 2024