



**NCN: [2024] UKFTT 00573 (GRC)**

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

Case Reference: PEN/2024/0021/AE

**Decided without a hearing  
Decision given on: 03 July 2024**

**Before**

**JUDGE HUGHES**

**Between**

**WSW PROJECTS LTD**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision: The reference is allowed, and the matter is remitted to the Regulator. The penalty notice is revoked. The Regulator is directed to file further information about its conduct of the case.**

## **REASONS**

1. In June 2017 Ms Cowden, the company's accountant completed and submitted the declaration of compliance for the company from an email account at wswltd.co.uk giving a business address in Barnet. Three years later she completed the same process submitting the same details as to the company's location, director and the same email address for her. Both returns were completed promptly.
2. Following the regularisation of its financial affairs; on 28 September 2021 WSW moved its registered address from Gilbert House Barbican London EC2Y 8BD to Unit 6B Meadway Court Rutherford Close Stevenage SG1 2EF.

3. On 10 October the Regulator posted a Compliance Notice to the 6B Meadway Court address, it followed this up with Penalty Notice 129756828387 sent to the same address on 6 December.

4. On 11 December Mrs Cowden wrote to the Regulator:

We received a Fixed Penalty Notice in the post today for not re-declaring to The Pensions Regulator.

We have submitted our declaration now but as far as I am aware this is the first communication we have received from The Pensions Regulator with regards to this.

We moved address 3 years ago and I have had to update our address details on our return (a screenshot of the details held is attached). We stopped re-direction of our mail after the 1st year, therefore if post has been sent to Barnet, we would have not received. Please can you revoke our Fixed Penalty Notice as we would never have ignored such communication had it been received at our business address (as registered with Companies House). I have requested that all future correspondence is via email so this cannot happen again.

5. The Regulator reviewed the issuing of the notice, concluded that it had been correctly issued to the registered office and upheld the notice.

6. The Employer paid the penalty and appealed:

*"The Regulator has conducted its enquiries and is satisfied that the notices were correctly issued to the registered address of Unit 6b, Meadway Court, Rutherford Close, Stevenage, SG1 2EF and are therefore deemed to be correctly served"*

*The first communication we received with regards to re-enrolment was when we received the Fixed Penalty Notice dated 6th December 2023. Presumably all previous correspondence had been going to our old Barnet address and post is no longer being redirected. Note - our pension provider had also been trying to contact us (presumably about this issue) but mail was being returned (see attached). Our company address had to be updated from our old Barnet address when we re-declared our compliance.*

*We have paid the fine to avoid any further penalties however, as a small company with all employees actively encouraged, and participating in our pension scheme (with the exception of one exempt employee under 22 - now enrolled) we would have completed our return immediately on receipt and we would most certainly not have ignored/missed multiple communications/final demands."*

7. In resisting the appeal the Regulator argued that the notice had been properly served at the registered address, it was dismissive of the argument with respect to a Barnet address:

*"The Appellant's claim that the Compliance Notice was not received is simply a bare assertion and is not supported with any evidence beyond a letter from the provider advising mail had been returned as "gone away" and asking the Appellant to update their address. This is not relevant to the defence as the Compliance Note was issued to the Appellant's registered office address as stated on Companies House (Annex A)*

*It is also clear the Fixed Penalty Notice (Annex A) was received at that registered office address given that it has been paid prior to this reference (appeal) and there is no explanation why the Compliance Notice was not received.”*

8. On 11 March Ms Cowden filed a response to the Regulator’s case:

*Further to our previous declaration, on Thursday 22nd February 2024 the letter from 10th October was received in our office for the 1st time. This may have been previously collected by another company in our building but obviously we are unable to prove this. Had we received this at the time, we would obviously have resolved the issue straight away.*

*The re-declaration of compliance is relatively new and our pension provider had been unable to contact us by post to advise of the non-compliance for which we were totally unaware (see earlier response)*

*We would be extremely grateful if the Regulator was to show leniency in this only instance of non-compliance.*

## **Consideration**

9. The first issue for me to consider is whether the rebuttable presumption that a statutory notice sent through the post to a company’s registered address has been received should be accepted. The Regulator is so confident in this claim that it not only dismisses the argument advanced by the company is “simply a bare assertion” but, in preparing the bundle did not include all the material submitted by the Employer. The reason it did not include it is unclear; it may well have thought the material irrelevant, since the address was not the address to which the notices were sent, however two issues are raised by that decision, the first is the propriety of the Regulator’s actions in apparently interfering with the case which the Employer wished to present to the tribunal when it prepared the bundle for the tribunal (an issue I will address later) and the second is the content of the information itself which the Employer considered relevant to its appeal.
10. An executive at Aegon (the pension provider) sent this:

“Sent: Tuesday, December 12, 2023 12:44 PM

To: Rona Cowden [redacted]

Subject: Company Address

Hi Rona,

Below is an email that was sent by email on 06/09/2023 and yet we had no response.

Good afternoon

We have had scheme correspondence returned as gone away from York House, Queens Road, Barnet EN5 4DJ

Please could you advise the new address ?

This must:

- Be on company headed paper
- Detail the Full Registered Company Name
- Detail the Company Registration Number
- Detail the registered permanent address including postcode and any separate principal trading addresses
- Be signed & dated by someone within the company who is authorised (Director, CEO, etc.). ....

Please post to :

Aegon and Scottish Equitable Pension and Bonds

SUNDERLAND

SR43 4DS

We can accept this as a PDF.”

11. Mrs Cowden replied promptly:

“From: Rona Cowden [redacted]

Sent on: Tuesday, December 12, 2023 2:07:58 PM

To: [redacted]

Subject: RE: Company Address

Attachments: Aegon COA 120923.pdf (851.26 KB)

Hi [redacted],

Our director returned this in September

Kind regards

RONA COWDEN

FINANCE MANAGER”

12. The attachment to this email appeared in the bundle, - a copy of a letter to Aegon signed by a director dated 12 September 2023 and confirming the Stevenage address.
13. The evidence put forward by the Employer was that the Compliance Notice sent in October was not received until February, that the Penalty Notice sent on 6 December was received on 11 December.
14. The Employer moved its registered office to Meadway Court Stevenage in September 2021 and at approximately the same time it moved its place of business from Barnet to Meadway

Court. It failed to notify its pension provider (Aegon) that it had moved its place of business and this was drawn to its attention by email in September 2023. On its account the letter it sent to its pension provider in September was not received. However what is clear is that an email to Mrs Cowden from Aegon was received and responded to promptly. Furthermore the records of the Pensions Regulator show that the 2017 and 2020 compliance declarations were promptly completed by Mrs Cowden – and the Pensions Regulator held in 2017 and 2020 the same email address which Mrs Cowden has used for this appeal.

15. The evidence shows on the balance of probabilities that the Compliance Notice was received by the Employer in February. It also strongly indicates that serving Compliance Notice by post, as a preliminary to serving a Penalty Notice is unlikely to be an optimal strategy for achieving compliance. Relying on provisions dating back to company legislation of the 19<sup>th</sup> century (or possibly earlier) as a means of communication rather than using the primary means of information transfer used for over 30 years (email) seems focused on placing the Regulator in a position to issue a financial Penalty not on achieving proper regulatory ends.
16. It appears that the Regulator, in preparing the bundle, may have failed to properly discharge its responsibilities.
17. I direct that the Pensions Regulator within 14 days hereof serve on the Appellant and file a statement explaining why it failed to include the email exchange with Aegon in the bundle.

Hughes

02 July 2024