



Neutral citation number: [2024] UKFTT 608 (GRC)

Case Reference: PEN-2024-0045

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

**Decided without a hearing  
Decision given on: 11 July 2024**

**Before**

**JUDGE BUCKLEY**

**Between**

**CAMBRIDGE RARE BOOKS LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision:**

1. In relation to the Fixed Penalty Notice the reference is dismissed and the matter is remitted to the Regulator.
2. In relation to the Escalating Penalty Notice the reference is allowed. The Escalating Penalty Notice is varied so that:
  - a. Cambridge Rare Books Limited ('the Employer') must comply with the directions in the notice by **9 August 2024**.
  - b. If the Employer fails to comply the penalty will accrue at a daily rate of £500 from **10 August 2024**.
  - c. The Employer must comply with the unpaid contributions notice no later than **9 August 2024**.
3. The remainder of the Escalating Penalty Notice is confirmed.
4. The matter is remitted to the Regulator.

## REASONS

### *Background*

1. By this reference Cambridge Rare Books Ltd (“the Employer”) challenges a fixed penalty notice issued by the Regulator on 26 October 2023 (Notice number 104795476704) (the Penalty Notice) and an escalating penalty notice issued by the Regulator on 27 November 2023 (Notice number 215422794465) (the Escalating Penalty Notice).
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 31 August 2023.
3. The Escalating Penalty Notice was issued under s 41 of the Pensions Act 2008. It required the Employer to pay a penalty accruing at a daily rate of £500 from 25 December 2023 for failing to comply with the requirements of an Unpaid Contributions Notice dated 31 August 2023.
4. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 2 January 2024. The decision was to vary the Escalating Penalty Notice so that the Employer was required to comply fully with the requirements of the varied notice by 4 February 2024. The Fixed Penalty was upheld.
5. 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*

6. 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.
7. Each employer is assigned a ‘staging 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.
8. 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. Where the Regulator is of the opinion that an employer has failed to comply with a Unpaid Contributions Notice the Regulator can issue an Escalating Penalty Notice.

9. Under s. 44 of the 2008 Act, a person who has been issued with a penalty notice may make a reference to the Tribunal provided 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, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a penalty 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.
10. On a reference to the tribunal in respect of a notice, the effect of the notice is suspended for the period beginning with when the tribunal receives notice of the reference and ending when the reference has been determined, the tribunal has remitted the matter to the Regulator and any directions of the tribunal for giving effect to its determination have been complied with.

#### *The Facts*

11. The Regulator received information from the pensions provider that contributions due between 1 April 2023 and 18 July 2023 had not been paid by the Employer. The Regulator issued an Unpaid Contributions Notice (UCN) on 31 August 2023 with a deadline of 11 October 2023 for calculating and paying the unpaid contributions and for providing evidence of compliance to the Regulator.
12. As the Employer failed to provide any evidence of compliance by the specified date, a Fixed Penalty Notice was issued on 26 October 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice provided that the Employer must comply with the Unpaid Contributions Notice by 23 November 2023.
13. As the Employer failed to provide any evidence of compliance by the specified date, an Escalating Penalty Notice was issued on 27 November 2023 with a deadline of 24 December to comply, after which the penalty would accrue at a daily rate of £500.
14. The Employer requested a review on 21 December 2023 on the basis that the director had been very unwell during the relevant period, the business had been going through a very difficult time and that they would be paying the unpaid contributions by paying one month's unpaid contributions every month going forward. The appellant attached medical evidence in support.
15. The Respondent responded on 2 January 2024 varying the Escalating Penalty Notice, extending the deadline to 4 February 2024 to afford the Appellant more time to resolve the unpaid contributions. The Fixed Penalty was upheld.
16. The unpaid contributions had not been paid by 4 February 2024 and the daily rate of £500 started to accrue from 5 February 2024.

17. The Employer referred the matter to the tribunal on 7 February 2024.

*Submissions*

18. In the Notice of Appeal, the Employer states as follows:

“They have only given until the 4 February 2024 to resolve the unpaid contributions. This is not enough time for us to resolve as the company has no money.

I have been very unwell during the period the unpaid contributions relate to – see attached doctor’s notes. The business has been going through a very difficult time during the period the unpaid contributions relate to, and any monies generated by the business have been used to pay the staff salaries as well as trying to keep the company trading. By enforcing these penalties on the business will only make things harder for the business.”

19. I note also that the Employer stated in the section on late appeals:

“Apologies for the slight lateness for this appeal but I have been very unwell and recently had surgery. Please see attached supporting evidence.

20. Finally in the covering email to the tribunal the director stated:

“I was unfit for work evidence attached since beginning of December until 5<sup>th</sup> Feb. I had surgery in January 2024.”

21. The Regulator submits that the appeal grounds do not amount to a reasonable excuse for the failure to comply with the requirements of the Unpaid Contributions Notice (UCN).

22. The Regulator submits that the Employer has provided no evidence to suggest that the duty of paying pension contributions could not have been delegated to another person in the Director’s absence. A responsible company director, after receiving a doctor’s statement stating that they are not fit for work, should have delegated the responsibility of paying salaries and pensions to another person during the period of absence. As salaries continued to be paid, this suggests that the task could have been handled by another person.

23. In relation to financial difficulties, the Regulator submits that the payment of pensions is an agreement between the pension provider and the Appellant, which the Regulator cannot assist with as such agreements are in the hands of the relevant parties. Nonetheless, the opportunity to notify the Regulator of this issue was available to the Appellant after receipt of the Unpaid Contributions Notice. If they had done so the Regulator could have afforded the Employer more time. The Employer admitted in their review request that they only contacted the Respondent after the Escalating Penalty Notice was issued. The Regulator advised the Employer to arrange a payment plan with their pension provider and it was only after this

advice that the Employer sought to do so. It is submitted that without the penalties the Regulator may have never been prompted to try and resolve the unpaid pension contributions.

24. The Regulator submits that it was reasonable and proportionate to issue the notices.

#### *Conclusion*

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.
26. 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 Unpaid Contributions Notice (UCN).
27. The UCN sets out clearly the 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.' The deadline for compliance and the consequences of failing to comply with all of the requirements of the notice are set out clearly.
28. I accept that the director has been unwell. There is no suggestion that this meant that the UCN was not received. If the director is unable to work, it is incumbent on a responsible employer to arrange for someone else to deal with matters such as these. Someone other than the director could have taken action in relation to the UCN, as they did in relation to the penalty notices once the escalating penalty notice was received.
29. I accept that the company has been in going through a difficult time. No details have been provided as to the extent of the company's financial difficulties although it is asserted that any monies generated by the business have been used to pay the staff salaries as well as trying to keep the company trading. I do not accept that that is a reasonable excuse for not paying pension contributions, which are required by law.
30. In summary I conclude that no reasonable excuse has been given for non-compliance in this case.
31. I accept that the imposition of a penalty is likely to increase a company's financial difficulties. That is in the nature of a penalty. I do not accept that this makes it unfair or unreasonable for the Regulator to have issued the penalty bearing in mind the importance of the Employer duties. I find that the penalty is not unfair, unjust or disproportionate to the breach. Furthermore, the amount of the penalty is fixed by law.
32. For those reasons I uphold the Fixed Penalty Notice.

33. In relation to the Escalating Penalty Notice, I am considering the notice as varied on 2 January 2024. Taking into account the Employer's proposal to pay off one month of unpaid contributions every month, I find that it was unreasonable and disproportionate to vary the date of compliance to 4 February 2024.
34. The purpose of an escalating penalty is, in part, to provide an incentive for the Employer to take action. Having been told that the Employer had (a) recognised its default, (b) attempted to agree a payment plan with NEST and (c) in the absence of such an agreement, resolved to pay off a certain amount per month, I find that it was not reasonable or proportionate to set a date for compliance that did not allow time for that reasonable proposal to be put into operation.
35. I have not been provided with details of the amount of unpaid contributions, but I note that the period in question is from 1 April 2023 to 18 July 2023. That amounts to four calendar months in relation to which contributions are due. In my view it would have been reasonable to allow the Employer at least four calendar months from the date of the review application to make the payments before imposing the escalating penalty. On that basis, I allow the reference in relation to the Escalating Penalty Notice.
36. I do not know if the Employer has now paid the unpaid contributions. The Employer has now had well in excess of four months to do so. In varying the notice it is appropriate to allow a short period of time for the Employer to pay any unpaid contributions and to provide the required evidence to the Regulator. I have therefore varied the notice so that it must be complied with by **9 August 2024**.
37. The Employer should note that the unpaid contributions notice contains three steps which must all be complied with by 9 August 2024.
38. I remit the matter to the Regulator. I confirm the Fixed Penalty Notice and vary the Escalating Penalty Notice. No directions are necessary.

Signed

Sophie Buckley

Date:

10 July 2024