



**IN THE FIRST TIER TRIBUNAL
(PENSIONS REGULATION)**

APPEAL NO: PEN/2023/0063

Neutral Citation Number: [2024] UKFTT 00934 (GRC)

Heard on 19 August 2024 by Judge Kennedy.

Decision given on 21 October 2024.

BETWEEN:

ORA CAFÉ UK LIMITED.

Appellant

and

THE PENSIONS REGULATOR

Respondent

Date and type of Hearing: 19 August 2024 – an appeal heard on GRC CVP.

Date of decision: 19 October 2024.

Decision: The appeal is dismissed. The Tribunal will consider a further application by the Respondent and refers to the Case Management Directions below.

REASONS

Introduction:

1. This decision relates to an appeal in respect of a Fixed Penalty Notice ('FPN') issued on 20 January 2023 under s.40 of the Pensions Act 2008 ('PA08') because the Respondent believed the Appellant had failed to comply with an Unpaid Contributions Notice ("UCN") that was issued under ss.37 and 38 PA08 on 21 November 2022, with a specified deadline of 4 January 2023 (Annex A).. The Pensions Regulator is of the opinion that the Appellant, an employer, failed to comply by 4 January 2023 with one or more of the requirements of the Unpaid contributions notice issued to the Appellant on 21 November 2022 with a specified deadline of 4 January 2023. The FPN further required the Appellant in addition to paying this penalty, that the Appellant must comply with the Unpaid contributions notice dated 21 November 2022 by 17 February 2023.
2. The Regulator is responsible for the regulation of work-based pension schemes. Established by section 1 of the Pensions Act 2004, its objectives are set out in section 5. These include maximising compliance with Automatic Enrolment duties under Chapter 1 of Part 1 of the PA 08 and safeguards in sections 50 and 54 of that Act (section 5(1)(ca)).
3. An employer's Automatic Enrolment duties are set out under Chapter 1 of Part 1 of the PA 08 and Regulations made under the Act. This reference to the Tribunal is concerned with the duty to pay relevant contributions to an occupational or personal pension scheme and to provide evidence to the Regulator that it had done so.
4. Where the Regulator is of the opinion that relevant contributions have not been paid, it has the power under s.37 PA 08 to issue an UCN

requiring an employer to pay the unpaid contributions into a pension scheme and to provide evidence to the Regulator that it has done so.

5. In the event that an employer fails to comply with a Notice issued under section 37, the Respondent may issue a Fixed Penalty Notice (“FPN”) in the sum of £400 and a further EPN for the continued non-compliance which accrues on a daily basis until the UCN is complied with or until the accrual reached its maximum limit.

Background:

6. As indicated above, Ora Café UK Limited is the employer for all purposes of the ‘Employer Duties’ under the PA 08. The reference (appeal) is in respect of a FPN issued on 20 January 2023 (Annex B) under section 40 of the Pensions Act 2008 (PA 08). These penalties were issued because the Respondent was of the opinion that the Appellant had failed to comply with a UCN (Annex A) issued under sections 37 and 38 PA 08 on 21 November 2022, by the deadline of 4 January 2022.
7. Prior to issuing the UCN, the Regulator had received information from the company’s pension scheme provider, NEST, that the Appellant had failed to pay the relevant contributions to an occupational or personal pension scheme on or before the due date for payment. The report stated that contributions for the period of 1 June 2022 to 30 September 2022 had not been paid to the scheme under pension scheme reference 12004537.
8. The Regulator therefore issued and served a UCN on 21 November 2022 (Annex A) on the Appellant’s Registered Office address at Unit A 581 Green Lanes Haringey N8 0RG. This UCN required the Appellant to take three steps: firstly, to calculate the unpaid contributions, secondly, to contact the pension scheme provider and pay the contributions and

thirdly to provide evidence of compliance. The deadline for compliance with the notice was 4 January 2023

9. The UCN also stated in bold *“What would happen if you do not comply with this notice – If you do not comply with all the requirements in this notice the Pension Regulator may issue you with a £400 fixed penalty notice and... that if you continue not to comply, the Pensions Regulator may issue an Escalating Penalty Notice”*.
10. As the Appellant failed to comply with the UCN by the deadline a FPN (Annex B) was therefore issued on 20 January 2023. The penalty clearly stated the reason for the notice being issued was because of non-compliance, and that if the Appellant disputed the notice it could request for a review of the notice within the 28 days of the date of the notice.
11. As the Appellant had still failed to comply or take any action on 21 February 2023 an EPN was issued where it stated that failure to comply by 20 March 2023 would result in an EPN accruing at a daily rate of £50.00 per day as of 23 March 2023 (Annex C). On the same day an FPN reminder was also sent to the Appellant requesting payment of the penalty. (Annex D)
12. On 28 February 2023 a further penalty reminder was sent to the Appellant advising it that the penalty remained payable. This further reminder was sent via email to admin@tax.focus.co.uk (Annex D)
13. On 9 March 2023 the Respondent made a chaser call to the Appellant – in that call the Respondent was advised that the outstanding debt and the reasons why and the Appellant responded by stating that it had paid the outstanding contributions to its pension provider On the same day the Appellant contacted the Respondent in writing – requesting a review of the penalty notice and again explained that the Appellant had already paid the contributions due to its pension provider and that the penalty should be removed. (Annexes E and F)
14. On 16 March 2023 the Respondent responded in which it stated that the request for review had been received after the 28-day time limit to the

deadline stated by law, which meant that the Respondent could not accept the application. Also, that it had decided not to conduct a review on its own initiative (Annex F).

15. On 30 March 2023 the Respondent was advised that the Appellant had lodged its appeal at the Tribunal on 16 March 2023.
16. In response to the Appellant's application to appeal the Respondent filed a strike out application in respect of the FPN (Annex B) on the basis that the Appellant had failed to request a review within 28 days of the notices and the Respondent had failed to conduct a review on its own accord and that the Tribunal had no jurisdiction to hear the matter.
17. However, the Tribunal in its decisions dated 11 July 2023 refused this application to strike out the appeal on the basis that the Appellant in its grounds for appeal asserted non-receipt and that this point needs to be tested at a hearing before the first-tier tribunal to determine whether the Tribunal has jurisdiction to hear that matter as well as whether the Appellant has a reasonable excuse for its failure to comply with the notice(s) Annexes A and D. This response has been drafted in response to the Tribunal's decision to hear this matter and in accordance with the Tribunal order dated 11 July 2023 where it set out its directions for the matter to be taken forward.
18. In its decision of 11 July 2023, the Tribunal has made reference to Freeman decision – (Philip Freeman Mobile Welders Ltd v The Pensions Regulator [2022] UKUT 62 (AAC). Annex R It is the Respondent's position that Freeman case tells us that if an employer can show they did not receive a notice, it follows that time for a review cannot start to run. However, it is the Respondent's view that that is not the case in this matter as the Appellant has not provided any valid reason or evidence whatsoever for non-receipt of all the notices and has just provided an explanation of bare assertion for non-receipt. This matter will be addressed below. Unless the Appellant can convince the Tribunal that it had a reasonable excuse for its non-compliance and only then can the time to request a review start to run afresh.

19. The Freeman also emphasizes that the question on whether the Tribunal has jurisdiction is dependent on whether the notices were issued and received by the Appellant – and that this matter should be heard by a Tribunal before a matter has been struck out where the Appellant raises issues that should concern a Tribunal. In such a case, evidence should be presented to the Tribunal for it to make a decision on the matter. The Respondent's position is set out below and a witness statement of Cathy Doherty will be sent to the Tribunal to address the issue of service further. This will be filed on the tribunal on or before 18 August as ordered by the Tribunal. The Respondent's position at the moment is set out below.
20. The Respondent contends that individually and/or collectively, none of the appeal grounds in this case amount to a reasonable excuse for the failure to comply with the UCN or provide the evidence required by the UCN or indicate that the Respondent has acted unfairly in anyway. The Appellant cannot dispute that it bears a statutory responsibility for complying with the Respondent's notices and providing the required information to the Respondent by the prescribed deadline and that it has to act as a reasonable employer at all times. It is also the Respondent's case that it served the relevant notices in this case on the Appellant and that they can be presumed to have been received by this Appellant.
21. The grounds of appeal are detailed by the Appellant in section 5 of Notice of Appeal. This is summarised as follow:
- The Appellant is appealing on the basis they did not receive the UCN or the FPN and only became aware of the issue upon receipt of the penalty reminder letter dated 21/02/2023.
 - Since that date, they have checked with their pension provider who has confirmed all payments are up to date and evidence of this is enclosed.
 - Additionally, they add they could not request a review or appeal on time as they did not receive the communication to alert them to this.
22. The Respondent submits that the grounds of appeal do not suggest a reasonable excuse for the failure for which the penalty notice was issued. The Appellant cannot dispute that it bears a statutory responsibility to

assess and pay the requisite contributions and to provide the required evidence to the Respondent by the prescribed deadline.

23. The Respondent notes that all notices (UCN, FPN and EPN) were sent to the Appellant's registered office address at Unit A, 581 Green Lanes Haringey N8 0RG which is that same address provided by the Appellant in its Declaration and Re-Declaration of Compliance (Annexes H and I). This is also the address noted on Companies House at Annex J and is the address used by the company since 2017. The Respondent maintains that all notices and correspondence were correctly served to the Appellant at the registered office address Annex J.
24. The Respondent therefore seeks to rely on the presumption of service of the notices as per section 144A PA08, the presumption of service provisions in section 303(6)(a) of the Pensions Act 2004 ('PA04'), section 7 of the Interpretation Act 1978 and Regulation 15(4) of the Employers Duties (Registration and Compliance) Regulations 2010.
25. The penalty was issued because the Respondent believed the Appellant had failed to comply with the directions in the Compliance Notice ('CN'), issued under s.35 PA08 on 13 February 2023, by the deadline of 27 March 2023.
26. The Respondent relies on section 303(6)(a) of the Pensions Act 2004 which provides that, for the purposes of s.7 of the Interpretation Act 1978 (service of documents by post), the proper address for a notice issued to a body corporate is the address of the registered or principal office of the body.
27. Whilst Regulation 15(4) of the Employers' Duties (Registration and Compliance) Regulations 2010 provides a further presumption that a notice (subject to review) is received by the person to whom it was addressed. Taken together, there is a strong statutory presumption that documents sent to such an address are properly served and received.
28. The Respondent submits that, on the available evidence, there is no basis for displacing the statutory presumption outlined above. In those

circumstances, the Respondent submits that the UCN and FPN were lawfully and correctly served and were received by the Appellant.

29. The Appellant has mentioned the issue of non-receipt in its grounds for appeal, but the Respondent can confirm that to date it has not received any mail returned to sender for this employer and is of the view that all correspondence, including the FPN, was correctly served and received by this Appellant. The Respondent will be relying on the witness statement of Cathy Doherty that sets out the process by which these notice and correspondence were sent to this Appellant and that no posts has been returned to sender – why the presumption of service stands. As a responsible employer it ought to have made the necessary arrangement to comply with the terms set out in the UCN and to ensure that it handled its post correctly upon receipt. The Appellant only made contact to request a review after the 28 days - 9 March 2023 after of the FPN had expired some 108 days after the UCN was issued, and 64 days after the deadline of the UCN).
30. Furthermore, the Respondent relies on the case of London Borough of Southwark v (1) Runa Akhter v (2) Stel LLC 2017 UKUT – 0150 (Annex K) where the Upper Tribunal stated in paragraphs 82 to 86 of that decision that mere assertion is insufficient and that the Respondent would only have to actually prove service if the contrary was proved by the Appellant (see paragraph 82, in particular). This decision places emphasis on the requirement of “proof” and not a mere assertion by an Appellant. There is, in the Respondent’s submission, no proof/evidence that has been provided by this Appellant to show that it never received the FPN, or any other correspondence were not received.
31. This position is familiar to the Tribunal and has been confirmed in other First-Tier Tribunal cases including the recent decision of the Chamber President, Judge McKenna in Ahmads 786 Frist Ltd v TPR – PEN.2019.0218 (Annex L). In this case, the Judge took the view that good evidence is required to rebut the presumption of service. The Respondent accepts that previous decisions of the First-Tier Tribunal are not binding and are simply persuasive.

32. The above principle was also adopted by the First Tier Tribunal (General Regulatory Chamber), in another case *Keith's Rubbish Clearance Limited v The Pensions Regulator* (PEN 2020 0203) (judgment dated 8 April 2021) ('Keith's Rubbish Clearance') (Annex M). In *Keith's Rubbish Clearance*, Judge Hunter found that "the Regulator is entitled to rely on the strong statutory presumptions... The Employer has made a bare "paper" assertion of non-delivery. That falls far short of the proof necessary to overturn the presumption" (paragraph 32). It is the Respondent's position that the arguments being raised by this Appellant falls short in this case too.
33. This position on service is not unfamiliar to this Tribunal. In *Stonehill MOT Centre Ltd v The Pensions Regulator* (PEN/2018/0314) (Annex O), Judge Holbrook found that a "mere denial that the compliance notice was not received will generally be insufficient unless supported by other evidence". A similar position was taken by Judge Holbrook in *Smiles Childcare Limited v The Pension Regulator* (PEN/2018/0132) (Annex P) where the Tribunal stated that mere denial must be supported by other evidence. In the *Stonehill* appeal certain communications were received, which the Appellant acknowledges was the case here despite the postal strikes that in their words delayed the post but never stopped service.
34. It is also the Respondent's position that there may have been a failure on the part of the Appellant to appreciate the importance of the correspondence, in particular the Unpaid Contributions Notice when it arrived and that as such it failed to act on it in a timely manner, wrongly handled it, ignored and/or discarded it. In any event, given the importance of a statutory notice sent to the registered office address for this employer, a lack of realisation of the importance of the Notice or a failure to act on it does not constitute reasonable excuse.
35. No evidence of rebuttal has been provided by this Appellant in this appeal and so therefore it is the Respondent's case that the Unpaid Contribution Notices in this case was correctly served and received by the Appellant. The Respondent has no record of Unpaid Contributions Notice being returned as undelivered. Therefore, this notice was received by the Appellant.

36. The case of Freeman (Annex N) makes it clear that the Appellant is required to provide evidence and reasoning of non-receipt/ service of a notice – at which point the Tribunal would have jurisdiction and can decide on the matter. No such evidence has been presented by this Appellant either in its request for review and its appeal to the Tribunal. All that is being relied on by this Appellant is simple bare assertion.
37. As with every other Employer, this employer had a duty is to maintain contributions pursuant to s.33 PA08 and this is an important, separate duty that was specifically explained to the Appellant in the Unpaid Contributions Notice (Annex A). Employer Duties are placed on all employers with workers, as defined in the Pensions Act 2008 and as a responsible employer it is for the Appellant to be aware of their legal duties and to ensure full- and on-time compliance with them.
38. Making pension contributions is a statutory duty and if the Appellant was struggling to comply with the Employer duties or had issues with payment it could have contacted the Respondent to request further time. Similarly, if it had difficulty receiving its posts it ought to have informed that Respondent also so they could use an alternative address.
39. The Unpaid Contributions Notice provided four weeks in which to comply, which the Respondent submits was more than adequate. As the Appellant failed to comply with the requirements in the Unpaid Contributions Notice by the, a Fixed Penalty Notice was then issued. Even after a further deadline of was given the Appellant still failed to comply and/ never provided the evidence of compliance.
40. With regards to the necessary evidence requested for, no adequate information or proof of payment had been provided to the Respondent, as expressly required by Step 3 of the Unpaid Contributions Notice, before the deadline in the Unpaid Contributions Notice. Step 3 of the Unpaid Contributions Notice clearly stated that, “When you have met the requirements in steps 1 and 2 above, you must provide evidence of compliance to The Pensions regulator.....” Guidance is given as to what

acceptable evidence includes, and the deadline for meeting all the steps was stated in bold text as 4 January 2023.

41. Had the Appellant followed the Respondent's instructions in the Unpaid Contributions Notice, (Annex B), calculating and paying the contributions, alongside providing the necessary evidence of compliance to the Respondent by the extended deadlines in the Unpaid Contribution Notice it would not have received the Fixed penalty notice. Further if they had difficulty getting the payment to its pension provider or knew that it may not happen by the deadline stated in the Unpaid Contribution Notice, or even before then as a reasonable employer, it ought to have contacted the Respondent upon receipt of the Unpaid Contribution Notice to ask for more time to act or help with the process to ensure it complied in time.
42. Furthermore, section 37 of the PA08, 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". The duty in such circumstances - which can clearly include ensuring that contributions are paid before the notice deadline and the provision of evidence to the Respondent that a lawfully issued notice has been complied with - this is manifestly a duty for the employer, not the Respondent or its pension provider.
43. It is the requirement to ensure that all unpaid contributions were made by the deadline and to provide the acceptable evidence of compliance with the UCN on or before 21 November 2022 that the Appellant was required to comply with to avoid the FPN being issued. This Appellant still failed to comply with the original notice and the extended deadline and although payment was finally made to the scheme, it failed to provide the necessary evidence of compliance to the Respondent as requested.
44. It was the employer's legal responsibility to ensure and demonstrate compliance and the Respondent does not consider that the Appellant has demonstrated a reasonable excuse as to why it has failed to comply with its duties under the UCN and why the FPN should not have been issued.

45. The importance of Step 3 has previously been recognised by the Tribunal. The Respondent again accepts that FTT decisions are not binding on the Tribunal but can be persuasive. In PEN2018.0369 *Spice Merchant Hyde Park Limited v The Pension Regulator* PEN 2018.0369 (Annex I) where Judge Holbrook described the position as follows: *“Making payment of the relevant unpaid pension contributions is, of course, the primary step which an employer must take to comply with an unpaid contribution notice. However, it is not the only step which is required: the provision to the Regulator of evidence of payment is also essential so that the Regulator can be satisfied that the unpaid contributions have been made good, or else so that it can decide whether additional enforcement action is warranted. Whilst I accept that, in this case, the Employer did eventually provide the Regulator with the evidence it needed, she did not do so before the deadline specified in the unpaid contributions notice. It was therefore appropriate for the Regulator to issue the Penalty Notice.”*
46. As with every employer the Appellant has a duty to ensure that it pays all of its contributions to its pension provider in time and in any event within a reasonable time, that being at least within three months of the date to which the payment is due (See: Section 38(2) of the Act and Regulation 9 of the Employers’ Duties (Registration and Compliance) Regulations 2010 (‘the 2010 Regulations’)).
47. 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 Appellant had more than sufficient time to provide evidence to the Respondent once it had resolved matters with its pension provider or it could have endeavoured to contact the Respondent if it had any difficulties doing so, with the consequences of missing the deadline specified clearly within the Unpaid Contributions Notice. It was therefore up to the Appellant to act swiftly in the matter.
48. The threat of an FPN being issued serves to underline the importance of Step 3 and the Appellant was made fully aware of this in the Unpaid Contributions Notice [Annex A] Plus the Appellant admits that it was aware of the outstanding amounts in February 2022 from its pension

providers. However, it failed to resolve matters before the Unpaid Contributions Notice deadline that was some 28 days later, neither did it attempt to contact the Respondent on receipt of the notice to explain the difficulties that it was having with re-setting up a direct debit for payment to be made. Note that the payments were outstanding for five months by the time the Unpaid contribution notice was issued.

49. As a result of these proceedings the Respondent has been in contact with the Appellant's pension provider and they have confirmed that the contributions for the period set out in the UCN of 1 June 2022 to 30 September 2022 were only paid on or around 16 February 2023, after the issue of the FPN and some 27 days after the deadline of the FPN - 17 February 2023 (Annexes A and B). This is contrary to what this Appellant has stated in its request for review and in its notice of appeal.
50. It is also the Respondent's position that the pension provider also would have advised this Appellant of the missed payment, and that this employer appears to have ignored this correspondence from a third party and so must have been aware that it had missing unpaid contributions for a long period of time but failed to rectify the matter.
51. 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 the PA 08 and whether employees entitled to pension contributions are having them paid.
52. With that legitimate objective in mind, the timely production of evidence of compliance is an important one and departure from it without reasonable excuse justifies the penalty. There is an important public interest in consistently enforcing compliance with employers' duties under the PA 08 via penalty notices in order to deter breaches and promote compliance. The deterrent effect of these would be greatly diminished if the practice were to revoke penalty notices in all cases provided that compliance is achieved at some point (see §17 The Pensions Regulator v Strathmore Medical Practice [2018] UKUT 104 (AAC)).

53. This Tribunal has also recognised the legitimacy of the Respondent's policy that, in most cases, where a person has not complied with the compliance notice, a monetary penalty will be issued, unless there is good reason not to do so. (see §8 Rossendale Sports Club PEN/2016/0011, for example)
54. The Respondent believes that the penalty of £400 is fair, reasonable, and proportionate in all the circumstances, the Appellant was given as extended deadline of 28 days in which to comply it has failed to do so knowing that it had failed to pay over its employer/employee contributions in time. In the Respondent's view the penalty remains fair and proportionate, as set by the Regulations in light of the above.
55. The Respondent notes that the amount of a Fixed Penalty is set down by law (Regulation 12 of the Employers' Duties (Registration and Compliance) Regulations 2010). The Respondent has no discretion to vary the amount and neither, respectfully, does the Tribunal.
56. The treatment of the Appellant's conduct is consistent with any other employers in similar circumstances and the Respondent considers the decision to issue and maintain a penalty, at the amount set by Regulation 12 of the 2010 Regulations, fair, reasonable, and proportionate for all reasons set out above.
57. The Respondent believes that the penalty of £400 is fair, reasonable, and proportionate in all the circumstances, the Appellant was given as extended deadline of 28 days in which to comply it has failed to do so knowing that it had failed to pay over its employer/employee contributions in time. In the Respondent's view the penalty remains fair and proportionate, as set by the Regulations in light of the above.
58. The Respondent notes that the amount of a Fixed Penalty is set down by law (Regulation 12 of the Employers' Duties (Registration and Compliance) Regulations 2010). The Respondent has no discretion to vary the amount and neither, respectfully, does the Tribunal.

59. The treatment of the Appellant's conduct is consistent with any other employer in similar circumstances and the Respondent considers the decision to issue and maintain a penalty, at the amount set by Regulation 12 of the 2010 Regulations, fair, reasonable, and proportionate for all reasons set out above.
60. The appeal provides no persuasive justification for revoking the penalties:
- (a) There does not appear to be any dispute that the statutory grounds for issuing the FPN was made out, in that the directions of the UCN that that was legally and correctly addressed were not complied with by the Appellant by the deadline stated.
 - (b) The issue is therefore whether it was appropriate for the Respondent to issue the penalty, which turns on whether the Appellant has a reasonable excuse for failing to comply with the earlier notice.
 - (c) There is, simply, no reasonable excuse advanced, in fact or law, for the failure to provide the evidence required within the set deadline.
 - d) Also, and or in the alternative - It is also the Respondent's case that the Appellant has provided no reasonable excuse for not filing its request for review in time and that as no review was conducted under s43 PA08 as such the Tribunal does not have jurisdiction to decide this matter, in any event.
61. The Respondent relies on the timely provision of information by employers in order to ascertain that it has met and continues to meet its automatic enrolment duties. It is crucial to enable the effective operation of the automatic enrolment scheme and effectively secure employer compliance.
62. The Respondent submits that Employer Duties are placed on all employers with workers, as defined in the PA08 and as a responsible employer it is for the Appellant to be aware of their legal duties and to ensure full- and on-time compliance with them. This includes the duty to maintain contributions pursuant to s.33 PA08, which the Appellant failed to do; it was therefore fair, reasonable, and appropriate for the Respondent to issue a UCN and when the Appellant still failed to comply,

to issue an FPN as a result. The extended time was given to assist this Appellant, but it has still not complied by providing the appropriate evidence of compliance.

63. The Tribunal notes that the Respondent indicated in their submissions that in the event that the Tribunal dismisses the Appellant's reference, on the basis of no jurisdiction or on the basis that the Appellant has no reasonable excuse for noncompliance and that this Appellant was served and received the notices, the Appellant is invited to contact the Regulator directly to discuss any financial hardship issues it may have in paying the outstanding penalty amount and propose a payment plan.
64. The Tribunal have attempted to have several hearings, and the Appellant has failed to attend in person or present any cogent arguments against the Respondents submissions. The Tribunal accept the compelling submissions and reasoning provided by the Respondents throughout this appeal and accordingly, (although with some sympathy in relation to reasons given but not substantiated by supporting evidence for the Appellants non-appearance) in the absence of, or presentation of, any material or relevant evidence to rebut the Respondents submissions, must dismiss this appeal.

CASE MANGEMENT DIRECTIONS

65. Given the unreasonable conduct of this appeal throughout the protracted course of these proceedings the Respondents were asked by the Tribunal to consider an application for costs. The Respondents have made such an application dated 3 September 2024. This has been presented to the Tribunal on the basis that the Respondents be awarded its costs for preparing for and attending the hearing on 19 August 2024, in accordance with Rule 10 of the Tribunal Procedure (First -tier Tribunal) General Regulatory Chambers) Rule 2009 and the Tribunals, Courts and Enforcement Act 2007 (TCEA) on the basis that the Appellant has acted unreasonably in this case.

66. The Tribunal directs that the Respondent formally serve this application on the Appellant on or before 30 October 2024 with sufficient evidence and submissions supporting and justifying the amount of costs sought.
67. The Appellant provide the Respondent and the Tribunal with is comprehensive written Response on why such order should not be made in all the circumstances and any material submissions on the appropriate sums of costs claimed should not or could not be paid – on or before the close of business on 8 November 2024.
68. The parties should provide suitable dates for a hearing of this application fro 11 November or in December 2024.
69. The Parties are at Liberty to apply.
70. The Parties are reminded of their duties and obligations under The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009

Overriding objective and parties' obligation to co-operate with the tribunal

2.— (1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. (2) Dealing with a case fairly and justly includes— (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;

(b) avoiding unnecessary formality and seeking flexibility in the proceedings;

(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;

(d) using any special expertise of the Tribunal effectively; and

(e) avoiding delay, so far as compatible with proper consideration of the issues.

(3) The Tribunal must seek to give effect to the overriding objective when it— (a) exercises any power under these Rules; or

(b) interprets any rule or practice direction.

(4) Parties must— (a) help the Tribunal to further the overriding objective; and

(b) co-operate with the Tribunal generally.

Brian Kennedy KC

19 October 2023.