



Neutral citation number: [2025] UKFTT 00359 (GRC)

Case reference: FT/PEN/2024/0282
FT/PEN/2024/0283

First-tier Tribunal
General Regulatory Chamber
Pensions Regulation

Decided without a hearing
Decision given on: 27 March 2025

Before

JUDGE SOPHIE BUCKLEY

Between

SN LINCOLN LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision in FT/PEN/2024/0282

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

Decision in FT/PEN/2024/0283

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

REASONS

Background

1. Given the overlap between these two references I have heard them together.
2. In reference FT/PEN/2024/0282 SN Lincoln Ltd (the Employer) challenges a fixed penalty notice (the Fixed Penalty Notice) issued by the Pensions Regulator (the Regulator) on 25 March 2024 (Notice number 102324114143).
3. In reference FT/PEN/2024/0283 the Employer challenges an escalating penalty notice (“the Escalating Penalty Notice) issued by the Regulator on 24 April 2024 (Notice number 244547648224).
4. 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 26 January 2024.
5. The Escalating Penalty Notice was issued under s 41 of the Pensions Act 2008. It required the Employer to comply with the Compliance Notice by no later than 7 March 2024. If the Employer failed to comply a penalty would accrue at a daily rate of £500 from 22 May 2024.
6. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 5 July 2024 that the Escalating and Fixed Penalty Notices were confirmed. The Employer referred the matter to the Tribunal on 26 July 2024.

The Law

7. 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.
8. Each employer is assigned a ‘staging 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 staging date. This is known as a ‘Declaration of Compliance’. 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. Where the Regulator is of the opinion that an employer has failed to comply with a Compliance Notice the Regulator can issue an Escalating Penalty Notice.
9. Under section 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.

10. 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

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

The facts

12. The Employer's staging date was 1 August 2023. The Declaration of Compliance was not completed by the deadline of 1 August 2023. The Regulator sent two reminder letters in September and December 2023 setting out the deadlines and warning of the penalties for failure to comply. The Regulator issued a Compliance Notice on 26 January 2024 with a deadline of 7 March 2024. As this was not complied with, the Fixed Penalty Notice was issued on 25 March 2024 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 22 April 2024. As the Employer did not comply, the Escalating Penalty Notice was issued on 24 April 2024.
13. The Regulator issued penalty reminders on 22 May 2024 and 4 June 2024. On 11 June 2024 the Regulator left a telephone message and attempted a further call on 12 June 2024. The Employer's accountant telephoned the Regulator on 13 June 2024 but did not provide authorisation to allow a discussion to take place. The Regulator issued a letter before action on 18 June 2024.
14. The Declaration of Compliance was completed on 25 June 2024.
15. On 1 July 2024 the Employer requested a review of the penalty notices. This was out of time but the Regulator conducted a review of its own initiative and the penalties were confirmed on 5 July 2024.
16. On 26 July 2024 the Employer referred the matter to the Tribunal.

Submissions

17. The Notice of Appeal relies on the following grounds:
 - (i) The Employer did not receive the notices from the Regulator.
 - (ii) The Employer was not aware of its duties.

- (iii) Once the Employer received the penalty letter it took immediate action to comply.
 - (iv) The Employer has now updated its contact information to ensure that all future correspondence is received promptly and such an oversight does not happen again.
 - (v) The Employer is a small business and the penalties will have a significant financial impact.
18. In addition, the Employer raises the following point in its letter of 15 November 2024:
- a. Eligible job holders were likely to opt out or did not incur any detriment and that there was no financial loss to employees or the Regulator.
19. The Regulator's response submits that there is no basis for displacing the statutory presumption of service of the Compliance Notice, Fixed Penalty Notice or Escalating Penalty Notice. The notices were sent to the registered office address and the Employer accepts that it received the letter before action sent to the same address.
20. The Employer was sent a welcome pack and two reminder letters and should have been aware of its duties.
21. It was fair, reasonable and appropriate to issue and maintain the penalty at the amount set by Regulation 12 and 13 of the 2010 Regulations.
22. 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.
23. The duties apply even if jobholders will likely opt out and minimal impact does amount to a reasonable excuse for non-compliance.

Conclusions

24. The notices were sent to the Employer's current registered address. The Employer states that it did not receive the notices. The Employer does not state whether it received the welcome pack and the two reminder letters sent to the same address. The Employer received the 'recent penalty letter' which appears to be the letter before action sent on 18 June 2024. This letter was sent to the same address as the other correspondence. The Employer has provided no explanation of why the notices might not have been received when the letter before action was received at the same address.
25. Taking into account the rebuttable presumption of service and looking at all the evidence I find that the Compliance Notice, the Fixed Penalty Notice and the Escalating Contributions Notice were all received by the Employer.

26. 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 declaration of compliance within a specified timeframe is a mandatory requirement.
27. The fact that eligible job holders were likely to opt out or did not incur any detriment and that there was no financial loss to employees or the Regulator does not diminish the importance of the obligation to provide information, nor, I find, does it excuse a failure to comply.
28. I accept that the requirement to pay £400 is a significant burden for a small business such as the Employer. The escalating penalty is an extremely significant amount for a small business. The fact that the penalty is burdensome is inherent in it being a 'penalty'. The amount is prescribed by regulations made under the Pension Act 2008. Its amount reflects both the importance of complying with the employer duty provisions and the seriousness with which a failure to do so will be viewed. The Regulator has no discretion to issue a penalty notice for a lesser amount, nor does the Tribunal have the power to direct substitution of a lesser penalty. The Regulator has offered to discuss financial hardship issues and to consider a proposal for a payment plan from the Employer.
29. I find that issuing the Fixed Penalty and the Escalating Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
30. Even though the Employer has now complied with this duty, this does not, I find, excuse the original failure to comply.
31. I have found above that the notices were received by the Employer. The Employer should have been aware of its obligations in any event. The Regulator sent a welcome pack in September 2023 and letters in September 2024 and December 2024 setting out the Employer's duties and the deadlines. The Employer has not asserted that these letters were not received and they were sent to the correct address. On this basis I find, on the balance of probabilities, that the welcome pack and the reminder letters were received.
32. 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 and the Escalating Penalty Notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the Fixed Penalty Notice and the Escalating Penalty Notice. No directions are necessary.

Signed **SOPHIE BUCKLEY**

Judge of the First-tier Tribunal

Date: 26 March 2025