



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

Appeal Reference: PEN/2024/0387

Neutral Citation Number: [2025] UKFTT 00635 (GRC)

Decided without a hearing on 20 May 2025

Before

JUDGE ANTHONY SNELSON

Between

CLEEN FINISH 2 LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

DECISION

The decision of the Tribunal is that the reference is dismissed and the matter remitted to the Pensions Regulator.

REASONS

1. The Appellant runs a small business in Greenwich, south-east London. By this reference, it challenges a Fixed Penalty Notice ('FPN') issued on 22 October 2024 by The Pensions Regulator ('TPR'), requiring it to pay a penalty of £400 for failing to comply with a Compliance Notice ('CN') issued on 27 August 2024 by the deadline of 7 October 2024.

2. The matter came before me for determination on the papers, both parties having stated that they were content for no hearing to be held. I was satisfied that it was just and in keeping with the overriding objective to adopt that procedure.

The statutory framework

3. The Pensions Act 2008 ('the Act') imposes a number of requirements on employers in relation to the automatic enrolment ('AE') of certain 'job holders' in occupational or workplace personal pension schemes. These include delivering written notification every three years of how the AE duties have been met, known as a 'declaration of compliance'. TPR has statutory responsibility for securing compliance with AE requirements. If it is of the opinion that a declaration of compliance has not been delivered by the due date, it may issue a CN pursuant to section 35 of the Act¹, requiring the employer to deliver a notice of compliance by a specified date.

4. By s40 of the Act, TPR may issue a FPN in the sum of £400² to a person if it is of the opinion that he or she has failed to comply with (among other things) a CN. In the event of any further breach TPR may issue an Escalating Penalty Notice ('EPN') under s41 of the Act, imposing heavier financial sanctions.

5. TPR may review a FPN or EPN on the application of the person affected (s43(1)(a)). The effect is to suspend the relevant Notice pending the outcome of the review (s43(4)). The possible outcomes are confirmation, variation and revocation of the Notice; in the event of revocation, TPR may substitute a different Notice (s 43(6)).

6. By s44 of the Act, provision is made for references to the First-tier Tribunal ('FTT') or (in circumstances which do not apply here) Upper Tribunal ('UT') in (so far as material) the following terms:

- (1) A person to whom a notice is issued under section 40 or 41 may, if one of the conditions in subsection (2) is satisfied, make a reference to the Pensions Regulator Tribunal³ in respect of –**
 - (a) the issue of the notice;**
 - ...
- (2) The conditions are –**
 - (a) that the Regulator has completed a review of the notice under section 43;**
 - (b) that the person to whom the notice was issued has made an application for the review of the notice under section 43(1)(a) and the Regulator has determined not to carry out such a review.**
- (3) On a reference to the Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning when the Tribunal receives notice of the reference and ending –**
 - (a) when the reference is withdrawn or completed, or**
 - (b) if the reference is made out of time, on the Tribunal determining not to allow the reference to proceed.**

¹ Hereafter, section numbers will be given as, say, s1, s35 etc.

² The figure is prescribed by the Employers' Duties (Registration and Compliance) Regulations 2010, reg 12.

³ Now the First-tier Tribunal

- (4) For the purposes of subsection (3), a reference is completed when –
 - (a) the reference has been determined,
 - (b) the Tribunal has remitted the matter to the Regulator, and
 - (c) any directions of the Tribunal for giving effect to its determination have been complied with.

7. In dealing with a reference the powers of the FTT are very wide. The Pensions Act 2004, s103 includes:

- (3) On a reference, the tribunal concerned must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it.

In *In the matter of the Bonas Group Pension Scheme* [2011] UKUT B 33 (TCC) Warren J, sitting in the UT, held that there was nothing in s103 or elsewhere to constrain the tribunal's approach to a reference. Its function is not that of an appellate court considering an appeal.⁴ It must simply make its own decision on the evidence before it (which may differ from that before the Regulator).

The key facts

8. The material facts are not in dispute. Besides those given in para 1 above, they can be summarised shortly as follows (I borrow from TPR's 'Response' document).

- 8.1 The Appellant's 'duties start date' (*ie* the date on which the AE duties first applied to them) was 6 April 2018 and the deadline for completion of its Re-declaration of Compliance was 6 September 2021. It submitted its Re-declaration of Compliance on 9 March 2021 and chose a re-enrolment date of 1 March 2021.
- 8.2 Accordingly, the Appellant's second cycle re-enrolment anniversary date was 1 March 2024 and its deadline for submission of the second cycle Re-declaration of Compliance was 31 July 2024.
- 8.3 Despite two letters and a series of emails between October 2023 and July 2024, by which TPR drew the Appellant's attention to its duty to submit the Re-declaration of Compliance and, latterly, the risk of financial sanctions if the deadline was not met, it failed to make the submission by the due date.⁵
- 8.4 On 9 August 2024 TPR wrote to the Appellant noting that the 31 July 2024 deadline had been missed and giving it a further 14 days to deliver the Re-declaration of Compliance. The letter pointed out that a failure to meet the extended deadline of 23 August 2024 would put the Appellant at risk of a financial penalty.
- 8.5 The Appellant having failed to complete the Re-declaration of Compliance by the extended deadline of 23 August 2024, the CN dated 27 August 2024 (already mentioned) was issued. It was correctly addressed to the Appellant at its registered office address, allowed it until 7 October 2024 to deliver the Re-declaration of Compliance and warned that it would be liable to a fixed penalty of £400 if it failed to meet the (further extended) deadline.

⁴ Although the terminology of 'appeal', 'appellant' etc is used

⁵ TPR acknowledges that the letter of May 2024 may not have been received by the Appellant since it was not addressed to the then Registered Office of the company. But the Appellant does not deny receiving any of the communications relied upon by TPR.

- 8.6 The Appellant did not complete the Re-declaration of Compliance by the due date (as twice extended), 7 October 2024.
- 8.7 The FPN (already mentioned) was issued almost two weeks later, on 19 November 2024.
- 8.8 On 30 October 2024 the Appellant submitted an application for review of the FPN.
- 8.9 On 9 November 2024 TPR refused the review application.
- 8.10 On 16 December 2024 the Appellant submitted its Re-declaration of Compliance.

The appeal

- 9. The notice of appeal dated 11 November 2024, prepared by the Appellant's current payroll agent, essentially covers the same ground as the application for review. It reads (so far as material) as follows:

We would like to appeal on the grounds that, as we mentioned in our original request for review, we did not have the required information to complete the declaration of compliance.

As their payroll agent, we have been given responsibility by our client for completing the declaration of compliance ... Normally, we would be handed over the necessary information, gaining access to the workplace pension account and completing the declaration. However, as the previous agent had passed away we only had limited information, which was the reference number of the NEST account. This did not give us, as their agent, the needed access to the account.

Our client tried to call NEST to explain this to them a number of times and tried to add us over the phone, but to no avail. Finally, the client had to take time out during working hours to come to our office so that I could explain to NEST what was happening and how we could remedy the situation. Even though I have experience of over 5 years of dealing with TPR and NEST, the telephone conversation lasted a long time as this was a niche situation. Finally they ... told us that they needed to email us delegate access registration forms to be filled out. We have only just received access to one of the companies (not the company which this penalty relates to) and are awaiting NEST to give access to the other.

The Pensions Regulator should not expect laypersons such as my client to know, when I as a person of experience did not know, that we could or should have told them and for them to 'maybe request an extension'. The point of the matter is, we still do not have the required information to complete the declaration there we are expecting very soon from NEST.

Most of the delay has been out of our control and out of the control of our client. These are surely mitigating circumstances which deserve the penalty to be waived.

Discussion and conclusions

- 10. I start by reminding myself of the terms of the applicable legislation (summarised above) and in particular (a) the salutary purposes which the AE regime is designed to achieve, including ensuring that qualifying workers have the chance through occupational pensions to enjoy dignity and comfort in retirement; (b) the need for the mandatory requirements of the scheme to be backed up by an effective and robust enforcement mechanism; and (c) the need for other employers to understand that those requirements will be enforced. In my view, the correct approach is to look

to the Appellant to show a good reason why TPR should not have followed its usual practice of meeting a breach of a CN with a FPN.

11. The first thing to say is that this is not a case of an employer simply overlooking or disregarding its AE obligations. I accept that the Appellant found itself in a difficulty as a consequence of the death of its payroll agent and the fact that the agent appointed in his or her stead did not have access to the relevant NEST account. I further accept that these circumstances resulted in the new agent being without the information needed to complete the Re-declaration of Compliance until after 11 November 2024. I approach the case on the basis that the Appellant is entitled to a degree of sympathy.

12. All this said, it is for the Appellant to make out its appeal. Without oral evidence, the challenge to the FPN is threadbare. I am not told:

- when the former agent died or ceased to act for the Appellant;
- when the new agent was appointed;
- when the difficulties in obtaining access to the relevant NEST account were first apparent;
- precisely what efforts were made to resolve those difficulties, when and by whom;
- more specifically, what the Appellant would say in answer to the Response of TPR, paras 30-33, which seems to suggest that (a) it woke up to the delegate access problem at a very late stage (around September 2024) and (b) that problem was, or may have been, wholly or in part, one of its own making;
- why (despite the repeated reminders) there was no timely approach to TPR to explain the Appellant's problem in meeting the deadline;
- given the reference in the notice of appeal to 'most' of the delay being outside the Appellant's control, for what period of delay it accepts responsibility, and why.

13. Without answers to these questions, I am quite unable to say that the Appellant has made out a reasonable excuse for its non-compliance. The legislation places the burden firmly upon the employer to comply. Of course, any employer is entitled to use professional agents for any lawful purpose, but that does not absolve it of the obligation to fulfil the duties which the law places upon it. On the information available to me, I am not persuaded that the Appellant took reasonable and timely steps to comply with its AE obligations. It failed to do so despite numerous reminders and warnings. It did not alert TPR to the delegate access difficulty until much too late. The fact that it eventually complied does not amount to an arguable ground for quashing the FPN.

14. I also accept that for many small businesses a penalty of £400 may be exceedingly painful but Parliament has chosen to enact a fixed system and the Tribunal has no power to vary the level of penalty.

Outcome

15. For the reasons stated, I am clear that the Appellant has not demonstrated a good excuse for its failure to meet the requirements of the CN and accordingly I must dismiss the reference and remit the matter to the Regulator. No further direction is required.

(Signed) Anthony Snelson

Judge of the First-tier Tribunal

Date: 4 June 2025