



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

**Case Reference: FT/PEN/2024/0091
Neutral Citation Number: [2025] UKFTT 00681 (GRC)**

**Heard: Remote CVP Hearing
Heard on: 13 December 2024
Decision given on: 9 June 2025**

Between

SPRAT LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

**Before:
JUDGE FINDLAY
Sitting in Chambers**

Representation:

Appellant: Mr Daniel Gable

**Respondent: Mr Abdelmageed Gharib
Mr Richard Gillingham observer**

Decision:

The reference is dismissed and the matter is remitted to The Pensions Regulator (“the Regulator”). The Final Penalty Notice (“FPN”) is confirmed without directions.

REASONS

1. I have conducted a hearing by CVP and considered a bundle of 189 pages. I have heard a submission from Mr Gharib, on behalf of The Pensions Regulator (“the Regulator”),

and from Mr Gable on behalf of the Appellant. I find that Mr Gable is the proper person to represent and make submission on behalf of the Appellant as he is the sole Director.

2. The FPN was issued on 18 January 2024 under s.40 of the Pensions Act 2008 (“the Act”). It required the Employer to pay a penalty of £400 for failing to comply by 3 January 2024 with one or more of the requirements of the Unpaid Contributions Notice (“UCN”) issued under sections 37 and 38 of the Act.
3. An Escalating Penalty Notice was issued but revoked on review.
4. Under s.44 of the Act a person who has been issued with a FPN may make a reference to the tribunal provided an application for a 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 taking into account the evidence before it.
5. I find that the tribunal has jurisdiction to determine this appeal and a review of the FPN has taken place taking into account the wording of the Regulator’s letter of 28 February 2024 (pages 144 and 145) and the inclusion to the reference relevant to the FPN. The review decision letter states: “We write to notify you that we have conducted a review of the above notice and to advise you of the decision of the review.” The references of the Notice numbers are recorded as 249693534946 and 116589990625. The latter reference number is the Notice number for the FPN (page1).
6. The application to strike out the appeal is refused.
7. I find that the Appellant is the employer for the purposes of the Employer Duties under the Act.
8. Mr Gable submits that the correspondence went to the wrong address so he had no warning about any issues with the pension payments. He submits that the Appellant could not be expected to pay any outstanding pension when the exact payments were not known due to the complexity that the mis-sold pension for himself had caused. The only reason the payments were not made relating to an employee was because Mr Gable cancelled the direct debit because payments were being taken for the mis-sold pension and he was unable to reinstate the direct debit as he could not access the portal.
9. Mr Gable seeks to have the notice overturned. He submits that the payroll organisation went out of business so he no longer had access to make changes to the plan. He was unable to change the details and make payments. He called multiple times and although he could prove he was the owner of the appellant company he was unable to get access to the account. He submits that the Appellant is a small company and he is the only full time employee. He was not able to remove people from the pension plan or unenroll people so the Appellant was being charged for people who no longer worked for the company. He did everything he could to solve the problem but kept hitting a brick wall. He feels he has already suffered with the hours this has taken and feels the FPN is unfair

because he was trying to do the right thing. The FPN has had a big impact on a small company.

10. The outstanding pension contributions have now been paid in full and a new direct debit set up.
11. I find that the Regulator used the correct address when writing to the Appellant on the basis that the address was the registered office address for the company (page 179) and the address used by the Peoples's Partnership (page 167). Mr Gable submitted that receipt of the UCN was delayed because it was not sent to the trading address. I find it reasonable to expect Mr Gable to put in place proper mail handling systems. Any delay in Mr Gable receiving correspondence from the Regulator is not a relevant factor in these circumstances.
12. The Regulator submits that the reason for the imposition of the FPN was that from 6 August 2023 onwards there was one employee (not Mr Gable) enrolled in the scheme for whom contributions were not paid and no evidence of compliance with the UCN was provided by the deadline. The FPN is in respect of the non-compliance. The Regulator accepts that there are no unpaid contributions for Mr Gable and the Regulator does not seek to uphold the FPN because of any unpaid contributions for Mr Gable.
13. I find that the Regulator issued the UCN dated 20 November 2023 informing the Appellant to take 3 steps.
14. Step 1 required the Appellant to calculate the unpaid contributions. Step 2 required the Appellant to contact the pension scheme provider and pay the contributions. Step 3 required the Appellant to provide evidence of compliance. The UCN required compliance with steps 1-3 by 3 January 2024. The UCN provided a link to apply for an online review and a telephone number and email address.
15. The UCN refers to outstanding contributions between 22 May 2023 and 22 October 2023. The outstanding contributions were relevant only for the period from 6 August 2023 when the employee joined the scheme. I find that Mr Gable made efforts to make a payment of the unpaid contributions but this was difficult as he was unable to establish what those unpaid contributions were. I find Mr Gable cancelled the direct debit payments as he thought this was the only way to stop the contributions for his own pension which he believed had been set up in error. Mr Gable never enrolled for a pension and was wrongly automatically enrolled after a year. The unpaid contributions referred to in the UCN included contributions for a pension for him which was incorrect. However, this does not assist Mr Gable for the reasons set out below.

16. I find that the Appellant's payroll company went out of business and Mr Gable was unable to access the Appellant's pension details because he did not have the relevant passwords.
17. I find that the Appellant had a reasonable excuse for failing to comply with steps 1 and 2. However, I find that the Appellant did not have a reasonable excuse for failing to comply with step 3.
18. Even if the Appellant did not intentionally breach the duty as an employer the lack of intent does not amount to a reasonable excuse. Even if Mr Gable made an honest mistake in cancelling the direct debit this does not amount to a reasonable excuse.
19. I find that it is the duty of the Appellant and Mr Gable as the sole Director to ensure that the employer's duties are complied with and appropriate steps taken to ensure compliance. I find there was a duty on Mr Gable, on behalf of the Appellant, to take action to comply with the UCN and resolve the issue with the Regulator before the deadline.
20. I find that the Appellant failed to comply with its duty despite having the Regulator's email and telephone number. Mr Gable did not telephone the Regulator until 20 February 2024.
21. I find that Mr Gable failed to make contact with Regulator before 3 January 2024 to explain that he was having difficulties in complying. I find that in failing to do this the Appellant did not act reasonably.
22. I find that the Appellant failed to comply with step 3 of the requirements in the UCN by 3 January 2024 and there were grounds for the Regulator to issue the FPN.
23. Mr Gable submitted that the FPN was a heavy burden on the Appellant which is a small company. Although it is recognised that the burden on small employers is more onerous, the Act and relevant legislation places a duty on all employers of eligible jobholders to comply with the employer's duties. The size of the workforce does not absolve the Appellant from the statutory duty to comply with the employer's duties.
24. Mr Gable submitted that the imposition of the FPN would have a significant impact on the Appellant. The amount of the fixed penalty is prescribed by the secondary legislation and I have no discretion as to its amount. The level of the fixed penalty reflects the importance of an employer's adherence to the employer's duties and the seriousness of a failure of those duties.
25. Accordingly, the appeal is dismissed.

Signed: *J Findlay*

Date: 9 June 2025

Tribunal Judge J Findlay

