



Neutral citation number: [2025] UKFTT 00552 (GRC)

Case Reference: FT/PEN/2024/0331

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

**Decided without a hearing
Decision given on: 20 May 2025**

Before

JUDGE WATTON

Between

PRIVATE PHYSIO CARE LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The appeal is dismissed, and the reference is remitted to the Regulator without directions. The penalty notice is confirmed.

REASONS

1. This is a reference to the Tribunal by the Appellant in respect of a £400 Fixed Penalty Notice ("FPN") 176179253982, issued by the Respondent on 4 September 2024.
2. The parties agreed that the reference could be determined without a hearing and as required by Rule 32 I was satisfied I could properly determine the issues without a hearing.

Factual background

3. The Appellant is an employer with specified duties concerning enrolment in pension schemes. The Appellant was required to re-declare its compliance with those duties

to the Respondent by 7 September 2020 under the relevant statutory framework. It did not do so.

4. The Respondent sent a reminder letter to the Appellant on 21 June 2024 explaining that the Appellant needed to make its declaration of compliance, and gave it 14 days to do so. The Respondent issued a Compliance Notice ('CN') to the Appellant on 8 July 2024, giving the Appellant until 19 August 2024 to make its declaration of compliance.
5. On 29 July 2024 there was a telephone call between the parties. The Respondent's note of the call is in the bundle and says "Advised of the duties the employer would need to complete. Advised once duties are submitted, employer would then be able to submit the DOC (and RE-DOC)." I understand 'DOC' and 'RE-DOC' to mean declaration of compliance and redeclaration of compliance respectively. The Appellant says its director, Rajesh Gilla, did not understand all the steps to be taken and registered with the NEST pension scheme, rather than completing the declaration of compliance.
6. As the Appellant had not complied with the CN, the Respondent issued a FPN to the Appellant on 4 September 2024.
7. The Appellant completed its declaration of compliance on 9 September 2024. On 13 September the Appellant requested a review of the FPN, saying that it misunderstood what it needed to do to complete the enrolment process. The Respondent upheld the decision on 14 September 2024.

Legal framework

Duties of the employer

8. The Pensions Act 2008 ("the 2008 Act") requires employers to enrol "job holders" in occupational or workplace pension schemes.
9. Employers have additional duties under the 2008 Act. Under section 11, an employer subject to automatic enrolment duties must give prescribed information to the Regulator.
10. This information is set out in Regulation 3 of the Employers' Duties (Registration and Compliance) Regulations 2010 ("the 2010 Regulations") and includes the employer's details, information about its workers and information about the occupational or personal pension scheme it uses for automatic enrolment purposes.
11. The declaration of compliance must be provided within five months of the staging date or duty start date (Regulation 3(1)). The employer must file a re-declaration of compliance within five months after the third anniversary of the staging date. The employer then must file further re-declarations within five months after the third anniversary of the previous automatic re-enrolment date (Regulation 4(1)).

Powers of the Regulator

12. The Pensions Regulator must ensure employers' compliance with the 2008 Act, so the legislation gives it specified powers to do so, including:
 - a. Section 35: the Regulator may issue a compliance notice if an employer has contravened one or more of the employer duties. A compliance note requires an employer to take action, usually by a specified date.
 - b. Section 40: the Regulator may issue a fixed penalty notice for failure to comply with various provisions of the 2008 Act, including sections 35 and 37. This requires the employer to pay a penalty within a specified period. The penalty is £400 and is set by the 2010 Regulations.

Presumption of service

13. Section 303(6)(a) of the Pensions Act 2004 ("the 2004 Act") and regulation 15(4) of the 2010 Regulations create a presumption that notices are received by the employer when addressed to them and sent to their registered office or principal office address. However, that presumption is capable of being rebutted on the basis of contrary evidence: *Philip Freeman Mobile Welders Ltd v Pensions Regulator* [2022] UKUT 62 AAC.

The role of the Tribunal

14. Section 44 of the 2008 Act allows a person to make a reference to the Tribunal in respect of the issue of a penalty notice or the amount of the penalty payable under the notice. Section 103(3) of the 2004 Act allows the Tribunal to consider any relevant evidence, even where it was not available to the Regulator. Section 103(4) provides that on a reference the Tribunal must determine what (if any) is the appropriate action for the Regulator to take. The role of the Tribunal is to make its own decision on the appropriate action to take, having regard to all the circumstances before it.
15. Section 43 of the 2008 Act provides such a reference is only permitted where the Regulator has reviewed the notice or if an application for a review has been made and the Regulator has determined not to carry out a review.

The parties' submissions

The Appellant

16. The Appellant says that upon receiving the FPN on 14 September 2024 its Director promptly contacted the Respondent and spoke to an advisor. The Director did not understand how to register for auto-enrolment and instead registered with the NEST pension scheme. The Appellant goes on to state it contacted the Respondent again after receiving the penalty charge notice and this time an advisor helped the director to complete the auto-enrolment. The Appellant says the matter was a genuine misunderstanding and it has taken swift corrective action.

The Respondent

17. The Respondent says that the Tribunal should presume that the CN was validly served. The Respondent says the Appellant ought to have been aware of its obligations, and that the Respondent reminded the Appellant of these in any event. The Respondent disputes that the advice from its advisors was unclear, and says the written communications it issued were clear about the need to complete the declaration of compliance. In addition, on the call of 29 July 2024 the advisor from the Respondent told the Appellant's director he needed to register with NEST.
18. The Respondent disputes that the corrective action was swift, and says even if it was then that does not amount to an excuse, and if it did employers might adopt a casual approach to deadlines.

Findings

Was the Compliance Notice correctly served on the Appellant?

19. There is a legal presumption that the CN was served on the Appellant, though it can be rebutted. The CN was addressed to the Appellant at 31 Balaams Wood Drive, Northfield, Birmingham B31 5HF. This is the company's registered address on Companies House and the address given on the appeal form. The Appellant does not say that the notices were not received. The Appellant has not rebutted the presumption in favour of receipt and so I find that the CN was correctly served on the Appellant.

Does the Appellant have a reasonable excuse for failing to comply with the compliance notice?

20. The Respondent provided a contemporaneous note of the telephone call of 29 July 2024. It says "Advised once duties are submitted, employer would then be able to submit the DOC [declaration of compliance] (and RE-DOC)". In contrast, what the Appellant says about the call is equivocal ("*which may be due to the way the advisor explained*"). The Appellant has also not disputed the accuracy of the call record. I am satisfied that the advice given on the call was clear. I agree with the Respondent's

submission that the reason the Appellant was not given the option of filling the declaration of compliance at that time was because it was not yet compliant. It needed to register with the NEST scheme first.

21. In any event, if the advice given in the phone call of 29 July was unclear, the written communications are clear. The letter of 21 June 2024 sets out the need to provide the declaration of compliance and provides a link to the online form. The CN itself sets out what the declaration of compliance is, when it needed to be completed by, and again provided a link to the service. It also warned of the potential for penalties.
22. Looking at these events in the round, I am not satisfied the Appellant has a reasonable excuse for non-compliance. It ought to have been aware of its duties as an employer even before the 21 June 2024 letter. The duties were clearly expressed in writing in the letter of 21 June 2024 and the CN of 8 July 2024, before the phone call of 29 June 2024. Late compliance is not a reasonable excuse.

Conclusion

23. The reference is dismissed. I remit the matter to the Regulator without directions and confirm the Penalty Notice.

Signed Judge Watton

Date: 18 May 2025