



Neutral citation number: [2025] UKFTT 00277 (GRC)

Case Reference: FT/PEN/2024/0183

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

**Heard by Cloud Video Platform
Heard on: 10 February 2025
Decision given on: 6 March 2025**

Before

JUDGE MATON

Between

TCD HOSPITALITY LTD

and

THE PENSIONS REGULATOR

Appellant

Respondent

Representation:

For the Appellant: Jon-Paul Lawrence, Accountant.

For the Respondent: Caleb Wood-Jones, Paralegal.

Decision: The appeal is Dismissed.

REASONS

1. This is a reference application in relation to the Regulator's Fixed Penalty Notice number 120967795424 dated 8 April 2024 (the "FPN"). For convenience the reference application is referred to as "the Appeal".
2. The Tribunal received and considered a bundle of documents, and the parties attended an oral hearing by Cloud Video Platform.
3. The Tribunal is satisfied that this was a fair and just way to decide the Appeal.

Relevant law

4. Under the Pensions Act 2008 (the “2008 Act”), employers are required to enrol “job holders” in occupational or workplace personal pension schemes. The Regulator ensures compliance with these requirements.
5. Under s11 of the 2008 Act, an employer who is subject to automatic enrolment duties must give prescribed information to the Regulator, known as a declaration of compliance. This information, and the time periods in which it must be provided, are prescribed by the Employers' Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”). This includes re-declarations of compliance at intervals of approximately three years.
6. Under s35 of the 2008 Act the Regulator can issue a compliance notice if an employer has contravened one of more of its employer duties. A compliance notice requires the employer to take certain steps in order to comply with these duties. It will usually specify a date by which this must be done.
7. The Regulator can issue a fixed penalty notice if an employer has failed to comply with a compliance notice (s40 of the 2008 Act). This requires the employer to pay a penalty within a specified period. The amount of a fixed penalty is £400 (as set by regulation 12 of the 2010 Regulations).
8. The Regulator sends notices by post to an employer’s “proper address” (s303(3)(c) of the Pensions Act 2004 (the “2004 Act”). The registered office or principal office address is the proper address on which to serve notices on a body corporate, as set out in s303(6)(a) of the 2004 Act (applied by s144A of the 2008 Act). Under regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. This includes compliance and fixed penalty notices issued under the Act.
9. Section 7 of the Interpretation Act 1978 states that:

Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

10. An employer can make a reference to the Tribunal in respect of the issue of a notice and/or the amount of the penalty payable under the notice (s44 of the 2008 Act). This is only permitted if the Regulator has reviewed the notice or if an application for a review has been made to the Regulator under s43 of the 2008 Act. Under s103(3) of the 2004 Act, the Tribunal must then “determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it.” The Tribunal must make its own decision on the evidence presented to it (which may be different from the evidence presented to the Regulator). In considering a penalty notice, it is

proper to take “reasonable excuse” for compliance failures into account (*Pensions Regulator v Strathmore Medical Practice* [2018] UKUT 104 (AAC)). On determining the reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as it considers appropriate.

The Appeal

11. The Appellant, and the employer for the purposes of this Appeal, is a company. There is no dispute that the Appellant is an employer with duties to enrol employees in a relevant pension scheme.

12. The Regulator states that:

- a. the Appellant was required to submit a declaration of compliance by 30 January 2024, and did not do so;
- b. on 8 February 2024 the Regulator issued a Compliance Notice to the Appellant in relation to the submission of a declaration of compliance, giving an extended deadline of 20 March 2024;
- c. on 8 April 2024, having received no response to the Compliance Notice, the Regulator issued the FPN to the Appellant, requiring payment of a penalty of £400 and compliance with the Compliance Notice by 7 May 2024;
- d. on 11 April 2024 the Appellant submitted its declaration of compliance;
- e. on the same date the Appellant submitted a review request to the Regulator in relation to the FPN;
- f. on 18 April 2024 the Regulator issued its review decision, upholding the FPN.

13. The Appellant appealed to the Tribunal.

14. In its application for this Appeal the Appellant disputes that the Compliance Notice was issued to it. The Appellant states that:

- a. it had received no correspondence from the Regulator before the FPN;
- b. it acted promptly to complete the declaration of compliance on receipt of the FPN;
- c. the Regulator has provided only limited evidence of the Compliance Notice having been sent and no evidence of it having been received by the Appellant;
- d. the declaration took only a few minutes to complete and did not require any payment so the Appellant would have had no motivation not to have completed it.

15. In addition to the points made in its application the Appellant submitted that the Regulator could have used some form of recorded delivery rather than ordinary post.

16. The Regulator submits that:

- a. as a responsible employer it is incumbent on the Appellant to be aware of its legal duties and ensure full compliance with them, and the auto-enrolment duties are not new and ought to be known by employers;
- b. it does not use recorded delivery methods as this would facilitate evasion by allowing intended recipients to avoid or refuse to accept delivery;
- c. a failure to appreciate or act properly in response to a notice should not constitute a reasonable excuse for non-compliance;
- d. the declaration of compliance in respect of which the Compliance Notice was issued was the Appellant's third triennial declaration, and employers are reminded of their duties at each re-declaration; the Appellant therefore had prior knowledge and experience of the requirement;
- e. the Appellant should have been aware of the letter code used in the correspondence as this would have been included in the previous declaration of compliance.

Factual background and evidence

17. The Appellant is a company, incorporated on 6 June 2014. Since 28 May 2021 its registered office address has been The Royal Oak, Whatcote, Shipston-on-stour CV36 5EF. The Compliance Notice and the FPN were addressed to the Appellant at this address.

18. Mr Lawrence said that there is an operational office at this address which handles all of the Appellant's business post. He said that the Appellant does not receive a large volume of post and he did not envisage that post being lost in the office was likely.

Discussion

19. To determine this Appeal, it is necessary to decide the following issues:

- a. were the notices properly issued by the Regulator; and
- b. if so, does the Appellant have a reasonable excuse for non-compliance with those notices?

Were the notices properly issued?

20. As noted above, where a company is an employer, its proper address for the service of notices under auto-enrolment legislation is its principal or registered office.

21. The Compliance Notice and the FPN were addressed to the Appellant at its registered office address. The Regulator submits that these notices were sent by post, and the Appellant has not presented evidence to challenge this. The hearing bundle included copies of the notices, and the Appellant has acknowledged that the FPN was received.
22. I find that the Regulator has established in its evidence that it can raise the statutory presumptions of service and receipt in relation to the Compliance Notice and the FPN.
23. Has the Appellant's evidence rebutted those presumptions?
24. In *London Borough of Southwark v (1) Runa Akhter and (2) Stel LLC* [2017] UKUT 0150 (LC) the Upper Tribunal held that "bare denial" was as a matter of law insufficient to overturn the presumption of service in s7 Interpretation Act 1978.
25. The Appellant has put forward no evidence beyond denials. Mr Wood-Jones noted that the Appellant had had several chances to provide such evidence before and during the Appeal. Mr Lawrence queried what evidence could have been provided, as this would require the Appellant to evidence that something did not happen. Mr Wood-Jones suggested that, hypothetically, a witness statement regarding the Appellant's handling of post could have been provided, and that, again hypothetically, had there been problems with the Appellant's local postal deliveries, witness evidence of this could have been included.
26. Although there may be evidential challenges for employers in these circumstances, it remains the case that the Appellant has here provided no evidence to rebut the presumption of service beyond denials. I find that the Appellant has not overturned the presumption of service and therefore that the Compliance Notice and the FPN were properly served by the Regulator.

Does the Appellant have a reasonable excuse for non-compliance?

27. The Appellant provided little in support of a reasonable excuse for non-compliance. The Regulator made submissions to the effect that the Appellant ought to have been aware of its duties and complied with them.
28. Regarding the lack of any incentive not to complete the declaration of compliance, this does not add to the Appellant's case, and is not material to the issues which I have needed to decide. Absence of intention does not provide a reasonable excuse.
29. Regarding the inclusion in each acknowledgement of a declaration of compliance that a further declaration will be needed in around three years, Mr Lawrence said that the Appellant could have diarised a reminder to complete this if a specific date had been provided, but did not do so as the date was vague and the Appellant waited for the Regulator to contact it. Mr Wood-Jones said that no specific date is given in these acknowledgements as employers have a window of time in which to submit. I

also note here Mr Wood-Jones's submission that the Appellant, as a responsible employer, ought to be aware of its obligations.

30. Regarding the use of a letter code in the notices which would have been the same as that used in a previous declaration of compliance, I did not find that this helped to decide the Appeal one way or the other. The acknowledgment of the Appellant's previous declaration of compliance in 2020 did not include a letter code, and the declaration to which it related was not provided in evidence. In any event it is not clear that this would have assisted the Regulator, unless the relevance of the letter code in 2020 to future correspondence would have been clear to the Appellant.
31. I do not find that the above matters establish a reasonable excuse for non-compliance by the Appellant.

Conclusion

32. Having considered the parties' submissions and the matters set out above, the Tribunal dismisses the Appeal, and does not require the Regulator to take any action.

Signed

Tribunal Judge Maton

Date:

28 February 2025