



NCN: [2025] UKFTT 00357 (GRC)

Case reference: FT/PEN/2024/0361

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

**Decided without a hearing
Heard on: 25 March 2025
Decision given on: 26 March 2025**

Before

JUDGE SOPHIE BUCKLEY

Between

SCODEF LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision

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

REASONS

Background

1. Scodef Ltd (the Employer) challenges a fixed penalty notice (the Fixed Penalty Notice) issued by the Pensions Regulator (the Regulator) on 3 July 2024 (Notice

number 174678479588) and an escalating penalty notice (the Escalating Penalty Notice) issued by the Regulator on 2 August 2024 (Notice number 275833223900).

2. 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 8 May 2024.
3. 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 29 August 2024. If the Employer failed to comply a penalty would accrue at a daily rate of £500 from 30 August 2024.
4. The Regulator completed a review of the decision to impose the Escalating Penalty Notice on 24 September 2024 and confirmed the notice. The Employer referred the matter to the Tribunal on 29 October 2024. The Regulator conducted a further review of both notices and informed the Employer on 13 January 2025 that both notices were confirmed.

The Law

5. 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.
6. 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'. An employer is required to make a re-declaration of compliance every three years. 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.
7. Under s.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.

8. 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

9. I read and took account of a bundle of documents and heard evidence from Mrs Opara on behalf of the Employer.
10. Although I was unable to open the final version of the bundle of documents in the hearing, I had access to the draft version of the bundle in the hearing and the final bundle after the hearing.

The facts

11. The Employer's staging date was 1 October 2017. The Declaration of Compliance was completed on 22 October 2017. The first re-declaration of compliance was completed late on 12 April 2021.
12. The contact details provided to the Regulator included the registered office address and, in the 2021 re-declaration of compliance, Mrs Opara's personal email address. The registered office address has not changed and is Mrs Opara's home address. Although Mrs Opara said that she no longer uses her personal email address for the Employer's business the Regulator was not informed of this. She still has access to this email address, because that was how she says she ultimately became aware that the Employer had been given a penalty.
13. The second re-declaration of compliance was due on 26 April 2024.
14. The Regulator sent a reminder letter to the registered office address in August 2023. This letter stated gave the re-declaration deadline and reminded the Employer of its duties. A further letter was sent to the registered office address in January 2024. Emails were sent to Mrs Opara's personal email address on 30 June 2023, 29 September 2023, 17 November 2023, 29 December 2023, 26 January 2023, 1 March 2024, 5 April 2024 and 12 April 2024.
15. The Employer did not complete the re-declaration of compliance by 26 April 2024 so the Regulator issued a Compliance Notice on 8 May 2024 with a deadline of 18 June 2024. As this was not complied with, the Fixed Penalty Notice was issued on 3 July 2024 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 31 July 2024. As the Employer did not comply, the Escalating Penalty Notice was issued on 29 August 2024.

16. Mrs Opara accepts that she received an email to her personal email address on 17 September 2024 informing the Employer of an outstanding penalty of £4,400, at which point she contacted the Regulator.
17. On 23 September 2024 the Employer requested a review of both penalty notices. The Regulator conducted a review of the Escalating Penalty Notice and confirmed it. It is not entirely clear from the outcome letter, but it appears that the Regulator did not conduct a review of the Fixed Penalty Notice because the request was out of time. The re-declaration of compliance was completed on 26 September 2024.
18. The Regulator later conducted a review of both notices of its own initiative and the penalties were confirmed on 13 January 2025.

Submissions

19. The Notice of Appeal relies on the following grounds:
 - (i) The Employer did not receive the notices.
 - (ii) The Employer is a SME organisation and does not have the money to pay the penalty.
20. In her oral submissions Mrs Opara said that she had not received the notices or any of the reminder letters and that she would have complied if she had. She has no explanation for why none of the reminder letters or notices had arrived. She did not use her personal email address for the Employer's business anymore, so she had not seen any of the reminders, although she did read the email sent to that address notifying the Employer of an outstanding penalty of £4,400.
21. The Regulator submits that the notices were sent to Employer's registered office address and there is no basis for displacing the statutory presumption of service of the Compliance Notice, Fixed Penalty Notice or Escalating Penalty Notice.
22. The Regulator sent eight reminder emails and a letter to the Employer between before the re-declaration of compliance was due. The Regulator submits that there is no reasonable excuse for non-compliance.
23. The Regulator submits that the financial situation of the Employer does not amount to a reasonable excuse and that the amount of the penalties is fixed by legislation.

Conclusions

24. All letters and notices were sent to the Employer's current registered address which is Mrs Opara's home address. Mrs Opara candidly stated that she could not provide any explanation of why none of the letters or notices were not received. She was asked by Ms Cranfield if there were other difficulties receiving

post, but she said there were none. It seems unlikely that two reminder letters, plus all the notices would not have reached the intended 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 re-declaration of compliance within a specified timeframe is a mandatory requirement. Even though the Employer had now complied with this duty a short time after the deadline had expired, this does not excuse a failure to comply.
27. The requirement to pay £400 is a significant burden for a small business such as the Employer. The escalating penalty of £4,000 is an extremely significant amount.
28. 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. I conclude that the Employer did not have a reasonable excuse for failing to comply.
31. The Employer should have been aware of its obligations in any event. The declaration of compliance and the first re-declaration of compliance had been completed, and the Employer ought to have known when the second re-declaration was due.
32. The Regulator is not obliged to send reminders. It does however send reminders and a large number of those were sent to the Employer. The Regulator sent the Employer a number of emails and letters setting out the deadlines and the consequences of the failure to comply. It seems unlikely that both reminder letters failed to arrive. Although Mrs Opara says that she does not use her

personal email address for the Employer's business, it was not reasonable not to check that email account regularly because she had provided that email address to the Regulator as the Employer's contact email address.

33. 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

Date:

25 March 2025