



[2022] UKFTT 00221 (GRC)

Appeal number: PEN/2022/0027

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(PENSIONS REGULATION)**

DECORUS FURNITURE GROUP LTD

Appellant

- and -

THE PENSIONS REGULATOR

Respondent

**TRIBUNAL: HER HONOUR JUDGE ANGELA MORRIS,
THE RECORDER OF WINCHESTER**

Sitting in Chambers on 15th May 2022

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DECISION

1. The reference is dismissed, and the matter is remitted to the Regulator. The Penalty Notice is confirmed.

REASONS

Background

2. By this reference Decorous Furniture Group Ltd (“the Employer”) challenges a fixed penalty notice issued by the Regulator on 30th December 2021 (Notice number 14379722469).

3. The Penalty Notice was issued under s. 40(1) 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 13th October 2021 which required the Employer by the deadline of 23rd December 2021 to provide to the Regulator a re-declaration of compliance regarding their employee’s enrolment into a pension scheme in accordance with Regulation 4(1) of the Employers’ Duties (Registration and Compliance) Regulations 2010 (the 2010 Regulations).

4. The Regulator was requested to review the Compliance Notice on 23rd November 2021. The Respondent completed such review of the decision to impose the Compliance Notice and informed the Employer on 26th November 2021 that they would grant a further extension of 30 days grace to 23rd December 2021 for the Employer to make the re-declaration of compliance.

5. No response was received by 23rd December and the Respondent issued a Fixed Penalty Notice (FPN) on 30th December 2021. The Employer completed the re-declaration of compliance on 4th January 2022 and 3 days later, on 7th January 2022, the Respondent was asked to review the decision to issue the FPN. The Respondent reviewed the matter and informed the Employer on 13th January 2022 that the decision was confirmed. The Employer referred the matter to the Tribunal on 20th January 2022.

6. The parties and the Tribunal agreed that this matter was suitable for determination on the papers in accordance with rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended. The Tribunal considered all the evidence and submissions made by both parties.

The Law

7. 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.

8. Each employer is assigned a “staging date” from which the timetable for performance of their obligations is set. The Employers’ 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”. The Employer must provide re-enrolment information within five months beginning with the third anniversary of the employers staging date (in this case the re-declaration of compliance date was 6th September 2021).

9. Where the Employer fails to make a re-declaration of compliance by the deadline in accordance with the 2010 Regulations, 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.

10. Under s. 44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice may make a reference to the Tribunal provided an application for 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 to take, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a Fixed 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.

The Facts

11. The Employer’s staging date was 6th April 2018 so that deadline for the Re-Declaration of Compliance was due on 6th September 2021. As this was not complied with, the Regulator issued a Notice of Compliance dated 13th October 2021, which required the Re-Declaration of Compliance to be filed by 23rd November 2021. On 23rd November 2021 the Regulator was asked to review the Compliance Notice and replied on 26th November 2021 granting an extension of 30 days to 23rd December 2021 to provide the requisite information. As this was not done, the Regulator issued a Fixed Penalty Notice on 30th December 2021. The Re-Declaration of Compliance has now been filed.

12. In an email to the Regulator dated 23rd November 2021, the Employer explained that they had experienced considerable difficulties in complying because of the failure of the ex-business partner to ensure the employees had been enrolled and the payroll services agent had also failed to register the company with the requisite pension scheme. It was as a result of this email the Employer was granted an extension to the deadline for Re-Declaration of Compliance until 23rd December 2021.

Submissions

13. In the Notice of Appeal dated 20th January 2022, the Appellant submits that this is a particularly difficult process to follow but one he and his bookkeeper/accountant took very seriously. The Appellant thought they had carried out the instructions correctly but only realised their error on returning to work after the Christmas break. The Appellant immediately called the Regulator and was guided through the process

which allowed them to make the re-declaration of compliance the same day. The Appellant submits that the Regulators actions were over-zealous in respect of this error.

14. The Regulator responds that the Regulations have been in force since 2021 and there is a plethora of information available to assist an employer ensure compliance. In this case it included letters sent to the Appellant on a number of previous occasions. Furthermore, the Respondent submits that the Appellant is not new to the scheme, having previously declared compliance and, therefore, well equipped to understand the Regulations and the need to ensure deadlines are met.

15. The Respondent submits there is no record of the Appellant attempting to complete the re-declaration before 4th January 2022 which the Appellant knew he was duty bound to do. The Appellant was reminded of his re-declaration duties on three occasions during the period from September to December 2021, contacted by the Respondent in November 2021 as the deadline approached and then also given an extension of time in which to meet these obligations. Despite all of the assistance given to the Appellant by the Respondent, they failed to communicate any further with until the service of the FPN. In the circumstances, therefore, the Respondent submits the Appellant's actions do not amount to a reasonable excuse and the FPN should be confirmed.

Conclusion

16. I conclude that no reasonable excuse has been given for non-compliance in this case. I am satisfied that the Appellant was aware of his duty to comply with his legal obligations and that he was not only repeatedly reminded of them by the Regulator but granted an extension of time in which to ensure compliance was completed. It is the Appellant's obligation to ensure compliance. It is noted that after the service of the FPN the Appellant was able to effect compliance within hours on the same day. This is inconsistent with the assertion that the Appellant was struggling to understand the system in order to comply.

17. Even if the failure was an inadvertent and a genuine error on the part of the Appellant, given this previous asserted lack of understanding, it would not have been unreasonable to expect the Appellant to have made contact with the Respondent to ensure that the re-declaration was properly completed by the extended deadline date. Any reasonable employer would have made arrangements for compliance to have been checked and not just worked on the basis of assumption alone. In the circumstances, the submission that the Respondent was "over-zealous" in issuing the FPN is not borne out by the facts; the Respondent extended the deadline and it was the Appellant's obligation to ensure compliance thereafter.

18. In all the circumstances, I determine that the Fixed Penalty Notice was the appropriate action for the Regulator to take in this case. I remit the matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

HHJ Angela Morris
The Recorder of Winchester

Date: 15th May 2022

Date promulgated: 30th May 2022