



[2022] UKFTT 00293 (GRC)

Case Reference: PEN/2022/0052

First-tier Tribunal  
General Regulatory Chamber  
Pensions Regulation

Heard by: Judge in Chambers on the papers

Decision given on: 16<sup>th</sup> August 2022

Before

HHJ DAVID DIXON

Between

PUDDLEDUCKS NURSERY & PRE-SCHOOL  
(COLMWORTH) LIMITED

Appellant

and

THE PENSIONS REGULATOR

Respondent

**Decision:** The reference is dismissed, and the matter is remitted to the Regulator. The Penalty Notice is confirmed, without any further directions.

## REASONS

1. By this reference Puddleducks Nursery and Pre-School (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 25<sup>th</sup> February 2022.
2. The FPN 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 31<sup>st</sup> December 2021. The Compliance Notices was issued under s. 35 of the Pensions Act 2008. It directed the Employer to file a redeclaration of compliance by 10<sup>th</sup> February 2022.
3. The Employer referred the matter to the Tribunal on 5<sup>th</sup> March 2022.
4. 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 Appeal*

5. Under s. 44 of the 2008 Act, a person who has been issued with a FPN 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 FPN 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.
6. The Employer’s Notice of Appeal indicates that they have been complying with the regulations by making monthly payments and the like. They indicate they are a small enterprise, recently opened, and the penalty will cause them issues. They also indicate that they have now filed the compliance notification. They indicate that they did not receive any reminders/notices indicating they had to complete anything.
7. The Regulator’s Response indicates that the redeclaration was not completed and as a result the CN and then the FPN were appropriate. The Regulator stresses it is the employer’s obligation to comply with the Regulations. The Regulator indicates that it posted the relevant documents to the principal office address of the Appellant and relies upon the presumption of service under s7 Interpretation Act 1978, Regulation 15(4) of the Employer’s Duties (Registration and Compliance) Regulations 2010 etc to assert the same. The Regulator maintains that no basis for rebutting the presumption exists, so service of the documents is to be deemed.
8. The Regulator provides a chronology with documents showing the letters and notices sent, and the response received by the Regulator days after the FPN was issued. All of the letters/notices were sent to the same address.
9. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
10. The Tribunal considered a bundle of 94 pages.

### *Submissions*

11. The Appellant argues the FPN was unfair as they had been complying by paying the required monthly sums. They assert that they didn't receive any correspondence except for the FPN that was acted upon. The Appellant indicates it is a small entity and the fine will cause real issues.
12. The Regulator responds that there is no excuse for the late compliance, let alone a reasonable one. It is the Employer's responsibility to meet the legal requirements, and here the Appellant has not provided evidence to reverse the imposition of the FPN. It asserts that post was properly sent, and that service is proved by the relevant presumptions.

### *Conclusion*

13. The Appellant is a relatively new business it seems that was trying to do the right thing by paying the relevant contributions. It has provided evidence to support those efforts. However, what the Appellant did not do was to make the required declaration of compliance. It isn't clear from my papers why, but I suspect from the general tenor of the submissions it was ignorance of the requirement to file the same.
14. The Appellant argues that it never received the relevant indications that it must file a declaration. The Regulator has provided details of the documents supplied to the Appellant, all to the same address. The Appellant accepts receiving the FPN as it was acted upon. The Regulator relies upon the presumption of service that indicates in basic terms that if post is properly addressed and sent, then it is deemed to have arrived unless and until cogent evidence is provided to doubt the same. A simple denial of receipt is not enough to displace the presumption. Here there is only a denial of receipt nothing else to suggest the presumption is inappropriate. It is telling that the one document that levelled a penalty was received and acted upon. The receipt of the FPN supports the presumption, nothing detracts and therefore I find that the CN was served.
15. The Appellant did not file a declaration of compliance when required, the FPN that followed was perfectly proper and I can see no basis for finding to the contrary. The appeal against the penalty itself is without merit.
16. The Appellant indicates that the level of the penalty will cause it difficulties. The sum charged is set by Parliament and as such is not subject to variation, either up or down. The purpose of the penalty is to remind businesses of the need to comply and that fact that it hits smaller businesses more than others must have been considered by Parliament. In the overall scheme of the Regulations, I do not believe that it can be said that the penalty is disproportionate. I therefore uphold the FPN. (The Appellant will doubtless note the offer of the Regulator to allow payment by instalments, but that is a matter between the parties.)
17. I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
18. No further directions are required

Signed: HHJ David Dixon

DATE: 16<sup>th</sup> August 2022

Date Promulgated: 17<sup>th</sup> August 2022