



[2022] UKFTT 300 (GRC)  
Case Reference: PEN/2022/0067

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

Heard at: Determination on the papers, in Chambers  
Heard on: 22 August 2022  
Before: Judge Alison McKenna

**SUPPORTING CARE  
REDBRIDGE LIMITED**

**Appellant**

**- and -**

**THE PENSIONS REGULATOR**

**Respondent**

**DECISION**

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

**REASONS**

*Background*

2. By this reference Supporting Care Redbridge Limited (“the Employer”) challenges an Escalating Penalty Notice issued by the Regulator on 9 February 2022 (Notice number 228142840542).

3. Prior to the service of the Escalating Penalty Notice, the Regulator had served the Employer with a Fixed Penalty Notice, dated 10 January 2022. The Fixed Penalty

Notice was issued under s. 40(1) of the Pensions Act 2008<sup>1</sup>. The Fixed Penalty Notice is not mentioned in the Employer's Notice of Appeal, so I understand this reference to concern the Escalating Penalty Notice only, notwithstanding the Regulator's submissions made on the understanding that the Fixed Penalty Notice is also before me.

4. Both Penalty Notices relate to the Employer's failure to make a Declaration of Compliance as required by a Compliance Notice dated 25 November 2021. The Compliance Notice required the Employer to make a Declaration of Compliance to the Regulator by 5 January 2021, but the Employer did not do so.

5. The documents before me in my bundle indicate that the Regulator informed the Employer on 23 March 2022 that it had refused to carry out a review because the application for review was made after the 28-day time limit. However, the Respondent's Response states that a review was conducted, and a decision made to confirm the Escalating Penalty Notice. I proceed on the understanding that the statement in the Response is the correct one, as otherwise the Tribunal would have been deprived of jurisdiction.

6. The Employer referred the matter to the Tribunal on 1 April 2022. 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<sup>2</sup>. The Tribunal has considered all the evidence and submissions made by both parties in a bundle numbered 1 to 63.

### *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, including the service of Compliance Notices, Fixed and Escalating Penalty Notices.

8. Under s. 44 of the 2008 Act, a person who has been issued with a Fixed or an Escalating Penalty Notice may make a reference to the Tribunal. 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 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.

### *Submissions and Evidence*

9. The Employer relies on grounds of appeal that (i) it complied with its duties in all respects other than the filing of the Declaration of Compliance; (ii) it experienced

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<sup>1</sup> [Pensions Act 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

<sup>2</sup> [General Regulatory Chamber tribunal procedure rules - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

postal problems so did not receive the relevant correspondence from the Regulator; (iii) it did not initially understand that a separate Declaration of Compliance was required but filed one as soon as the obligation was explained to it.

10. The Employer has provided evidence in support of the first and third grounds of appeal. The Employer has not provided any evidence of postal disruption in connection with the second ground of appeal. The Employer asks the Tribunal to withdraw the Escalating Penalty Notice or to reduce the amount of the Penalty.

11. The Regulator has responded that there is no evidence of the postal disruption to which the Employer refers, and that in any event it is entitled to rely on the statutory presumption of service, having sent all the Notices to the Employer's registered address. The Regulator notes that the Employer states it is now compliant, but that it did not file the Declaration of Compliance required until after the service of the Escalating Penalty Notice. The Regulator relies on the Welcome Pack and other correspondence sent to the Employer explaining its legal obligations, including the requirement to file a Declaration of Compliance. It further relies on and produces in evidence the note of a telephone conversation between the Employer and its staff in which the Employer was advised on 23 December 2021 of the obligation to make a Declaration of Compliance.

12. The Regulator submits that, in all the circumstances, the Escalating Penalty Notice was the appropriate action to take because the Employer did not respond to the Compliance Notice or indeed the Fixed Penalty Notice by the deadlines set. It asks the Tribunal to dismiss the Employer's reference.

### *Conclusion*

13. It is undisputed that the Employer did not file a Declaration of Compliance before the deadline set by law. I find that the Employer had a legal duty to file a Declaration of Compliance with the Regulator in addition to undertaking its other duties. The Employer failed to take the relevant steps until after the Escalating Penalty Notice had been served. The first ground of appeal does not succeed.

14. I have considered the Employer's submission that it failed to understand the duty to file the Declaration of Compliance in addition to the other employer duties. I find that the Regulator's Welcome Pack (including a check list) made this obligation clear and further that the Employer was told of the obligation in a telephone call prior to the deadline expiring. I conclude that the Employer has a responsibility to ensure that it complied with all of its legal obligations but that it did not act accordingly. The third ground of appeal does not succeed.

15. I am unable to make a finding of fact on the balance of probabilities that the Notices were not received due to postal disruption. The Employer's suggestion to this effect is a mere assertion, unsupported by any evidence. I find that the Regulator is entitled to rely on the statutory presumption of service, having sent all the Notices to the Employer's registered address. I also note that the telephone call of 23 December

2021 was made by the Employer, suggesting that it must have received some correspondence to prompt the call. The second ground of appeal does not succeed.

16. The Employer has not provided the Tribunal with evidence of any other extenuating circumstances which caused it to be unable to comply with its legal obligations.

17. In all the circumstances, I find that the Employer has not established the grounds of appeal on which it relies. I determine that the Escalating Penalty Notice was the appropriate action for the Regulator to take in this case.

18. I now remit this matter to the Regulator and confirm the Escalating Penalty Notice. No directions are necessary.

**(Signed)**

**JUDGE ALISON MCKENNA**

**DATE: 22 August 2022**

**Date Promulgated 23 August 2022**

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