



Neutral citation number: **[2022] UKFTT 00379 (GRC)**.

Case Reference: PEN/2022/0087

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

**Heard by: Judge in Chambers on the papers**

**Decision given on: 18<sup>th</sup> October 2022**

**Before**

**HHJ DAVID DIXON**

**Between**

**AIM ENTERPRISES 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 Aim Enterprises Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 16<sup>th</sup> May 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 (CN) issued on 25<sup>th</sup> April 2022. The Compliance Notice was issued under s. 35 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 6<sup>th</sup> April 2022.
3. The Employer referred the matter to the Tribunal on 30<sup>th</sup> April 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, dated 30<sup>th</sup> April 2022, indicates that the company wasn’t aware that they needed to comply by certification and further asserts that they didn’t receive the CN to act upon it. They aver that they have complied as soon as they were aware of the requirements. They seek the penalty be waived.
7. The Regulator’s Response indicates that the Appellant failed to provide certification of compliance as is required, a compliance notice followed that was sent to the registered office address of the company. It was not returned undelivered. The FPN was sent to the same address. The Regulator relies upon the presumptions of service and avers that the CN was corrected delivered and simply the Appellant has failed to act upon it. The Regulator asserts the FPN was just and appropriate.
8. The Regulator indicates a Review was completed as a result of the Appellant’s request, which arrived two days after the FPN was issued. Having considered the circumstances advanced the FPN was confirmed.
9. The Tribunal considered a bundle of 60 pages.

### *Submissions*

10. The Appellant seeks to have the FPN overturned on the basis of compliance and challenging the service of the CN.

11. The Regulator responds that there is no excuse for non-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.
12. The Regulator maintains that the CN was correctly posted and following the presumptions is deemed to have been received, unless contrary material is shown to rebut the presumptions. The Regulator avers no such material is shown and as such the CN was correctly served.

### *Conclusion*

13. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and here it could have and should have dealt with matters. In accordance with s7 Interpretation Act 1978 assumptions, by sending letters and emails to the Companies Registered address the Regulator had met its obligations and more. The further presumptions within the Employers Duties (Registration and Compliance) Regulations 2010 (SI 2010/5), particularly Regulation 15, further support the Regulator's position. I note that the FPN sent to the same address as the CN was replied to promptly, with a request for a Review and compliance. It seems to me this confirms post was being delivered, and therefore supports the presumption.
14. The Appellant has raised nothing that displaces the presumption of service and therefore I deem the CN was properly served. The failure to comply rests solely with the company for failing to ensure that post sent to its registered office was dealt with properly.
15. The reliance on compliance after the event is of no assistance to the Appellant. The law requires compliance generally, and certification of the same. It is the Appellant's responsibility to be aware of its obligations, and here it was found wanting. Whilst the compliance prevents further penalties it has no further relevance to this appeal.
16. Having failed to comply, the standard penalty was imposed. The penalty is designed to remind companies of the importance of compliance, and I do not see that the penalty in this case is inappropriate or disproportionate to the breach.
17. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
18. No further directions are required

Signed: HHJ David Dixon

DATE: 18<sup>th</sup> October 2022