



**[2022] UKFTT 00479 (GRC)**

Case Reference: PEN/2022/0153

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

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

**Decision given on: 13<sup>th</sup> December 2022**

**Before**

**HHJ DAVID DIXON**

**Between**

**JOHN F WOOSTER CONSTRUCTION (LINCS) 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.

## REASONS

1. By this reference John F Wooster Construction (Lincs) Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 27<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 dated 1<sup>st</sup> April 2022. The Compliance Notice (“CN”) was issued under s. 35 of the Pensions Act 2008. It directed the Employer to file a certificate of compliance with the Regulator.
3. The Employer referred the matter to the Tribunal on 22<sup>nd</sup> July 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 22<sup>nd</sup> July 2022, indicates that the CN was never received and therefore there was no way for them to comply.
7. The Regulator’s Response indicates that the CN was sent to the same address as the FPN that was acted upon. The Regulator relies upon the presumptions of service and upon the aforesaid as proof the CN was properly served. They assert no evidence has been offered to show that there were issues with the postal system and therefore the presumptions stand.
8. The Regulator indicates a Review was completed as a result of the Appellant’s request. Having considered the circumstances advanced the FPN was confirmed.
9. The Tribunal considered a bundle of 106 pages.

### *Submissions*

10. The Appellant argues the FPN was unfair as they had no knowledge of the issue.
11. 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.

## *Conclusion*

12. 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.
13. In accordance with s7 Interpretation Act 1978 presumptions, 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.
14. 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. 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.
17. No further directions are required

Signed: HHJ David Dixon

DATE: 13<sup>th</sup> December 2022