



NCN: [2023] UKFTT 1060 (GRC)

Case Reference: PEN/2023/0150

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

Heard by: Judge in Chambers on the papers

Decision given on: 20th December 2023

Before

HHJ DAVID DIXON

Between

EVAN ONE LTD

and

THE PENSIONS REGULATOR

Appellant

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 Evan One Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 18th April 2023.
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 28th February 2023. The Compliance Notice was issued under s. 37 and 38 of the Pensions Act 2008. It directed the Employer file a redeclaration of compliance by 12th April 2023.
3. The Employer referred the matter to the Tribunal on 26th June 2023.
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, drafted by an agent, indicates that the company has not failed to comply with the requirements of the Pensions Act, rather it asserts that the Regulator and/or certain of its staff have set about a vexatious campaign to either profit themselves via expense funded trips to see the Appellant or out of a complete lack of understanding of the relevant regulations, rules and laws have misapplied provisions deliberately against the Appellant. The Employer’s agent avers that the Employer is outside the scope of the Act by virtue of the employee’s signing “opt out” documents and/or not meeting individually the requirements to be included within the relevant schemes. The Appellant avers that at no stage has the Regulator pointed out why they have not complied. The agent is a practising Chartered Certified Accountant.
7. The Regulator’s Response indicates that the Appellant failed to complete the declaration as required. The Regulator indicates that whilst an indication was given that all employees had “opted out” the Regulator was concerned that this was still so and therefore required a declaration that all employees had been told of their rights, that any that were within the scope of the Act were registered, that sums were paid etc.
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. During the Review the Regulator requested details of the Appellant’s payroll so that the suggestions proffered could be corroborated. No details were provided.
9. The Regulator sets out the considerable lengths it has gone to, to try and obtain the relevant information from the Appellant to confirm or refute the position advanced.

10. It seems that during the currency of these proceedings the Regulator tried to obtain details relevant to this Appeal. One such step was to seek to enter premises pursuant to section 73/74 of the Act. Whilst I note that these steps, and indeed others, were taken, they are not of direct relevance to the issues in this Appeal. However, it is clear the Appellant's agent has a dim view of the Regulator's conduct.

11. The Tribunal considered a bundle of 69 pages.

Submissions

12. The Appellant seeks to have the notices overturned on the basis that the Regulations do not apply and the Regulator is acting in a high handed and inappropriate manner. It suggests that a deal of further training is required to ensure that the Regulator's employees don't act above the law again.

13. 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 Notice.

Conclusion

14. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The Regulator here was perfectly entitled to request a declaration of compliance with the Pensions Act. The service of the requests (made in various different ways) were all appropriate, proper and valid attempts by the Regulator to obtain the information it was entitled to ascertain in order to meet its own obligations.

15. The CN was properly served and should have resulted in the Appellant simply indicating (assuming this is the position) that it had x employees, y were outside the scope of the Act, z had opted out and provided details of the same with a declaration that the same was a true and accurate reflection of their workforce. This would have been compliance. There was nothing unlawful, inappropriate or otherwise in the request.

16. The suggestion that such information was given before is irrelevant. The Regulator had reason to believe that the Appellant may not be compliant and was entitled to request clarification. The Regulator can, provided it has a basis for doing so, level such requests regularly, indeed in order to meet its own obligations it must, if there are grounds to do so. The Appellant's position, as advanced by the agent, that the Regulator must tell the employer why it isn't complying is a complete misunderstanding of the respective responsibilities involved.

17. The Appellant's failure to provide the information sought, even during the Review process, gives the clear potential inference that all is not in accordance with the Regulations. The Regulator will want to give careful consideration to its next steps as a result.

18. 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.

19. No further directions are required.

20. However, it would be remiss of the Tribunal to fail to comment on the conduct of the "agent" here. Accusations of a completely improper kind have been levelled by the "agent,"

a professional man, without it seems any proper basis or evidence. The Tribunal expects everyone of professional standing to act in accordance with their ethical duties to conduct themselves appropriately. The accusations against the Regulator here seem groundless and unprofessional and should not have been made.

Signed: HHJ David Dixon

DATE: 20th December 2023