



**[2023] UKFTT 00457 (GRC).**

**Case Reference: PEN/2022/0263**

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

**Determined: On the papers  
Heard on: 31 May 2023  
Decision given on: 31 May 2023**

**Before**

**JUDGE O'CONNOR  
Chamber President**

**Between**

**FINISHING TOUCHES CHELTENHAM LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision: For the reasons given below, I dismiss the reference and remit the matter to the Pensions Regulator on that basis. No directions are necessary.**

## **REASONS**

### **Background**

1. The parties have both consented to this matter being determined on the papers pursuant to rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and, having considered the information before me, I am satisfied that the appeal can be properly determined without a hearing.
2. By this reference, Finishing Touches Cheltenham Limited (“the appellant”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 9 November 2022 (Notice number 127600693981). The Penalty Notice was issued pursuant to section 40 of the Pensions Act 2008 (“the 2008 Act”). It required the appellant to pay a penalty of £400 for failing to comply with the requirements of a Compliance Notice dated 14 September

2022. The appellant submitted a review request to the Pensions Regulator on 15 November 2022 and the Pensions Regulator completed a review of the decision under section 35 of the 2008 Act on 23 November 2022.

3. The appellant thereafter referred the matter to the First-tier Tribunal (“the Tribunal”) by way of an undated “Notice of Appeal”.
4. I have before me a bundle of documents running to 72 pages which, *inter alia*, includes the appellant’s Notice of Appeal and the Pensions Regulator’s Response thereto. I have taken account of all the documents contained within this bundle, irrespective of whether such documents are specifically referred to herein.

### **The Law**

5. The 2008 Act imposes a number of legal obligations on employers in relation to the automatic enrolment of certain ‘jobholders’ into occupational or workplace personal pension schemes. Each employer is assigned a ‘staging date’ from which the timetable for performance of their obligations is set. The Employer’s Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”), specify that an employer must provide certain specified information to the Pensions Regulator within five months of their staging date. This is known as a ‘Declaration of Compliance’. An employer is required to make a re-declaration of compliance every three years.
6. The Pensions Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers. Under section 35 of the 2008 Act, the Pensions Regulator can issue a Compliance Notice if an employer has contravened one or more of its employer duties. A Compliance Notice requires the person to whom it is issued to take (or refrain from taking) certain steps in order to remedy the contravention and will usually specify a date by which these steps should be taken.
7. Pursuant to section 40 of the 2008 Act, the Pensions Regulator can issue a penalty notice if it is of the opinion that an employer has failed to comply with a Compliance Notice. This requires the person to whom it is issued to pay a penalty within the period specified in the Notice. The amount is to be determined in accordance with regulations. Under the 2010 Regulations, the amount of a fixed penalty is £400.
8. Notification may be given to a person by the Pensions Regulator by sending it by post to that person’s “proper address” (section 303(2)(c) of the Pensions Act 2004 (the “2004 Act”). The registered office or principal office address is the proper address on which to serve notices on a body corporate, as set out in section 303(6)(a) of the 2004 Act. Under regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. This includes Compliance Notices issued under the 2008 Act.
9. By section 44 of the 2008 Act, a person who has been issued with a Penalty Notice may make a reference to the Tribunal provided that an application for review has first been made to the Pensions Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Pensions Regulator to take, considering 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 Pensions Regulator with such directions (if any) required to give effect to its decision.

## **The Facts**

10. There is little dispute as to factual background to this reference. The appellant's staging date was 6 April 2022, and the first Declaration of Compliance was due before 5 September 2022. The appellant did not declare by the deadline, and the Pensions Regulator thereafter issued a Compliance Notice on 14 September 2022, requiring the appellant to comply with specified steps by 25 October 2022. The appellant received the Compliance Notice and there is no dispute that it failed to comply with the requirements detailed therein. As a result, on the 9 November 2022, the Pensions Regulator issued the appellant with a Penalty Notice pursuant to section 40 of the 2008 Act. The appellant subsequently submitted a re-declaration notice.

## **Notice of Appeal**

11. In its Notice of Appeal the appellant states:

“I started the business in April 2022, I instructed an accountant which has caused so many issues. The accountant asked me to send on all the HMRC, pensions correspondence directly on to them and they will deal with everything as per contract. My receptionist did as she was asked, therefore I did not see the original letter from the Pensions Regulator. I trusted the accountant to do what they had promised. But after a few other issues brought to my attention, and then seeing the fine from the Pensions regulator and decided to change accountant, please see evidence attached.

I did the declaration for the pensions regulator as soon as I was made aware of it. The business is a start-up and mistakes have been made by my previous accountant with regards money and I am trying to stay afloat, this £400 fine will seriously impact my business at this early stage.

With the help of my new accountant, I can promise this will not happen again.”

## **Discussion**

12. The timely provision of information to the Pensions Regulator, so that it can ascertain whether an employer has complied with its duties under the 2008 Act, is crucial to the effective operation of the automatic enrolment scheme. Unless the Pensions Regulator is provided with this information, it cannot effectively secure the compliance of employers with their duties. It is for this reason that the provision of a Declaration of Compliance within a specified timeframe is a mandatory requirement. The fact that the appellant has now complied with this duty, after the date required in the Compliance Notice, does not excuse a failure to comply.
13. I accept that the Compliance Notice was sent to the appellant's registered address, and there is no evidence capable of rebutting the presumption that it was received. It is not in dispute that the appellant received the Compliance Notice and that it failed to comply with the requirements set out in that Notice. In all the circumstances, I find that issuing the Penalty Notice was appropriate, unless there was a reasonable excuse for the appellant's failure to comply with the requirements therein. I conclude that the appellant did not have a reasonable excuse for this failure to comply.
14. I accept that, although not required by law, the Pensions Regulator nevertheless sent the appellant two letters reminding it of the requirement to re-declare compliance. These letters are contained within the bundle of documents before me.

15. The appellant's case revolves around its assertion that it delegated its obligations to comply with the pensions' regulations to an accountant, and that this accountant failed to ensure that these obligations were complied with. In particular, it is asserted that it was the accountant's responsibility to provide notice of re-declaration of compliance on behalf of the appellant, and also to ensure that the terms of the Compliance Notice were adhered to. The accountant failed in both respects. In my conclusion, this does not amount to a reasonable excuse for the appellant's failure to comply with the terms of the Compliance Notice.
16. Whilst for the purposes of this decision I am prepared to accept the appellant's assertions that it instructed an accountant to ensure its pensions obligations were met, and that the accountant failed to meet those obligations, ultimately the requirement to meet the appellant's pensions obligations is the responsibility of the appellant. If an accountant is instructed in this regard, this does not relieve the appellant of its responsibilities. If the accountant failed to adhere to its terms of engagement or failed to comply with its professional obligations, the appellant's remedy is against the accountant.
17. Moving on, I accept that the requirement to pay £400 is a significant burden for a small business such as the appellant, particularly if that business is struggling. However, the amount is prescribed by regulations made under the 2008 Act. Its amount reflects both the importance of complying with the employer duty provisions and the seriousness with which a failure to do so will be viewed. The Pensions Regulator has no discretion to issue a penalty notice for a lesser amount, nor does the Tribunal have the power to direct substitution of a lesser penalty.
18. For the reasons given above, I am satisfied that the appellant failed to comply with the terms of the Compliance Notice and that it has not provided a reasonable excuse for such a failure. In all the circumstances, I conclude that issuing the Penalty Notice is the appropriate action to take in this case. I remit the matter to the Pensions Regulator and confirm the Penalty Notice. No directions are necessary.

Signed: **Judge O'Connor**

Date: 31 May 2023