



**NCN: [2023] UKFTT 643 (GRC)**

Case Reference: PEN/2023/0045.

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

**Heard on the papers.**

**Heard on: 31 July 2023.**

**Decision given on: 31 July 2023.**

**Tribunal Judge: Brian Kennedy KC**

**Between:**

**HOUNDGATE WINES LIMITED**

**and**

**THE PENSIONS REGULATOR**

Appellant

Respondent

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**APPLICATION BY THE RESPONDENT TO STRIKE OUT  
THE APPEAL PURSUANT TO RULE 8(2)(a)**

The Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber) Rules  
2009.

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**Decision:** The application is allowed, and the appeal is Struck Out.

## REASONS

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### Introduction:

- [1] The Tribunal has been asked to strike out Houndgate Wines Limited's case, that is bring it to an end on the ground that the Tribunal does not have jurisdiction in relation to the reference ("appeal").
- [2] As there has been no review of the penalty under s.43(1)(a) of the *Pensions Act 2008* and as the Pensions Regulator declined to review the penalty under section 43(1)(b) of that Act, the conditions for a reference to the Tribunal under section 44(2) of that Act are not satisfied. The Pensions Regulator has referred to the Decision of Chamber President Judge Peter Lane (as he then was) in *Mosaic Community Care Ltd v The Pensions Regulator* dated 10 August 2015. Rule 8(2)(a) of the Tribunal's Rules provides for a mandatory strike out where there is no jurisdiction to determine an appeal.

### Factual and Legal Background:

- [3] The appeal is in respect of a Fixed Penalty Notice ("FPN") dated 30 December 2022 issued under section 41 of the Pensions Act 2008 ('PA08'). The FPN was issued because the Respondent was of the opinion that the Appellant had failed to comply with the directions in the Compliance Notice ("CN") dated 2 November 2022, issued under section 35 PA 08 on 2 November 2022, by the deadline of 13 December 2022.
- [4] The Respondent is responsible for the regulation of work-based pension schemes. Established by section 1 of the Pensions Act 2004 ('PA 04'), its objectives are set out in section 5. These include maximising compliance with the Employers' Duties under Chapter 1 of Part 1 of the PA08 and safeguards in sections 50 and 54 of that Act (s.5(1)(ca)).

- [5]** The Appellant, is the employer for all purposes of the 'Employer Duties' under PA 08. The Appellant's duties start date was 6 April 2022. The statutory deadline for completing and submitting its Declaration of Compliance ('DOC'), was five months from its duties start date. This meant that the employer should have submitted its DOC by 5 September 2022.
- [6]** Two letters were sent by the Respondent to the Appellant on August 2022 and 18 October 2022. Due to the timing of when the Respondent became aware of the Appellant, the Appellant was directed to complete and submit its Declaration of Compliance by 10 October 2022, despite the statutory deadline being 5 September 2022. This afforded the Appellant additional time in which to comply.
- [7]** These communications served as a reminder of the Appellant's duties, highlighted key dates and offered additional support in case of difficulty. The letter dated 18 October 2022 also provided the Appellant with an additional 14 days to complete and submit their DOC, once its statutory deadline of 5 September 2022 and extended deadline of 10 October 2022 passed.
- [8]** When the Appellant failed to respond to the correspondence and/or complete their DOC, the Respondent issued a Compliance Notice on 2 November 2022. The Notice directed the Appellant to declare compliance by the further extended deadline of 13 December 2022.
- [9]** The Respondent contacted the Appellant by telephone on 18 November 2022 and advised the Appellant of their outstanding automatic enrolment duties including the duty to complete their declaration of compliance by the relevant deadline. The Appellant confirmed that they scanned the letter and sent it across to their Accountant and would remind them.
- [10]** No further communications were received from the Appellant, and the Respondent determined to and did issue a Fixed Penalty Notice on 30 December 2022. The

Fixed Penalty Notice stated that any objection to the Notice must be submitted within **28 days** of issue i.e. by 27 January 2023.

- [11] On 22 February 2023, the Respondent received a review request in relation to the FPN. This request for review was outside the 28-day deadline which was stipulated within the FPN.
- [12] The Respondent replied to the Appellant's request for review on 3 March 2023, in which it advised the Appellant that as its request was out of time, a review had not been conducted and that the information did not suggest that a review should be conducted. On 17 April 2023 the Respondent was notified of the Appellant's reference (the appeal) to the Tribunal.
- [13] The Respondent contends that the CN and FPN were correctly served on the Appellant at its registered office address and that the Notices were correctly served and received. The Respondent is entitled to rely on the presumptions of due service of the notices as per section 144A PA08, the presumption of service provisions in section 303(6)(a) of the Pensions Act 2004 ('PA04'), section 7 of the Interpretation Act 1978 and additionally receipt as per Regulation 15(4) of the Employers Duties (Registration and Compliance) Regulations 2010 ('the 2010 Regulations'). Taken together, there is a strong statutory presumption that documents sent to the registered office address of a body corporate are properly served and received.
- [14] All communications sent, and the CN and FPN were all addressed to the Appellant, at its registered office address, as follows: *3a Houndgate, Darlington, DL1 5RL.*, the Appellant's entry on Companies House which shows that this is the Appellant's registered office address, and the address used by the Respondent was in force at the time of both statutory notices being sent.
- [15] The Respondent further notes within the case note record of the telephone call dated 18 November 2022, the Appellant appears to confirm receipt of the CN and stated that it would scan and send the letter and remind their accountant. Within the same call, the Appellant was reminded of their automatic enrolment duties, CN deadline and the need to complete their DOC. At the time of the call, only the CN

had been issued. Contrary to the indication in the telephone call, within the notice of appeal the Appellant has provided a supporting document in which it noted that the penalty reminder was the “first notice regarding penalties”. In any event, all correspondence was sent to the Appellant’s registered office address and no reasonable excuse has been advanced for the failure to comply with the CN nor any other reason for revocation of the FPN.

**[16]** Furthermore, the Appellant provides the same address under section 1 of their Notice of Appeal, as the address for the Appellant. The Appellant provides evidence with its Notice of Appeal which includes: a copy of a penalty reminder letter dated 31 January 2023 which was sent to it by the Respondent. It is unclear why the Appellant was able to receive some correspondence but not the FPN which were all sent to the same registered office address. The Appellant has not provided any explanation in relation to this.

**[17]** The address held by the Respondent is evidently in use by the Appellant and the Appellant only appears to deny receipt of the FPN. The Respondent submits that, on the available evidence, there is no basis for displacing the statutory presumptions outlined above. In those circumstances, the Respondent submits that the CN and FPN were lawfully and correctly served and were received by the Appellant.

**[18]** It is not clear why the Appellant did not act upon the correspondence which was sent to it by the Respondent at or upon receipt of the CN, and/or to the telephone call which took place on 18 November 2022 whereby the Appellant confirmed receipt of the CN and indicated they would remind their accountant. Arguably, had the Appellant responded to the correspondence or the telephone call and in particular the CN, then the FPN may not have been issued.

**[19]** The Appellant has provided no explanation or detail as to why they were not able to comply with the original statutory deadline (5 September 2022), the initial extended deadline of 10 October 2022, or the further extended deadline provided by the CN until, 13 December 2022.

- [20]** The Grounds of Appeal dated 21 February 2023 and lodged on behalf of the Appellant by David Kipling of DK Accountancy, state as follows: *“Houndgate Wines Limited have adhered to all compliance, we know this as we have completed this on behalf of the Company. We are actually unsure as to what our client has been fined for. As far as we were aware, everything has been submitted within the timescales required. Maybe there has been some sort of mix up with postal delays or delays in internet submission receipts by TPR, we don’t know. But the client has always provided everything within timescales required for full compliance. Could we please ask for disclosure on the reason for penalty, and ask for your understanding on this occasion and request the penalty be revoked.”*
- [21]** The Tribunal notes that the Respondent has provided copies of all relevant documents to support their assertions herein while the Appellant have provided nothing to support their assertions above. No evidence of rebuttal has been provided by the Appellant in this appeal.
- [22]** The Tribunal is invited by the Respondent to strike out this appeal under Rule 8(2)(a) on the basis that the conditions in s.44(2) PA 08 are not met, and the Tribunal does not have jurisdiction. The law is set out and analysed in the Tribunal’s decision in the appeal by *Mosaic Community Care Limited* (PEN 2015.0004) as affirmed in other cases. This case is analogous.
- [23]** The circumstances of this case are that the review request dated 22 February 2023 was sought by the Appellant outside the required 28 days and therefore no review was therefore carried out. The 28-day period is set down in Regulation 15(1) of the Employers Duties (Registration and Compliance) Regulations 2010.
- [24]** The Respondent did not carry out, nor did it refuse to carry out the review of the Fixed Penalty Notice for the purposes of section 44(2)(b) PA08. For section 44(2)(b) to be engaged, the Respondent must have refused to conduct a review which had been requested within the timescale set down in section 43(1)(a) – i.e., a review requested *within* 28 days of issue of the Fixed Penalty Notice.

**[25]** Accordingly, the absolute and necessary conditions in s.44 PA 08 are not met, such that a reference may not be made to the Tribunal. This was not a valid application under s.43(1)(a) and the requirement in s.44(2)(b) is not satisfied. Therefore, the Respondent did not conduct a review of the notice under section 43(1)(a) or (b) and the requirement in section 44(2)(a) is not satisfied and the Tribunal allow the application to Strike Out the Appellants appeal.

**[26]** The Tribunal refer the parties to Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 Part 1 Rules 2 and 3.

Brian Kennedy KC

31 July 2023.