



**[2023] UKFTT 00671 (GRC).**

**Appeal number: PEN/2023/0039P**

**FIRST-TIER TRIBUNAL  
GENERAL REGULATORY CHAMBER  
(PENSIONS REGULATION)**

**DIAMOND PLUMBING and HEATING (SOUTHERN) LTD      Appellant**

**- and -**

**THE PENSIONS REGULATOR      Respondent**

**TRIBUNAL:**

**ALEXANDRA MARKS CBE  
(SITTING AS A FIRST TIER  
TRIBUNAL JUDGE)**

**Sitting in Chambers (and therefore decided on the papers without a hearing) on  
12 JULY 2023**

## DECISION

1. The reference is dismissed and the matter is remitted to the Respondent. The Fixed Penalty Notice dated 16 January 2023 is confirmed.

## REASONS

### *Background*

2. Diamond Plumbing and Heating (Southern) Limited ('the Employer') challenges a Fixed Penalty Notice issued by the Respondent ('the Regulator') on 16 January 2023 (Notice number 172138959587) (**p.2**). In this decision, references to page numbers in the bundle provided to me are shown in bold in brackets (e.g. **p.2**)
3. The Fixed Penalty Notice was issued under section 40 of the Pensions Act 2008 ('the Act'). It required the Employer to pay a penalty of £400 for failing to comply with a Compliance Notice dated 16 November 2022 (**p.53**) that required the Employer to provide the Regulator with information in respect of automatic enrolment.
4. The Regulator completed a review of the decision to impose the Fixed Penalty Notice and informed the Employer's agent, Ms K, on 3 February 2023 that the decision was confirmed (**p.62**).
5. On 9 February 2023, the Employer referred to the Tribunal the Regulator's decision to issue the Fixed Penalty Notice (**p.3**).
6. The parties and the Tribunal agree that this matter is 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 law*

7. The Act imposes various legal obligations on employers in relation to the automatic enrolment of certain 'jobholders' into occupational or workplace personal pension schemes. The Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers.
8. Since 1 October 2017, automatic enrolment duties apply to employers from their 'staging date' (being the date when the legislation first applies to that employer). These duties include the obligation - from the employer's staging date - to assess their staff, write to them, and automatically enrol them into a qualifying scheme if applicable.

9. The employer must, within five months of its staging date, provide certain specified information to the Regulator about its compliance with these duties. This is known as a ‘declaration of compliance’.

10. Crucially for the purposes of this case, the employer must *also* - every three years from its staging date - assess and re-enrol eligible staff who have left the workplace pension scheme. The employer must then provide the Regulator with re-enrolment information by means of a ‘re-declaration of compliance’.

11. If the employer fails to provide a re-declaration of compliance, the Regulator can issue a Compliance Notice and then, if that Notice is not complied with by the stated deadline, a Fixed Penalty Notice can be issued for failure to comply with the Compliance Notice. The prescribed Fixed Penalty is £400.

12. Under section 44 of the Act, a person who has been issued with a Fixed Penalty Notice may make a reference to the Tribunal provided an application for review has first been made to the Regulator.

13. The role of the Tribunal is to take account of the evidence before it, and make its own decision on the appropriate action for the Regulator to take. The Tribunal may confirm, vary or revoke a Penalty Notice 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.

### ***The facts***

14. The Employer’s first declaration of compliance was 29 January 2016. The Regulator’s letter acknowledging this is dated 30 January 2016 (p.20). It was sent to Ashley Wright at 10 Elms Drive, Lancing BN15 9LJ (the ‘Elms address’). The letter expressly stated “*You will be required...to re-declare with [the Regulator] in approximately three years’ time.*”

15. The Employer duly re-declared on 16 February 2019. This time, the Regulator’s letter acknowledging the re-declaration of compliance was dated 17 February 2019 (p.23) and was sent to Mr C Wood, employee, 67 Orchard Avenue, Lancing, West Sussex BN15 9EB (the ‘Orchard address’). The stated details of the person who completed the re-declaration was Ashley Wright of the Elms address. The contact details for the Employer were given as Mr C Wood, employee at the Orchard address and with the email [cwood8053@gmail.com](mailto:cwood8053@gmail.com).

16. On 17 September 2021, the Regulator sent an email to [cwood8053@gmail.com](mailto:cwood8053@gmail.com) headed ‘***Are you still our key contact for re-enrolment?***’ (p.26). The email also stated ‘*If you are no longer the correct person to contact regarding re-enrolment duties, use the link below to tell us who we should contact instead. This is important as we will send further emails with useful information to help DIAMOND PLUMBING and HEATING (SOUTHERN) LTD with their re-enrolment*’ Immediately beneath this wording was a purple box with large white text which said ‘*Tell us who to contact*’.

17. In November 2021 (p.44) the Regulator sent a letter to Mr C Wood at the Orchard address setting out the legal duties as an employer in relation to re-enrolment.

18. On 17 December 2021, the Regulator sent another email to [cwood8053@gmail.com](mailto:cwood8053@gmail.com) headed ***'Your re-enrolment window is open – select your date now.'*** (p.28) The email also stated, *'...if you aren't setting up re-enrolment for DIAMOND PLUMBING and HEATING (SOUTHERN) LTD, let us know who to contact instead.'*

19. Thereafter, between 11 February 2022 and 8 July 2022, the Regulator sent a further eight emails to [cwood8053@gmail.com](mailto:cwood8053@gmail.com) about re-enrolment requirements (p.30-43).

20. The Regulator also sent a further letter to Mr C Wood at the Orchard address headed ***'Act now – your re-enrolment deadline is nearly here.'*** (p.46) The letter explained how to submit a re-declaration of compliance and stated *'This must be completed and submitted by 15 July 2022...If you do not complete your legal duties on time, including your re-declaration of compliance, you may be subject to fines.'*

21. On 25 July 2022, the Regulator also sent a letter to Mr A Wright, DIAMOND PLUMBING and HEATING (SOUTHERN) LTD, at Ground Floor, 19 New Road, Brighton BN1 1UF (p.47). This address is the registered office address for the Employer recorded at Companies House (the 'RO address'). It is also the address of Lucraft Hodgson & Dawes LLP ('Lucrafts'), the accountants apparently engaged by the Employer. The letter was headed ***'Urgent action is required – your re-declaration deadline was 15 July 2022.'*** The letter also stated, in a red-edged text box, *'... You have 14 days from the issue date of this letter to complete your re-declaration. Failure to complete your re-declaration of compliance may result in you being fined.'*

22. Having received no response to any of these emails, nor any of the three letters referred to above, nor any re-declaration of compliance with the Employer's statutory duties, on 11 August 2022 the Regulator sent a Compliance Notice ('CN1') to the Orchard address extending the deadline for completion of the re-declaration of compliance until 21 September 2022 (p.48).

23. Having still not received any response from the Employer or anyone on the Employer's behalf, on 6 October 2022 the Regulator sent a Fixed Penalty Notice ('FPN1') to the Orchard address (p.51). FPN1 imposed a penalty of £400 for failure to comply with CN1 and specified a deadline of 3 November 2022 both to pay the penalty and comply with CN1.

24. On 15 November 2022, Mr Wright telephoned the Regulator. I have listened to an audio recording of that telephone call. Mr Wright explained that he had not received any of the above communications from the Regulator because they had been sent to the wrong address. He stated (and repeated several times) that the company's correct address is the Elms address. He said that he is the owner of the company, and that Mr C Wood is *'the employer'* (though presumably he meant *'employee'*) who

lives at home with his parents at the Orchard address. Mr Wright explained that Mr Wood's mother had passed to Mr Wright the unopened letters received at their home addressed to DIAMOND PLUMBING and HEATING (SOUTHERN) LTD.

25. The Regulator's staff member who took Mr Wright's call said that he would immediately cancel CN1 and FPN1 so Mr Wright would not have to pay the fine specified by FPN1. The staff member said he would send another Compliance Notice ('CN2') to the Elms address. Mr Wright said that he would make the required pension arrangements 'today'.

26. The next day, on 16 November 2022, the Regulator sent to the Employer at the Elms address CN2: it was headed '**DO NOT IGNORE THIS COMMUNICATION**' (p.53). CN2 explained that the deadline for the re-declaration of compliance had been extended from 15 July 2022 to 28 December 2022. CN2 went on to offer assistance with any problems in completing the re-declaration by giving the postal address and telephone number for the Regulator. CN2 stated '*If you don't complete your re-declaration of compliance by 28 December 2022, we may issue you with a £400 penalty*'.

27. Having received no response to CN2 nor any re-declaration of compliance by the deadline of 28 December 2022, on 16 January 2023, the Regulator sent a Fixed Penalty Notice ('FPN2') to the Employer at the Elms address (p.56). FPN2 imposed a penalty of £400 for failing to comply with CN2.

28. On 19 January 2023, Ms D King, of Lucrafts, acting as Payroll Manager/Agent for the Employer, submitted a review request to the Regulator (p.58). She explained an '*ongoing issue....as the Regulator held the incorrect address for the company*'. She went on that '*...the one qualifying employee was enrolled into a pension scheme at the earliest opportunity, being from the beginning of December 2022. The Declaration of Compliance has also been submitted...*'

30. On 20 January 2023, the Regulator wrote to Mr Wright at the Elms address acknowledging the re-declaration of compliance on 19 January 2023, and the enrolment of one employee of the Employer with the NEST pension scheme. (p.59).

31. On 3 February 2023, the Regulator emailed Ms King notifying her that a review had been conducted, and FPN2 confirmed. The Regulator explained that every three years employers are required to complete their re-enrolment duties and submit a re-declaration of compliance. While CN1 and FPN1 had been revoked as incorrectly issued, CN2 was issued to the Elms address, and provided a new deadline for compliance of 28 December 2022. There was no further contact by the Employer or anyone on the Employer's behalf thereafter so the Regulator sent FPN2. The re-declaration of compliance was completed on 19 January 2023, after the deadline in CN2 and after issue of the FPN.

32. On 9 February 2023, Ms King, filed a Notice of Appeal with the Tribunal.

### *Submissions*

33. The Notice of Appeal dated 9 February 2023 submitted on the Employer's behalf said that:

- (1) They had no correspondence from the Regulator informing them of the deadline of 28 December 2022 until after that date had passed.
- (2) The review decision stated that CN2 was issued on 16 January 2023 to the Elms address, providing a deadline of 28 December 2022 – but how could that deadline have been met when it had already passed?
- (3) They had assumed that they would have the usual deadline of 5 months after the staging date if postponed, or 2 months after enrolment.
- (4) The review decision clearly showed dates they could not possibly meet.

34. In its response dated 17 March 2023, the Regulator gave the following reasons for opposing the Employer's reference of this matter to the Tribunal:

- (1) CN2 and FPN2 were both sent to the Elms address which Mr Wright repeatedly stated in his telephone call to the Regulator on 15 November 2022 was the company address.
- (2) The Regulator relies on the strong statutory presumptions about the service and receipt of documents sent to the proper address.
- (3) There is no basis for displacing these statutory presumptions unless the contrary can be shown by evidence. Mere assertion that posted items have not been received is insufficient. The Employer's agent in this case has provided no evidence or explanation for what is claimed to be non-delivery of any correspondence sent to the correct address. There is no record of any of the Regulator's correspondence having been returned undelivered.
- (4) During the telephone conversation on 15 November 2022, Mr Wright was told more than once that a new notice was going to be issued to the Elms address, and that there would be a further 42 days to comply. Mr Wright confirmed that he would be complying '*today*' which he did not do.
- (5) The Regulator was not at fault in using the Orchard address. This address was stated on the re-declaration of compliance in February 2019 which Mr Wright had himself given. Mr Wright also stated that Mr Woods' mother had passed him the correspondence sent to the Orchard address so he was aware of his duty to make a re-declaration of compliance from that correspondence.
- (6) Even if Mr Wright did not receive any of the emails sent to Mr Woods' email address (which Mr Wright had also supplied in February 2019), the absence of these reminders does not absolve the Employer of their statutory duties as to re-declaration of compliance. These reminders are sent as a courtesy, not because there is any legal requirement to do so.

(7) A warning letter was also sent to the Employer's registered office address on 25 July 2022, notifying that the re-declaration of compliance deadline had expired but granting a further 14 days within which to comply.

(8) The obligation to complete a declaration of compliance in 2022 was the third occasion (the first two being 2016 and 2019) when the Employer had had to fulfil this duty. On each of the two previous occasions, the Regulator had reminded the Employer of the requirement to complete a declaration every three years.

(9) The error identified in the review decision (stating the date of CN2 as 16 January 2023 when that was the date of FPN2) is immaterial given the enforcement journey that took place beforehand.

(10) Mr Wright was advised of the six-week deadline to comply with the CN2 during the November 2022 telephone call. There are no date errors in CN2 and FPN2 themselves.

(11) Re-declaration of compliance is not a mere administrative detail: it is a vital source of information for the Regulator and a central part of its compliance and enforcement approach.

(12) The Regulator made clear that action will be taken against employers who fail to provide a re-declaration of compliance in its correspondence to Mr Wright and to his accountants/agent.

(13) The legislation allows employers a generous period of five months to complete the re-declaration from the date when it falls due. In this case, by the time the FPN was issued on 16 January 2023, another six months had elapsed.

(14) The amount of the penalty is prescribed by legislation so neither the Regulator nor the Tribunal has any discretion to vary it.

(15) The Employer has not provided any persuasive argument that the presumptions of service have been rebutted.

(16) The re-declaration of compliance was completed only after the expiry of the extended deadline for doing so, and only after FPN2 was issued.

(17) The issuing of a penalty was appropriate because no reasonable excuse in fact or law has been provided for the Employer's failure to complete the re-declaration on time.

### ***Conclusions***

35. Taking account of all the evidence provided to me - including an audio recording of the conversation between the Regulator and Mr Wright on 15 November 2022 - I conclude that the Employer has given no 'reasonable excuse' for non-compliance in this case. My reasons are set out below.

36. The Employer clearly did receive FPN1 – albeit belatedly because it was sent to home address of his employee (Mr Wood). Mr Wright was able to quote to the Regulator during his telephone call objecting to FPN1 the 12-digit reference number as well as the name and address to which FPN1 had been sent.

37. While Mr Wright was able successfully to achieve revocation of FPN1, he would have been aware from its contents of the need urgently to complete a re-declaration of compliance. Indeed, he told the Regulator during that telephone conversation that he would complete it the same day but in fact he did not.
38. Mr Wright has not given any explanation or evidence for non-receipt of CN2 which was sent the very next day after his telephone call to the Regulator to the address he repeatedly stated during that call was the company's address.
39. Neither Mr Wright nor Ms King have explained or evidenced any reason for non-receipt of the warning letter sent in late July 2022 by the Regulator to the company's registered office – which is also the address of the Employer's accountants who submitted the Notice Appeal on the Employer's behalf.
40. Neither Mr Wright nor Ms King dispute receipt of FPN2 – indeed, Ms King cited the 12-digit reference number of FPN2 in the Notice of Appeal.
40. I find that CN2 and FPN2 were each correctly addressed to the principal office of the Employer notified to the Regulator by Mr Wright repeatedly during his telephone call of 15 November 2022. I also find that the warning letter previously sent to the Employer at its registered office in July 2022 was correctly addressed. None of these items was returned to the Regulator undelivered.
41. As to whether the Employer *received* CN2 or FPN2:
- (1) The Regulator does not have to *prove* that the documents were received. This is because the Act and related Regulations say that if a document is sent to a company's principal office - or registered office - by post, which is its proper address, it is *presumed* that it was received by the person to whom it was addressed. This is only a presumption and, if there were strong evidence to the contrary, the presumption can be displaced. The Employer does not have to *prove* that the documents were not received but, beyond the simple statement that neither the warning letter nor CN2 was received, the Employer has produced *no* evidence in support of this position (such as evidence from the Post Office of post being disrupted in the local area; or post being wrongly delivered to another similar address).
  - (2) Secondly, even if the Employer received neither CN2 nor any of the reminder letters (one of which was sent to the Employer's registered office address and the others to postal and email addresses notified by Mr Wright to the Regulator in 2019), that would not relieve the Employer of the duty to comply with the legal obligations relating to re-enrolment. Such obligations include filing with the Regulator a re-declaration of compliance by the required deadline every three years.
42. The Employer apparently instructed their accountants to file the re-declaration and ask the Regulator to remove the penalty. However, both the filing and request to remove the penalty was several days *after* the deadline, and *after* issue of FPN2. It



was therefore too late to avoid the penalty because late compliance does not excuse a failure to do so by the deadline.

43. The Employer was - or should have been - aware of the obligation to send the Regulator a re-declaration of compliance by 15 July 2022, even *without* receiving CN2 (the effect of which was to extend the deadline till 28 December 2022). I am satisfied that the Employer - or advisers on their behalf - had ample time and repeated chances as well as extended deadlines to comply with the obligation to file a re-declaration of compliance by 28 December 2022.

44. Whether or not an employer receives reminders, as a responsible employer it is for them to be aware of their legal duties, and to ensure full and timely compliance with them. In this instance, the Employer failed to do so. That failure entitled the Regulator to issue a Penalty Notice.

45. Furthermore, even if an employer pays for the services of a third party to assist, it is the employer who retains ultimate responsibility for compliance with statutory duties. Although it appears that in this case the Employer engaged accountants to act on their behalf, that does not relieve the Employer of the responsibility to ensure that the duties were met. The duty to comply with pensions obligations rests with the Employer. It was therefore fair, reasonable and appropriate for the Regulator to issue CN2 and, when the Employer still failed to comply, to issue FPN2.

46. The Employer has since completed the re-declaration, but only after the deadline had passed and after FPN2 was issued. This late compliance does not excuse the failure to complete it on time, nor provide a reason for revoking the Penalty Notice.

47. In all the circumstances, I determine that the Regulator was entitled to issue FPN2 on 16 January 2023 for non-compliance with CN2 dated 16 November 2022.

48. The amount of the penalty is fixed by law, so neither the Regulator nor the Tribunal has any discretion to reduce the penalty below £400.

49. I confirm the Penalty Notice, and I remit the matter to the Regulator.

50. No directions are necessary.

**(Signed)**  
**ALEXANDRA MARKS CBE**  
**(Sitting as a Judge of the First Tier Tribunal)**

**DATE: 14 August 2023**