



NCN: [2023] UKFTT 762 (GRC)

Case reference: PEN-2023-0132-AE

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

**Heard: On the papers
Heard on: 14 September 2023
Decision given on: 19 September 2023**

Before

TRIBUNAL JUDGE SOPHIE BUCKLEY

Between

GUILD EVENTS LTD

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

Background

1. Guild Events Ltd (“the Employer”) challenges a fixed penalty notice (“the Fixed Penalty Notice”) issued by the Pensions Regulator (“the Regulator”) on 19 May 2023 (Notice number 138083832541).
2. The Fixed Penalty Notice 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 23 March 2023.
3. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 2 June 2023 that the Fixed Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 5 June 2023.

The Law

4. The Pensions Act 2008 imposed a number of legal obligations on employers in relation to the automatic enrolment of certain ‘jobholders’ into occupational or workplace personal pension schemes. The Pensions Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers.
5. 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 specify that an employer must provide certain specified information to the 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. Where this is not provided, the Regulator can issue a Compliance Notice and then a Fixed Penalty Notice for failure to comply with the Compliance Notice. The prescribed Fixed Penalty is £400.
6. Under s.44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice or an Escalating Penalty Notice may make a reference to the Tribunal provided that a review has been carried out or an application for review has 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, considering the evidence before it.
7. 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.

Evidence

8. I read and took account of a bundle of documents.

The facts

9. The Employer's staging date was 8 October 2019. The re-declaration of compliance was not completed by the deadline of 7 March 2023, so the Regulator issued a Compliance Notice on 23 March 2023 with a deadline of 3 May 2023. As this was not complied with, the Fixed Penalty Notice was issued on 19 May 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 16 June 2023. The re-declaration of compliance was completed on 25 May 2023.
10. On 25 May 2023 the Employer requested a review of the Penalty Notice. The penalty was confirmed on 2 June 2023.
11. On 5 June 2023 the Employer referred the matter to the Tribunal.

Submissions

12. The Notice of Appeal relies on the following grounds:
 - (i) The reminder was not received by the Employer prior to receiving a fine.
 - (ii) The address was incorrect as the fine was sent to the Employer's accountants address and should have been sent to the Employer's home address which is the registered address for the Regulator.
 - (iii) Enrolment was completed as soon as the Employer received the notification that it was due on 25 May 2023.
 - (iv) The compliance notice was never received.
 - (v) Royal Mail have suffered strikes and post has been mislaid or received late and perhaps this has contributed to the compliance notice not being received.
13. The Regulator's response dated 28 July 2023 submits that the Employer has not provided a reasonable excuse for its failure to comply with the Compliance Notice or provided exceptional reasons which warrant revocation of the Fixed Penalty Notice.
14. The Regulator's records show that none of the emails sent to the email address provided by the Employer bounced and that none of the postal correspondence was returned to the Respondent as undelivered.
15. The pre-re-declaration of compliance postal communications were sent to the Employer at: Lime View, Manning Lane, Hoole Village, Chester, Cheshire CH2 2PB (the "Lime View" address). This postal address was provided within the

Employer's Declaration of Compliance which was submitted on 10 January 2020 as the address for the employer.

16. In view of the lack of response to the correspondence, the Regulator opted to send its statutory communications to the Employer at its registered office address: Suite 1, Viscount House, River Lane, Saltney, Chester CH4 8RH. It is the Regulator's position that the statutory notices were correctly served and received. The Employer's registered address on Companies House has been in force since 15 November 2022. The Regulator submits that both the Compliance Notice and Fixed Penalty Notice were served on the Appellant at its registered office address. The Regulator has no record of any post being sent to this address being returned as undelivered.
17. The Regulator notes that an open internet search does not indicate that any postal strikes were taking place around the time that the Compliance Notice was issued. The Regulator acknowledges that a number of strikes have taken place at various stages but in the absence of any information and/or detail around this, the Regulator is unable to comment on this ground further. Should the Employer provide additional detail and/or evidence about this ground, then the Regulator will consider any response accordingly.
18. The Regulator contends that it was entitled to opt to send its statutory communications to the registered office address given the Employer's failure to comply with its automatic re-enrolment duties, its failure to respond to communications and because the registered office address is a lawful address for receiving statutory mail and legal documents.
19. Late or eventual compliance does not excuse the failure or comprise exceptional grounds to revoke a penalty served following expiry of the deadline in a statutory Compliance Notice. Nor does compliance with other automatic re-enrolment duties excuse or explain a failure to undertake the duty to re-declare compliance.
20. It was fair, reasonable and appropriate to issue the penalty.

Conclusions

21. The timely provision of information to the Regulator, so 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 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 re-declaration of compliance within a specified timeframe is a mandatory requirement. Late compliance does not excuse a failure to comply.

22. I find that issuing the Fixed Penalty was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
23. I conclude that the Employer did not have a reasonable excuse for failing to comply.
24. The Employer has been sent two letters by post to the address at which it has said that it wishes to be contacted (Lime View). Neither of these letters were returned undelivered:
 - a. In June 2022 a letter giving the re-declaration deadline of 7 March 2023;
 - b. In December 2022 a further letter reminding of the re-declaration deadline of 7 March 2023, which states 'If you do not complete your legal duties on time, including your re-declaration of compliance, you may be subject to fines and/or prosecution'.
25. The Regulator also sent 12 emails to the Employer between 10 May 2022 and 7 March 2023, clearly setting out the Employer's duties and the relevant deadlines. None of these emails bounced back. This email address was the address provided by the Employer on the Declaration of Compliance.
26. The Employer should have been aware of its duties even without those communications. From those letters and emails there is no doubt that it would have been aware of its duties and the relevant deadlines. There is no suggestion from the Employer that there has been any difficulty in receiving post sent to the Lime View address, nor has there been any explanation as to why the emails might not have been received.
27. On the balance of probabilities I find that these reminders have been received by the Employer.
28. Although the Employer states that the 'fine' was sent to my 'accountant's address', the Fixed Penalty Notice and the Compliance Notice were sent to the Employer's registered office address. Although there is a reference in the review request to the company having moved, it is clear from the Companies House evidence provided by the Regulator that the correct address was used.
29. The Regulator was entitled to serve the statutory notices at the registered office address. The Fixed Penalty Notice was received at that address. Other than a general reference to postal strikes, the Employer has provided no explanation of why the Compliance Notice might not have been received when the Fixed Penalty Notice was received at the same address.

30. Taking into account the rebuttable presumption of service and looking at all the evidence I find that the Compliance Notice was received by the Employer.
31. For the above reasons I am satisfied that the Employer has not provided a reasonable excuse for not complying with the Compliance Notice. I determine that issuing the Fixed Penalty Notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

Signed **SOPHIE BUCKLEY**

Judge of the First-tier Tribunal

Date: 14 September 2023