



NCN: [2023] UKFTT 769 (GRC).

Case Reference: PEN/2023/0097

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

**Decided without a hearing**

**On: 14 September 2023  
Decision given on: 19 September 2023**

**Before**

**TRIBUNAL JUDGE HAZEL OLIVER**

**Between**

**PEOPLES CARE LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision:** The appeal is Dismissed

## **REASONS**

1. By this reference Peoples Care Ltd (the “Appellant”) has appealed against a fixed penalty notice issued by the Pensions Regulator (the “Regulator”) on 24 February 2023 requiring the Appellant to pay a fixed penalty of £400 for failure to comply with an unpaid contributions notice (“UCN”).

2. The parties have agreed to a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. The Pensions Act 2008 (the “Act”) imposes a number of requirements on employers in relation to the automatic enrolment of certain “job holders” in occupational or workplace personal pension schemes.

4. The Regulator has statutory responsibility for ensuring compliance with these requirements, including the requirement to make pension contributions. Under Section 37 of the Act, the Regulator can issue a UCN if it is of the opinion that relevant contributions have not been made on or before the due date. A UCN requires the employer to make payments of relevant contributions by a specified date, and may also require the employer to calculate the amounts of unpaid relevant contributions. A UCN can require an employer to take other steps specified by the Regulator, which may include providing evidence of compliance by a certain date.

5. Under Section 40 of the Act, the Regulator can issue a fixed penalty notice if it is of the opinion that an employer has failed to comply with a UCN. 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 Employers' Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”), the amount of a fixed penalty is £400.

6. Notification may be given to a person by the 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 from the Regulator on a body corporate, as set out in section 303(6)(a) of the 2004 Act (applied by section 144A of the 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 UCNs issued under the Act. A mere assertion that a notice was not received is not sufficient to overturn the statutory presumption of service (***London Borough of Southwark v (1) Runa Akhter & (2) Stel LLC*** [2017] UKUT 0150).

7. Section 44 of the Act permits a person to whom a fixed penalty notice has been issued to make a reference to the Tribunal in respect of the issue of the notice and/or the amount of the penalty payable under the notice. A person may make a reference to the Tribunal provided that an application for a review has first been made to the Regulator under Section 43 of the Act. Under Section 103(3) of the 2004 Act, the Tribunal must then “determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it.” The Tribunal must make its own decision following an assessment of the evidence presented to it (which may differ from the evidence presented to the Regulator), and can reach a different decision to that of the Regulator even if the original decision fell within the range of reasonable decisions (***In the Matter of the Bonas Group Pension Scheme*** [2011] UKUT B 33 (TCC)). In considering a penalty notice, it is proper to take “reasonable excuse” for compliance failures into account (***Pensions Regulator v Strathmore Medical Practice*** [2018] UKUT 104 (AAC)). On determining the reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as it considers appropriate.

## **Facts**

8. The facts are set out in the Appellant's notice of appeal document and the Regulator's response document, including the annexes attached to those documents. I find the following material facts from those documents.

9. The Appellant is the employer for the purposes of the various employer duties under the Act. The Regulator sent a UCN to the Appellant on 30 December 2022, after receiving a report from the Appellant's pension scheme provider that contributions due to be paid between 1 August and 31 October 2022 were unpaid.

10. The UCN sets out three steps under the heading "what you need to do now". Step 1 is to calculate the unpaid contributions. Step 2 is to contact the pension scheme provider and pay the contributions. Step 3 is to provide evidence of compliance. The notice expressly states, "*If you do not complete the steps required by this notice by 9 February 2023, the Pensions Regulator may issue you with a £400 Fixed penalty notice*".

11. The Appellant did not contact the Regulator and so they issued a fixed penalty notice to the Appellant on 24 February 2023. The Appellant requested a review on the basis that a poorly handled office move meant records were not properly transferred, and the UCN was not received. The Regulator confirmed the penalty notice in a review decision issued on 27 March 2023, on the grounds that insufficient evidence had been provided that the missing contributions had been paid by the deadline and both notices were sent to the Appellant's registered office address.

12. The pensions provider confirmed to the Regulator that the late payments were made by 7 March 2023.

## **Appeal grounds**

13. The Appellant says that they moved offices, which meant their records were not handy and organised, and this is why there was a delay. They also say that they did not receive UCN. They changed their registered office address at Companies House on 13 December 2022, and finalised their office move in mid-January 2023.

14. The Regulator says the Appellant does not have a reasonable excuse for the failure to comply. Poor business management is not a reasonable excuse for failing to comply with automatic enrolment duties. Both the UCN and the fixed penalty notice were sent to the Appellant's registered office address as updated from 13 December 2022, the presumption of service applies, and the Appellant has not rebutted this presumption.

## **Conclusions**

15. Payment of pension contributions is an essential part of the automatic enrolment system. The whole purpose of the system is to provide workers with a pension fund on retirement, and this requires all contributions to be made correctly and at the right time. The use of UCNs and fixed penalty notices is a central part of the Regulator's compliance and enforcement approach. Employers are responsible for ensuring that

the important duties are all complied with, and there needs to be a robust enforcement mechanism to support this system. The Regulator must have evidence of compliance in order to ensure that employers are fulfilling all of their duties, and penalties act as an important deterrent to breach of these duties.

16. I have considered whether issuing the fixed penalty notice was an appropriate action for the Regulator to take in this case, and find that it was. The Regulator had sent the Appellant a UCN which required evidence of compliance to be provided, after having been informed by the pension provider that contributions had not been paid. There had been some unpaid contributions. The Appellant failed to make the contributions or provide evidence of compliance until after the deadline had expired and after receipt of the fixed penalty notice.

17. I have considered whether the UCN was legally served at the Appellant's proper address, and find that it was. Under the 2004 Act, the Regulator can serve this notice on a limited company by sending it to either the company's registered office or to its principal office. The UCN was sent to the Appellant's registered office address, as updated from 13 December 2022.

18. I find that the Appellant does not have a reasonable excuse for failing to comply with the UCN.

19. The Appellant says that they did not receive the UCN. The Appellant does not give any reason why this may be the case, bearing in mind that they received the fixed penalty notice which was sent to the same address. There was an office move which may have resulted in the UCN being overlooked by the Appellant, on the basis it was sent on 30 December 2022 and the move was not finalised until mid-January 2023. However, this does not mean that the UCN was not delivered to the correct address. A responsible business should have had arrangements in place to receive and deal with important correspondence during an office move.

20. The UCN was correctly sent to the registered office address, the presumption of service applies, and the Appellant has not provided any evidence to overturn the presumption that the UCN was delivered to this address.

21. The Appellant also says that their records were not organised due to the office move, and this is why their contributions were delayed. I note that the missing contributions were between 1 August and 31 October 2022. The Appellant refers to the office move taking place in December 2022 and January 2023. I do not see how this later office move would have affected pension contributions from August 2022. In any event, even if records were disorganised throughout this period, this does not provide a reasonable excuse for the failure to make the contributions on time and comply with the UCN. I agree with the Regulator that poor business management is not a reasonable excuse for failing to comply with automatic enrolment duties. Any responsible employer could and should have put arrangements in place to deal with these important duties irrespective of an office move.

22. The Appellant did pay the late contributions after receiving the fixed penalty notice. However, there is a significant public interest in upholding fixed penalty notices where there has been late compliance. This is particularly important where

the underlying issue is late contributions, because timely compliance by the employer with the Regulator's requirements is crucial to ensuring that individuals are not missing out on pension contributions over an extended period of time.

23. For the above reasons, I find that the Appellant did not have a reasonable excuse for failing to make the contributions on time and provide the evidence of compliance required by the UCN. 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.

**Hazel Oliver**

**Judge of the First-tier Tribunal**

**Date: 18 September 2023**