



NCN: [2023] UKFTT 770 (GRC)

Case reference: PEN-2023-0088-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

ALL SAINTS PROPERTY GROUP (SUB HOLDINGS) 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. By this reference All Saints Property Group (Sub Holdings) (“the Employer”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 7 March 2023 (Notice number 176351613664).

2. The 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 9 January 2023.
3. The Regulator completed a review of the decision to impose the Penalty Notice and informed the Employer on 7 April 2023 that the Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 12 April 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'. 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 may make a reference to the Tribunal provided that an application for review has first 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 Fixed 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 14 2022. The declaration of compliance was not completed by the deadline of 13 December 2022, so the Regulator issued a Compliance Notice (CN) on 9 January 2023 with a deadline of 20 February 2023. As this was not complied with, the Penalty Notice was issued on 7 March 2023

requiring the Employer to pay a penalty of £400. On 3 April 2023 the Employer requested a review of the Penalty Notice. The penalty was confirmed on 7 April 2023. The Employer completed the Declaration of Compliance on 17 April 2023. On 5 April 2023 the Employer referred the matter to the Tribunal.

Submissions

10. The Notice of Appeal relies on the following grounds:
 - (i) The penalty notice was served incorrectly to All Saints Property Group (SUB HOLDING) Ltd. The Employer's name is All Saints Property Group (SUB HOLDINGS) Ltd.
 - (ii) The Employer's representative attempted to complete the Declaration of Compliance but the website advises not to until the name is corrected.
11. The Regulator's response dated 24 May 2023 submits that the Employer has not provided exceptional reasons that warrant revocation of the Penalty Notice.
12. The Respondent accepts that the name set out in the notices was 'All Saints Property Group (Sub Holding) Ltd, rather than that set out on Companies House of 'All Saints Property Group (Sub Holdings)'. The Respondent asserts that the error in the company name is minor and, as such, the notice valid. It is clearly evident on the face of the notice who the notice is addressed to and no reasonable recipient, having received the reminder letters and aware of their automatic enrolment duties would be perplexed by the error.
13. The Respondent's website includes the following:

"Is your employer name incorrect? If your employer name is incorrect please contact us on 0345 600 1011 so that we can amend it before you start your declaration".
14. The Respondent refutes the Employer's assertion that this provided a reasonable excuse for non-compliance with its automatic enrolment duties. It is clear from the pop-up message that the Employer was advised to contact the Respondent in such instances. The Respondent did not receive any contact from the Employer until 27 March 2023, some 10 weeks after the CN had been issued and 20 days after issue of the Fixed Penalty Notice.

Conclusions

1. It is accepted by the Regulator that there was an error in the name of the Employer in the CN and the Fixed Penalty Notice. The correct name is All Saints Property Group (Sub Holdings) Ltd. The name used on the notices omitted the 's' on Sub Holdings.

2. I find that the CN and the Fixed Penalty Notice are valid notices, despite the spelling error. They were served at the Employer's correct address. They were received by the Employer. The error in the Employer's name is a minor and obvious spelling error and is, I find, de minimis (too small to be meaningful or taken into account).
3. I consider, on its true construction, that the Notice has been issued to and served on the Employer at the correct address as required by the Pensions Act 2008.
4. Further, applying by analogy the principles from the House of Lords decision in Mannai Investment Co Ltd v Eagle Star Assurance Co Ltd [1997] AC 747 (with respect to notices under break clauses in commercial leases), this is an obvious typographical error. A reasonable recipient of the notice would have understood that the notice contained an error and that it was intended to name 'All Saints Property Group (Sub Holdings) Ltd. There is no company with the name 'All Saints Property Group (Sub Holding) Ltd, and the notice was sent to the Employer's address.
5. It would have been clear to a reasonable employer reading the CN or the Fixed Penalty Notice that the Regulator was serving the relevant notice on the Employer. It is a minor typographical error which has no potential to cause confusion. The statutory requirements under the Pensions Act 2008 are satisfied. For those reasons I find that the notice was valid, and was validly issued and served.
6. I find that issuing the Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
7. 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. The fact that the Employer has now complied with this duty a short time after the deadline had expired does not excuse a failure to comply.
8. I do not accept that the fact that the notice contained a minor error in the name of the Employer was a reasonable excuse for failing to comply. I have already stated that a reasonable employer would have understood that the notice was being issued to the Employer, despite the omission of an 's' from the name.
9. As stated, the Regulator's website contains a pop-up message which states:

If your employer name is incorrect please contact us on 0345 600 1011 so that we can amend it before you start your declaration”.

10. The Regulator had sent Employer the following correspondence using the incorrect name:
 - a. A letter dated September 2022 stating ‘you must act now’ and including the following warning: ‘Do not ignore this letter, you need to act now. If you do not complete your legal duties, including submitting your declaration of compliance on time, you may be subject to fines’.
 - b. A letter dated September 2022 asking the Employer for an email address and stating: ‘If you do not complete your legal duties, including submitting your declaration of compliance by 13 December 2022, you may be subject to fines’.
 - c. A letter dated November 2022 headed ‘Automatic enrolment: take immediate action to avoid a potential fine’
 - d. A letter dated 21 December 2022 informing the Employer that the deadline had passed and giving a further 14 days to complete the declaration.
11. It would have been clear to a reasonable employer that all these letters were intended for the Employer, despite the omission of the ‘s’. The Employer had ample opportunity before the deadline and the extended deadline to contact the Regulator to ask it to amend the name then to complete its Declaration of Compliance. It did not do so.
12. The Compliance Notice was sent on 9 January 2023. It gave the Employer a further 6 weeks to complete the Declaration of Compliance. The Employer had ample opportunity before the deadline to contact the Regulator to ask it to amend the name and then to complete its Declaration of Compliance. It did not do so.
13. The Employer states in the Notice of Appeal that, ‘we have attempted to complete our Declaration of Compliance but the website advises not to until the name is corrected.’
14. There is no evidence to suggest that the Employer attempted to complete the Declaration of Compliance *before* the deadline in the CN. In its email requesting a review dated 3 April 2023, the Employer states:

‘We have attempted to complete our Declaration of Compliance but the website advises not to until the name is corrected.’

We have spoken to the Pensions Regulator today (Fadumo, supervisor) today who has advised us to send this email and that you will correct the company name within circa 10 days after which we will then be able to complete the declaration of compliance.’

15. Thus the Employer did not ask the Regulator to correct the name until after the Fixed Penalty Notice had been issued. The Regulator confirms that it had received no contact from the Employer until after the Fixed Penalty Notice had been issued.
16. For those reasons I do not accept that the error in the Employer's name is a reasonable excuse for failing to comply. The Employer had made no attempt to get the name corrected before the deadline to comply with the CN expired.
17. For the reasons set out above I conclude that the Employer did not have a reasonable excuse for failing to comply. I determine that issuing the Penalty Notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the Penalty Notice. No directions are necessary.

Signed Sophie Buckley

Date: 18 September 2023

Judge of the First-tier Tribunal