



**NCN: [2024] UKFTT 00354 (GRC). Appeal number: PEN/2023/0234P/AE**

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

**PR JOINERY AND BUILDING 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  
22 March 2024**

## DECISION

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

## REASONS

### *Background*

2. PR Joinery and Building Limited ('the Employer') challenges a Fixed Penalty Notice issued by the Respondent ('the Regulator') on 23 August 2023 (Notice number 172756308703).

3. The Fixed Penalty Notice was issued under section 40 of the Pensions Act 2008 ('the Act'). It requires the Employer to pay a penalty of £400 for failing to comply with a Compliance Notice dated 26 June 2023 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 on 30 September 2023 that its decision was confirmed.

5. On 11 October 2023, the Employer referred to the Tribunal the Regulator's decision to issue the Fixed Penalty Notice.

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 'duties start date' (being the date when the legislation first applies to that employer). These duties include the obligation - from the employer's duties start 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 duties start date, provide certain specified information to the Regulator about its compliance with these duties. This is known as a ‘declaration of compliance’.

10. If the employer fails to provide a 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.

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

12. 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 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.

### *The facts*

13. The Employer’s start date was 1 January 2023 – so the deadline by which the Employer was to complete and submit the declaration of compliance was five months later, namely 31 May 2023.

14. In January 2023, the Regulator wrote to the Employer at the company’s registered office (using the Employer’s Letter Code 1604659637) advising of the requirement to auto-enrol certain staff into a workplace pension scheme and then make a declaration of compliance by 31 May 2023. The letter enclosed a copy of the Regulator’s ‘Essential Guide to Auto-Enrolment’ and warned that failure to complete these legal duties could result in a fine.

15. The Regulator wrote to the Employer again to the company’s registered office in February 2023, using the same letter code, to advise of the auto-enrolment duties and providing a web address for an online tool to assist with this by the compliance deadline of 31 May 2023.

16. The Regulator sent warning letters (again using the same letter code) to the Employer at the company’s registered office in May and June 2023 that immediate action needed to be taken to avoid a fine – namely completing and sending to the Regulator a declaration of compliance. The later letter extended the deadline to do this from 31 May 2023 to 23 June 2023.

17. As the Employer did not file a declaration of compliance by 23 June 2023, the Regulator issued a Compliance Notice dated 26 June 2023 to the Employer’s registered office. The letter was marked ‘*DO NOT IGNORE THIS COMMUNICATION*’ and headed ‘*PR JOINERY and BUILDING LTD must comply*’

*with the directions in this notice by 8 August 2023. You may be issued a £400 penalty if you fail to comply by this deadline’.*

18. On 13 July 2023, having heard nothing from the Employer, the Regulator telephoned the Employer to explain that a Compliance Notice had been issued because no declaration of compliance had been submitted to the Regulator. The Employer replied that his accountants dealt with pensions responsibilities on his behalf. He was therefore invited to pass onto the accountants the Regulator’s telephone number so that they could call the Regulator back.

19. There is no record of the accountants having attempted to contact the Regulator, nor file any declaration of compliance.

20. As no declaration of compliance had been filed as required by the Compliance Notice, on 23 August 2023 (two weeks after the extended deadline granted by the Compliance Notice) the Regulator issued a Fixed Penalty Notice. This notice was also addressed to the Employer’s registered office. The Penalty Notice required payment of the fixed penalty sum of £400 by 20 September 2023, and compliance with the Compliance Notice by the same date.

21. On 5 September 2023, the Employer’s accountants wrote to the Regulator asking for a review of the Penalty Notice. Their letter explained that the accountants had previously advised the Regulator of the Employer’s new address but this had not been applied. Consequently, all letters sent by the Regulator to the Employer’s old address had not been received – with the exception of the Penalty Notice which the accountants had immediately acted upon. It was not the Employer’s fault that he had not received any of the Regulator’s previous correspondence.

22. On 20 September 2023, the Regulator notified the Employer that it had noted all the issues raised in the review request, and that a declaration of compliance had since been submitted. The Regulator had reviewed its decision to issue the Fixed Penalty Notice and confirmed that decision.

### ***Submissions***

23. The accountants’ Notice of Appeal on the Employer’s behalf dated 6 October 2023 says that:

(1) The Director (PR) of the Employer had moved house after registering his pension scheme with NEST pension in January 2023.

(2) In April 2023, a letter was sent to the Regulator informing them of PR’s new address. Despite this, the Regulator sent all correspondence to PR’s old address.

(3) No re-direction of post was in place because ‘all important mailers had been informed of the new address’.

- (4) No letters were received by PR until the Fixed Penalty Notice which was brought to PR's new house by the person living at his old address.
- (5) On receiving the Penalty Notice on 4 September 2023, the accountants completed the declaration of compliance immediately.
- (6) The failure to comply with the Compliance Notice was because the Compliance Notice was never received.
- (7) The Regulator says that they had no record of being sent any change of address for PR but neither PR nor his accountants received any contact from the Regulator as their communications were sent to the wrong address.
- (8) The Penalty Notice should be cancelled because the Compliance Notice was not received, and there was therefore no failure on their part.
- (9) There was no fault by PR who is a very conscientious employer and all pension payments have been made.

24. In its response dated 8 December 2023, the Regulator gave the following reasons for opposing the Employer's reference of this matter to the Tribunal:

- (1) The Regulator is of the opinion that the Employer failed to comply with the requirements of a Compliance Notice.
- (2) The Compliance Notice and Fixed Penalty Notice were sent to the Employer's registered office address. The registered office was later changed, but not until 4 November 2023, long after the Regulator's correspondence and notices were sent.
- (3) The Regulator has no record of the accountant's letter dated 5 April 2023 advising of the Employer's change of address.
- (4) The Regulator relies on the statutory presumption of service where notification is made by post to a person's 'proper address' which includes the company's registered office address.
- (5) A further statutory presumption is that service is deemed to be effected by properly addressing, pre-paying and posting a letter and, unless the contrary is proved, to have been effected at the time which the letter would be delivered in the ordinary course of post.
- (6) The Employer can overturn these statutory presumptions of service and receipt by producing evidence to the contrary.
- (7) The accountants say that PR (a Director of the Employer) moved house – apparently sometime between January 2023 and 5 April 2023 though do not state exactly when. However, his former home address was also the company's registered office – and that address was not changed until 4 November 2023. In the intervening 10 months, post sent to that registered office address was properly served according to the statutory presumptions.

(8) The accountants' arguments are no more than bare denial of service falling far short of rebutting the presumptions of service.

(9) The Employer's inability to access the registered office address was wholly within the control of PR – or his accountants – who delayed by up to 10 months changing the registered office address at Companies House.

(10) The accountants say that 'no redirection of post was applied' but it is not correct that 'all important mailers had been informed' because Companies House had not been notified of the Employer's change of registered office.

(11) The Regulator proactively telephoned PR on 13 July 2023, nearly a month before the extended deadline given by the Compliance Notice. PR told the Regulator that accountants were dealing with pensions issues. The Regulator therefore advised PR to invite the accountants to call the Regulator back about the outstanding pensions obligations. There is no record of either PR or his accountants attempting to contact the Regulator before the Penalty Notice was issued.

(12) As for the accountants' letter dated 5 April 2023 (which the Regulator has no record of receiving), this demonstrates that the accountants were aware of the Regulator's regulatory role in managing pensions duties. Moreover, their letter cites the Employer's unique letter code which could only have been obtained from one of the two letters sent to the Employer by the Regulator before April 2023.

(13) The appeal provides no persuasive argument why it was reasonable for the Employer to have failed to comply with their duty to complete the declaration of compliance.

(14) The declaration of compliance was made on 4 September 2023 only after the expiry of the extended deadline granted by the Compliance Notice and only after the Penalty Notice had been issued.

(15) It was appropriate for Regulator to issue the penalty in circumstances where no reasonable excuse had been advanced for the failure to complete the declaration in time.

### ***Conclusions***

25. Taking account of all the evidence provided to me, I conclude that the Employer has given no 'reasonable excuse' for non-compliance in this case. My reasons are set out below.

26. Even though in this case the Employer engaged accountants to assist with auto-enrolment pension issues, it remains the employer's duty to comply with all pensions obligations. If accountants or any other third party fail to do what is necessary, and if that failure was due to inadequate professional care and attention, the employer may wish to consider what further steps may be available against those professionals.

27. In this case, in view of the accountants' letter including both the Regulator's correct postal address and the Employer's unique letter code, I consider it highly likely that the accountants saw at least one of the January or February letters from the Regulator. Both those letters stated in red text the deadline for the Employer's declaration of compliance as 31 May 2023.

28. By 5 April 2023 if not before, even if the accountants had not seen any of the Regulator's correspondence, they should have been aware that the deadline for the Employer's declaration of compliance was 31 May 2023, being five months after the Employer's duties start date of 1 January 2023.

29. The Employer says that the Compliance Notice was not received though accepts that the Fixed Penalty Notice was received by his accountants and passed on to him. Even if the Compliance Notice was not actually received, the Regulator – having sent it to the company's registered office address (which was correct at the time) – is entitled to rely on the statutory presumptions of proper service and receipt unless there is strong evidence to the contrary. No evidence to the contrary has been provided in this case.

30. Only **after** the Fixed Penalty Notice was served - meaning the Employer had had over seven months rather than five months to comply - did the Employer's accountants apparently make any attempt to contact the Regulator, despite the Regulator's telephone call in mid-July 2023 inviting the accountants to get in touch to discuss the outstanding declaration of compliance.

31. Understandable though the failure in this case to notify Companies House of the Employer's change of registered office may be – and while it may explain why the Employer did not actually receive some (or even all) of the Regulator's correspondence and the Compliance Notice - regrettably that does not amount in law to a reasonable excuse for failing to comply with the statutory duty to complete and send the Regulator a declaration of compliance in time. Late compliance does not excuse the previous failure to comply in time.

32. The declaration of compliance is not just a formality but an important tool to enable the Regulator to check that employers are complying with their legal obligations. It was for the Employer to be aware of this legal duty and ensure full and timely compliance. In this instance, the Employer failed to do so. That failure entitled the Regulator to issue a Compliance Notice.

33. Non-compliance with the Compliance Notice dated 26 June 2023 then entitled the Regulator to issue a Fixed Penalty Notice on 23 August 2023.

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

35. However, the Regulator can accept the payment of a penalty in instalments if a single payment will cause particular hardship. It is open to the Employer to contact the Regulator if a one-off payment would cause financial difficulties and seek the option to pay by instalments.

36. I confirm the Fixed Penalty Notice, and I remit the matter to the Regulator.
37. No directions are necessary.

**(Signed)**

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

**DATE: 25<sup>th</sup> April 2024**