



NCN: [2024] UKFTT 357 (GRC)

Case Reference: PEN-2023-0315-AE

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

**Heard by: On the papers  
Heard on: 1 May 2024  
Decision given on: 1 May 2024**

**Before**

**JUDGE SOPHIE BUCKLEY**

**Between**

**TLT CHILDCARE LIMITED**

**and**

**THE PENSIONS REGULATOR**

Appellant

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 TLT Childcare Limited (“the Employer”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 21 November 2023 (Notice number 138512437987).
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 25 September 2023.
3. The Regulator completed a review of the decision to impose the Penalty Notice and informed the Employer on 2 December 2023 that the Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 20 December 2023.
4. The parties and the Tribunal agreed that this matter was 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 any submissions made by both parties.

### *The Law*

5. 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.
6. 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.
7. 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.

8. 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*

9. The Employer's registered office address has changed over the relevant period:
  - a. On 1 December 2021 the registered office address changed from 10 Bolton Street, Ramsbottom, Bury, BL0 9HX to Bedford House 60 Chorley Road Bolton, BL1 4DA.
  - b. On 19 January 2023 the registered office address changed from Bedford House to St Philips Church Hall, Chatterton Road, Ramsbottom, Bury, BL0 0PQ.
10. The Employer completed its initial declaration of compliance and the first redeclaration of compliance by the applicable deadline. Reminders were in respect of the first cycle redeclaration of compliance were sent to the Employer in January 2019, December 2019, and May 2020. The second re-declaration deadline was 5 September 2023. Reminders were sent to the Employer in respect of the second redeclaration of compliance in December 2022 and June 2023.
11. The Regulator submits in his response that 'All reminder letters ...were sent to the [Employer's] registered office address at the time namely '12 Daffodil Close, Haslingden, Rossendale, Lancashire'. That was not the registered office address, but it was the correspondence address of one of the directors, Sharon Crolla. Companies House shows that Sharon Crolla resigned as director on 25 April 2022.
12. I assume that this was the correspondence address provided to the Regulator. I do not know if the Employer informed the Regulator that the correspondence address for the Employer had changed. As the reminder letters sent in relation to the second redeclaration of compliance were sent 8 months after the director had resigned, it is likely that they did not reach the Employer.
13. The re-declaration was not completed by the deadline, so the Regulator issued a Compliance Notice on 25 September 2023 with a deadline of 6 November 2023. The Compliance Notice was sent to the registered office address at St Philips Church Hall. As this was not complied with, the Penalty Notice was issued on 21 November 2023 requiring the Employer to pay a penalty of £400. The Penalty Notice was also sent to the registered office address at St Philips Church Hall.
14. On 23 November 2023 the Employer requested a review of the Penalty Notice. The penalty was confirmed on 2 December 2023. On 30 August 2022 the Employer referred the matter to the Tribunal on 20 December 2023.

15. The Employer completed the redeclaration of compliance on 20 December 2023.

### *Submissions*

16. The Notice of Appeal relies on the following grounds:

- (i) The Employer did not receive the Compliance Notice or any other letters before the Penalty Notice.
- (ii) The Employer has complied with its obligations since it opened in 2003.
- (iii) Consideration should be given to the fact that the business is a children's nursery.

17. The Regulator's response dated 8 February 2024 submits that there is not reasonable excuse for failing to comply and that the decision to issue the Penalty Notice was fair, reasonable and proportionate.

18. The Regulator submits that the fact that the Employer has previously complied does not amount to a reasonable excuse, nor does it demonstrate that the Regulator's conduct was disproportionate or unreasonable. It shows that the Employer was aware of its duties and knew how to comply.

19. The Compliance Notice and the Penalty Notice were correctly served. The Regulator sent a number of reminder letters. The Regulator submits that the Employer has not disputed receipt of the Penalty Notice. There is a mere assertion of non-receipt which does not rebut the statutory presumptions.

20. The Respondent sympathises with the Employer as to the fact that the penalty may be difficult to pay, but says that it is clear is that this Employer failed to comply with its employer duties within the deadline provided in Compliance Notice and that it only complied with its duties some four months after the original deadline of 5 September 2023. Therefore, the Regulator says that the Penalty Notice was lawfully issued. If the penalty will cause hardship the Regulator would be willing to consider a reasonable repayment offer from the Employer.

### *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 redeclaration of compliance within a specified timeframe is a mandatory requirement. The fact that the Employer has complied in the past and has now complied with this duty after the deadline had expired does not excuse a failure to comply.

22. The nature of the Employer's business does not excuse them from timely compliance. The requirement to pay £400 is a significant burden for a small business such as the Employer. However, the fact that it is burdensome is inherent in it being a 'penalty'. The amount is prescribed by regulations made under the Pension Act 2008. Its amount reflects both the importance of complying with the employer duty provisions and the seriousness with which a failure to do so will be viewed. The Regulator has no discretion to issue a penalty notice for a lesser amount, Nor does the Tribunal have the power to direct substitution of a lesser penalty.
23. The Employer asserts that the Compliance Notice was not received. It was sent to the registered office address, at which the Penalty Notice was received. I do not accept that this assertion is sufficient to rebut the presumption of service of the Compliance Notice taking account of section 7 of the Interpretation Act 1978 and section 303 of the Pensions Act 2004. I find on the balance of probabilities that the Compliance Notice was received. It makes no difference to my decision that the Regulator chooses to use first class post rather than recorded delivery.
24. 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.
25. I conclude that the Employer did not have a reasonable excuse for failing to comply.
26. I accept that the Employer may not have received the reminder letters in relation to the second redeclaration cycle. These letters were sent to the correspondence address of a former director.
27. I do not know why the Regulator had an old correspondence address. It may be that the Employer did not provide an updated correspondence address but for the purposes of this appeal I will assume in the Employer's favour that it was an error by the Regulator.
28. There is no obligation on the Regulator to provide reminders. The Employer had already complied with its redeclaration obligations on one occasion and was therefore aware that it would need to redeclare every three years without the need to be reminded. When an Employer completes the redeclaration they are informed that they will need to redeclare in three years' time and are provided with a link to the Regulator's website. The obligations and the timeline are set out clearly on the website.
29. Even accepting that the reminder letters were sent in error to the wrong address and therefore not received by the Employer, I find that there is no reasonable excuse for failing to comply.

30. 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 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**

Judge of the First-tier Tribunal

Date: 1 May 2024