



**NCN [2024] UKFTT 00450 (GRC)**

**.Case reference: PEN-2024-0019-AE**

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

**Heard: On the papers  
Heard on: 24 May 2024  
Decision given on: 24 May 2024  
Amended decision sent to the parties on: 03 June 2024**

**Before**

**TRIBUNAL JUDGE SOPHIE BUCKLEY**

**Between**

**ZABIR ALI OPTICAL LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Amended under rule 40 of the Tribunal Procedure (First-tier Tribunal) (General  
Regulatory Chamber) Rules 2009**

**Decision**

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

## REASONS

### *Background*

1. In this reference Zabir Ali Optical Limited (“the Employer”) challenges a fixed penalty notice (“the Fixed Penalty Notice”) issued by the Pensions Regulator (“the Regulator”) on 20 December 2023 (Notice number 137579205345).
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 25 October 2023.
3. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 9 January 2024 that the Fixed Penalty Notice was confirmed. A further review was conducted and the Regulator confirmed the Fixed Penalty Notice on 13 January 2024. The Employer referred the matter to the Tribunal on 14 January 2024.

### *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 duties start 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 duties start 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 deadline for the Employer's second re-declaration of compliance was 2 October 2023.
10. The Regulator sent two reminder letters to the Employer in January and July 2023. These were sent to the contact address in Westoughton that had been provided by the Employer when it submitted its re-declaration of compliance in 2020. The Employer had not notified the Regulator of any change in its contact address.
11. The Regulator sent email reminders to the Employer on 5 December 2022, 6 March 2023, 24 April 2023, 5 June 2023, 31 May 2023, 3 July 2023, 7 August 2023, 11 September 2023 and 18 September 2023. These emails were sent to the email address provided by the Employer when it submitted its re-declaration of compliance in 2020. The Employer had not notified the Regulator of any change in its contact email address.
12. The Employer's second re-declaration of compliance was not filed by the deadline of 2 October 2023 so the Regulator issued a Compliance Notice on 25 October 2023 with an extended deadline of 5 December 2023. The Compliance Notice was sent to the Employer's registered office address (2 West Brough). This had been the Employer's registered office address since 29 November 2022.
13. As the Employer did not complete a re-declaration of compliance by the deadline in the Compliance Notice, the Fixed Penalty Notice was issued on 20 December 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 17 January 2024.
14. The Employer's accountant submitted a review request on 3 January 2024. The grounds for review state that the current accountants took over the payroll from another accountant in April last year and they stated on their handover that the re-enrolment date was 01.05.24 so it got missed completely. The accountant stated that she had now submitted the declaration of compliance. She stated that this was an honest oversight and has been addressed as soon as she was made aware.
15. The Regulator upheld the Fixed Penalty Notice on review on 9 January 2024.
16. The Employer submitted a further review request on 9 January 2024. This states:

"I have had this business for nearly 12 years and this is my first delayed notification for auto enrolment. I have moved my company registered address from 1042 Wimborne Road to 2 West Borough mid 2023 as I sold my house. In

this process I have unfortunately lost some post due to problems setting up diversions and have only received the letter dated 20th December at the new address which states that we missed the deadline to submit.”

17. The Regulator conducted a further review and upheld the Fixed Penalty Notice on 13 January 2024.
18. The Employer completed the re-declaration of compliance on 4 January 2024.

#### *Submissions*

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

- (i) The Employer moved his registered address last year from Wimbourne Road to West Borough. The Employer tried several times to set up a postal diversion and Royal Mail failed to action it.
- (ii) The Employer has been fully compliant in the past.
- (iii) The Employer did not receive the two letters.
- (iv) An ‘older email address’ was being used by the Regulator.
- (v) As soon as the Employer realised action was taken.

20. In its reply to the Regulator’s response the Employer states that:

- a. The email address used to send the email reminders was wrong.
- b. The contact address for the two letter reminders was wrong (it was the director’s old address)
- c. The letter sent to the accountant’s address and the Compliance Notice were not communicated to the Employer.

21. The Regulator submits all notices were properly served. It submits that the appeal grounds do not amount to a reasonable excuse for the failure to comply with the requirements of the Compliance Notice or indicate that the Respondent has acted unfairly in any way in respect of the Fixed Penalty Notice.
22. The Regulator sent a number of reminders to the contact details provided by the Employer. The Employer had not updated their details using the online portal. There is no legislative requirement to provide an Employer with reminders before issuing a notice.
23. The Compliance Notice was properly served and gave an extension of time for filing the re-declaration of compliance. The Employer has prior knowledge and experience of their employer duties as regulated by the Respondent but, on this occasion, failed to comply with those duties in a timely manner.
24. The Regulator submits that the decision to issue the Fixed Penalty Notice was fair, reasonable, and proportionate.

## *Conclusions*

25. The Compliance Notice was sent to the Employer's correct registered office address. The Employer appears to have assumed that the Compliance Notice was sent to his former registered office address. This is not the case. The fact that the Post Office failed to set up a postal redirection service to forward post from his former office address is irrelevant, because the Compliance Notice was not sent to the former registered office address.
26. In the absence of any causative link with the change of address, the Employer has provided no evidence that could rebut the presumption of service. I find that the Compliance Notice was properly served and received at the registered office address of the Employer.
27. 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.
28. I find that issuing the Fixed Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
29. I conclude that the Employer did not have a reasonable excuse for failing to comply.
30. I accept that the reminder emails may not have been received by the Employer, because they appear to have been sent to a former email address. Further, it may be that the Employer did not receive the reminders sent by post, because they were sent to a Bolton address provided in 2020, which appears to be the address of the Employer's former accountants. In my view, it is the Employer's responsibility to ensure that the information provided to the Regulator is accurate and up to date and a failure to do so does not amount to a reasonable excuse for non-compliance.
31. The Employer should, in any event, be aware of its duties and even in the absence of any reminders would have been aware of the relevant date for compliance due to having previously re-declared compliance. I note from the first application for a review that the Employer's current accountants were aware of the need to comply. There is no requirement on the Regulator to send reminders, and the fact that no reminders have been received does not amount to a reasonable excuse for failing to comply.
32. The Compliance Notice was sent to the registered office address. Even disregarding the presumption of service, I find that the Compliance Notice was received on the balance of probabilities. In the absence of any explanation as to why the Compliance

Notice was not received, I find that it is more likely that it was received but not acted upon. Whilst this may have been because of the Employer's office move, this does not amount to a reasonable excuse. A reasonable employer would ensure that important documentation is acted upon.

33. To the extent that the Employer relies on the failure by the previous accountant to inform the new accountant of the correct date, the Employer cannot delegate the responsibility for complying with its legal duties to its accountant, and it remains responsible for ensuring compliance, even if the accountant has failed in some way.
34. 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: 24 May 2024

Amended on: 3 June 2024