



**NCN [2024] UKFTT 00463 (GRC).**

**Appeal number: PEN/2023/0257P/AE**

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

**A J RAYSON 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  
7 May 2024**

## DECISION

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

## REASONS

### *Background*

2. A J Rayson Limited ('the Employer') challenges a Fixed Penalty Notice issued by the Respondent ('the Regulator') on 5 October 2023 (Notice number 148468667107).

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 10 August 2023 that required the Employer to provide the Regulator with information in respect of automatic enrolment.

4. On 19 October 2023, the Employer asked for a review of the decision to impose the Fixed Penalty Notice. On 27 October 2023, the Regulator informed the Employer that its decision was confirmed.

5. On 27 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 pension 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 19 December 2022 – so the deadline by which the Employer was to complete and submit its declaration of compliance was five months later, namely 18 May 2023.

14. The Regulator sent an introductory letter to the Employer in January 2023, a reminder in February 2023, and a further reminder in May 2023. All these letters were addressed to the Employer's registered office address.

15. As the Employer did not file a declaration of compliance by 18 May 2023, the Regulator issued a Compliance Notice ('CN1') dated 30 May 2023.

16. On 26 July 2023, having heard nothing from the Employer, the Regulator issued a Fixed Penalty Notice ('FPN1').

17. FPN1 was returned to the Regulator on 2 August 2023 as undelivered.

18. Only at this point, when the Regulator checked the Employer's registered office address, did it discover that the Employer had changed its registered office in February 2023.

19. On 15 June 2023, the Employer again changed its registered office.

20. On 10 August 2023, the Regulator revoked CN1 and issued a fresh Compliance Notice ('CN2') to the Employer's current registered office address. CN2 extended the deadline for the Employer's declaration of compliance until 20 September 2023 and explained what to do, who to contact at the Regulator's office in case of difficulty and that a fine might be imposed for failure to comply.

21. The Employer still did not respond nor file a declaration so, on 5 October 2023, the Regulator served a Fixed Penalty Notice ('FPN2').

22. On 19 October 2023, the Employer telephoned the Regulator to ask why FPN2 had been served. She was told it was because she had not completed a declaration of compliance before the deadline and that she needed to complete it as soon as possible.

23. Having filed her declaration, later the same day the Employer emailed the Regulator to ask for reconsideration of the £400 penalty. She said that she had not been aware of the need for a declaration and had received no correspondence about it.

24. On 27 October 2023, the Regulator emailed the Employer explaining why FPN2 had been issued – and stating that decision to issue FPN2 had been reviewed, and confirmed because CN2 and FP2 were presumed by statute to have been properly served and received.

25. On 28 November 2023, the Employer rang the Regulator again, claiming she had not had a response to her review request. In fact she had, though she had not yet heard from the **Tribunal** to whom she had sent a Notice of Appeal a month before.

### ***Submissions***

26. The Employer's Notice of Appeal dated 27 October 2023 says that:

(1) When she first spoke to someone by telephone at the Regulator's office, he told her that the penalty '*would be squashed if I did not receive the reminders or paperwork*' from the Regulator.

(2) The Employer said she was attaching to her Notice of Appeal '*all the mail I have received at our office address*'. There were no reminders: the only letter received was '*the fine of £400*'.

27. In its response dated 28 December 2023, the Regulator opposed the Employer's reference to the Tribunal because:

(1) The Regulator had sent an introductory letter and other correspondence to the Employer in February and May 2023. While some had admittedly been sent to the Employer's previous registered office address, the Employer had not informed the Regulator of the change of address.

(2) It was only when a statutory Notice FPN1 was returned undelivered that the Regulator discovered the change of address and revoked the statutory Notices, reissuing the Compliance Notice ('CN2') to the correct address on 10 August 2023.

(4) The Employer still did not comply, so the Regulator issued a Fixed Penalty Notice ('FPN2') on 5 October 2023 again to the correct registered office address.

(5) Having sent both CN2 and FPN2 to the correct registered office, the Regulator is entitled to rely on the statutory presumptions of service and receipt.

(6) While these statutory presumptions can be overturned by evidence to the contrary, the Employer had provided only a screen-shot of a list of dates on

which correspondence **had** been received at the registered office. Crucially, however, this showed correspondence received between 22 August and 15 October 2023 yet CN2 was sent on **10** August 2023.

(7) This evidence - without more - was therefore insufficient to overturn the statutory presumption that CN2 was received, especially as FPN2 was admittedly received at the same address.

(8) Even if the Employer did not receive any of the other pre-Notice communications (which the Regulator disputes), the Employer must have been aware of her duty to complete the declaration of compliance on receipt of CN2.

(9) The Employer's account that she was told when she telephoned the Regulator that FPN2 would be revoked if it was the only communication received is irrelevant.

(10) While the Employer has belatedly completed her declaration, she did so only after FPN2 had been issued. Late compliance does not excuse the previous failure to do so on time.

(11) Overall, no reasonable excuse had been advanced for the failure to complete the declaration in time.

### ***Conclusions***

28. Based on the evidence provided to me, I conclude that the Employer has given no '*reasonable excuse*' for non-compliance in this case.

29. Even if the Employer received **none** of the Regulator's letters (as opposed to the Notices), that does not excuse her failure to complete a declaration on time because:

(a) the law does not require the Regulator to send **any** information or reminders before taking the enforcement action it did in this case by issuing CN2 and then FPN2; and

(b) employers are expected to be responsible and therefore aware of the legal obligations to which they are subject. These include the deadline for an employer's declaration of compliance five months after that employer's duties start date.

30. Even if the Employer did not **actually** receive CN2, the Regulator – having sent it to the Employer's correct registered office address – is entitled to rely on the statutory presumptions of proper service and receipt unless there is strong evidence to the contrary.

31. The Employer's evidence to the contrary - her screen-shot of dates correspondence **had** been received at the registered office address - did not cover the likely date of delivery of CN2 so does not prove anything.

32. As for the Employer's first telephone call to the Regulator, I consider the Employer either misunderstood what was said or the person she spoke to made a

mistake. Either way, it is clearly incorrect that non-receipt of reminder letters and ‘paperwork’ means a Fixed Penalty Notice will be quashed.

33. Finally, although the Employer belatedly completed her declaration, this was only **after** FPN2 had been served. Her non-compliance had therefore already incurred a penalty: such a penalty will not be revoked just because an employer has eventually complied.

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 apply for this.

36. I confirm FPN2 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: 30<sup>th</sup> May 2024**