



NCN: [2024] UKFTT 970 (GRC)

**IN THE FIRST TIER TRIBUNAL
(PENSIONS REGULATION)**

APPEAL NO: FT/PEN/2024/0041

Heard by determination on the papers.
Heard on 19 August 2024 by Judge Kennedy.
Decision given on 30 October 2024.

BETWEEN:

BRIAN QUINN

Appellant

and

THE PENSIONS REGULATOR

Respondent

Date and type of Hearing: 19 August 2024 – an appeal to be decided on the papers.

Date of decision: 19 August 2024

Decision: The appeal is dismissed.

REASONS

Introduction:

1. This decision relates to an appeal in respect of a Fixed Penalty Notice ('FPN') issued on 10 January 2024 under s.40 of the Pensions Act 2008 ('PA08'). The penalty was issued because the Respondent believed the Appellant had failed to comply with the directions in the Compliance Notice ('CN'), issued under s.35 PA08 on 9 November 2023, by the deadline of 20 December 2023.
2. The Respondent acknowledges the Appellant is based in Northern Ireland, so the equivalent legislation (The Pensions (Northern Ireland) Order 2005; Pensions (No.2) Act Northern Ireland 2008; and Employers' Duties (Registration and Compliance) Regulations (Northern Ireland) 2010) apply. The Compliance Notice (Annex G) and Fixed Penalty Notice (Annex H) to which this appeal relates clearly set out that there is differently titled legislation for each region, for example:
"Compliance notice issued under section 35 of the Pensions Act 2008. To the extent that this notice is applicable to the Northern Ireland jurisdiction, it is issued under section 35 of the Pensions (No.2) Act Northern Ireland 2008"
3. As the content of provisions relied on are the same, the Respondent has retained references to the Pensions Act 2008 in their Response but can be read as equivalent.

Background:

4. The Tribunal is grateful to the Respondent for the following submissions with references to the indexed and paginated Hearing Bundle ("HB") of papers provided:
5. The Respondent is responsible for the regulation of work-based pension schemes. Established by s.1 of the Pensions Act 2004, its objectives are set out in s.5. These include maximising compliance with Automatic Enrolment duties under Chapter 1 of Part 1 of the PA08.
6. This Appeal is concerned with the duty to give prescribed information to the Respondent under s. 11 PA 08:
7.
 - a. The information to be provided to the Respondent is prescribed in the Employers' Duties (Registration and Compliance) Regulations 2010 ('the 2010 Regulations'). It includes information about the number of workers automatically enrolled into a pension scheme, those already in a pension scheme, and those not in either category, as well as details of the pension provider and scheme (if any).

- b. Regulation 3(1) of the 2010 Regulations sets the deadline for providing the information, which is five months starting from employer's staging date (the date when the automatic enrolment legislation first applies to the employer).
 - c. Regulation 4(1) of the 2010 Regulations also sets the deadline for providing reenrolment information, which is within five months beginning with the third anniversary of the employer's staging date.
8. In the event of a contravention of the employer duties or certain safeguards, the Respondent has the power, among others, under the PA 08 to:
 - a. Issue a Compliance Notice specifying steps that the employer must take (including payment of pension contributions) to remedy a contravention of the employer duties or the inducement safeguard (s.35); and
 - b. Issue a Fixed Penalty Notice in the sum of £400, in the event of a failure to comply with a Compliance Notice (s.40).
 9. The Respondent has the power to issue other notices which are not the subject of this appeal.

Chronology:

10. The Appellant, Brian Quinn, is the employer for the purposes of the employer duties under PA 08.
11. On 07 June 2017, the Appellant made an initial declaration of compliance. The Appellant gave the employer's organisation name as "Brain Quinn" and an employer address of 67 Crosscavanagh Road, Dungannon, County Tyrone, BT70 3BJ. The employer's contact email address was given as brianquinn429@yahoo.co.uk (Annex A - HB).
12. On 9 September 2020 the Appellant made its re-declaration of compliance. The Appellant gave the employer's organisation name as "Brain Quinn" and an employer address of 67 Crosscavanagh Road, Dungannon, County Tyrone, BT70 3BJ. The employer's contact email address was given as brianquinn429@yahoo.co.uk (Annex B - HB).
13. The Respondent includes this declaration of compliance history, as set out below; to demonstrate it is more likely than not, this was an error on behalf of the Appellant and the first name ought to have read "Brian".
14. The Appellant was required to make a further re-declaration of compliance on 2 October 2023.
15. On 5 December 2022, 7 March 2023, 25 April 2023, 6 June 2023, 3 July 2023, 07 August 2023, 11 September 2023, 18 September 2023, 25 September 2023, 30 September 2023,

and 2 October 2023 the Respondent emailed the Appellant to the email address provided informing it that there was a re-declaration deadline of 2 October 2023 (Annex C - HB).

16. In January and July 2023, the Respondent issued further reminders reminding the Appellant of the 2 October 2023 deadline for submission of its re-declaration of compliance (Annex D - HB).
17. On 24 November 2023 the Respondent issued a further email reminder to the Appellant advising it that the re-declaration of compliance was now due and informing it what action was necessary to avoid enforcement action (Annex E - HB).
18. On 25 October 2023 the Respondent issued the claimant a reminder by post to the address provided in previous declaration of compliances that he had not complied with the duties and encouraging him to do so immediately or risk a fine (Annex F - HB). This afforded the Appellant a further 14 days before any Compliance Notice was issued.
19. As no redeclaration of compliance was made by the Appellant by the deadline of 2 October 2023 the Respondent issued a Compliance Notice to the Appellant on 9 November 2023 (Annex G - HB). The Notice was issued to Brain Quinn at 67 Crosscavanagh Road, Dungannon, County Tyrone, BT70 3BJ.
20. The Compliance Notice again requested the Appellant to complete and submit its declaration and afforded it a further extended deadline by which to comply, 20 December 2023. The Compliance Notice specified that a £400 penalty may be imposed if the Appellant failed to comply by this date. It also provided both an online link to the Respondent's website for filing the redeclaration and a telephone number through which to contact the Respondent should the Appellant require assistance.
21. The Appellant did not complete its redeclaration of compliance by 20 December 2023 as required by the Compliance Notice (Annex G - HB), so the Respondent elected to issue a Fixed Penalty Notice to the Appellant on 10 January 2024 (Annex H - HB). This Notice requested both payment of the £400 penalty and compliance with the Compliance Notice no later than 7 February 2024. The Fixed Penalty Notice was also addressed to Brain Quinn at 67 Crosscavanagh Road, Dungannon, County Tyrone, BT70 3BJ.
22. On 11 January 2024, the Appellant requested a review of the Fixed Penalty Notice (Annex I - HB). On the same day, the Appellant completed its redeclaration obligations. In doing so the Appellant again confirmed that the organisation name was "Brain Quinn", and the address was 67 Crosscavanagh Road, Dungannon, County Tyrone, BT70 3BJ (Annex J - HB).

23. The Respondent responded to the Appellant's review request on 18 January 2024 (Annex K - HB), advising that the Respondent had conducted a review but had upheld the issuing of the Fixed Penalty Notice.
24. The Appellant issued a Notice of Appeal to the Tribunal on 5 February 2024 (Annex L - HB).

Grounds of Appeal:

25. In its grounds of appeal, the Appellant has given its name as "Brian Quinn", this reflects the contact's name given by the Appellant in its past declarations of compliance to the Respondent (Annexes A, B, and J - HB). However, in those same declarations the Appellant has repeatedly given a different name (transposed characters) for the employer organisation: Brain Quinn.
26. The Respondent acknowledges its Notices, including the two connected to this appeal (Annex G and H - HB), were issued to the organisation name of Brain Quinn in reliance of the information from the Appellant in Annexes A and B (- HB). As submitted by the Respondent, the Tribunal determines that "Brain Quinn" is an error, the Respondent submits it is immaterial (de minimis) and arose from the Appellant's mistake/typing error. The Respondent considers and the Tribunal finds, it does not affect the validity of the Compliance Notice, or the Fixed Penalty Notice against which the Appellant appeals. In any event, no dispute as to the validity of either notice has been raised.
27. The grounds for the appeal contained within the Notice of Appeal (Annex L - N - HB) have been identified as being that:
 - a. The non-compliance was exceptional and remedied promptly and that the Appellant had always acted promptly in complying with its obligations previously; and
 - b. The Compliance Notice was not received and may have been "*misdelivered*" to a different address; and
 - c. That the "*amount of the penalty is onerous on a small family run business*"

Response:

28. The Respondent opposes the appeal asking the Tribunal to dismiss the appeal because the Appellant has not provided exceptional reasons that warrant revocation of the FPN. The Response sets out the Respondents detailed, and compelling submissions as follows;
29. With regard to the Fixed Penalty Notice, 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 that penalty notice.

30. Taking each ground in turn, the Respondent resists the Appellant's case for the following reasons.

Late Compliance:

31. The Appellant acknowledges that it complied with its obligations late, on 11 January 2024, and after the deadline of 20 December 2023 set in the Compliance Notice.
32. The Respondent submits that before issuing the Compliance Notice and the Fixed Penalty Notice, the Respondent had sent the Appellant:
 - a. Nine emails between 5 December 2022 and 2 October 2023 reminding it of its upcoming redeclaration deadline of 2 October 2023 (Annex C - HB); and
 - b. Two reminder letters to the Appellant reminding it of the 2 October 2023 deadline (Annex D - HB); and
 - c. One email on 24 November 2023 (Annex E - HB) reminding the appellant that it had missed the original deadline and to "act now" to avoid risking a penalty; and
 - d. One letter to the Appellant dated 25 October 2023 (Annex F - HB) reminding the Appellant that it had not complied with its obligations and asking the Appellant to take "*Urgent action*" to remedy this failure before the Compliance Notice was issued.
33. As such, there is strong evidence that the Appellant was aware of its statutory obligations and the time within which the Appellant was obliged to act. Despite these reminders, some of which afforded further time to comply beyond the statutory deadline before any enforcement action was taken, the Appellant failed to fulfil its obligations.
34. The importance of declaring compliance on time is, it is believed, recognised by the Tribunal, and need not be repeated at length here. As a responsible employer it is for the Appellant to be aware of their legal duties and to ensure full and timely compliance with them. Employers with workers as defined in the Pensions Act 2008 are required to comply with their statutory duties within the timescales provided by law. The Appellant failed to do so, despite numerous reminders and provision of information as to where the Appellant could access guidance and support, accordingly it was fair, reasonable, and appropriate for the Respondent to issue a Compliance Notice and when the Appellant still failed to comply by the date given, to issue a penalty, as a result of its non-compliance.

Service of the Compliance Notice:

35. The Appellant has suggested in the notice of appeal that the Compliance Notice was not delivered to the Appellant. There is no dispute that the Fixed Penalty Notice was received.
36. The Respondent relies upon the statutory presumptions of service. For the purposes of section 7 of the Interpretation Act 1978, the proper address on which to serve a notice and unincorporated business or any other person is the last known address. Section 232(2)(g)(ii) PA 04 provides that this also applies in Northern Ireland.
37. The presumption contained in section 7 of the Interpretation Act 1978 is that, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.
38. At the relevant time, the last known address was that provided by the Appellant on 9 September 2020 (Annex B - HB) and the employer's name and address was given as Brain Quinn, 67 Crosscavanagh Road, Dungannon, County Tyrone, BT70 3BJ.
39. The Respondent notes that this information remains unchanged from the information provided by the Appellant on 8 June 2017 (Annex A - HB) and 11 January 2024 (Annex J - HB)
40. Additionally, Regulation 15(4) of The Employers' Duties (Registration and Compliance) Regulations 2010 provides a presumption that a notice subject to review is received by a person to who it is addressed.
41. The Appellant has suggested, without any supporting evidence and simply on an assumption or musing, that the Compliance Notice was misdelivered to 68 Crosscavanagh Road, Dungannon, BT70 3BJ when the Appellant's correspondence address is in fact 68a Crosscavanagh Road, Dungannon, BT70 3BJ (Annex L; at 7.1 - HB).
42. In respect of this ground of appeal the Respondent submits that;
 - a. The Defendant has not submitted any evidence to rebut the statutory presumption of service with respect of the Notices that are the subject of this matter. There is simply a bare assertion that the Compliance Notice may have been misdelivered; and
 - b. The correspondence address given in the Notice of Appeal (68a Crosscavanagh Road, Dungannon, BT70 3BJ) is inconsistent with the correspondence address repeatedly provided by the Appellant in its declaration of compliances (67 Crosscavanagh Road, Dungannon, BT70 3BJ), both before and after the issue of both the Compliance Notice and the Fixed Penalty Notice (Annexes A, B and J - HB) . This

address is the address to which all Notices were sent, and the Fixed Penalty Notice was clearly received by the Appellant at that address as it applied for a review of it and subsequently lodged an appeal. Further, the Appellant complied with its redeclaration obligations the day after the Fixed Penalty Notice was received. There has been no compelling explanation why it was not able to receive and act upon the Compliance Notice issued to the same address.

c. The Respondent submits that it is reasonable for it to rely upon information provided by the Appellant in the exercise of its legal obligations, that the Compliance Notice was properly issued to Appellant and that it is reasonable to rely on effective service to this last known address, as provided by the Appellant itself. The Respondent notes that at no time any of the multiple correspondences issued to the Appellant, at that address, have been returned as undeliverable.

Penalty Value:

43. The value of the penalty is set by law and the Respondent has no discretion as to this amount. If the amount due is found burdensome for the Appellant, the Appellant could have contacted the Respondent to discuss payment options, but no such communication was been made to the Respondents or the Tribunal.
44. The Tribunal accept and adopt the Respondents careful, comprehensive and compelling reasoning in its response as summarised above and accordingly dismiss the appeal.

Brian Kennedy KC

19 August 2024.