



Neutral citation number: [2025] UKFTT 261 (GRC)

Case References: FT/PEN/2024/0289
FT/PEN/2024/0290

**First-tier Tribunal
(General Regulatory Chamber)
Pensions**

**Heard by Cloud Video Platform
Heard on: 10 February 2025
Decision given on: 28 February 2025**

Before

JUDGE MATON

Between

FIRST STEPS TOGETHER LTD

Appellant

and

THE PENSIONS REGULATOR

Respondent

Representation:

For the Appellant: Matthew Bonilla, Director.

For the Respondent: Natasha Jones, Solicitor.

Decision: The appeal is Dismissed.

REASONS

1. This is a reference application in relation to the Regulator's Fixed Penalty Notice number 130131694304 dated 6 September 2023 ("the FPN"), and in relation to the Regulator's Escalating Penalty Notice number 204554304228 dated 6 October 2023 ("the EPN"). For convenience the reference application is referred to as "the Appeal".
2. The Tribunal received and considered a bundle of documents, and the parties attended an oral hearing by Cloud Video Platform.

3. The Tribunal is satisfied that this was a fair and just way to decide the Appeal.

Relevant law

4. Under the Pensions Act 2008 (the “2008 Act”), employers are required to enrol “job holders” in occupational or workplace personal pension schemes. The Regulator ensures compliance with these requirements.
5. Under s11 of the 2008 Act, an employer who is subject to automatic enrolment duties must give prescribed information to the Regulator, known as a declaration of compliance. This information, and the time periods in which it must be provided, are prescribed by the Employers' Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”).
6. Under s35 of the 2008 Act the Regulator can issue a compliance notice if an employer has contravened one of more of its employer duties. A compliance notice requires the employer to take certain steps in order to comply with these duties. It will usually specify a date by which this must be done.
7. The Regulator can issue a fixed penalty notice if an employer has failed to comply with a compliance notice (s40 of the 2008 Act). This requires the employer to pay a penalty within a specified period. The amount of a fixed penalty is £400, set by regulation 12 of the 2010 Regulations.
8. In some circumstances the Regulator may also issue an escalating penalty notice in relation to a failure to comply with a compliance notice (s41 of the 2008 Act). This requires the employer to pay a penalty at a daily rate. These rates are prescribed in regulation 13 of the 2010 Regulations, and are determined by reference to the number of employees employed by the employer.
9. The Regulator sends notices by post to an employer’s “proper address” (s303(3)(c) of the Pensions Act 2004 (the “2004 Act”). The registered office or principal office address is the proper address on which to serve notices on a body corporate, including a company, as set out in s303(6)(a) of the 2004 Act (applied by s144A of the 2008 Act).
10. Section 7 of the Interpretation Act 1978 (the “1978 Act”) states that:

Where an Act authorises or requires any document to be served by post (whether the expression “serve” or the expression “give” or “send” or any other expression is used) then, 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.
11. Under regulation 15(4) of the 2010 Regulations, it is presumed that (a) where a notice is given a date by the Regulator, it was posted or otherwise sent on that day; (b) if a notice is posted or otherwise sent to a person's last known or notified address, it was

issued on the day on which that notice was posted or otherwise sent; and (c) a notice was received by the person to whom it was addressed.

12. A company's registered office is the address shown as such on the companies register. Section 86 of the Companies Act 2006 (the "2006 Act") requires a company to ensure that its registered office is one where, in the ordinary course of events, a document addressed to the company and delivered to the address would be expected to come to the attention of a person acting on behalf of the company.
13. By s87 of the 2006 Act, a change of registered office is effected by notice to the registrar of companies, and takes effect on being registered.
14. An employer can make a reference to the Tribunal in respect of the issue of a notice and/or the amount of the penalty payable under the notice (s44 of the 2008 Act). This is only permitted if the Regulator has reviewed the notice or if an application for a review has been made to the Regulator under s43 of the 2008 Act. Under s103(3) of the 2004 Act, the Tribunal must then "determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it." The Tribunal must make its own decision on the evidence presented to it (which may be different from the evidence presented to the Regulator). In considering a penalty notice, it is proper to take "reasonable excuse" for compliance failures into account (*Pensions Regulator v Strathmore Medical Practice* [2018] UKUT 104 (AAC)). On determining the reference, the Tribunal must remit the matter to the Regulator with such directions (if any) as it considers appropriate.

The Appeal

15. The Appellant, and the employer for the purposes of this Appeal, is a company. There is no dispute that the Appellant is an employer with duties to enrol employees in a relevant pension scheme.
16. The Regulator states that:
 - a. the Appellant was required to submit a declaration of compliance by 22 June 2023, and did not do so, despite a number of letters and emails having been sent to the Appellant asking the Appellant to update its details and reminding it to comply;
 - b. on 10 July 2023 the Regulator issued a compliance notice ("the Compliance Notice") to the Appellant in relation to the submission of a declaration of compliance, giving an extended deadline of 21 August 2023;
 - c. on 6 September 2023, having received no response to the Compliance Notice, the Regulator issued the FPN to the Appellant, requiring payment of a penalty of £400 and compliance with the Compliance Notice by 4 October 2023;
 - d. on 6 October 2023, having received no response to the FPN, the Regulator issued the EPN to the Appellant, requiring compliance with the Compliance

Notice by 2 November 2023 and imposing an escalating penalty of £500 per day from 3 November 2023 in the event of failure;

- e. on 19 December 2023 the Regulator sent a letter before action to the Appellant in relation to the sum of £14,400 being due further to the FPN and the EPN;
- f. on 23 January 2024 the Appellant submitted a declaration of compliance (“the Declaration of Compliance”);
- g. on 17 June 2024 the Regulator sent a further letter before action to the Appellant in relation to the sums said to be outstanding (“the Second LBA”);
- h. on 29 July 2024 the Appellant submitted a review request to the Regulator in relation to the FPN and the EPN;
- i. on 2 August 2024 the Regulator issued its review decision, upholding the FPN and the EPN.

17. The Appellant appealed to the Tribunal.

18. In its application for this Appeal the Appellant disputes a number of the matters of fact put forward by the Regulator. These areas of dispute are discussed below.

Factual background and evidence

19. The Appellant was incorporated on 3 October 2022, with the registered office address of 13 Hillside Close, Hyde, Manchester, Lancashire SK14 3GR (“the Hillside Close address”). On 8 December 2023 it changed its registered office address to 76 Manchester Road, Denton, Lancashire M34 3PS. On 23 January 2024 it changed its registered office address to Mynshull House, 78 Churchgate, Stockport, Cheshire SK1 1YJ (“the Mynshull House address”).

20. Mr Bonilla said that, until May 2023, the Hillside Close address was his residential address, which he occupied as a tenant. Since May 2023 he has not lived at the Hillside Close address and has had no contact with the landlord or with anyone who may have lived at the address since he left. The Tribunal has not seen documentary evidence to support these matters.

21. Mr Bonilla did not arrange for a re-direction or forwarding of post when he left the Hillside Close address. He said that almost all correspondence relevant to the business of the Appellant would have been by email. He also said that the Appellant did not operate its business from a separate office during the time that its registered office was at the Hillside Close address.

22. Mr Bonilla said that the Appellant did not receive any correspondence from the Regulator before the Second LBA, including the Compliance Notice, the FPN or the EPN. He states that the Second LBA was only received because he attended a sorting office to pick up a parcel and it was given to him at the sorting office, as it had been wrongly addressed. The Tribunal has seen a copy of this letter, which was addressed

to the Appellant at the Mynshull House address, but using an incorrect postcode (which, it transpires, was the postcode of the address provided to the Regulator in the Declaration of Compliance – see paragraph 26). The Regulator accepted that the address in the Second LBA was an error.

23. Mr Bonilla said that the Appellant's accountants were responsible for pension administration on behalf of the Appellant. The evidence before the Tribunal shows that, for at least some correspondence with the Appellant, the Regulator had used an email address which the Appellant confirms is used by a member of staff working for its accountants. Miss Jones said that no reply or auto-response had been received by the Regulator from those emails.
24. Mr Bonilla said that the Appellant received no correspondence from its accountants indicating that any aspect of administration was overdue, and that the Appellant had provided all of the necessary information to its pension provider and checked its account directly with its pension provider to ensure that its compliance was up to date.
25. The Appellant's accountants submitted the Declaration of Compliance on behalf of the Appellant.
26. No copy of the Declaration of Compliance was available before or during the hearing. During the hearing, Miss Jones checked the Regulator's records and said that the Declaration of Compliance had given the following address for the Appellant: B2.27 Tameside Business Park, Windmill Lane, Denton, Manchester M34 3QS. Mr Bonilla confirmed that this was the address submitted in the Declaration of Compliance.

Discussion

27. To determine this Appeal, it is necessary to decide the following issues:
 - a. were the notices properly issued by the Regulator; and
 - b. if so, does the Appellant have a reasonable excuse for non-compliance with those notices?
28. In addition to the evidence discussed above, the Appellant submits that:
 - a. pension compliance is a high priority for the Appellant;
 - b. there may have been some oversight by the Appellant's accountants;
 - c. despite having not received correspondence before the Second LBA, the Appellant acted swiftly once it was received;
 - d. the amount of the penalties is unfair, unjust and excessive in the circumstances;

- e. although the Appellant has made some errors in its administration, the evidence shows that the Regulator has also made errors.

29. The Regulator submits that:

- a. as a responsible employer it is incumbent on the Appellant to ensure that it can receive official correspondence at its registered address, and the Regulator is entitled to rely on this address for its notices;
- b. as a responsible employer it is also incumbent on the Appellant to be aware of its legal duties and ensure full compliance with them, and the auto-enrolment duties are not new and ought to be known by employers;
- c. delegation of compliance tasks to another person, such as a firm of accountants, does not provide a reasonable excuse for non-compliance;
- d. although neither the FPN or the EPN give details of what the Appellant needed to do to comply with the Compliance Notice, the Appellant was able to file the Declaration of Compliance on 23 January 2024, indicating some awareness of the requirement independently of the notices;
- e. employer declarations of compliance are an important element of the regulatory framework;
- f. the Appellant had ample time and opportunity to comply with its duties, and had plenty of notice in the form of letters and emails;
- g. the Regulator's records suggest that the Appellant was not compliant with its underlying duties from its start date of 23 January 2023;
- h. regarding the amounts due under the FPN and the EPN, the Regulator has no discretion regarding these, as they are set out in legislation.

Were the notices properly issued by the Regulator?

- 30. As noted above, where a company is an employer, its proper address for the service of notices under auto-enrolment legislation is its principal or registered office.
- 31. The Compliance Notice, the FPN and the EPN were addressed to the Appellant at the Hillside Close address, which on the dates of those notices was the Appellant's registered office address. The Regulator submits that these notices were sent by post, and the Appellant has not presented evidence to challenge this (although such evidence might be very difficult to come by). I find that the evidence demonstrates, on balance, that the notices were properly addressed and posted.
- 32. Accordingly, I find that the Regulator has established in its evidence that the Compliance Notice, the FPN and the EPN are deemed to have been served and presumed to have been received by the Appellant for the purposes of the auto-enrolment legislation. Has the Appellant's evidence rebutted that presumption?

33. In the circumstances of the case as Mr Bonilla described them, it is at least plausible that no person acting for the company in fact received any notices from the Regulator before the Second LBA, but plausibility is not enough for the Appellant's case to succeed. No evidence other than assertions on the part of the Appellant has been presented to the Tribunal.
34. In *London Borough of Southwark v (1) Runa Akhter and (2) Stel LLC* [2017] UKUT 0150 (LC) the Upper Tribunal held that "bare denial" was as a matter of law insufficient to overturn the presumption of service in s7 of the 1978 Act.
35. I find that the Appellant has not provided evidence sufficient to overturn the presumption of service and therefore that the Compliance Notice, the FPN and the EPN were properly served by the Regulator.
36. Regarding the suggestion that the Appellant may have known about its duties otherwise than by the Second LPA, on the basis that the FPN and EPN did not include this information, I do not draw any inference from this. The evidence shows that the Declaration of Compliance was completed by the Appellant's accountants, who may have known about the compliance requirement from a range of sources.

Does the Appellant have a reasonable excuse for non-compliance?

37. I have considered whether the circumstances of the Appellant's address history might provide a reasonable excuse for non-compliance with the Compliance Notice, the FPN or the EPN, and I find that they do not. I accept the Regulator's submissions regarding the importance of responsible employers ensuring compliance with their legal obligations, both in relation to pension matters and in relation to routine company registration and correspondence. The Appellant's failure to update its registered office address for approximately 8 months after it ceased practically to use that address should not give the Appellant a basis for avoiding its other obligations.
38. The Appellant submitted that it has largely delegated its pensions administration to its accountants. The Regulator submitted that, while employers can delegate the completion of employer duties to others, the failure of an agent to ensure compliance with employer duties should not amount to a reasonable excuse on the part of the employer.
39. I accept that the fact of delegation does not necessarily provide a non-compliant employer with a reasonable excuse; but it does not follow that an employer which has delegated to an agent cannot have a reasonable excuse for non-compliance. The Tribunal must consider the case on its facts.
40. The evidence does not demonstrate the circumstances or arrangements between the Appellant and its accountants provide the Appellant with a reasonable excuse for non-compliance. There is nothing in the evidence which demonstrates the Appellant actively engaging with its obligations in relation to declaring compliance, prior to the Second LBA, or seeking assurances from its accountants in this regard.

41. The Appellant did actively engage with its pension provider but, as Miss Jones noted at the hearing, this is not the same as, and is not a substitute for, compliance with the Appellant's obligations to the Regulator.
42. I accept the Regulator's submission that the Appellant had ample time to comply with its duties. The Regulator sent numerous communications to the Appellant by both post and email. Having dealt with the statutory notices above, I note that the Regulator's email correspondence was sent to an address which is used by the Appellant's accountants. Although the Regulator does not have evidence that these emails were as a matter of fact received by the Appellant's accountants, the accountants have continued to act for the Appellant in relation to its pension administration, up to and beyond the submission of the Declaration of Compliance.
43. Accordingly, I find that the Appellant does not have a reasonable excuse for non-compliance in relation to this Appeal.

Further matters

44. The above findings are sufficient to dispose of this Appeal.
45. Submissions from the parties regarding the Appellant's compliance with auto-enrolment obligations other than the submission of the Declaration of Compliance and the subsequent notices, and the Appellant's submissions regarding the priority it gives to pensions administration, were not relevant to this Appeal and I do not need to make any finding on them.
46. The Appellant considers the amounts of the penalties under the FPN and the EPN to be unfair, unjust and excessive. These are not matters which can be considered in this Appeal, and as noted by the Regulator it has no discretion regarding these amounts, as they are set in legislation.
47. Regarding the errors which the Appellant says that the Regulator has made, the only error which is identifiable from the evidence is the address of the Second LBA. I have found no errors which are material to the decision in this Appeal.

Conclusion and decision

48. Having considered the parties' submissions and the matters set out above, I dismiss the Appeal for the reasons given, and I do not require the Regulator to take any action.

Signed

Tribunal Judge Maton

Date:

24 February 2025