



Neutral citation number: [2025] UKFTT 282 (GRC)

Case Reference: PEN/2024/0123

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

Decided without a hearing

Decision given on: 7 March 2025

Before

JUDGE HUGHES

Between

M ROSE CONSTRUCTION LTD

Appellant

And

THE PENSIONS REGULATOR

Respondent

Decision: The appeal is Allowed I direct that the penalty is varied to £0.

REASONS

1. The Appellant building company was formed in November 2018. It is a micro-company. The report and accounts filed in November 2020 show that it had no employees in 2019 or 2020. The accounts filed in August 2022 show that that state continued to November 2021. The accounts approved in September 2024 and subsequently filed show that there were no employees in 2022 and the average number in 2023 was two.
2. In October 2023 the Regulator wrote to the company:

“Take immediate action: your automatic enrolment duties

The Pensions Regulator is responsible for ensuring that all employers comply with workplace pension law. Under the Pensions Act 2008, every employer in the UK must put certain staff in a workplace pension scheme and pay into it. This is called “automatic enrolment”

....

According to our records your ‘duties start date’ was 1 July 2023, which is when your first member of staff started working for you”

3. On 11 December the Regulator wrote to the sole director in the following terms:

“Urgent action is required - your declaration deadline was 1 December 2023

I wrote to you recently to remind you to complete your declaration of compliance but according to our records you have still not completed it. You need to do this to tell us how you have met your duties.

When completing your declaration, make sure everyone who worked for you on 1 July 2023 is included in the information you provide. To complete your declaration go to:.....”

4. The Regulator served a Compliance Notice on the Appellant company on 29 December 2023. The company failed to comply with the notice and accordingly the Regulator issued a Penalty Notice in the sum of £400 on 23 February 2024 requiring the company to pay the penalty and submit information in accordance with the Compliance Notice by 22 March.
5. The company (through its accountant) sought a review of the issuing of the Penalty Notice on 8 March, at the same time providing the required information. The accountant explained:

“We are authorized agent of above mentioned client.

During that period, our client encountered personal difficulties stemming from a family bereavement and the ramifications of the Covid-19 pandemic. These challenges impeded their capacity to promptly enrol and submit the required re-declaration as a first-time enrollee. We hope you can understand the circumstances that our client faced.

Consequently, we are pleased to inform you that we have now successfully completed enrolment with The Pensions Regulator.

Furthermore, apart from the aforementioned information, we have replied to your initial communication and are drafting this letter as a subsequent follow-up. We apologize for the delay, which was caused by our client's circumstances, and respectfully request your understanding in waiving the £400 fine.

We want to reassure you that steps have been implemented to prevent any future occurrences of such delays.”

6. The Regulator replied to the accountants on 16 March refusing the request to review the issuing of the penalty. In doing so it noted that the declaration of compliance showed that there was one eligible employee of the company who had not been automatically enrolled. The company had a duty to notify and enroll all eligible employees and calculate all employer and employee contributions since the date the employee started work.
7. In its appeal the company explained that the director lacked an understanding of the scheme and had technical difficulties it had had in accessing the information it needed, it was a very small family business and they had been pre-occupied with family issues, they had had financial difficulties following the pandemic, the penalty would have a significant impact. The company gave assurances of future compliance and denied having received the Compliance Notice.
8. In responding to the appeal the Regulator relied in statutory provisions relating the service of notices and the company’s registered office. It noted the various communications sent before the Penalty Notice (discussed in paragraphs 2,3 and 4 above) and that the Appellant company had only stated that it had not received one communication argued that in the circumstances it was fair reasonable and appropriate to issue the penalty notice however it acknowledged that the penalty could cause difficulties. The Regulator submitted that the difficulties in completing the notice had been overcome by instructing an accountant, and stated:

“It is irrelevant that the underlying duties may have been met in this case, the Declaration of Compliance was not, and this is an important statutory duty”

Statutory framework

9. The Regulator’s power to issue a penalty notice is contained in s40 Pensions Act 2008, review a penalty is contained in s43 and the Tribunal’s powers on appeal in s44.. These provide (so far as is relevant)

40 Fixed penalty notices

- (1) The Regulator may issue a fixed penalty notice to a person if it is of the opinion that the person has failed to comply with—
 - (a) a compliance notice under section 35,....
- (4) The penalty —
 - (a) is to be determined in accordance with regulations, and ...
- (5) A fixed penalty notice must —
 - (a) state the amount of the penalty;....
 - (g) notify the person to whom the notice is issued of the review process under section 43 and the right of referral to a tribunal under section 44.

43 Review of notices

- (1) The Regulator may review a notice to which this section applies –
 - (a) on the written application of the person to whom the notice was issued, or
 - (b) if the Regulator otherwise considers it appropriate.
- (2) This section applies to – ...
 - (d) a fixed penalty notice issued under section 40;...
- (4) On a review of a notice, the effect of the notice is suspended for the period beginning when the Regulator determines to carry out the review and ending when the review is completed.
- (5) In carrying out a review, the Regulator must consider any representations made by the person to whom the notice was issued.
- (6) The Regulator's powers on a review include power to –
 - (a) confirm, vary or revoke the notice;
 - (b) substitute a different notice.

44 References to First-tier Tribunal or Upper Tribunal

- (1) A person to whom a notice is issued under section 40 or 41 may, if one of the conditions in subsection (2) is satisfied, make a reference to the Tribunal in respect of –
 - (a) the issue of the notice;
 - (b) the amount of the penalty payable under the notice.
- (2) The conditions are –
 - (a) that the Regulator has completed a review of the notice under section 43;
 - (b) that the person to whom the notice was issued has made an application for the review of the notice under section 43(1)(a) and the Regulator has determined not to carry out such a review.
- (3) On a reference to the Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning when the Tribunal receives notice of the reference and ending –
 - (a) when the reference is withdrawn or completed, or...
- (4) For the purposes of subsection (3), a reference is completed when –
 - (a) the reference has been determined,
 - (b) the Tribunal has remitted the matter to the Regulator, and
 - (c) any directions of the Tribunal for giving effect to its determination have been complied with.

10. The relevant regulations are The Employers' Duties (Registration and Compliance) Regulations 2010 which provide (so far as is relevant)

Fixed penalty notices

“12 Where the Regulator issues a fixed penalty notice to a person under subsection (1) or (2) of section 40 of the Act, the penalty is £400.”

Consideration

11. The Regulator refused to carry out a review. It stated:

The Respondent 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.

12. The Regulator is in its response to the tribunal concerned to demonstrate that the Appellant company received a communication informing it of its obligations. The Regulator, having satisfied itself that the pre-condition for issuing a penalty have been met has declined the opportunity to consider the evidence and argument put forward on behalf of the Appellant company. It has neither sought confirmation of the facts alleged nor queried their veracity and weight. It has entirely discounted them. The Regulator has been administering this system for over a decade, it has ignored the newness and scale of the company, the possible impact of the extraordinary pandemic on such a small new organisation as well as ignored the statement of the impact of a bereavement. Within a system of bounded rationality it has satisfied itself of the existence of a pre-condition and ignored everything else. The words quoted above (paragraph (8)) are a somewhat concerning statement for a Regulator to make and indicates a significant failure to appreciate the function of regulation which is precisely to promote the performance of “underlying duties”. The Regulator appears satisfied that it is entitled to issue a penalty and views that as sufficient. I am entirely satisfied that this behaviour unambiguously indicates that “the Respondent has acted unfairly”.
13. The Regulator appears to consider that the provisions as to the service of documents are a full and complete response to the issues raised by the Accountant. It appears to discount the possibility of moderating a sanction during a review using s43(6).
14. The Appellant recognises the importance of compliance and in the circumstances seeks a waiver of the penalty. I am satisfied that such a waiver is a just outcome. I direct that the amount payable under the notice is £0.

Signed Hughes

Date: 4 March 2025

[judge's name]

[date]

