



Case Reference: PEN/2022/0074

[2022] UKFTT 00284 (GRC)

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

Heard at: Determination on the papers, in Chambers

Heard on: 22 August 2022

Before: Judge Alison McKenna

**YI XUAN LOU LIMITED**

**Appellant**

**- and -**

**THE PENSIONS REGULATOR**

**Respondent**

**DECISION**

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

**REASONS**

*Background*

2. By this reference Yi Xuan Lou Limited (“the Employer”) challenges a fixed penalty notice issued by the Regulator on 23 February 2022 (Notice number 168912786147).

3. The Penalty Notice was issued under s. 40(1) of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of an Unpaid Contributions Notice dated 29 December 2021, which required the Employer to take certain steps and provide the Regulator with information by 8 February 2022.

4. The Regulator has completed a review of the decision to impose the Penalty Notice and informed the Employer on 18 March 2022 that the decision was confirmed. The Employer referred the matter to the Tribunal.

5. The parties and the Tribunal agreed that this matter was 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 in a bundle numbered 1 to 144.

#### *The Law*

6. 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, including issuing an Unpaid Contributions Notice and, if this is not complied with, issuing a Fixed Penalty Notice.

7. Under s. 44 of the 2008 Act, a person who has been issued with a Fixed Penalty Notice may make a reference to the Tribunal provided an application for review has first 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, taking into account the evidence before it. 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.

#### *Submissions and Evidence*

8. The Employer relies on three grounds of appeal: (i) that it did not receive the Unpaid Contributions Notice or any other correspondence from the Respondent or their pension provider between the period of 29 December 2021 to 24 February 2022; (ii) that it is now compliant with the requirements of the Unpaid Contributions Notice (having complied promptly on receipt of the Fixed Penalty Notice); and (iii) that it was told on the telephone by the Respondent’s staff that if it provided evidence of compliance, the penalty would be removed.

9. The Employer has supplied some supporting evidence in support of its second ground of appeal, but not in respect of the other two grounds. The Employer speculates that the Christmas period caused postal disruption leading to non-delivery of the Unpaid Contributions Notice. It has not provided any evidence of the telephone call or other advice from the Regulator on which it relies. The Employer asks the Tribunal to withdraw the Fixed Penalty Notice.

10. The Regulator has responded that there is no evidence of the postal disruption to which the Employer refers, and that in any event it is entitled to rely on the statutory presumption of service, having sent the Unpaid Contributions Notice to the Employer’s registered address. The Regulator notes that the Employer states the unpaid contributions have now been made but that confirmation was not provided to the Regulator until after the service of the Fixed Penalty Notice. The Regulator disputes the Employer’s account of the telephone call and provides as evidence a note of the call, taken by its staff.

11. The Regulator submits that, in all the circumstances, the Fixed Penalty Notice was the appropriate action to take because there were unpaid contributions, and the Employer did not respond to the Unpaid Contributions Notice by the deadline set. It asks the Tribunal to dismiss the Employer's reference.

*Conclusion*

12. Whilst the Employer submits that the unpaid contribution payments have now been made, it is undisputed that the Employer did not provide confirmation of this to the Regulator before the deadline set. I find that the Employer had a legal duty to comply with all three of the requirements of the Unpaid Contributions Notice and that these requirements included the step of providing confirmation to the Regulator. The Employer failed to do this until after the Fixed Penalty Notice had been served.

13. I have considered carefully the Employer's explanation for its default, but I am unable to make a finding of fact on the balance of probabilities that the Unpaid Contributions Notice was not received due to Christmas-time postal disruption. The Employer's suggestion to this effect is a mere assertion, unsupported by any evidence. The Regulator is entitled to rely on the statutory presumption of service, having sent the Notice to the Employer's registered address.

14. I am also unable to make a finding of fact on the balance of probabilities that the Employer was told by the Regulator's staff that the Fixed Penalty Notice would be cancelled if the unpaid contribution payments were made. The Employer has not provided any evidence to support this assertion, whereas the Regulator has provided an attendance note which does not record the advice on which the Employer relies.

15. The Employer has not provided the Tribunal with evidence of any other extenuating circumstances which caused it to be unable to comply with its legal obligations.

16. In all the circumstances, I find that the Employer has not established the grounds of appeal on which it relies. I determine that the Fixed Penalty Notice was the appropriate action for the Regulator to take in this case.

17. I now remit this matter to the Regulator and confirm the Fixed Penalty Notice. No directions are necessary.

**(Signed)**

**JUDGE ALISON MCKENNA**

**DATE: 22 August 2022**

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