



**[2023] UKFTT 00456 (GRC)**

**Case Reference: PEN/2022/0232**

**First-tier Tribunal  
General Regulatory Chamber  
Pensions Regulation**

**Determined: On the papers  
Heard on: 31 May 2023  
Decision given on: 31 May 2023**

**Before**

**JUDGE O'CONNOR  
Chamber President**

**Between**

**MY WAREHOUSE LTD**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision: For the reasons given below, I dismiss the reference and remit the matter to the Pensions Regulator on that basis. No directions are necessary.**

## **REASONS**

### **Background**

1. The parties have both consented to this matter being determined on the papers pursuant to rule 32 of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 and, having considered the information before me, I am satisfied that the appeal can be properly determined without a hearing.
2. By this reference, My Warehouse Limited (“the appellant”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 7 October 2022 (Notice number 128036672227). The Penalty Notice was issued pursuant to section 40 of the Pensions Act 2008 (“the 2008 Act”). It required the appellant to pay a penalty of £400 for failing to comply with the requirements of a Compliance Notice dated 12 August 2022. The

appellant submitted a review request to the Pensions Regulator on 12 October 2022 and the Pensions Regulator completed a review of the decision under section 35 of the 2008 Act on 20 October 2022.

3. The appellant thereafter referred the matter to the First-tier Tribunal (“the Tribunal”) by way of a “Notice of Appeal” dated 1 November 2022.
4. I have before me a bundle of documents running to 108 pages which, *inter alia*, includes the appellant’s Notice of Appeal, the Pensions Regulator’s Response, and the appellant’s Reply to the aforementioned Response. I have taken account of all the documents contained within this bundle, irrespective of whether such documents are specifically referred to herein.

### **The Law**

5. The 2008 Act imposes a number of legal obligations on employers in relation to the automatic enrolment of certain ‘jobholders’ into occupational or workplace personal pension schemes. Each employer is assigned a ‘staging date’ from which the timetable for performance of their obligations is set. The Employer’s Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”), specify that an employer must provide certain specified information to the Pensions Regulator within five months of their staging date. This is known as a ‘Declaration of Compliance’. An employer is required to make a re-declaration of compliance every three years.
6. The Pensions Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers. Under section 35 of the 2008 Act, the Pensions Regulator can issue a Compliance Notice if an employer has contravened one or more of its employer duties. A Compliance Notice requires the person to whom it is issued to take (or refrain from taking) certain steps in order to remedy the contravention and will usually specify a date by which these steps should be taken.
7. Pursuant to section 40 of the 2008 Act, the Pensions Regulator can issue a penalty notice if it is of the opinion that an employer has failed to comply with a Compliance Notice. This requires the person to whom it is issued to pay a penalty within the period specified in the Notice. The amount is to be determined in accordance with regulations. Under the 2010 Regulations, the amount of a fixed penalty is £400.
8. Notification may be given to a person by the Pensions Regulator by sending it by post to that person’s “proper address” (section 303(2)(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, as set out in section 303(6)(a) of the 2004 Act. Under regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. This includes Compliance Notices issued under the 2008 Act.
9. By section 44 of the 2008 Act, a person who has been issued with a Penalty Notice may make a reference to the Tribunal provided that an application for review has first been made to the Pensions Regulator. The role of the Tribunal is to make its own decision on the appropriate action for the Pensions Regulator to take, considering the evidence before it. The Tribunal may confirm, vary, or revoke a Penalty Notice and when it reaches a decision, must remit the matter to the Pensions Regulator with such directions (if any) required to give effect to its decision.

## **The Facts**

10. The appellant's staging date was 1 February 2016, and the first Declaration of Compliance was completed by the appellant on 19 May 2016. The appellant's first re-declaration was due on 1 July 2019. The appellant did not declare by the deadline, and I accept that the Pensions Regulator thereafter issued a Compliance Notice on 24 July 2019. A copy of that Notice has been provided to the Tribunal, as have letters from the Pensions Regulator to the appellant preceding this Compliance Notice. The appellant submitted a re-declaration of compliance on 2 August 2019. A copy of the acknowledgement of receipt of that re-declaration notice is in the papers before me. It indicates that the person who completed the re-declaration notice on 2 August 2019 was a "*Mr Andrew Reedman*". The employer contact details therein are identified as "*Ms Karen Marchant*", and the employer's address is recorded as "*28 Heathfield, Stacey Bushes, Milton Keynes MK12 6HP*" ("the registered office").
11. Although the Notice of Appeal, which is signed by Andrew Reedman, states that the appellant does not recall the 2019 re-declaration process, I accept the Pensions Regulator's version of events, which is supported by a substantial amount of clear and cogent documentary evidence relating to the completion of the process by the appellant, as identified above.
12. Prior to the next re-declaration date of 2 August 2022, the Pensions Regulator sent the appellant two reminder letters (dated November 2021 and May 2022). Copies of these letters are contained within the bundle before me and were sent to the appellant's registered office, i.e. 28 Heathfield, Stacey Bushes, Milton Keynes, MK12 6HP.
13. The appellant failed to comply with its statutory obligation to submit its re-declaration of compliance to the Respondent by 2 August 2022. Consequently, on the 12 August 2022 the Respondent issued a Compliance Notice under section 35 of the 2008 Act requiring the re-declaration of compliance to be filed by 22 September 2022.
14. The appellant did not respond to the Compliance Notice, nor did it submit the re-declaration notice. As a result, on the 7 October 2022 the Pensions Regulator issued the appellant with a Penalty Notice pursuant to section 40 of the 2008 Act. The appellant subsequently submitted a re-declaration notice on 12 October 2022, the same date that it sought a review of the Penalty Notice.

## **Notice of Appeal**

15. In its Notice of Appeal the appellant maintains that:
  - It has no recollection of completing the re-declaration process in August 2019. It created its NEST pension in 2019, so the current re-declaration is the first re-declaration process it has been asked to complete.
  - The first it heard of the requirement for re-declaration was when the Penalty Notice was brought to its attention. It did not receive the Compliance Notice. It is possible that the Compliance Notice was incorrectly delivered to another company with a similar name which resides behind the appellant's warehouse. The Pensions Regulator did not email the appellant to remind it of the need to re-declare.
  - The level of the fine is significant.

## **Discussion**

16. The timely provision of information to the Pensions Regulator, so that it can ascertain whether an employer has complied with its duties under the 2008 Act, is crucial to the effective operation of the automatic enrolment scheme. Unless the Pensions Regulator is provided with this information, it cannot effectively secure the compliance of employers with their duties. It is for this reason that the provision of a Declaration of Compliance within a specified timeframe is a mandatory requirement. The fact that the appellant has now complied with this duty, after the date required in the Compliance Notice, does not excuse a failure to comply.
17. It is not in dispute that the appellant failed to comply with the requirements of the Compliance Notice. In all the circumstances, I find that issuing the Penalty Notice was appropriate, unless there was a reasonable excuse for the appellant's failure to comply with the requirements therein. I conclude that the appellant did not have a reasonable excuse for this failure to comply.
18. In reaching this conclusion, I have considered whether the Compliance Notice was legally served at the appellant's proper address, and I find that it was. Under the 2004 Act, the Pensions Regulator can serve this notice on a limited company by sending it to either the company's registered office or to its principal office. I accept, having considered the documents before me, that the Compliance Notice was sent to the appellant's registered office.
19. Under Regulation 15(4) of the 2010 Regulations, there is a presumption that a notice is received by a person to whom it is addressed. In my conclusion, the appellant has not rebutted this presumption. Whilst the appellant postulates that the Compliance Notice might have been delivered to the address of another company with a similar name which resides behind the appellant's warehouse, no evidence has been provided to support the fact that this was so. The appellant states that without proof of service it is unable to confirm if the Compliance Notice was received. It is also asserted that because of the limited volume of post it receives, had the Compliance Notice been received by post at its registered office this would have become apparent.
20. As indicated above, there is a statutory presumption that such a notice is received by a person to whom it is addressed. The Pensions Regulator does not have to provide any further proof of service, and I do not accept the mere assertion in this case that it was not received, is sufficient to rebut the presumption that it was legally served. I also observe that the appellant did receive the Penalty Notice, which was sent to the same address.
21. In all the circumstances I find, on the balance of probabilities, that the appellant received the Compliance Notice.
22. In its Reply to the Pensions Regulator's Response to the instant proceedings, the appellant further maintains that there was no motivation for it to avoid completing the re-declaration form, as it is straight forward and there is no fee involved. I am prepared to accept that the failure to comply was not deliberate, and I have taken this into account in reaching each of my findings above. This, though, does not provide a reasonable excuse for failure to comply.
23. Moving on, I accept that the requirement to pay £400 is a significant burden for a small business such as the appellant, particularly if that business is struggling. However, the amount is prescribed by regulations made under the 2008 Act. Its amount reflects both the

importance of complying with the employer duty provisions and the seriousness with which a failure to do so will be viewed. The Pensions Regulator has no discretion to issue a penalty notice for a lesser amount, nor does the Tribunal have the power to direct substitution of a lesser penalty.

24. Whether the appellant has, or has not, been through the re-declaration process previously is only of tangential relevance to the issues before me. Nevertheless, I accept the Pensions Regulator's evidence on this issue. The Pensions Regulator's assertion that the appellant went through the re-declaration process in 2019, and that this process was recorded as having been undertaken by Mr Andrew Reedman, is supported by cogent documentary evidence.
25. For the reasons given above, I am satisfied that the appellant failed to comply with the terms of the Compliance Notice and that it has not provided a reasonable excuse for such a failure. In all the circumstances, I conclude that issuing the Penalty Notice is the appropriate action to take in this case. I remit the matter to the Pensions Regulator and confirm the Penalty Notice. No directions are necessary.

Signed: **Judge O'Connor**

Date: 31 May 2023