



NCN: [2023] UKFTT 768 (GRC)

Case Reference: PEN/2023/0108

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

**Heard: Paper Consideration**

**Heard on: 14 September 2023 in Chambers  
Decision given on: 19 September 2023**

**Before**

**TRIBUNAL JUDGE HAZEL OLIVER**

**Between**

**GRASSROOTS SPORTS ACADEMY LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision:** The appeal is Dismissed

## **REASONS**

1. By this reference Grassroots Sports Academy Limited (the “Appellant”) has appealed against a fixed penalty notice issued by the Pensions Regulator (the “Regulator”) on 4 April, requiring the Appellant to pay a fixed penalty of £400 for failure to comply with a compliance notice.
2. The parties have agreed to a paper determination of the appeal. The Tribunal is satisfied that it can properly determine the issues without a hearing within rule 32(1)(b) of The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (as amended).

3. The Pensions Act 2008 (the “Act”) imposes a number of requirements on employers in relation to the automatic enrolment of certain “job holders” in occupational or workplace personal pension schemes.

4. The Regulator has statutory responsibility for ensuring compliance with these requirements. Under Section 35 of the Act, the 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.

5. Under Section 40 of the Act, the Regulator can issue a fixed 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 Employers' Duties (Registration and Compliance) Regulations 2010 (the “2010 Regulations”), the amount of a fixed penalty is £400.

6. Notification may be given to a person by the 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 (applied by section 144A of the Act).

7. Section 44 of the Act permits a person to whom a fixed penalty notice has been issued to make a reference to the Tribunal in respect of the issue of the notice and/or the amount of the penalty payable under the notice. A person may make a reference to the Tribunal if an application for a review has first been made to the Regulator under Section 43 of the Act. Under Section 103(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 following an assessment of the evidence presented to it (which may differ from the evidence presented to the Regulator), and can reach a different decision to that of the Regulator even if the original decision fell within the range of reasonable decisions (*In the Matter of the Bonas Group Pension Scheme* [2011] UKUT B 33 (TCC)). 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.

8. Under section 11 of the Act, an employer who is subject to automatic enrolment duties must give prescribed information to the Regulator - known as a declaration of compliance. The declaration of compliance must be provided within five months of the staging date or duties start date (Regulation 3(1)).

## Facts

9. The facts are set out in the Appellant's notice of appeal document and the Regulator's response document, including the annexes attached to those documents. I find the following material facts from those documents.

10. The Appellant is the employer for the purposes of the various employer duties under the Act. The duties start date was 7 April 2022. The Appellant's declaration of compliance was due to be provided by 6 September 2022.

11. The Regulator initially issued a compliance notice to the Appellant on 3 October 2022. No response was received. The Regulator issued a fixed penalty notice on 29 November 2022. The Appellant requested a review, and the Regulator revoked the statutory notices due to a Royal Mail postal strike at the time they were issued. The review decision outcome of 3 February 2023 states, "*A new Compliance notice 30209834262 has been issued to Grassroots Sports Academy Ltd as our records show that the declaration of compliance is still outstanding*".

12. The Regulator issued the new compliance notice to the Appellant on 3 February 2023, to the registered office address. This gives the deadline for the declaration of compliance as 16 March 2023. The notice expressly states, "*If you don't complete your declaration of compliance by 16 March 2023, we may issue you with a £400 penalty*".

13. The Appellant did not comply with the new compliance notice, and the Regulator issued a fixed penalty notice to the Appellant on 4 April 2023. The Appellant applied again for a review to the Regulator. The Regulator confirmed the penalty notice, on the grounds that notices had been correctly served at the registered office.

### **Appeal grounds**

14. The Appellant's appeal grounds (as completed by their tax advisers) are, "*We are appealing on the grounds that the customer had made the same mistake previously during the same period, and a previous appeal had been granted. We believe that the mistake has been corrected and will not occur again, and therefore we kindly request that the penalty be waived.*"

15. The Regulator says that there is no reasonable excuse for the failure to comply with the second compliance notice.

### **Conclusions**

16. The declaration of compliance is a central part of the Regulator's compliance and enforcement approach. It is necessary so that the Regulator can ensure that employers are complying with their automatic enrolment duties, and this is why it is a mandatory part of the system. Employers are responsible for ensuring that these important duties are all complied with, and there needs to be a robust enforcement mechanism to support this system.

17. I have considered whether issuing the fixed penalty notice was an appropriate action for the Regulator to take in this case, and find that it was. The Appellant failed to comply with the further deadline set out in the compliance notice. I have also

considered whether the compliance notice was legally served at the Appellant's proper address, and find that it was. Under the 2004 Act, the Regulator can serve this notice on a limited company by sending it to either the company's registered office or to its principal office. According to the documents I have seen, the notice was sent to the Appellant's registered office address.

18. I do not find that the Appellant had a reasonable excuse for failing to comply with the compliance notice.

19. I have considered the Appellant's argument that they had made the same mistake previously, and this has now been corrected. This is not a reasonable excuse for the failure to comply. In fact, the Appellant had the advantage of a second chance to comply, because the first penalty notice they were sent in November 2022 was revoked. This review decision made it clear that a further compliance notice would be sent because the declaration of compliance was still outstanding. This new compliance notice gave a further extended deadline of 16 March 2023. The Appellant did not provide their declaration of compliance by this extended date. The appeal provides no explanation of why they failed to do so.

20. Although the appeal says that the mistake has now been corrected, late or eventual compliance does not provide a reasonable excuse. The penalty system operates to ensure that employers comply with their duties on time. This is particularly the case where the Appellant was given a second chance to comply after the first fixed penalty notice was revoked.

21. For the above reasons, I determine that issuing the fixed penalty notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the fixed penalty notice. No directions are necessary.

**Hazel Oliver**

**Judge of the First-tier Tribunal**

**Dated: 18 September 2023**