



NCN [2024] UKFTT 00253 (GRC).

Case Reference: PEN-2023-0212-AE

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

**Heard by: On the papers
Heard on: 25 March 2024
Decision given on: 25 March 2024**

Before

JUDGE SOPHIE BUCKLEY

Between

VENETIAN PLASTERING NORTH WEST LIMITED

Appellant

and

THE PENSIONS REGULATOR

Respondent

Decision: The reference is dismissed and the matter is remitted to the Regulator. The penalty notice is confirmed.

REASONS

Background

1. By this reference Venetian Plastering North West Limited (“the Employer”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 30 June 2023 (Notice number 101311582940).
2. The Penalty Notice was issued under s 40 of the Pensions Act 2008. It required the Employer to pay a penalty of £400 for failing to comply with the requirements of a Compliance Notice dated 5 May 2023.
3. The Employer referred the matter to the Tribunal on 2 September 2023.
4. 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 any submissions made by both parties.

The Law

5. 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.
6. 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 specify that an employer must provide certain specified information to the 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. Where this is not provided, the Regulator can issue a Compliance Notice and then a Fixed Penalty Notice for failure to comply with the Compliance Notice. The prescribed Fixed Penalty is £400.
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 that 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, considering the evidence before it.
8. 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.

The facts

9. The Employer’s staging date was 1 November 2019. The Declaration of Compliance was not completed until 25 June 2021 after a compliance notice has been issued on 25 June 2021. The re-declaration was due by 31 March 2023. The Regulator sent seven email reminders to the email address provided by the Employer between 3 June 2022 and 31 March 2023. The Regulator sent two reminder letters to the address provided by the Employer in July 2022 and December 2022. It sent a further reminder letter to

the Employer's registered office address in February 2023. The Regulator sent a final reminder letter to the registered office address on 20 April 2023, extending the deadline for 14 days.

10. The re-declaration was not completed by the deadline, so the Regulator issued a Compliance Notice on 5 May 2023 with an extended deadline of 15 June 2023. On 22 May 2023 the Regulator made a telephone call to the number provided by the Employer and spoke to the Employer's accountant. The accountant was advised of the deadline and the accountant said that they would get in touch with the Employer.
11. As the Compliance Notice was not complied with, the Penalty Notice was issued on 30 June 2023. The Employer completed the re-declaration on 14 July 2023.

Submissions

12. The Notice of Appeal relies on the following grounds:
 - (i) The fine 'is the first I have heard about it'
 - (ii) The company director has been off work with an injury to his leg.
 - (iii) The company director has been out of the country.
 - (iv) The Employer's accountant dealt with the matter 'as soon as it was brought to light'.
 - (v) The failure to complete a re-declaration was not intentional.
13. The Regulator's response dated 31 October 2023 submits that the grounds of appeal do not amount to a reasonable excuse for failing to comply with the Compliance Notice, which was served and received by the Employer.
14. The Regulator submits that the Compliance Notice and Fixed Penalty Notice were correctly and effectively served on and received by the Employer. It is submitted that the Employer does not dispute that the notices were served and received by the Employer, but only that the company director was absent. The fact that the company director did not receive the notice does not affect service and receipt by the Employer.
15. In relation to reasonable excuse the Regulator notes that the Employer has not provided any dates as to when the director's injury occurred or explained why the notice was not opened for the entire period from the first reminder letter sent in February 2023 to the deadline in the compliance notice of 15 June 2023.
16. If the director was not able to attend the office address, the Regulator submits that a reasonable employer would have put alternative arrangements in place.
17. The Regulator submits that the Employer should have been aware of the process in any event but in particular because a previous compliance notice had been served. The Employer had engaged accountants. The Regulator spoke to the accountant on 22 May 2023 before the deadline expired but the re-declaration was not made until 14 July 2023. Even if the fault lies with the accountant this is not a reasonable excuse. The Employer remains responsible for compliance.

Conclusions

18. The timely provision of information to the Regulator, so 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 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 re-declaration of compliance within a specified timeframe is a mandatory requirement. The fact that the Employer has now complied with this duty after the deadline had expired does not excuse a failure to comply.
19. I find that issuing the Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
20. I conclude that the Employer did not have a reasonable excuse for failing to comply.
21. Dealing firstly with service and receipt, the Compliance Notice was sent to the registered office address. Although the director was out of the country (for an unknown period on unknown dates) and was off work due to a leg injury (for an unknown period on unknown dates) there is no assertion that the Compliance Notice did not arrive at the registered office address. The fact that it was not opened or actioned does not prevent it being properly served and received. I find that it was.
22. In terms of a reasonable excuse I accept, on the basis of the assertions in the Grounds of Appeal, that the director was off work at some point for a leg injury and was out of the country for some period at some stage. I do not know if these absences covered any or all of the relevant period and therefore this cannot amount to an excuse.
23. In any event, I would not have considered this to be a reasonable excuse. Where a company only has one director it is incumbent on the Employer to take steps to ensure that it complies with its legal obligations if that director is ill or absent. A reasonable employer would have taken steps to ensure, for example, that important post sent to the registered office was dealt with by somebody else, or redirected to an address where it would be actioned. It is for this Employer to decide how to do this, but I note, for example, that the Employer has an accountant who might have been able to receive and action post from the Regulator in the absence of the director.
24. I find that the Employer should have been aware of its obligations to re-declare compliance. The Employer does not state whether it received the numerous emails or the two reminder letters which were not sent to the registered office address. These were all sent to the contact details provided to the Regulator, which a reasonable employer would have kept up to date. As stated above, there should have been a system in place to deal with the two reminder letters which were sent to its registered office address. Further it had been subject to a compliance notice previously.
25. Finally, I note that the Employer's accountant was made aware of the impending deadline on 23 May 2023. I do not know if it is the accountant's or the Employer's fault that no action was taken until after the deadline. However, even if it was the accountant's fault that does not amount to a reasonable excuse, because the Employer remains responsible for ensuring compliance.

26. The fact that the Employer's actions were not 'intentional' does not, in my view, amount to a reasonable excuse for failing to comply. As I have set out above, the Employer could and should have taken steps to ensure that the matter was dealt with in the absence of the director.
27. For the above reasons I am satisfied that the Employer has not provided a reasonable excuse for not complying with the Compliance Notice. I determine that issuing the Penalty Notice was the appropriate action to take in this case. I remit the matter to the Regulator and confirm the Penalty Notice. No directions are necessary.

Signed **SOPHIE BUCKLEY**

Judge of the First-tier Tribunal

Date: 25 March 2024