



**NCN: [2024] UKFTT 00353 (GRC). Appeal number: PEN/2023/0233P/AE**

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

**BEN ARIS GROUP LTD**

**Appellant**

**- and -**

**THE PENSIONS REGULATOR**

**Respondent**

**TRIBUNAL:**

**ALEXANDRA MARKS CBE  
(SITTING AS A FIRST TIER  
TRIBUNAL JUDGE)**

**Sitting in Chambers (and therefore decided on the papers without a hearing) on  
22 March 2024**

## DECISION

1. The reference is dismissed and the matter is remitted to the Respondent. The Fixed Penalty Notice is confirmed.

## REASONS

### *Background*

2. Ben Aris Group Limited ('the Employer') challenges a Fixed Penalty Notice issued by the Respondent ('the Regulator') on 13 September 2023 (Notice number 184091415267).

3. The Fixed Penalty Notice was issued under section 40 of the Pensions Act 2008 ('the Act'). It requires the Employer to pay a penalty of £400 for failing to comply with a Compliance Notice dated 19 July 2023 that required the Employer to provide the Regulator with information in respect of automatic enrolment.

4. The Regulator completed a review of the decision to impose the Fixed Penalty Notice and informed the Employer on 10 October 2023 that its decision was confirmed.

5. The same day, on 10 October 2023, the Employer referred to the Tribunal the Regulator's decision to issue the Fixed Penalty Notice.

6. The parties and the Tribunal agree that this matter is 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.

### *The law*

7. The Act imposes various legal obligations on employers in relation to the automatic enrolment of certain 'jobholders' into occupational or workplace personal pension schemes. The Regulator has statutory responsibility for securing compliance with these obligations and may exercise certain enforcement powers.

8. Since 1 October 2017, automatic enrolment duties apply to employers from their 'duties start date' (being the date when the legislation first applies to that employer). These duties include the obligation - from the employer's duties start date - to assess their staff, write to them, and automatically enrol them into a qualifying scheme if applicable.

9. The employer must, within five months of its duties start date, provide certain specified information to the Regulator about its compliance with these duties. This is known as a ‘declaration of compliance’.

10. Crucially for the purposes of this case, the employer must *also* - every three years from its duties start date - assess and re-enrol eligible staff who have left the workplace pension scheme. The employer must then provide the Regulator with re-enrolment information by means of a ‘re-declaration of compliance’.

11. If the employer fails to provide a re-declaration of compliance, the Regulator can issue a Compliance Notice and then, if that Notice is not complied with by the stated deadline, a Fixed Penalty Notice can be issued for failure to comply with the Compliance Notice. The prescribed fixed penalty is £400.

12. Under section 44 of the Act, a person who has been issued with a Fixed Penalty Notice may make a reference (i.e. an appeal) to the Tribunal provided an application for review has first been made to the Regulator.

13. The role of the Tribunal is to take account of the evidence before it, and make its own decision on the appropriate action for the Regulator to take. 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***

14. The Employer’s start date was 10 February 2020 – so the deadline by which the Employer was to complete and submit its first declaration of compliance was five months later, namely 9 July 2020.

15. In fact, the Employer did not submit a declaration of compliance by that date so on 26 January 2021, the Regulator sent to the Employer’s registered office a Compliance Notice, extending the deadline until 8 March 2021 and warning that failure to comply could result in a £400 penalty. The Employer’s first declaration of compliance was in fact submitted on 30 March 2021, more than eight months late though no penalty was imposed on that occasion due to the pandemic.

16. The Regulator wrote to the Employer in October 2022 and April 2023 reminding the Employer of the re-declaration of compliance deadline of 10 July 2023. These letters set out the actions that the Employer needed to take by the deadline.

17. Both reminder letters were sent to the Employer’s registered office address (which remains the same to this day).

18. As the Employer failed to submit the re-declaration of compliance by 10 July 2023, on 19 July 2023 the Regulator sent a Compliance Notice to the Employer’s registered office. The letter was marked ‘*DO NOT IGNORE THIS COMMUNICATION*’ and headed ‘*Ben Aris Group Ltd must comply with the*

*directions in this notice by 29 August 2023. You may be issued a £400 penalty if you fail to comply by this deadline’.*

19. On 7 August 2023, having heard nothing from the Employer, the Regulator telephoned the Employer to explain that a Compliance Notice had been issued as the Employer was behind with its re-declaration of compliance. There was no reply so the Regulator left a voicemail message. A few hours later, someone from the business called back and, when told that the re-declaration of compliance was overdue, said she would complete the re-declaration ‘right away’.

20. There is no suggestion that the Employer contacted, or attempted to contact, the Regulator to explain any difficulties or to seek an extension of time to submit re-declaration of compliance. As a result, on 13 September 2023 (two weeks after the extended deadline granted by the Compliance Notice) the Regulator issued a Fixed Penalty Notice – again addressed to the Employer’s registered office. This Penalty Notice required payment of the fixed penalty sum of £400 by 11 October 2023, and compliance with the Compliance Notice by the same date.

21. On 25 September 2023, the Employer submitted its re-declaration of compliance, 11 weeks after the original deadline, and four weeks after the extended deadline granted by the Compliance Notice.

22. On 2 October 2023, the Employer asked the Regulator to review its decision to issue the Fixed Penalty Notice.

23. On 10 October 2023, the Regulator replied, noting the Employer’s reasons for requesting a review and that the re-declaration of compliance had since been submitted. The Regulator upheld its decision to issue the Fixed Penalty Notice.

### ***Submissions***

24. The Employer’s Notice of Appeal dated 10 October 2023 repeats the explanations he gave when seeking a review of the Regulator’s decision namely that (in summary):

(1) The Employer says he had made sincere efforts to comply with all relevant pensions obligations. The Employer adds that he has diligently followed the guidelines and worked closely with his pension advisor to ensure that the business is fully compliant with the Regulator’s requirements.

(2) The Employer claims that any lapses or discrepancies were unintentional and not reflective of any lack of commitment to compliance.

(3) The Employer says that non-compliance in this instance arose from unforeseen circumstances beyond the Employer’s control. The Employer adds that he acted promptly to rectify the situation once it came to his attention and ensured that all necessary actions were taken to bring his pension scheme into compliance.

(4) Until now, the Employer says, he has maintained a positive track record of compliance with pension regulations, consistently meeting obligations and demonstrating commitment to ensuring the financial security of employees' retirement funds.

(5) During the period when the compliance violation occurred, the Employer says that the business experienced an unexpected and significant turnover in key personnel responsible for pension scheme management. This staff changeover resulted, he says, in a temporary gap in knowledge and experience, leading to inadvertent non-compliance with pension regulations.

(6) The Employer claims he has now rectified the compliance issues and has voluntarily taken steps to further improve his understanding of pensions regulations. The Employer says he has invested time and resources in additional training and education to ensure that such issues do not recur in future.

(7) The imposed penalty poses, the Employer claims, a significant financial burden on his business. He goes on to say that such a penalty, especially given the mitigating factors mentioned above, could have a detrimental impact on his ability to operate effectively and maintain employees' pension benefits.

(8) The Employer says that he firmly believes that the penalty imposed is disproportionate to the nature of the violation and does not align with the principles of fairness and proportionality

25. The Employer says that the Regulator agrees these were valid reasons for his delay and lack of understanding of compliance, so his request for removal of the £400 penalty should be allowed.

26. In its response dated 8 December 2023, the Regulator gave the following reasons for opposing the Employer's reference of this matter to the Tribunal:

(1) All Notices were legally and properly served on the Employer.

(2) The Regulator relies on the statutory presumptions of service because in this case notifications were made by post to the Employer's 'proper address' which includes the company's registered office address.

(3) A further statutory presumption is that service is deemed to be effected by properly addressing, pre-paying and posting a letter and, unless the contrary is proved, to have been effected at the time which the letter would be delivered in the ordinary course of post.

(4) The Employer has not produced any evidence to the contrary. Indeed, the Employer has not suggested that the Notices - or the preceding reminder letters - were not received but instead indicates that they were not dealt with due to high staff turnover.

(5) The Employer has not produced any evidence of high staff turnover nor explained how this impacted on the failure to submit a declaration of compliance on time.

- (6) The Regulator is not legally required to send reminders but in this case in fact sent the Employer two reminder letters as well as the Compliance Notice. The Employer does not dispute receiving any of these.
- (7) Further, the Regulator telephoned the Employer after issuing the Compliance Notice and left a voicemail message. When the call was returned a few hours later by someone at the Employer's office, she said that the re-declaration would be completed 'right away'. Had this been done, the re-declaration would have been submitted during the extended period granted for compliance so no Penalty Notice would have been issued.
- (8) An employer is ultimately responsible for complying with auto-enrolment duties. The Employer should have been aware of these duties – especially due to previous enforcement action for the same breach three years previously. Failure to put things in place to ensure compliance because of 'high staff turnover' does not amount to a reasonable excuse for failure to comply.
- (9) The Employer has received various reminders and should have known of his duties arguably since the last breach in 2020 when a Compliance Notice was served, and at least since the first reminder letter on this occasion in October 2022.
- (10) The Employer – in his review request and in his Notice of Appeal – claims to have a 'positive track record' and to have 'consistently met my obligations'. In fact, however, a Compliance Notice was served three years ago when the first declaration of compliance was required. This should have made the Employer hyper-aware of his duties and led him to put measures in place to prevent further breaches. It is simply not true that this case is an isolated incident and a 'one off'.
- (11) The amount of the penalty is set by law and the Regulator does not have any discretion to reduce it from £400.
- (12) The grounds put forward by the Employer do not amount to a 'reasonable excuse' and therefore the appeal should be dismissed.

### ***Conclusions***

27. Taking account of all the evidence provided to me, I conclude that the Employer has given no 'reasonable excuse' for non-compliance in this case. My reasons are set out below.
28. The Employer claims that the Regulator 'agrees' with the Employer's reasons for overturning the £400 penalty. However, as the Regulator points out in an email to the Employer on 19 December 2023, the Regulator's response to the Employer's review request was simply summarising the reasons the Employer had given for seeking a review, not **agreeing** with his reasons. As the response to the review request made clear, the Regulator concluded that the £400 penalty should stand because the Employer had had sufficient time and guidance to comply with the duty to submit a re-declaration of compliance on time.

29. The Regulator has already rejected the Employer's reasons for failing to comply with the Compliance Notice – and the Employer has added nothing new in his appeal to the Tribunal. He has simply repeated the reasons he gave in seeking a review of the Regulator's decision. Those reasons appear to have been drafted for him – or to be a template of some kind – because the request includes (under the heading 'Unforeseen Circumstances') "[Explain the circumstances briefly]".

30. As the Regulator has pointed out, the reminder letters and both Compliance Notice and Penalty Notice were all sent by post to the Employer's registered office address. The Employer has not produced any evidence to rebut the statutory presumptions of service and receipt. Indeed, the Employer does not dispute having received any of this correspondence or either of the Notices. Further, after service of the Compliance Notice, the Regulator telephoned the Employer with an oral reminder. Someone from the Employer's office returned the call and said that the re-declaration would be completed 'right away'.

31. The Employer also claims in his review request, and repeats in his Notice of Appeal, that he has a 'positive track record of compliance' and to have 'consistently met obligations and...demonstrated commitment...' However, in view of the late submission in 2020 – despite reminder letters and a Compliance Notice – of the first declaration of compliance, I do not consider the Employer's previous record as 'positive' nor that the Employer has in the past 'consistently met obligations'.

32. The Employer did submit a re-declaration of compliance on 25 September 2023 but this was only after the Fixed Penalty Notice had been served - meaning the Employer had had over seven months rather than five months to comply.

33. Unfortunately, late compliance does not excuse previous non-compliance such that the penalty can be withdrawn. Otherwise, employers would not take seriously compliance deadlines and instead await receipt of a penalty notice in the hope or even expectation that the penalty would be overturned once they had complied.

34. I do not consider that the high staff turnover to which the Employer refers provides a reasonable excuse for failing to take note of two written reminders, one telephone reminder and a Compliance Notice all clearly indicating that a re-declaration of compliance was required.

35. The re-declaration of compliance is not just a formality but an important tool to enable the Regulator to check that employers are complying with their legal obligations. It was for the Employer to be aware of this legal duty and ensure full and timely compliance. In this instance, the Employer failed to do so. That failure entitled the Regulator to issue a Compliance Notice.

36. Non-compliance with the Compliance Notice dated 19 July 2023 then entitled the Regulator to issue a Fixed Penalty Notice on 13 September 2023.

37. The amount of the penalty is fixed by law, so neither the Regulator nor the Tribunal has any power to reduce the penalty below £400.

38. However, the Regulator can accept the payment of a penalty in instalments if a single payment will cause particular hardship. In its response to the Employer's review request, the Regulator said that if the Employer has difficulties paying the penalty, the Employer should call 0800 169 0325 to discuss the possibility of setting up a payment plan.

39. I confirm the Fixed Penalty Notice, and I remit the matter to the Regulator.

40. No directions are necessary.

**(Signed)**

**ALEXANDRA MARKS CBE  
(Sitting as a Judge of the First Tier Tribunal)**

**DATE: 25<sup>th</sup> April 2024**