



NCN [2024] UKFTT 00005 (GRC).

Case Reference: PEN-2023-0200

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

**Heard: on the papers  
Heard on: 5 January 2024  
Decision given on: 5 January 2024**

**Before**

**JUDGE SOPHIE BUCKLEY**

**Between**

**ASHLEY KEVIN PURDY**

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 Ashley Kevin Purdy (“the Employer”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 17 August 2023 (Notice number 105857159906).
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 21 June 2023.
3. The Regulator completed a review of the decision to impose the Penalty Notice and informed the Employer on 24 August 2023 that the Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 29 August 2023.

### *The Law*

4. 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.
5. 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.
6. 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.
7. 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*

8. The Employer’s staging date was 13 January 2020. The Declaration of Compliance was completed on 28 January 2020. The re-declaration was not completed by the deadline of 12 June 2023, so the Regulator issued a Compliance Notice on 21 June 2023 with a deadline of 1 August 2023. As this was not complied with, the Penalty Notice was issued on 17 August 2023 requiring the Employer to pay a penalty of £400. The Employer completed the re-declaration of Compliance on 20 August 2023. On 20

August 2023 the Employer requested a review of the Penalty Notice. The penalty was confirmed on 24 August 2022. On 30 August 2022 the Employer referred the matter to the Tribunal.

### *Submissions*

9. The Notice of Appeal relies on the following grounds:
  - (i) The postman has been misdelivering letters in the Employer's road.
  - (ii) The Regulator does not use recorded delivery or registered postal services.
  - (iii) The Post Office is fallible sometimes, as in this case.
  - (iv) The Employer asks the tribunal to take account of his previous good history with the Regulator.
10. In the grounds for review dated 20 August 2023 the Employer also states that he 'did the re-declaration in good time and was unaware it had not been completed properly'. He also states that no reminder notices were received, simply a 'straight off' penalty notice for £400.
11. The Regulator's response submits that the grounds of appeal do not amount to a reasonable excuse for failing to comply with the Compliance Notice. To the extent that service of the service of the CN is disputed the Appellant has provided no evidence to rebut the presumption of service set out above and the Respondent asserts that the CN and FPN, were duly served to the correct address where it can rely upon the statutory presumptions of service.
12. The Regulator sent the Compliance Notice to the Employer's last known address, which remains his current address. The Fixed Penalty Notice sent to the same address was received by the Employer. The Regulator sent a reminder email to the Employer on 25 June 2023. There is, in the Regulator's submission, no proof/evidence that has been provided by this Appellant to show that it never received the Notices and that they went astray and that the postman must have misdirected its post.
13. It was fair, reasonable and appropriate to issue the Penalty Notice.

### *Conclusions*

14. 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 a short time after the deadline had expired and had complied in the past does not excuse a failure to comply.
15. The requirement to pay £400 is a significant burden for a small business such as the Employer. However, the fact that it is burdensome is inherent in it being a 'penalty'. The amount is prescribed by regulations made under the Pension Act 2008. 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 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.

16. 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.
17. I conclude that the Employer did not have a reasonable excuse for failing to comply.
18. All correspondence was sent to the Employer's current address, at which the Fixed Penalty Notice was received. As the Employer is an individual rather than a company, this was also the correct address for service, because it was the Employer's last known address.
19. I accept that there may have been some problems with the postman misdelivering letters on the Employer's street. However, in the absence of any evidence as to the extent of those difficulties or any supporting evidence, I do not accept that this is sufficient to rebut the presumption of service of the Compliance Notice taking account of section 7 of the Interpretation Act 1978 and section 303 of the Pensions Act 2004. I find on the balance of probabilities that the Compliance Notice was received. It makes no difference to my decision that the Regulator chooses not to use registered post or recorded delivery.
20. There is no suggestion that the Employer attempted to take any action to deal with the postal difficulties. It is not reasonable for an employer who knows that there are difficulties with postal deliveries to the address at which it receives official documents to simply sit back and assume that it is thereby relieved from complying with its legal obligations.
21. The Employer has not stated whether the reminder email, sent on 25 June 2023 was received. It was sent to the correct address and in the absence of any assertion to the contrary I find that it was received. This email alerted the Employer to the fact that although he had started his re-declaration it had not been submitted.
22. Taking all the above into account, the Employer should have been aware of its obligations to redeclare compliance.
23. 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: 5 January 2024