



**NCN: [2024] UKFTT 00407 (GRC)**

**Case reference: PEN-2023-0304**

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

**Heard: On the papers  
Heard on: 22 May 2024  
Decision given on: 23 May 2024**

**Before**

**TRIBUNAL JUDGE SOPHIE BUCKLEY**

**Between**

**CEMGATE LIMITED**

Appellant

**and**

**THE PENSIONS REGULATOR**

Respondent

**Decision**

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

**REASONS**

## *Background*

1. In this reference Cemgate Limited (“the Employer”) challenges a fixed penalty notice (“the Fixed Penalty Notice”) issued by the Pensions Regulator (“the Regulator”) on 6 September 2023 (Notice number 171068101343).
2. The Fixed 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 10 July 2023.
3. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 21 October 2023 that the Fixed Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 7 December 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 duties start 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 duties start 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 or an Escalating Penalty Notice may make a reference to the Tribunal provided that a review has been carried out or an application for review has 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 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.

## *Evidence*

8. I read and took account of a bundle of documents.

## *The facts*

9. The Employer’s re-declaration of compliance was not completed by the deadline of 30 June 2023, so the Regulator issued a Compliance Notice on 10 July 2023 with a deadline of 21 August 2023. As this was not complied with, the Fixed Penalty Notice

was issued on 6 September 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 4 October 2023.

10. The Employer unsuccessfully attempted to submit a review on 11 September 2023 but this was not received by the Regulator. The review request was resubmitted on 12 October. In that request the Employer's accountants stated that the Fixed Penalty Notice was the first communication received by the Employer and that the accountants had received no communication in relation to re-declaration.
11. The Regulator conducted a review and confirmed the Fixed Penalty Notice on 21 October 2023.
12. On 24 October 2023 the Employer's accountants submitted a further request for a review which referred to extensive building works at the Employer's property and the fact that the Employer's were not in residence at the property for 6 months, although they did 'pop in from time to time' to collect their post. The letter also refers to a number of challenges faces by the sole director of the accountant's business in the relevant period.
13. The Employer also subsequently submitted further information.
14. The Regulator did not carry out an other review.

### *Submissions*

15. The Notice of Appeal relies on the following ground:
  - (i) The Employer did not receive any communication before the Fixed Penalty Notice. There have been extensive building works at the Employer's address and nobody took receipt of letters because nobody was in residence.
  - (ii) The Employer's accountants have not received any correspondence relating to the re-declaration.
  - (iii) The accountancy firm has had a number of challenges arising from the personal circumstances of the director and the other accountant. As a result the business was sold in March 2023 and the handover has been very slow due to ill health of the director. The firm also had IT issues in around January 2023.
16. The Regulator's response dated 14 February 2024 submits that the appeal grounds do not amount to a reasonable excuse for the failure to comply with the requirements of the Compliance Notice or indicate that the Respondent has acted unfairly in any way in respect of that penalty notice.
17. The Regulator submits that there is no basis for displacing the statutory presumption of service of the Compliance Notice and the difficulties experienced by the accountancy firm are irrelevant because they were not designated as the address for service of notices.
18. The Regulator submits that it was fair, reasonable and appropriate to issue the penalty.
19. The Employer is invited to contact the Regulator directly to discuss a potential payment plan.

## *Conclusions*

20. Although I do not, in any event, understand this to be a ground of appeal, I confirm that the question of what was or should have been considered by the Regulator in response to the request(s) for a review is not relevant to the issue I have to determine.
21. 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.
22. I find that issuing the Fixed Penalty Notice was appropriate, unless there was a reasonable excuse for the Employer's failure to comply with the requirements of the Compliance Notice.
23. I conclude that the Employer did not have a reasonable excuse for failing to comply.
24. The Compliance Notice was sent to the Employer's correct registered office address. Although building work was being carried out, there is no evidence that this had led to any post going astray.. Further, the fact that post which had properly been delivered might not have been picked up, or might subsequently have gone missing because the Employer would only 'pop in from time to time' to pick up the post, does not amount to a reasonable excuse. Given the importance of the registered office address, if building work is taking place that was likely to lead to post going astray it is incumbent on a reasonable employer to take steps to prevent this.
25. Taking into account the rebuttable presumption of service, and looking at all the evidence I find that the Compliance Notice was received by the Employer.
26. Whilst I have sympathy with the personal circumstances of the director of the accountancy firm and his employee, these are entirely irrelevant to whether or not the Employer had a reasonable excuse for failing to comply with the Compliance Notice, as is the fact that the accountancy firm had not received any correspondence.
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 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.

Signed **SOPHIE BUCKLEY**

Judge of the First-tier Tribunal

Date: 22 May 2024