



**NCN [2024] UKFTT 477 (GRC).**

**Case Reference: PEN-2023-0305**

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

**Heard by: On the papers  
Heard on: 06 June 2024  
Decision given on: 07 June 2024**

**Before**

**JUDGE SOPHIE BUCKLEY**

**Between**

**RICHBROOK DEVELOPMENTS 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 Richbrook Developments Limited (“the Employer”) challenges a fixed penalty notice (“the Penalty Notice”) issued by the Pensions Regulator on 25 October 2023 (Notice number 147912921821).
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 30 August 2023.
3. The Regulator completed a review of the decision to impose the Penalty Notice and informed the Employer on 21 November 2023 that the Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 5 December 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.
5. This matter was original listed for a paper determination on 1 May 2024. I postponed that determination because the date that the re-declaration of compliance was completed was in dispute and the Regulator had not provided evidence of the date. I ordered that this evidence be provided, and gave either party the opportunity to make submissions. The evidence was received, with short covering submissions from the Regulator. The Employer did not make any additional submissions.

### *The Law*

6. 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.
7. 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.

8. 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.
9. 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*

10. The Employer's re-declaration deadline was 21 August 2023. I accept that British Telecom inadvertently disconnected the Employer's telephone and broadband on 16 August and did not reconnect it until 3 October 2023.
11. The Employer states in its application for a review and in the notice of appeal that as a result of the confusion caused by the disconnection it was not able to complete the re-declaration until 'a day later than we should have' on 22 August 2023. I accept that the Employer attempted to submit the re-declaration on 22 August 2023, but I find that it did not do so successfully because the Regulator has submitted evidence that shows that the re-declaration was not completed until 28 November 2023.
12. The re-declaration was not completed by the deadline, so the Regulator issued a Compliance Notice on 30 August 2023 with a deadline of 10 October 2023. As this was not complied with, the Penalty Notice was issued on 25 October 2023 requiring the Employer to pay a penalty of £400. On 10 November 2023 the Employer requested a review of the Penalty Notice. The penalty was confirmed on 21 November 2023. The Employer referred the matter to the Tribunal on 5 December 2023.

### *Submissions*

13. The Notice of Appeal relies on the following grounds:
  - (i) British Telecom disconnected the Employer's telephone and broadband in error on 15 August 2023 and reconnected it on 2 October 2023. This left the business 'in a mess' and the Employer had to eventually submit the declaration on 22 August 2023 using a neighbouring business' computer. did not receive any letters prior to the Penalty Notice. There have been problems in the past with Royal Mail.
  - (ii) A fine of £400 is very hard because the Employer is a small business and had already suffered for seven weeks because of British Telecom.

14. The Regulator's response dated 22 January 2023 submits that the grounds of appeal do not amount to a reasonable excuse for failing to comply with the Compliance Notice or indicate that the Regulator has acted unfairly in any way.
15. The Regulator submits that the Employer was able to complete the re-declaration by using a different computer and there is no explanation as to why this took place only after the Fixed Penalty Notice had been issued and could not have taken place during the period the Compliance Notice provided or prior to the original deadline for 21 August 2023.
16. The Regulator submits that it sent multiple reminder letters to the Employer between 24 October 2022 and 14 August 2023 via email and letter. The Employer made no attempts to contact the Regulator following the issue of the Compliance Notice which was during the period it alleges that it did not have internet access. The Regulator submits that it is highly unlikely that no-one in the business has access to a mobile phone.
17. The Regulator submits that the amount of the penalty is fixed by law and it was fair, reasonable and appropriate to issue the Compliance Notice and the Penalty Notice.

### *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 a short time after the deadline had expired does not excuse a failure to comply.
19. 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.
20. 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.

21. I conclude that the Employer did not have a reasonable excuse for failing to comply.
22. It is clear from the application for a review that the Employer was of the view that the re-declaration was submitted 'one day later' than it was due. This suggests that the Employer is genuinely of the view that it had successfully submitted the re-declaration of compliance on 22 August 2023, which is one day later than the original deadline. The explanation for this short delay is that the business was unexpectedly without internet access, and it had had to use a neighbour's computer to submit the re-declaration.
23. Whilst this might explain a delay of one day, a delay of one day is not what triggered the issuing of the Fixed Penalty Notice. The re-declaration was not in fact submitted until 28 November 2023, 8 weeks after internet and telephone access had been restored. The Employer has provided no explanation for that delay.
24. The Regulator sent the Employer a Compliance Notice by post on 30 August 2023 which states clearly that the Regulator has no record of the Employer completing the re-declaration of compliance and gives an extended deadline for completing the re-declaration of 10 October 2023. Any reasonable Employer would have realised from the Compliance Notice that the re-declaration remained outstanding.
25. The Employer did not contact the Regulator in response to this letter to explain that it had attempted to submit the re-declaration of compliance, or to explain that it was currently without internet or landline telephone. In any event, the internet was reconnected on 2 October 2023, before the deadline expired. The Employer has provided no explanation as to why it could not complete the re-declaration by the extended deadline of 10 October 2023.
26. For the above reasons I am satisfied that the Employer has not provided a reasonable excuse for not complying with the Unpaid Contributions 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: 06 June 2024