



[2022] UKFTT 00247 (GRC)

Case Reference: PEN/2022/0002

First-tier Tribunal  
General Regulatory Chamber  
Pensions Regulation

Heard by: Judge in Chambers on the papers

Decision given on: 21<sup>st</sup> June 2022

Before

HHJ DAVID DIXON

Between

TYK TRADING COMPANY LIMITED

and

THE PENSIONS REGULATOR

Appellant

Respondent

**Decision:** The reference is dismissed, and the matter is remitted to the Regulator. The Penalty Notice is confirmed.

## REASONS

1. By this reference TYK Trading Company Limited (“the Employer”), challenges a fixed penalty notice (“FPN”) issued by the Regulator on 10<sup>th</sup> November 2021 (Notice number 123733578462).
2. The FPN 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 27<sup>th</sup> September 2021. The Compliance Notices was issued under s. 35 of the Pensions Act 2008. It directed the Employer to complete their declaration of compliance by 8<sup>th</sup> November 2021. As the Employer did not provide evidence of compliance by the deadline, the Regulator issued the fixed penalty notice.
3. A Review was requested, on the basis that compliance was completed on 22<sup>nd</sup> November 2021, and the penalty was unfair in the circumstances. The Regulator completed a Review informing the Employer on 9<sup>th</sup> December 2021 that the notice was upheld.
4. The Employer referred the matter to the Tribunal on 2<sup>nd</sup> January 2022.
5. 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 submissions made by both parties.

### *The Appeal*

6. Under s. 44 of the 2008 Act, a person who has been issued with a FPN may make a reference to the Tribunal provided 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, taking into account the evidence before it. The Tribunal may confirm, vary or revoke a FPN 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.
7. The Employer’s Notice of Appeal, dated 2/1/22, indicates that it never received the reminder letters, and as such they were unable to comply with the necessary declarations. The employer confirms it has now complied. It asserts the penalty is unfair.
8. The Regulator’s Response indicates that the CN was correctly posted to the Appellant. The Respondent accepts that a reminder was “returned to sender”, but no other issues over correspondence was noted. As a result of the one “returned to sender” reminder, out of courtesy, the Respondent telephoned the Appellant’s director and informed him of the need for compliance. No compliance declaration followed so the FPN was issued.
9. The Regulator relies upon the presumption of service (See s7 Interpretation At 1978 for example) and as the documents were all sent to the Appellant’s registered office at “40 Middle Street, Consett, England, DH8 5QJ” service is proved. The Regulator notes that within a short time of the FPN being issued a review was requested and compliance was met. The Regulator asks rhetorically why did the FPN arrive, but not the CN?

10. The Regulator indicates a Review was completed as a result of the Appellant's request. Having considered the circumstances advanced the FPN was confirmed.

### *Submissions*

11. The Appellant argues the FPN was unfair.
12. The Regulator responds that there is no excuse for the late compliance, let alone a reasonable one. It is the Employer's responsibility to meet the legal requirements.

### *Conclusion*

13. I find that the Appellant has failed to provide any proper basis for not complying with the CN. The responsibility for completing the declaration rests with the employer and here it could have and should have dealt with matters. In accordance with s7 Interpretation Act 1978 assumptions, by sending letters and emails to the Companies Registered address the Regulator had met its obligations and more. The further presumptions within the Employers Duties (Registration and Compliance) Regulations 2010 (SI 2010/5), particularly Regulation 15, further support the Regulator's position. I note that there was one issue with the correspondence sent in this case, but that didn't apply to the CN. I also note that the FPN was replied to promptly, with a request for a Review and compliance. Whilst the issue with the one returned letter might have raised an issue with the presumption, nothing else has been raised and the action following the FPN serves to confirm the presumption.
14. The Appellant has raised nothing that displaces the presumption of service and therefore I deem the CN was properly served. The failure to comply rests solely with the company for failing to ensure that post sent to its registered office was dealt with properly.
15. Having failed to comply, the standard penalty was imposed. The penalty is designed to remind companies of the importance of compliance, and I do not see that the penalty in this case is inappropriate or disproportionate to the breach.
16. In all the circumstances I am driven to the view the appeal has no merit and I remit the matter to the Regulator, upholding the Fixed Penalty Notice.
17. No further directions are required

Signed: HHJ David Dixon

DATE: 21<sup>st</sup> June 2022

Date Promulgated: 23<sup>rd</sup> June 2022