



**NCN: [2024] UKFTT 00409 (GRC)**

**Case reference: PEN-2024-0005-AE**

**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**

**DE LISLE LTD**

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 De Lisle Ltd (“the Employer”) challenges a fixed penalty notice (“the Fixed Penalty Notice”) issued by the Pensions Regulator (“the Regulator”) on 21 November 2023 (Notice number 126516728543).
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 25 September 2023.
3. The Regulator completed a review of the decision to impose the penalty notices and informed the Employer on 1 December 2023 that the Fixed Penalty Notice was confirmed. The Employer referred the matter to the Tribunal on 4 January 2024.

## *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 second re-declaration of compliance was not completed by the deadline of 31 August 2023 so the Regulator issued a Compliance Notice on 25 September 2023 with a deadline of 6 November 2023. As this was not complied with,

the Fixed Penalty Notice was issued on 21 November 2023 requiring the Employer to pay a penalty of £400. The Fixed Penalty Notice required the Employer to comply with the Compliance Notice by 19 December 2023.

10. The Employer submitted a review request on 23 November 2023. The grounds for review state that the Employer (or possibly the Employer's current accountant) had not received any emails or letters before the Fixed Penalty Notice because they were sent to the previous accountant. At the same time the Employer changed its nominated contact with the Regulator from the email address of its former accountant.
11. The re-declaration of compliance was completed on 23 November 2023.
12. The Regulator upheld the Fixed Penalty Notice on review on 1 December 2023.

### *Submissions*

13. The Notice of Appeal relies on the following grounds:
  - (i) The Employer did not receive the reminders about re-declaration because they changed accountants in the summer.
  - (ii) The accountants were advised to update the contact details with the Regulator but failed to do so.
  - (iii) The Employer has complied fully with its other duties.
  - (iv) The Employer paid the penalty as soon as it was forwarded the Fixed Penalty Notice.
  - (v) Nobody suffered any losses as a result of the failure.
14. The Regulator submits that the Compliance Notice and the Fixed Penalty Notice were sent to the registered office address. The Regulator relies on the statutory presumption of service.
15. The Regulator submits that it has no duty to send reminders. In any event, in addition to the emails sent to the nominated contact, the Regulator sent two reminder letters to the Employer's registered office address. The nominated contact was not changed until 23 November 2023.
16. The Regulator submits that the decision to issue the Fixed Penalty Notice was fair, reasonable, and proportionate.

### *Conclusions*

17. The Compliance Notice was sent to the Employer's correct registered office address. The Employer has not provided any evidence that might rebut the presumption of service. Taking into account the rebuttable presumption of service, and looking at all the evidence, I find that the Compliance Notice was served on and received by the Employer.
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.

19. The fact that an Employer otherwise complies with its duties, that nobody has suffered any losses as a result and that the penalty was paid promptly does not excuse a failure to comply.
20. 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.
21. I conclude that the Employer did not have a reasonable excuse for failing to comply.
22. There is no obligation on the Regulator to send reminders to and Employer. In this case, it did send two reminders by post to the Employer's registered office address, which I find were received.
23. The fact that the further email reminders sent to the Employer's former accountant were not received is not reasonable excuse. Those reminders were not necessary and it is the Employer's responsibility to ensure that it, or its representative, updates the Regulator with any changes to the details of its nominated contact.
24. 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