

ENGLAND AND WALES / JUDGMENT

Ashworks Limited v The Pension Regulator

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Neutral citation number: [2025] UKFTT 01586 (GRC) First-tier Tribunal (General Regulatory Chamber) Pensions Case Reference: PEN/2022/0246 Heard by Cloud Video Platform Heard on: 27th November 2025 Decision given on: 29 December 2025 Before JUDGE ARMSTRONG-HOLMES Between ASHWORKS LIMITED and THE PENSIONS REGULATOR Appellant Respondent Representation: For the Appellant: Vanoise Zahra (the Appellant's Accountant) For the Respondent: Neil Farrow on behalf of The Pensions Regulator Decision: The appeal is struck out under Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

REASONS

1. Ashworks Limited (the “Appellant”) appeals against the decision of The Pensions Regulator (the “Regulator”) to issue an Escalating Penalty Notice (“EPN”) on 10 th July 2019. The Fixed Penalty Notice (“FPN”), issued prior to the EPN on 28th May 2019, is not the subject of this appeal. The reason for this is that the reference was submitted to the Tribunal on 17 th November 2022, over three years beyond the twenty eight day period within which a reference must be submitted, and on 24th January 2023, the Tribunal refused to grant an extension of time (PEN/2022/0245). The reference in respect of the FPN was therefore not admitted out of time. This reference therefore relates only to the EPN. 2. I had been provided with a bundle of 695 pages in advance of the hearing, which I have read and considered. © CROWN COPYRIGHT 2024 Background and Chronology
3. The Regulator received information from the Appellant’s pensions provider, Nest, that pension contributions were owed to the pensions scheme by the Appellant for the period between 1st December 2019 and 31st January 2019. As a result of this information, the Regulator issued an Unpaid Contributions Notice (“UCN”) under section 37 of the Pensions Act 2008 on 26th April 2019 which required the Appellant to perform the following tasks: (i) (ii) (iii) To calculate the unpaid contributions. To contact the pension scheme provider and pay the contributions. To provide evidence of compliance to the Respondent.
4. The UCN stated that the deadline for complying with the requirements of the notice was 23 rd May 2019, and that a failure to comply before that date may result in a fixed penalty notice for £400 being issued, and that a continued failure to comply may result in an Escalating Penalty Notice being issued. The UCN additionally stated that “Acceptable evidence will be proof of payment to the pension scheme of the contributions calculated and paid under steps 1 and 2 or a payment plan agreed with the pensions provider. This can

be in the form of a letter, email statement from your provider or screenshots from your account that clearly show all outstanding contributions as being paid.”.

5. As the Regulator did not receive a response by the 23rd May 2019 deadline, a Fixed Penalty Notice was issued on 28th May 2019. Following that FPN being issued, the Appellant submitted a request for the Regulator to review the decision to impose the financial penalty on 8th June 2019, stating that “There is no reason for this penalty. All submissions and authority to pay by dd to nest have been made on time, funds in the bank were always available. Unfortunately nest computer systems are diabolical and constantly have issues.”. This, of course, confirmed that the FPN had been received.
6. On 18th June 2019, the Regulator provided the Appellant with the outcome of the review, which upheld the notice as the Appellant had failed to provide evidence of compliance with the UCN, and Nest had not marked the late payment as being resolved. The Regulator therefore took the view that the contributions were still outstanding.
7. On 9th July 2019, the Regulator sent out a penalty reminder letter to the Appellant, and on 10th July 2019, the Regulator issued an Escalating Penalty Notice under section 41 of the Pensions Act 2008 as a consequence of the Appellant having failed to comply with the requirements of the UCN. The EPN stated that a failure to comply with those requirements by 7th August 2019 would result in the penalty accruing at a daily rate of £50 until there was compliance with the UCN or until such earlier date as the Regulator may determine.
8. The Unpaid Contributions Notice, Fixed Penalty Notice, and the Escalating Penalty Notice were all sent by the Regulator to the Appellant at Flat 3-18, 42 Brunswick Terrace, Hove, East Sussex BN3 1HA. That was the address given by the Appellant when a declaration of compliance was completed and submitted to the Regulator on 5th July 2017.
9. The Regulator sent out further reminders to the Appellant by letter at the same address on 7th August 2019 and 5th September 2019, and by email on 12th September 2019, but no further response or payment was forthcoming. Additionally, the Regulator telephoned the Appellant on the number that had been provided by the Appellant in the re-declaration of compliance, dated 14th April 2020, and left voicemails regarding the outstanding debt and Escalating Penalty Notice.
10. On 19th September 2019, the Regulator sent the Appellant a letter before action, requiring payment of the now outstanding £1,800 in penalty fees, comprising of £400 by way of the fixed penalty and £1,400 (£50 x 28 days) by way of the escalating penalty.
11. On 20th September 2019, the Appellant’s pension provider, Nest, informed the Regulator that the unpaid contributions, which had been the subject of the UCN, had now been paid the day before on 19th September 2019.

12. By 6th December 2019, the Regulator had received no further communications from the Appellant, and it issued an application for judgment in respect of the outstanding debt at the County Court. A recovery award was subsequently granted by the court on 20 th January 2020, awarding judgment in full and permitting the Regulator to take enforcement action in respect of the sums due.
13. On 31st October 2022, the Appellant made an application to have that judgment set aside at Brighton County Court. Both parties attended the hearing. The application was, however, refused by the court.
14. The Appellant submitted this reference to the Tribunal on 17th November 2022 and an extension of time was granted for the appeal to be admitted out of time. However, an extension of time to admit the appeal in respect of the Fixed Penalty Notice out of time was refused. The Appeal and Response
15. The reference is advanced in the Notice of Appeal, dated 17th November 2022, on the basis that the EPN was not received until 22nd March 2022, which is when it is stated that the Appellant “requested a set aside on a court order dated 22 Mar 2022.”. The Notice of Appeal goes on to state that “The Pensions Regulator had the wrong address.”, and the document alludes to there having been a technical fault on the Nest system.
16. The initial Response of the Regulator, dated 13th January 2023, submitted that no review was ever carried out by the Regulator under section 43 of the Pensions Act 2008, either at the request of the Appellant or at the discretion of the Regulator, and that there was therefore a question over whether the Tribunal has jurisdiction to hear the reference. Additionally, the Regulator submitted the following:
 - (a) That the suggestion that the Regulator had used the wrong address was misleading, as the Regulator had used the address provided by the Appellant in his declaration of compliance, dated 5th July 2017.
 - (b) It would be inequitable for the Appellant to claim non-receipt of the EPN on the basis of an incorrect address when it was the Appellant and/or his Accountant that had provided the address to the Regulator.
17. Further written submissions were advanced by the Regulator on 3rd March 2023 in response to the Tribunal’s case management directions of 24th January 2023. These submissions are summarised as follows:
 - (a) In addition to the EPN being issued on 10th July 2025, further reminders were sent out by letter on 7th August 2019 and 5th September 2019, and by email on 12th September 2019.

- (b) Several telephone calls were made to the Appellant on 19th August 2019 and 2nd September 2019 on the telephone number provided by the Appellant in the declaration of compliance, dated 5th July 2019. That same telephone number was again confirmed in the Appellant's re-declaration of 14th April 2020, and in the Appellant's appeal reference, dated 17th November 2022. Messages were left on the answer phone on both of these occasions, advising of the EPN accrual.
 - (c) The EPN and all statutory notices and correspondence were served properly and lawfully on the Appellant at the address provided by the Appellant, namely Flat 3- 18, 42 Brunswick Terrace, Hove, East Sussex, BN3 1HA. Save for the addition of the flat details, which was at the behest of the Appellant, this is the Registered Address of the company, which appears on Companies House as: 42 Brunswick Terrace, Hove, East Sussex, BN3 1HA.
 - (d) The Appellant clearly received the FPN at the address used by the Regulator, as they submitted a request for review. Receipt of the FPN is accepted by the Appellant. That request for a review made no mention of the wrong address being used or of non-receipt of any correspondence referred to within the FPN.
 - (e) The Appellant is relying upon a bare assertion of non-receipt in respect of the EPN. Bare assertion of non-receipt is not sufficient to overturn the presumption of service, as the Upper Tribunal found in the case of *London Borough of Southwark v Akhter* 2017 UKUT.
 - (f) The EPN has not been reviewed under section 43(1)(a) of the Pensions Act 2008 (a review at the request of the employer) or section 43(1)(b) (a review at the request of the Regulator), and consequently, the conditions under section 44(2) are not met. The Tribunal therefore lacks jurisdiction to hear the reference. The Law
18. Under the Pensions Act 2008 ("The Act"), every employer in the United Kingdom is obligated to put certain staff into a workplace pensions scheme and contribute towards it. This is called 'automatic enrolment'.
19. Section 37(1) provides that "The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date.". Sections 37(2) goes on to provide that "An unpaid contributions notice is a notice requiring an employer to pay into a pension scheme by a specified date an amount in respect of relevant contributions that have not been paid.".
20. Section 37(4) provides as follows: 37(4) "An unpaid contributions notice may, in particular –
- (a) Specify the scheme to which the contributions are due;
 - (b) Specify the workers, or category of workers, in respect of whom the contributions are due;
 - (c) State the period in respect of which the contributions are due;
 - (d) State the due date in respect of the contributions;

- (e) Require the employer to take such other steps in relation to remedying the failure to pay the contributions as the Regulator considers appropriate;
 - (f) State that if the employer fails to comply with the notice, the Regulator may issue a fixed penalty notice under section 40.”
21. Section 40(1)(c) states that the Regulator may issue a fixed penalty notice to a person “if it is of the opinion that the person has failed to comply with an unpaid contributions notice under section 37”.
22. Regulation 12 of The Employers’ Duties (Registration and Compliance) Regulations 2010 (“The Regulations”) stipulates that where a penalty notice is issued under section 40 of the Act, the penalty is £400. There is therefore no power for this fine to be reduced or increased, as the sum is prescribed by law.
23. Section 41(1)(c) of the Act provides that the Regulator may issue an escalating penalty notice to a person if it is of the opinion that the person has failed to comply with an unpaid contributions notice under section 37.
24. Section 41(2) provides that “the Regulator may not issue an escalating penalty notice if –
- (a) it relates to failure to comply with a notice within subsection (1)(a), (b) or (c), the person to whom that notice was issued has applied for a review of it under section 43, and any review has not been completed;
 - (b) it relates to a failure to comply with any notice within subsection (1), the person has exercised the right of referral to a tribunal under section 44 in respect of a fixed penalty notice issued in relation to that notice, and the reference has not been determined.”
25. Sections 41(3), (5) and (6) of the Act, when read together with Regulation 13 of the Regulations provide that the escalating penalty, in this instance, is to be calculated by applying the lower daily rate of £50. Section 41(6) provides that “An escalating penalty notice must –
- (a) Specify the failure to which the notice relates;
 - (b) State that, if the person fails to comply with the notice referred to in subsection (1) before a specified date, the person will be liable to pay an escalating penalty;
 - (c) State the daily rate of the escalating penalty and the way in which the penalty is calculated;
 - (d) State the date from which the escalating penalty will be payable, which must not be earlier than the date specified in the fixed penalty notice under section 40(5)(b);
 - (e) State that the escalating penalty will continue to be payable at the daily rate until the date on which the person complies with the notice referred to in subsection (1) or such earlier date as the Regulator may determine;

- (f) Notify the person of the review process under section 43 and the right to referral to a tribunal under section 44.”
26. Section 43(1) of the Act provides that the Regulator may review a notice upon (a) the written application of the person to whom the notice was issued or (b) if the Regulator otherwise considers it appropriate. This applies to unpaid contributions notices under section 37 (section 43(2)(c)), a fixed penalty notice issued under section 37 (section 43(2)(d)), and an escalating penalty notice issued under section 41 (section 43(2)(e)). Regulation 15(1) stipulates that an application to review a notice under section 43(1)(a) (i.e. upon the written application of a person to whom the notice was issued) must be made within 28 days, starting from the day a notice is issued to a person. Regulation 15(2) states that the Regulator may review a notice of its own volition within a period of 18 months, again starting from the day a notice is issued to a person.
27. Section 303(6)(a) of the Pensions Act 2004 provides that for the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post), the proper address for service in the case of a body corporate (the Appellant is a body corporate), is the address of the registered or principal office of the body.
28. Regulation 15(4) provides three rebuttable presumptions (see *Philip Freeman Mobile Welders Limited v The Pensions Regulator* [2022] UKUT 62 (AAC) and *J. M. Kamau Limited v The Pensions Regulator* [2025] UKFTT 00484 (GRC) which apply in relation to the issuing of notices. These are as follows:
- (a) Where a notice is given a date by the Regulator, it was posted or otherwise sent on that day;
 - (b) If a notice is posted or otherwise sent to a person’s last known or notified address, it was issued on the day on which that notice was posted or otherwise sent; and
 - (c) A notice was received by the person to whom it was addressed.
29. Whilst the presumptions may be rebutted, the Appellant bears the burden of doing so, but if it does, the burden then passes back to the Regulator. Rebutting a presumption requires more than a mere assertion however (see *London Borough of Southwark v Akhtar and Stel LLC* [2017] UKUT 150 (LC) at para. 82).
30. Section 44 of the Pensions Act 2008 sets out the circumstances where a person may bring a reference to the Tribunal: 44: References to First-tier Tribunal or Upper Tribunal
- (1) A person to whom a notice is issued under section 40 or 41 may, if one of the conditions in subsection (2) is satisfied, make a reference to the Tribunal in respect of –
 - (a) the issue of the notice;
 - (b) the amount of the penalty payable under the notice.

- (2) The conditions are –
- (a) that the Regulator has completed a review of the notice under section 43;
 - (b) that the person to whom the notice was issued has made an application for the review of the notice under section 43(1)(a) and the Regulator has determined not to carry out such a review.
31. In accordance with section 44(2) of the Act, a reference may only be made to the Tribunal where there has either been a review, or where a written application for a review was requested under section 43(1)(a) of the Act, within the 28-day period prescribed by Regulation 15(1), but was not carried out by the Regulator. The tribunal's role, if one of these two conditions is satisfied, is set out in section 103 of the Pensions Act 2004. As stated in *Kamau* (at para. 13), when considering a reference: "The Tribunal must make its own decision following an assessment of the evidence presented to it (which may differ from the evidence presented to The Pensions Regulator), and can reach a different decision to that of the Pensions Regulator, even if the original decision fell within the range of reasonable decisions."
32. The Regulator when carrying out a review, and the Tribunal on a reference is entitled to consider reasonable excuses for non-compliance by an employer. In *The Pensions Regulator v Strathmore Medical Practice* [2018] UKUT 104 (AAC), the Upper Tribunal said that the legislation is "permissive", and stated as follows: "Although the legislation says nothing about reasonable excuse, it does not prevent the Regulator (or the First-tier Tribunal) from having regard to it. I do not go so far as to say that they must always have regard to it – there might well be a case where that would not be appropriate – but it is certainly proper to take reasonable excuse into account." Evidence
33. The parties had submitted written evidence to the Tribunal prior to the hearing, comprising of a bundle of 695 pages (including an index). I have read and considered the entirety of this bundle. Summary of written and oral submissions on behalf of the Appellant
34. Mr Zahra, the Appellant's accountant, made submissions on behalf of the Appellant. He accepted that the outstanding payment contributions had been paid on 19th September 2019, having been referred to the Schedule at page 694 of the bundle by the Tribunal, which showed that the contributions were paid on that date. He made the following submissions:
- (a) That his accountancy firm's address occupied Flat 17 of 42 Brunswick Terrace, and his firm submitted the declaration of compliance, dated 5th July 2017, to the Regulator on behalf of the Appellant. He stated that postal problems had led him to tell people to write to him at 42 Brunswick Terrace, rather than putting a flat number on the correspondence.

- (b) That the Regulator had the correct address of 42 Brunswick Terrace, Hove, East Sussex, BN3 1HA from 2015, but that the declaration of compliance did add Flats 3-18 to the address details. It was suggested that the reason for this may have been that the Regulator's portal had a drop down list of addresses and this was selected because there was no other option to choose.
 - (c) That the accountant's offices are part of a block of 20 flats with several entrances, and unless addressed to 42 Brunswick Terrace, Hove, East Sussex, BN3 1HA, post may go missing. Even correctly addressed post has sometimes gone missing.
 - (d) That the bank statements provided to the Pensions Regulator by way of evidence by the accountant were wrong, as he forgot that the relevant period was December 2018 to January 2019 and not between September 2019 and May 2020. This is why the outstanding payment was showing as being paid on 19th September 2019 when he was looking at it.
 - (e) That no notices were ever received other than the FPN.
 - (f) That no emails or telephone calls were received, as the telephone number used by the Regulator is not generally used and doesn't have a voicemail feature on it. The number is only used for marketing purposes.
 - (g) That if the Schedule at page 694 of the bundle had been provided at an earlier stage, then the Appellant would have done what was needed and made payment of the unpaid contributions.
 - (h) That the EPN was received as part of a bundle for the County Court proceedings in 2022.
- Summary of written and oral submissions on behalf of the Regulator
35. The Regulator reiterated the submissions which were contained in the earlier Responses of 13th January 2023 and 3rd March 2023. A summary of the further submissions is as follows:
- (a) That no review was ever carried out in relation to the EPN, and consequently the Tribunal has no jurisdiction to hear the appeal.
 - (b) That the Regulator was relying upon the witness statement of Cathy Doherty, Compliance and Enforcement Manager for Capita Plc, dated 8th February 2023, for the purposes expressed by the Chamber President in *J. M. Kamau Limited v The Pensions Regulator* [2025] UKFTT 00484 (GRC).
 - (c) A review of the EPN was not requested by the Appellant until 20 th May 2023, which, even if it was to be accepted that the first date that the EPN came into the Appellant's possession was following deemed service of the extended debt bundle in the County Court proceedings on 22nd April 2022, would be well beyond the 28 days prescribed by Regulation 15 of The Employers' Duties (Registration and Compliance) Regulations 2010.
- Discussion and Conclusions

36. It is no longer in dispute that the pension contributions were not paid by the Appellant until 19th September 2019. The Appellant's case is essentially a factual one: either the EPN was not issued to it, or, if they were, they were not received.
37. The Regulator relies upon the evidence of Cathy Doherty, dated 8th February 2023, to discharge the burden of demonstrating that the EPN was issued (Regulation 15(4)) in adherence to the requirements set out by the Chamber President at paragraphs 80 to 84 in *J. M. Kamau Limited v The Pensions Regulator* [2025] UKFTT 00484 (GRC). The relevant screenshots showing the dates that the UCN, FPN and EPN were created and issued appear at pages 55 to 66 of the bundle, and a copy of the decision in *J. M. Kamau* was made available to the Appellant and is contained within this bundle at pages 410 to 436. However, as the Chamber President went on to comment, when considering the earlier case of *Philip Freeman Mobile Welders Limited v The Pensions Regulator* [2022] UKUT 62 (AAC), the Tribunal must consider whether a notice was, as a matter of fact received, whenever considering the question of whether a notice was issued by the Regulator. The Chamber President went on to state as follows: "It hardly needs saying, but there are a multitude of reasons why a notice might not have been received by its intended recipient, such as mis-delivery by Royal Mail, or misdirection of mail internally within an office or serviced building. The reasons for non-receipt include, however, a failure to send the notice, or the sending of the notice to the wrong address. Thus, the obvious need to ensure that there is an evaluation of the parties competing evidential cases."
38. In the present case, the Appellant submits that the EPN was sent to the wrong address, namely Flats 3-18, 42 Brunswick Terrace, Hove, East Sussex, BN3 1HA, rather than the same address, but without the 'Flats 3-18', which it is not disputed was added by the Appellant's accountant in the declaration of compliance, dated 5th July 2017. Whilst the Appellant suggests that this was a mistake by the accountant, the Appellant had delegated the responsibility for making that declaration to his accountant. Nonetheless, complying with any statutory requirement of the Pensions Act 2008 is the responsibility of the employer alone, even if he has seen fit to delegate that responsibility. Regulation 15(4)(b) stipulates that for the purposes of the Regulations, "it is presumed that (b) if a notice is posted or otherwise sent to a person's last known or notified address, it was issued on the day on which that notice was posted or otherwise sent". The Regulator sent the EPN, as is evidenced in the screenshots showing the dates that it was created and issued, to the address that it had been notified of by the Appellant in that declaration of compliance. But for the addition of the flat details, the address is also the same as that held by Companies House, which is simply 42 Brunswick Terrace, Hove, East Sussex, BN3 1HA.
39. Whilst the Appellant has asserted that post has sometimes gone missing in the past, no cogent evidence has been provided which points to the EPN having not been delivered or received at the correct address. Indeed, the FPN was sent to the same address as the EPN, and the Appellant requested a review of that FPN on 8th June 2019. There is therefore no dispute that the FPN was received by the Appellant at the address which included 'Flats 3-

18’.

40. The Tribunal has been provided by the Appellant with photographs showing the various post boxes within the building for each of the ‘flats’, which are clearly numbered from three to eighteen. This is understood to be the section of the building where the Appellant’s accountant occupied premises at the time, as it was confirmed in evidence by Mr Zahra that his accountancy firm occupied flat 17 at the relevant time. Although it has been submitted that the EPN, and by extension the FPN and the UCN, were all sent to the wrong address, it is clear that a notice sent to the address used by the Regulator should be delivered to this area within the building. A responsible company would, of course, regularly check the area for post which the postman may not have been able to deliver to a particular post box, perhaps because it was addressed to a number of flats, as it was, at the request of the Appellant, in this particular case. The addition of CCTV recording is perhaps indicative of some problems, though this alone does not support the proposition that post was going missing or that the EPN was not received.
41. Considering all of the evidence in the round, when assessing whether the notices were issued by the Regulator, I attach little weight to the evidence produced on behalf of the Appellant, and I am satisfied on the balance of probabilities that the EPN was created and issued on the date identified by the Regulator, and that it was sent to the proper address. When considering whether, as a matter of fact, the EPN was received, the evidence relied upon by the Appellant is by way of a bare assertion only. The Appellant has not produced any documentary evidence of attempts to contact Royal Mail or the other business in the building regarding mis-delivery of post addressed to, what the Appellant now states is the wrong address. I conclude, on the balance of probabilities that the EPN was received by the Appellant at the correct address, and the Appellant has not therefore rebutted the presumption that, as a matter of law, the EPN was received.
42. The Regulator has not completed a review of the EPN in issue in this case, whether on written application of the Appellant (section 43(1)(a) of the Pensions Act 2008) or of its own motion (section 43(1)(b) of the Pensions Act 2008). The First-tier Tribunal does not, therefore, have jurisdiction to consider the references pursuant to section 44(2)(a) of the Pensions Act 2008.
43. Furthermore, the Appellant did not request a review of the EPN until 10 th June 2023, which is considerably outside the 28-day period within which an application to review the EPN may be made under section 43(1)(a) of the Pensions Act 2008. Even if the Tribunal was to take 22nd April 2022 (the date of deemed service in the County Court proceedings) as being the date when the Appellant first received the EPN, that would still be over a year later that the request for a review was submitted to the Regulator. The Trib

-
44. Pursuant to Rule 8(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, the First-tier Tribunal “must strike out the whole or part of the proceedings if the Tribunal does not (a) have jurisdiction in relation to the proceedings or that part of them...”. These proceedings are therefore struck out. Signed: Judge Armstrong-Holmes Date: 19th December 2025 10
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ukftt/grc/2025/1586>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/ashworks-limited-v-the-pensions-regulator-EscalatingPenaltyNotice-court-unknown--6a3ea5083b1caa91298045c7>

Prepared on 22 October 2026 · Esheria