

ENGLAND AND WALES / JUDGMENT

ITH Group Limited v The Environment Agency

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NCN: [2026] UKFTT 00740 (GRC) First-tier Tribunal (General Regulatory Chamber) Environment
Case Reference: FT/EV/2025/0129 Heard by Cloud Video Platform Heard on: 21 April 2026
Decision given on: 21 May 2026 Before JUDGE SWANEY MEMBER MITCHENER MEMBER BOOTH
Between ITH GROUP LIMITED and THE ENVIRONMENT AGENCY Appellant Respondent
Representation: For the Appellant: Mr J Millington, counsel For the Respondent: Mr N Grant, counsel
Decision: The appeal is allowed DECISION Substituted Decision Notice: the penalty notice is cancelled, and a substituted penalty notice is to be issued against the appellant in the amount of £16,875, payable within 6 weeks of the date of issue of the revised penalty notice.

Background

REASONS

1. 2. 3. 4. 5. 6. 7. 8. The appellant appeals against the notice of a civil penalty ESOS-ENF-3-1846 issued on 4 November 2025 pursuant to regulation 39 of the Energy Savings Opportunity Scheme Regulations 2014 (the ESOS Regulations). The civil penalty was imposed in the amount of £33,750 in respect of the appellant's failure to carry out an energy audit, contrary to Chapter 3 of Part 4 of the ESOS Regulations. The ESOS Regulations were promulgated to transpose Articles 8(4)-(6) of the EU Energy Efficiency Directive (2012/27/EU) which required Member States to introduce mandatory energy efficiency audits for all 'large enterprises'. As set out in the Explanatory Memorandum to the ESOS Regulations, the aim is to drive improvements in energy efficiency in Member States, to meet the EU's (then extant) targets of a 20% reduction in primary energy consumption by 2020 as against a 2007 business as usual projection baseline. The appellant is a parent company which holds other subsidiary companies. The group provides healthcare services. At the material time, it is accepted that its registered office was care of RPGCC, the group's auditors. The following is a chronology of events according to the respondent. We note at this stage that some of these events are not accepted by the appellant, and we return to them below. The respondent asserts that it sent an initial letter (an awareness letter) to the appellant on 14 December 2023 to make them aware of the Energy Savings Opportunity Scheme (ESOS) and to inform them that it is considered that ITH Group qualifies and may need to take action to comply with the scheme. The letter summarises the qualification criteria and explains the nature of an ESOS assessment. The letter gives a date for compliance of 5 June 2024. A link to the scheme

guidance is contained in the letter. The respondent asserts that a second awareness letter was sent on 29 May 2024, which advised of an extension of the compliance deadline to 6 August 2024, and that a third awareness letter was sent on 26 July 2024. The appellant denies receipt of any of these three awareness letters. The deadline for compliance passed on 6 August 2024 and it is accepted that the appellant did not comply. The respondent asserts that on 11 September 2024 it sent a compliance notice to the appellant, giving a deadline for compliance of 25 September

2024. The appellant denies receiving this letter and accepts that they did not comply. The respondent asserts that an enforcement notice was issued to the appellant on 27 November 2024, with a deadline for compliance of 27 February 2025. The appellant denies receiving this letter and accepts that they did not comply. In light of the appellant's failure to comply, the respondent asserts that a notice of intent to impose a civil penalty was sent to the appellant on 7 July 2025. The respondent notes that this letter contained a clerical error and on 1 August 2025 sent a revised notice of intent to impose a civil penalty to the appellant. The appellant accepts that this letter was received on 6 August 2025 and asserts that it is the first correspondence that they had received from the respondent.
9. On 6 August 2025 and 30 September 2025, the appellant purported to send emails to the respondent asking to discuss the intention to impose a civil penalty. The appellant now accepts that both of those emails were incorrectly addressed and were not received by the respondent; and that delivery failure notifications were received but not seen by the appellant because they were delivered to a spam folder.
10. The civil penalty notice was issued on 4 November 2025. The respondent's decision
11. The civil penalty notice imposed a penalty of £33,750, with payment due because the appellant had failed to carry out an energy audit, contrary to Chapter 3 of Part 4 of the ESOS Regulations. It stated that: Under regulation 45 of the ESOS Regulations, the following financial penalties for failing to undertake an energy audit are: • • An initial penalty of up to £50,000; A further penalty of up to £40,000 comprising £500 for each working day starting on the day after the service of the compliance notice, issued on 11 September 2024, subject to a maximum of 80 working days. 12. It was noted that the appellant remained non-compliant with the ESOS regulations as at the date of issue of the civil penalty notice. The respondent set out a summary of the four-step approach followed in setting the penalty, which is contained in Annex 2 of the Enforcement and Sanctions Policy (ESP): Step 1 Check or statutory maximum the breach determine for Step 2 Set initial penalty amount by assessing the nature of the breach and other Statutory maximum – A notification of compliance was not submitted and 80 days have elapsed since the service of the Compliance Notice The maximum penalty the organisation is liable to is £90,000 (£50,000 + daily penalty of £500 x 80 days) that Initial penalty amount

- £5,000 (reduction due to new entrant status) plus daily penalty of £40,000 totalling £45,000
Step 3 Step 4 enforcement positions in line with Section D Work out penalty starting point and penalty range Set final penalty amount the by assessing and aggravating mitigating factors Culpability category – Negligent Size of organisation – Large Penalty starting point - £13,500 Penalty range - £6,300 - £33,750 Final penalty amount - £33,750 13. In giving reasons for its decision, the respondent stated as follows: The most relevant factors in reaching this decision are as follows: In assessing the ‘nature of the breach’ in line with Sections D2 and D2.3 of our Enforcement and Sanctions Policy we consider that undertaking an energy audit is an essential requirement of the Regulations and a failure to do so undermines the integrity of the scheme. We do not think it is appropriate to waive the penalty. We consider you to be a new entrant to the scheme. We have therefore reduced the financial penalty set out in regulation 45(2)((a)(i) to £5,000. We consider that a penalty, including the daily penalty, is necessary to mark the breach and encourage future timely compliance. In assessing the size of your organisation, you are a Large organisation based on your latest registered accounts stating turnover of £85,949,989. In assessing the culpability category, we consider that your culpability category is Negligent, due to the failure by the organisation as a whole to take reasonable care to put in place and enforce proper systems for avoiding commission of the breach. We assessed whether there are any aggravating and mitigating factors, and we have taken the following factors into consideration (step 4 above): We received no response to the Compliance Notice or the Enforcement Notice issued, both of which were sent to your registered office address. You remain non-compliant as you have not submitted a notification of compliance for Phase 3 ESOS. You have avoided the costs of carrying out an energy audit. We did not receive any representations in response to the Notice of Intent, which was sent via recorded delivery.
- 14. The notice then set out a deadline of 30 January 2026 for payment of the penalty and the further steps required of the appellant, which were to carry out an ESOS assessment in accordance with Part 4 of the ESOS Regulations and to report the ESOS assessment in accordance with Part 5 of the ESOS Regulations. In the alternative, the appellant was advised that they could provide evidence in writing to demonstrate that ITH Group Limited or any of its corporate group activities in the United Kingdom did not meet the definition of a large undertaking as specified in Schedule 1 to the ESOS Regulations on 31 December 2022. The law
- 15. Part 4 of the ESOS Regulations creates an obligation on responsible undertakings to carry out ESOS assessments (regulation 20) for which at least one lead assessor must be appointed (regulation 21(1)(a)). Part 4 sets out what is required of an ESOS assessment and provides that a responsible undertaking must produce an ESOS report.
- 16. Part 5 of the ESOS Regulations sets out notification and confirmation requirements for ESOS assessments. Regulation 29 provides that a responsible undertaking must notify the scheme administrator using the Notification System whether the participant has complied with part 4 by providing certain information. Regulation 30 provides that a participant must appoint

one or more responsible officers in relation to an ESOS assessment and gives a definition of 'responsible officer'. Regulation 31 sets out what the responsible officer must confirm in the notification required by regulation 29.

17. Part 7 makes provisions relating to compliance and enforcement. Regulation 35 provides that the respondent may issue a compliance notice where it requires information to monitor compliance and makes provision about compliance notices. Regulation 37 provides that a responsible undertaking must notify the scheme administrator if it becomes aware that it is in breach of any requirement of the ESOS Regulations. Regulation 38 provides that the respondent may serve an enforcement notice on any responsible undertaking it reasonably believes has failed to comply with a requirement of the ESOS Regulations. It also makes provision for the content, format, and service of the enforcement notice.
18. Part 8 makes provisions relating to civil penalties and breaches. Regulation 39 provides that where the respondent is satisfied that the responsible undertaking is liable to a civil penalty, it may serve a penalty notice imposing the penalties and other requirements set out in Part 8. Regulation 39 makes provision for the content, format, and service of the penalty notice. Chapter 2 of Part 8 sets out the breaches of the Regulations in respect of which liability to a civil penalty arises and the amounts of the penalties. Pursuant to regulation 42, the respondent has discretion to waive a civil penalty, impose a lower financial penalty, or modify the application of a publication penalty.
19. Part 9 makes provision for an appeal to the First-tier Tribunal. Regulation 48(1) provides that there are three grounds of appeal: (i) that the enforcement or penalty notice was based on an error of fact; (ii) that it was wrong in law; or (iii) that it was unreasonable. Regulation 49 provides that the effect of the enforcement notice or penalty notice is suspended pending the determination of an appeal. Regulation 50 sets out what the First-tier Tribunal may do when determining an appeal. It may cancel the penalty notice; affirm the penalty notice, either in its original form or subject to modification; or instruct the respondent to do anything that is within the respondent's power to do. 20. In addition to the ESOS Regulations, the Energy Savings Opportunity Scheme Guidance (the ESOS Guidance); the Comply with the Energy Savings Opportunity Scheme Phase 3 Guidance (the Phase 3 Guidance); and the respondent's Enforcement and Sanctions Policy (the ESP) are relevant. The ESP is particularly relevant, as it sets out the stepped approach the respondent takes when deciding whether to impose a civil penalty and in assessing the amount (see paragraph 12 above). Annex 2 to the ESP gives guidance on how to set the penalty (Section A) and gives guidance in relation to ESOS specifically (Section D).
21. Regulation 51 of the ESOS Regulations makes provision regarding the service of documents. It provides that any determination or notice required to be served on a responsible undertaking may be served by delivering or sending it to or leaving it at the responsible undertaking's registered office.

22. Section 7 of the Interpretation Act 1978 applies to notices served pursuant to the ESOS Regulations and provides that where an Act authorises or requires any document to be served by post, then unless the contrary intention appears, service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would have been delivered in the ordinary course of post. The appellant's case
23. The appellant denies receipt of any correspondence prior to 6 August 2025 when the revised notice of intent was received. It is the appellant's case that they were not aware of their ESOS obligations until they received the revised notice of intention to impose a civil penalty. The appellant asserts that had they been aware of their obligations at any earlier point in time, they would have taken steps to comply and rely on the fact that they operate within a heavily regulated sector and that compliance with regulatory requirements is essential and that as soon as they became aware of their obligations, they took prompt steps to comply.
24. The appellant challenges the respondent's assessment of the quantum of the penalty and submits that it was neither reasonable nor proportionate. The respondent's case
25. The respondent's case is that all correspondence was properly served on the appellant at their registered address. The respondent submits that service on the appellant's registered office is sufficient.
26. The respondent contends that the factors taken into account when assessing the quantum of the civil penalty are set out in the civil penalty notice; that the staged approach to calculating the civil penalty was followed; that the factors taken into account were relevant; and that the penalty imposed was not unfair, unsound or excessive. The appeal hearing
27. The hearing was conducted by video and there was no objection to that being a suitable method of hearing. We heard oral evidence from Mr Andrew Winstanley and Mr Chris Jeffrey on behalf of the appellant and Mr Rory Belcher for the respondent. We considered the oral evidence and submissions together with the following documents in reaching our decision: Hearing bundle containing evidence from both parties. (i) (ii) Authorities bundle. (iii) (iv) (v) Skeleton argument on behalf of the appellant. Skeleton argument on behalf of the respondent. List of agreed facts and issues. The issues
28. The appellant argues that the respondent's setting of the final penalty amount is based on an error of fact and is unreasonable. The issues in the appeal are therefore: (i) (ii) Is the civil penalty notice based on an error of fact? Is the civil penalty notice unreasonable? Is the civil penalty notice based on an error of fact?
29. The appellant asserts that they received none of the respondent's correspondence prior to the second notice of intent dated 1 August 2025 and that they therefore had no knowledge of ESOS prior to 6 August 2025 when that letter was received.

30. We deal with the various pieces of correspondence separately, as different considerations apply. The awareness letters
31. The awareness letters are not notices required to be served on a responsible undertaking pursuant to the ESOS Regulations and therefore the common law regarding service applies to them. The basic principle is that where a properly directed letter is proved to have been posted, it is deemed to have been received. The presumption of receipt is rebuttable. A mere assertion that it has not been received is not sufficient and it must be assessed with reference to the relevant facts and an assessment of the witness's credibility and reliability.
32. As set out above, it is accepted that all correspondence (whether received or not) was correctly addressed to the appellant at their registered office.
33. We heard oral evidence from Andrew Winstanley (Chief Commercial Officer of ITH Group) and Chris Jeffrey (Operations and Facilities Manager for ITH Group). Both adopted their witness statements, Mr Winstanley with clarification in relation to paragraph 13 of his. We found both to be credible witnesses, who answered questions within their knowledge. We note that the respondent did not challenge their credibility.
34. Mr Belcher gave evidence for the respondent about the sending of the awareness letters. We found him to be a credible witness, who spoke to matters within his knowledge and where matters were not within his knowledge, he made that clear. His evidence was consistent with the documentary evidence before us.
35. The respondent sent three awareness letters to responsible undertakings. The awareness letters were dated 14 December 2023, 29 May 2024, and 26 July 2024. The dates on which the letters were posted differ from the dates on the letters. The respondent sent the first awareness letter itself from its premises. Letters were sent to 11,216 companies in 12 batches, each batch except the last containing 1,000 letters.
36. Mr Belcher's witness statement contains evidence about the number of responses received to each of the awareness letters. We clarified with Mr Belcher as to what constituted a response given that there was in fact no requirement for responsible undertakings to respond to the awareness letters. He said that there would not have been compliance at that stage because the notification system was not operational, but a response was any engagement by a responsible undertaking with the respondent in relation to ESOS.
37. Mr Millington asked Mr Belcher about the low response rate to the first awareness letter (4,000 responses out of 11,216 companies contacted). His questions appeared to be focused on the attitude of the recipients rather than a challenge to the respondent's evidence that the letters were in fact posted.
38. Due to the volume of letters, the respondent employed printing suppliers HH Global to issue the second and third awareness letters. Mr Belcher provides some information about HH Global in his witness statement, which the appellant did not challenge. Mr Belcher sets out the process in his witness statement, and he provided additional detail in his oral evidence.

Essentially, the respondent provided HH Global with the text of the awareness letter; and an Excel spreadsheet containing the mailing list data. HH Global then completed a mail merge – the process by which Microsoft Word merges the template letter with the information in the Excel spreadsheet to create a letter for each intended recipient. HH Global then provided a sample of letters to the respondent for approval. Mr Belcher states that HH global employs subcontractors to support their work. 39. In respect of the second awareness letter, 7,098 records, i.e. letters, were sent to Royal Mail for posting. This is set out in the mailing docket produced by HH Global and provided to the respondent. The respondent sent details of 7,121 addressees to HH Global, which means that 23 letters are not accounted for. In other words, the respondent expected HH Global to send 7,121 awareness letters, but in fact only 7,098 were sent. The respondent accepts that it is not possible to determine which recipients were not sent the second awareness letter or to rule out the fact that the appellant was one of the recipients who did not receive the letter.

40. Given that only 0.3% of the second awareness letter cannot be confirmed to have been sent to the intended recipients, we find on the balance of probabilities that the second awareness letter was in fact sent to the appellant. Even if we are wrong, it is not material to the outcome of this appeal. The compliance notice and the enforcement notice
41. These are both notices required to be issued to responsible undertakings under the ESOS Regulations and regulation 51 regarding service of documents and section 7 of the Interpretation Act therefore apply. This was not in dispute.
42. Mr Belcher states that the compliance notice was sent in the same manner as the second and third awareness letters, i.e. using HH Global.
43. Mr Belcher states that he was responsible for sending the enforcement notice to the appellant. His evidence at paragraph 22 of his witness statement was not challenged and we accept it. The first notice of intent
44. A notice of intent to impose a civil penalty is not a notice that is required to be issued to a responsible undertaking under the ESOS regulations and so the common law applies.
45. The respondent provided proof of delivery from Royal Mail in respect of the first notice of intent dated 7 July 2025. That item was sent by recorded delivery to the appellant care of RPGCC at its address. The proof of delivery included the posting label showing the recipient's address and the recorded delivery reference number; an electronic record that the item was delivered on 9 July 2025 also containing the recorded delivery reference number; and a photograph of the item on a desk and an electronic signature. The appellant does not dispute that this item was delivered to RPGCC but does not accept that they received it. Mr Winstanley confirmed that ITH did not take issue with the evidence of delivery and that they were not making any assertions about the reliability of Royal Mail but maintained that ITH did not receive the item. Conclusions on receipt of documents

46. As has been made clear by the Court of Appeal (*R (Alam) v SSHD* [2020] EWCA Civ 1527), there is no requirement for a recipient to have actually opened the letters or made themselves aware of the contents. There are good reasons for this – a person who fails or refuses to open correspondence should not be able to rebut the presumption of receipt. The Court of Appeal said in that case that the burden of proving the negative, non-receipt, in the face of convincing evidence leading to the expectation of receipt will not be lightly discharged. The Court of Appeal also said that it will not be discharged by evidence, far less by mere assertion, that the notice did not come to the attention of the person affected.
47. Mr Winstanley gave evidence about the process for receiving mail sent to ITH's registered address. He stated that at the material time, correspondence sent to the registered address was received by RPGCC, ITH's auditor. That correspondence was forwarded to ITH unopened, where it would be received at head reception and forwarded on to the relevant addressee. Mr Winstanley stated that he was not aware of any concerns about post not being received when forwarded in this manner by RPGCC. He confirmed when asked, that neither he nor anyone else at ITH had made enquiries with RPGCC to identify any issues with the mail forwarding process when it came to light that they had not received correspondence which had apparently been sent to them. He also confirmed that there was no internal investigation at ITH to try and determine whether the missing correspondence had been received and if so, that had happened to it.
48. While we accept that both Mr Winstanley and Mr Jeffrey are credible witnesses and we accept their evidence that neither of them personally received or saw any of the correspondence prior to the letter dated 1 August 2025, we do not accept that they have rebutted the presumption of receipt. They have failed to identify any reason why correctly addressed correspondence was not received from the respondent; have not identified any general issues with their system of receiving mail sent to their registered address; and did not identify any issue with the receipt or distribution of post within their own offices once it had been forwarded by RPGCC; and do not claim any fault on the part of Royal Mail.
49. We do not understand the appellant to challenge the fact of posting of the first awareness letter and we find on the balance of probabilities that they were posted as set out in Mr Belcher's evidence and that the appellant has failed to rebut the presumption of receipt.
50. We are satisfied on the balance of probabilities that the second and third awareness letters were sent to the appellant as explained by Mr Belcher in his evidence and the supporting evidence on which he relies. For the reasons set out above, we do not accept that the appellant has rebutted the presumption of receipt of the letters.
51. We are satisfied that the evidence of how the second and third awareness letters were sent is sufficient evidence of posting. This is a common method of posting bulk correspondence and the appellant did not challenge it as a reliable method. While HH Global were responsible for getting the letters ready to send, it was Royal Mail which was the service provider engaged to deliver them. There is no suggestion by the appellant that this was not

an appropriate method of delivery or that there is any evidence of a failure on the part of Royal Mail.

52. For the same reasons as set out in relation to the second and third awareness letters, we find on the balance of probabilities that the compliance notice was sent to the appellant at its registered address and that the appellant has not rebutted the presumption of receipt.
53. We find that the enforcement notice was sent to the appellant and for the reasons set out above, they have failed to provide any evidence capable of rebutting the presumption of receipt.
54. As set out above, there is no dispute that the respondent's correspondence was correctly addressed to the appellant's registered office at the material times. We find in the light of the proof of delivery evidence relied on by the respondent, that the notice of intent dated 7 July 2025 was delivered to the appellant's registered address on 9 July
2025. The appellant has failed to rebut the presumption of receipt for the same reasons as set out above. 55. It is accepted that the second notice of intent and the civil penalty notice were both received.
56. We find that the appellant has failed to show on the balance of probabilities that none of the respondent's correspondence was received prior to the letter dated 1 August 2025.
57. For all of these reasons, we find that the civil penalty notice was not based on an error of fact. Is the civil penalty notice unreasonable? 58. 59. 60. It is not disputed that the appellant is a responsible undertaking required to participate in ESOS; or that it did not comply with its obligations under the ESOS Regulations. It is not expressly disputed that the appellant is liable to a civil penalty, although the appellant argues that discretion ought to have been exercised not to impose one. It is not disputed that the respondent followed the four-step process for determining the penalty or that the process itself is unlawful. The appellant's challenge relates to the respondent's assessment of the final penalty at step four of the process. In relation to step 1, it is not disputed that the respondent identified the correct statutory maximum penalty, and we find that it did.
61. As to step 2, it is not disputed that the respondent correctly identified the initial penalty amount as £5,000 allowing for a reduction because the appellant is a new entrant to the scheme plus a daily penalty of £40,000. We find that the initially penalty was correctly identified.
62. Step 3 relates to the penalty starting point and range. It is not disputed that the starting point of £13,500 or the range of £6,300 to £33,750 is correct and we find that it is.
63. Step 3 also involves an assessment of the level of culpability of the responsible undertaking. The appellant does not expressly take issue with the respondent's assessment that the appropriate level of culpability is 'negligent.' We have considered the guidance on culpability set out in the ESP. Negligent means 'failure by the person or organisation as a whole to take

reasonable care to put in place and enforce proper systems for avoiding commission of the breach of offence.’ 64. In his witness statement, Mr Winstanley states that ITH Group operates in a highly regulated industry and takes its regulatory responsibilities very seriously. Mr Jeffrey’s witness statement contains similar evidence about ITH Group’s attitude towards compliance.

65. Mr Winstanley states that ITH Group has ‘implemented robust systems to ensure full compliance with all regulations applicable to the operations of each of its companies.’ Notwithstanding this, he accepted in cross-examination that ITH Group did not have a system in place to identify the ESOS Regulations as being relevant to them or with which they were required to comply. We find based on Mr Winstanley’s evidence that the appellant did not have in place proper systems for avoiding commission of the breach. We also find that as at the date of issue of the civil penalty notice, that the appellant had not taken any steps to rectify that issue. This is because there is no evidence at all of any steps taken between 6 August 2025 when the appellant accepts they received the second notice of intent and 5 November 2025 when they received the civil penalty notice to familiarise themselves with the ESOS Regulations; to put in place a system to ensure compliance; or to in fact comply with their obligations.
66. We find that the respondent’s assessment that the appellant’s level of culpability was negligent was reasonable and appropriate. We also find that the respondent was entitled to conclude that a penalty, including a daily penalty was necessary in light of the breach and to encourage future compliance. We accept that the respondent was entitled to decline to exercise discretion to waive the penalty given that the appellant did not seek to provide any mitigation in response to the notice of intent. There were no mitigating factors known to the respondent which could have formed a basis on which to waive the penalty.
67. We therefore move on to consider step 4. The respondent identified what it considered were three aggravating factors: (i) (ii) The lack of response to the compliance notice or the enforcement notice. The continuing lack of compliance because of a failure to submit a notification of compliance. The respondent considered that the appellant had avoided the costs of carrying out an energy audit. (iii) The lack of representations in response to the notice of intent.
68. The appellant contends that it was unreasonable for the respondent to give weight to the lack of response to the compliance notice and the enforcement notice as an aggravating factor and submits that it should more appropriately have been taken into account as a mitigating factor. We reject that submission. As set out above, we have found that the notices were properly served on the appellant and ignorance of the law is not a mitigating factor. We accept the appellant’s assertion that it takes regulation very seriously. We do not accept however that the appellant’s adherence to other regulatory schemes is something to which we can attach weight here. As we have found, as at the date of issue of the civil penalty notice, there is no evidence that the appellant had any measures in place to identify their responsibilities under the ESOS Regulations.

69. Having said that, in circumstances where we accept the witness evidence that no one with the appropriate level of responsibility at ITH Group had actual knowledge of the compliance or enforcement notices we find that it was not reasonable to treat a lack of response as an aggravating factor.
70. We find that the respondent was entitled to treat the ongoing lack of compliance as at the date of issue of the civil penalty notice as an aggravating factor. The appellant accepts that it received the second notice of intent on 6 August 2025 and that it was aware of its contents. There was a period of three weeks and two days between receipt of the notice of intent and the date given for compliance in that notice (29 August 2025). There was 13 weeks between receipt of the notice of intent and receipt of the civil penalty notice. While we accept that the appellant took steps after receiving the civil penalty notice including commissioning an ESOS assessment and report, there is no evidence that those steps were taken at any point prior to either the deadline of 29 August 2025 or prior to 5 November 2025. Mr Winstanley was unable to confirm when asked when he first contacted JRP Solutions who carried out an ESOS assessment in December 2025. Similarly, Mr Jeffrey was unable to confirm when JRP Solutions was first contacted.
71. We have considered the evidence that the appellant attempted to contact the respondent on two occasions after receiving the notice of intent. We do not place significant weight on this evidence for the following reasons: (i) (ii) The emails to the respondent were never received due to what we accept is an innocent spelling mistake in the email address used. The first email was not copied to anyone else at ITH Group and there is no evidence that any discussions within ITH Group took place about the notice of intent or how it could comply with its obligations. (iii) No steps were taken to set a reminder to chase the email and when no response was received, no steps were taken to check email records to ensure that the email had been properly sent/whether there might be any issues with receipt of a response. Specifically, there was no check of the email spam/junk folder. (iv) The second email was not sent until 30 September 2025, more than a month after the deadline given in the notice of intent and again, there is no evidence that any steps were taken to check email records to ensure that the email had been properly sent/whether there might be any issues with receipt of a response. Specifically, there was no check of the email spam/junk folder. In respect of the second email, the lack of checks carries more weight.
72. We find that the lack of any meaningful or effective action taken between 6 August 2025 and the deadline of 29 August 2025 and which continued until receipt of the civil penalty notice is an aggravating factor. It is indicative of the fact that despite the assertions of the witnesses, the appellant did not take this aspect of regulation seriously. We find that it is only the imposition of a financial penalty which finally spurred the appellant into taking any meaningful action to attempt to comply with the ESOS Regulations.
73. While we are looking at the evidence as it was at the date of issue of the civil penalty notice, the evidence suggests that even at the date of hearing, the appellant does not yet have proper systems in place to avoid commission of breaches. This is based on Mr Jeffrey's evidence,

who when it was put to him that the respondent had not yet received notification of compliance, replied that he was not sure what that was. This is not something to which we have attached any weight, but it is something to which the appellant may wish to have regard.

74. Similarly, although we accept that the appellant has taken some steps to ensure compliance with the ESOS Regulations, given that we have found that they did not take those steps prior to the date of issue of the civil penalty notice, which is the relevant date for assessing matters in this appeal, we do not give them any weight.
75. It was a matter for the appellant whether they considered at the time of receipt of the notice of intent whether there were any mitigating factors. It is interesting to note that they did not seek to inform the respondent at that stage that they had not received any of the earlier correspondence. The lack of mitigation is relevant to the refusal of the respondent to exercise discretion to waive the penalty, but we do not accept that it is an aggravating factor in the assessment of the final penalty.
76. We are satisfied based on the evidence before us that having due regard to the respondent as regulator and primary decision maker, that its assessment of the final penalty was not reasonable.
77. Applying our findings above, we have reached the conclusion that it was not reasonable to set the penalty at the maximum in the applicable range. We find that the final penalty amount which is reasonable based on the evidence before us is half that imposed by the respondent, i.e. £16,875.
78. We therefore allow the appeal, and the respondent must issue a revised civil penalty notice in the amount of £16,875, payable within 6 weeks of the date of issue. Signed J K Swaney
Date: 22 April 2026 J K Swaney Judge of the First-tier Tribunal 14

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