

ENGLAND AND WALES / JUDGMENT

Pavillion - MPL Ltd v The Pensions Regulator

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NCN: [2026] UKFTT 00536 (GRC) First-tier Tribunal (General Regulatory Chamber Pensions Regulation Decided without a hearing on 2 April 2026 Appeal Reference: FT/PEN/2025/0239 Decision given on: 10 April 2026 Before JUDGE ANTHONY SNELSON Between PAVILION - MPL LTD and THE PENSIONS REGULATOR DECISION Appellant Respondent The decision of the Tribunal is that the reference is dismissed and the matter remitted to the Pensions Regulator.

REASONS

1. The Appellant is a small company with a single director which runs a business at the Stormont Estate in Belfast. By this reference (or appeal) it challenges a Fixed Penalty Notice ('FPN') issued on 17 September 2025 by the Pensions Regulator ('TPR'), requiring it to pay a penalty of £400 for failing to comply with a Compliance Notice ('CN') by the (extended) deadline of 2 September 2025. The matter came before me for determination on the papers, both parties having stated 2. that they were content for no hearing to be held. I was satisfied that it was just and in keeping with the overriding objective to adopt that procedure. 3. I was provided with a bundle of some 196 pages. The statutory framework 4. Strictly speaking, Northern Ireland legislation is applicable in this case, but it is indistinguishable from what follows, and it is convenient to set out the provisions applicable in Great Britain. 5. The Pensions Act 2008 ('the Act') imposes a number of requirements on employers in relation to the automatic enrolment ('AE') of certain 'job holders' in occupational or workplace personal pension schemes. These include delivering written notification of how the AE duties have been met, known as a 'declaration of compliance'. TPR has statutory responsibility for securing compliance with AE requirements. If it is of the opinion that a declaration of compliance has not been delivered by the due date, it may issue a CN pursuant to section 35 of the Act¹, requiring the employer to deliver a notice of compliance by a specified date. By s40 of the Act, TPR may issue a FPN in the sum of £400² to a person if it is of the 6. opinion that he or she has failed to comply with (among other things) a CN. In the event of any further breach TPR may issue an Escalating Penalty Notice ('EPN') under s41 of the Act, imposing heavier financial sanctions. 7. TPR may review a FPN or EPN on the application of the person affected (s43(1)(a)). The effect is to suspend the relevant Notice pending the outcome of the review (s43(4)). The possible outcomes are confirmation, variation and revocation of the Notice; in the event of revocation, TPR may substitute a different Notice (s 43(6)). 8. By s44 of the Act, provision is made for references to the First-tier Tribunal ('FTT')

or (in circumstances which do not apply here) Upper Tribunal (“UT”) in (so far as material) the following terms: (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 Pensions Regulator Tribunal³ in respect of— (a) ... the issue of the notice; (2) (a) (b) The conditions are — that the Regulator has completed a review of the notice under section 43; 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. (3) On a reference to the Tribunal in respect of a notice, the effect of the notice is suspended for the period beginning when the Tribunal receives notice of the reference and ending— (a) when the reference is withdrawn or completed, or 1 Hereafter, section numbers will be given as, say, s1, s35 etc. 2 The figure is prescribed by the Employers’ Duties (Registration and Compliance) Regulations 2010, reg 12. 3 Now the First-tier Tribunal (b) (4) (a) (b) (c) if the reference is made out of time, on the Tribunal determining not to allow the reference to proceed. For the purposes of subsection (3), a reference is completed when— the reference has been determined, the Tribunal has remitted the matter to the Regulator, and any directions of the Tribunal for giving effect to its determination have been complied with. In dealing with a reference the powers of the FTT are very wide. The Pensions Act 9. 2004, s103 includes: On a reference, the tribunal concerned must determine what (if any) is the appropriate (3) action for the Regulator to take in relation to the matter referred to it. In In the matter of the Bonas Group Pension Scheme [2011] UKUT B 33 (TCC) Warren J, sitting in the UT, held that there was nothing in s103 or elsewhere to constrain the tribunal’s approach to a reference. Its function is not that of an appellate court considering an appeal. 4 It must simply make its own decision on the evidence before it (which may differ from that before the Regulator). One question which it may well be appropriate to take into account is whether the employer has shown a good excuse for its failure to comply with the AE duty which it has infringed: The Pension Regulator v Strathmore Medical Practice [2018] UKUT 104 (AAC). The key facts The material facts are not in dispute. Besides those given in para 1 above, they can be 10. summarised shortly as follows (I borrow largely from TPR’s ‘Response’ document). 10.1 The original deadline for delivery by the Appellant of the declaration of compliance was 27 June 2025. 10.2 TPR issued a letter in April 2025, correctly addressed to the Appellant’s Director’s home address (the address given by the Director to TPR for correspondence relating to AE matters), drawing attention to the deadline. 10.3 By a further correctly-addressed letter⁵ issued in June 2025, TPR again referred to the deadline. 10.4 Having heard nothing from the Appellant, TPR issued a further reminder letter on or about 8 July 2025, again referring to the deadline and, on this occasion, extending it by 14 days, to 22 July 2025. 10.5 On 22 July 2025 TPR issued the CN already mentioned, allowing the Appellant further time to deliver the (by now well overdue) declaration of compliance, expiring on 2 September 2025. In the absence of any response from the Appellant, TPR on 7 October 2025, issued the FPN under challenge. 10.6 10.7 Very soon after issue of the FPN, the Appellant complied with the duty to provide a declaration of compliance and sought a review of the FPN. 10.8 On 7 October 2025, TPR completed a review of the FPN and upheld it. The appeal 4 Although the terminology of ‘appeal’, ‘appellant’ etc is used 5 All subsequent

correspondence issued by TPR to the Appellant is shown as having been sent to the same, correct address. 11. The notice of appeal dated 29 October 2025 raises six grounds as follows: (i) (ii) (iii) (iv) (v) (vi) The address where the correspondence was sent suffers from long-standing postal delivery issues including frequent mis-delivery and delays. The Appellant's delay was not deliberate or negligent but was caused by postal issues, which constitutes a reasonable excuse in legislation. No evidence has been provided to show that the notices were issued by the Respondent. The Appellant was unaware that the declaration of compliance remained outstanding. Once the Appellant became aware of the breach it immediately completed the declaration and has remained compliant. The Appellant has complied with its underlying duties, with two staff enrolled in a scheme and contributions have been consistently paid. The penalty is disproportionate. As can be seen, the appeal raises no challenge to the validity of the grounds on which 12. TPR took enforcement action. It is concerned only with matters of mitigation. Discussion and conclusions 13. I start by reminding myself of the terms of the applicable legislation (summarised above) and in particular (a) the salutary purposes which the AE regime is designed to achieve, including ensuring that qualifying workers have the chance through occupational pensions to enjoy dignity and comfort in retirement; (b) the need for the mandatory requirements of the scheme to be backed up by an effective and robust enforcement mechanism; and (c) the need for other employers to understand that those requirements will be enforced. In my view, the correct approach, as suggested by the Strathmore Medical Practice case (already cited), is to look to the Appellant to show a good reason why TPR should not have followed its usual practice of meeting a breach of a CN with an FPN. 14. Having considered the matter with care, I am satisfied that the Appellant has failed to make out a reasonable excuse for its non-compliance. The legislation places the burden firmly upon the employer to comply. TPR is not under any legal duty to provide advice and reminders to employers at all. But in this case I am satisfied in any event that the documents demonstrate repeated efforts by TPR to encourage the Appellant to comply. I find that the communications which I have listed above, were duly issued by TPR on the dates they bore. Nor am I persuaded by the simple assertion on behalf of the Appellant, not supported by evidence, that none was received. As TPR points out, in reliance on *JM Kamau Ltd v TPR*

[2025] UKFTT 00425 (FTT), a decision of the Chamber President, taken with the documentary evidence in the bundle, the Tribunal is entitled to find that the relevant communications were duly issued on the dates they bear. And the statutory presumptions of delivery establish receipt, absent sufficient evidence to rebut them. In these circumstances, the first, second and third grounds of appeal fail. 15. I accept that, as the Appellant states in its fourth ground of appeal, the breach of the obligation to provide the declaration of compliance was remedied swiftly. I agree that it is entitled to some small credit for that. But it does not amount to significant mitigation to warrant interference with the FPN. 16. The same reasoning applies to the fifth ground of appeal. 17. As to the sixth ground of appeal, I accept that the Appellant, as a small enterprise, may well find the imposition of the FPN burdensome, but the level of penalties is set by Parliament and the Tribunal has

no jurisdiction to apply reductions to take account of means. Where appropriate, arrangements can be made to make payments by instalments. Outcome 18. For the reasons stated, I am clear that the Appellant has not demonstrated a good excuse for its failure to meet the requirements of the CN and accordingly I dismiss the reference and remit the matter to the Regulator. No further direction is required. (Signed) Anthony Snelson Judge of the First-tier Tribunal Date: 2 April 2026 5

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