

ENGLAND AND WALES / JUDGMENT

Reactive Zero 2 Limited v The Pensions Regulator

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NCN: [2026] UKFTT 00245 (GRC) First-tier Tribunal (General Regulatory Chamber) Pensions Case
Reference: FT/PEN/2025/0210 Decided without a hearing Decision given on: 23 February 2026
Before JUDGE HEALD Between REACTIVE ZERO 2 LIMITED and THE PENSIONS REGULATOR
Appellant Respondent Decision: The Reference is dismissed and is remitted to the Respondent.

REASONS

1. This appeal (Reference) relates to the Respondent's decision of 11 September 2025 by which, after a review, it upheld the issuing of a fixed penalty notice of 8 May 2025 and an escalating penalty notice of 9 June 2025. I have considered the content of the bundle of 129 pdf pages.
2. Rule 32 The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 provides that, unless the Tribunal is satisfied that it can properly determine the issues without a hearing and the parties also agree, the Tribunal must hold a hearing before making a decision which disposes of proceedings. In its appeal form the Appellant asked that the matter be dealt with without a hearing and in its Response the Respondent said that it was content with this approach. Having considered the issues raised in this Reference, seen the bundle of papers provided © CROWN COPYRIGHT 2026 and had regard to the overriding objective I am satisfied that the issues can be properly dealt with without a hearing.
3. The following definitions are adopted:- The Pensions Act 2008 The Pensions Act 2004 The Interpretation Act 1978 The Employers' Duties (Registration and Compliance) Regulations 2010 The Appellant The Respondent the 2008 Act the 2004 Act IA78 the 2010 Regs the Company TPR unpaid contribution notice, escalating penalty notice & fixed penalty notice UCN, EPN & FPN Registered Office Address of the Company the RO address Perrys Accountants Limited AMR Bookkeeping Solutions Limited Perrys AMR Parties
4. The Company is an employer as defined in the 2008 Act. It was incorporated on 5 June 2002. At all material times the RO address was Unit 31 Wilks Avenue Questor Trade Park, Hawley Road, Dartford, Kent, DA1 1JS and its directors have been Jane Gale (who is also the Secretary) and Stuart Gale. Jane Gale and Stuart Gale are also the people with significant control. Perrys represent the Company in this Reference.

5. Some evidence in this matter relates to Mr Gale's health. To avoid any unnecessary intrusion into sensitive private matters I have sought, where possible, to minimise the publication of personal medical details in this decision even though this may result in the issues being dealt with by Mr Dale appearing less serious than the evidence suggests. I wish Mr Dale well.
6. As regards TPR the Chamber President in *J. M. Kamau Limited v The Pensions Regulator* (PEN/2023/0160) from para 16 set out its objectives and ability to issue notices. I also agree with Judge Oliver who in *Cafe Piano (Radcliffe-on-Trent) Limited -v- the Pensions Regulator* [2023] UKFTT 00084 (GRC) said:- "19. Payment of pension contributions is an essential part of the automatic enrolment system. The whole purpose of the system is to provide workers with a pension fund on retirement, and this requires all contributions to be made correctly and at the right time. The use of UCNs and fixed penalty notices is a central part of the Regulator's compliance and enforcement approach. Employers are responsible for ensuring that the important duties are all complied with, and there needs to be a robust enforcement mechanism to support this system." and "34 There is a significant public interest in upholding fixed penalty notices. This is particularly important where the underlying issue is late contributions, because timely compliance by the employer with the Regulator's requirements is crucial to ensuring that individuals are not missing out on pension contributions over an extended period of time" Relevant law Notices
7. By section 37 of the 2008 Act TPR may issue an UCN to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date. By section 40(1)(c) of the 2008 Act TPR may issue a FPN if it is of the opinion that there has been a failure to comply with a UCN. By section 41 of the 2008 Act TPR may issue a EPN where there has been a failure to comply with, for example, a UCN. Applying for a review
8. Section 43(1) of the 2008 Act provides to the recipient of a notice the right to apply to TPR for a review of a notice and TPR may carry one out of its own volition. The time- limits for this (which are not extendable) are as set out in reg 15(1) & (2) of the 2010 Regs. They are (a) on an application from the person to whom the notice was issued, 28 days starting from the day a notice is issued to a person and (b) where TPR decides itself to review, 18 months, starting from the day a notice is issued to a person. Reference to the Tribunal
9. If the conditions in section 44(2) of the 2008 Act apply a recipient of a notice may apply to the Tribunal by section 44(1) of the 2008 Act in respect of (a) the issue of the notice (b) the amount of the notice. Jurisdiction
10. For the Tribunal to have jurisdiction it needs to be satisfied that the relevant notice was issued (ie sent and received) and, if it was, that one of the conditions of section 44(2) of the 2008 Act is satisfied. Issue of a notice
11. Where the issuing of a notice is disputed it is for TPR (Kamau para 29) to satisfy the Tribunal that the relevant notice has been issued (ie sent and received).
12. As regards the sending of a notice:-

- (a) in this case the Appellant is a body corporate and by section 303(6)(a) of the 2004 Act "...the proper address of a person...(a) in the case of a body corporate, the address of the registered or principal office of the body"
 - (b) Section 7 IA78 says:- "Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the 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 be delivered in the ordinary course of post."
 - (c) Reg 15(4) of the 2010 Regs says that:-
 - (4) For the purposes of this regulation, it is presumed that— (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;
 - (d) In Kamau the Chamber President said (with various provisos):- "80 In future cases before this Tribunal, The Pensions Regulator is entitled to rely upon the evidence of Ms Doherty, as detailed in [32] to [55] above, as to the system it operates for the issuing of IPBs, FPNs and EPNs. There will be no further requirement to produce a witness statement detailing these processes, unless a direction is made to that effect in a given matter."
13. As regards receipt by the Company
- (a) it is again for TPR to satisfy the Tribunal of receipt and to do so it needs to consider any evidence put forward by an Appellant (Freeman para 32). In Kamau the Chamber President said:- "85....when considering the question of whether a notice was issued by The Pensions Regulator, it is necessary to consider whether it was, as a matter of fact, received. Evidence of non-receipt needs to be addressed, weighed, and evaluated by the Tribunal, against the evidence put forward by The Pensions Regulator."
 - (b) TPR may wish, where appropriate, to refer to and seek to rely on reg 15(4)(c) of the 2010 Regs which provides that "(4) For the purposes of this regulation, it is presumed that—(c) a notice was received by the person to whom it was addressed."
 - (c) this presumption is rebuttable (Kamau 105) by an appellant (in this case the Company). If the presumption is successfully rebutted, the burden passes back to TPR. However to rebut the presumption an appellant will need to do more than merely assert non-receipt (London Borough of Southwark v Akhtar [2017] UKUT 150 (LC) at para 82). The conditions

14. The Tribunal will only have jurisdiction in relation to an issued notice if one of the conditions in section 44(2) of the 2008 Act are satisfied. These 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."
15. If a person, to whom a notice has been issued, requests a review after the expiry of the 28 day time limit in reg 15(1) and TPR says it will not carry one out due to its lateness that is not an application for a review pursuant to section 43(1)(a) of the 2008 Act and the refusal is not a determination not to carry out a review for the purposes of section 43(1)(a) of the 2008 Act.
Role of the Tribunal
16. Where the Tribunal has jurisdiction its role is as set out in section 103 of the 2004 Act. This provides that:- (3)On a reference, the tribunal concerned may consider any evidence relating to the subject- matter of the reference, whether or not it was available to the Regulator at the material time. (4)On a reference, the tribunal concerned must determine what (if any) is the appropriate action for the Regulator to take in relation to the matter referred to it. (5)On determining a reference, the tribunal concerned must remit the matter to the Regulator with such directions (if any) as it considers appropriate for giving effect to its determination. (6)Those directions may include directions to the Regulator—
 - (a) confirming the Regulator’s determination and any order, notice or direction made, issued or given as a result of it;
 - (b) to vary or revoke the Regulator’s determination, and any order, notice or direction made, issued or given as a result of it;
 - (c) to substitute a different determination, order, notice or direction;
 - (d) to make such savings and transitional provision as the tribunal concerned considers appropriate.
17. Relevant legal authorities such as Kamau, Pensions Regulator v Strathmore Medical Practice [2018] UKUT 104 (AAC)), Keith's Rubbish Clearance Limited v-the Pensions Regulator PEN/2020/0203 and In the Matter of the Bonas Group Pension Scheme [2011] UKUT B 33 (TCC)) have stated that the Tribunal:-
 - (a) does not sit as an appellate body from a decision of TPR but decides what action, if any, is appropriate.
 - (b) is to reach a decision having considered the evidence presented which may be different from that which TPR considered.
 - (c) can reach a different decision to that of TPR, even if the original decision fell within the range of reasonable decisions.
 - (d) can take account of reasonable excuses for compliance failures. Chronology

18. On 12 March 2025 TPR addressed a UCN to the Company at the RO address, on 8 May 2025 TPR addressed a FPN to the Company at the RO address and on 9 June 2025 TPR addressed an EPN to the Company at the RO address. On 5 September 2025 AMR wrote to TPR seeking a review and on 11 September 2025 TPR wrote to AMR and said that although the Company was out of time to seek a review TPR had decided to hold its own review but that its decision was to uphold the issuing of the FPN and EPN. It is this letter and Decision of 11 September 2025 that is the basis of this Reference.
19. For completeness on 11 September 2025 AMR wrote again to TPR and on 18 September 2025 TPR wrote back and reported that this later request for a review was out of time and TPR did not consider it appropriate to conduct a review on their own initiative. The Reference
20. In section 9.1 of the appeal form the Company says that the outcome sought is for the penalties to be set aside or reduced because:-
 - (a) the Company did not receive the notices despite them being sent to the RO address.
 - (b) as soon as the issue was realised steps were taken to resolve the matter.
 - (c) the Company has demonstrated clear commitment to compliance and is actively working to bring the contributions up to date.
 - (d) the Company's actions reflect "...good faith and a genuine intention to meet all statutory obligations and we ask that this be taken into account when reconsidering the penalties."
21. The Company also referred to Mr Dale's health issues which prevented him from overseeing the day-to-day operations of the Company and issues with people who should have been dealing with these matters who did not fulfil their duties.
22. On 28 October 2025 TPR responded to the Reference and the grounds of appeal. In summary TPR says that the notices were all properly issued and that the grounds of appeal do not amount to reasonable excuses. The Notices
23. On 12 March 2025 TPR addressed an UCN to the Company with notice number 78424010006. This notice explained that it was being issued because TPR was of the opinion that the Company had failed to pay relevant contributions to an occupational or personal pension scheme on or before the due date for payment. The UCN went on to direct the Company on what it should do and by when and what would happen if the Company did not comply by the due date.
24. On 8 May 2025 TPR prepared a FPN with notice number 139098657501 because the Company had failed to meet the requirements of the UCN by the relevant date. The Company was told that as well as paying the FPN it still had to comply with the UCN now with a compliance date of 5 June 2025.

25. On 9 June 2025 an EPN with notice number 204107676387 was prepared because the date for compliance set out in the FPN had expired but the FPN had not been paid and the Company had still not complied with the UCN.
26. In the Company's appeal document, sometime later, it did not assert that there were no unpaid relevant contributions and in fact said that its is actively working to bring the account up to date with weekly contributions being uploaded to resolve the outstanding balance.
27. From the above I conclude that TPR was entitled to issue each of the three notices and that doing so it was an appropriate and proportionate step on each occasion for TPR to take in light of the evidence of unpaid contributions and then the failure to respond to the notices. Amount of the notices
28. The Tribunal cannot set its own level of penalties. By reg 12 of the 2010 Regs a FPN is £400. By reg 13(2)(c) of the 2010 Regs where an EPN is based on an UCN (as here) the prescribed daily rate is as set out in the table in the Regs. £500 is where there are between 5 and 49 people. Jurisdiction
29. I am satisfied from the evidence provided and the submissions made that the Tribunal has jurisdiction for the reasons set out below. Were the notices sent to the Company?
30. As TPR says, each notice was addressed to the RO address. It also says they were posted (para 36) to that address as required by section 303(6)(a) of the 2004 Act and it relies on the presumption set out in reg 15(4)(a)&(b) of the 2010 Regs.
31. The Company, in the appeal form, does not say that the notices were not sent, it confirms that TPR was using the correct RO address and says "despite them being sent to the correct registered office". Additionally in an email of 11 September 2025 AMR said "while we appreciate you having the company's registered office address and confirming that the letter was sent here that does not mean... "
32. Based on the above I am satisfied that TPR has established that the notices were each properly sent to the Company at the RO address by post on the dates that appear on the notices. Were the notices received?
33. Receipt of the notices is disputed by the Company as follows:-
 - (a) in the appeal form the Company says that TPR was using the correct RO address but "our client did not receive any such letters" and "we were unable to provide copies of...as these documents were never received. "
 - (b) at section 9.1 of the appeal form the Company said that this Reference was being made on "the basis that our client did not receive the original notices."
 - (c) the Company says that it was only made aware of the issues when told by nest and that "This prompted immediate action on our part."

- (d) the Company says that had the notices been received the matter would have been addressed without delay.
34. In AMR's email of 5 September 2025 they tell TPR that "... it should also be noted that our client has never received any penalties notices or communications from yourselves on this matter. " Additionally on 11 September 2025 AMR said to TPR:- "whilst we appreciate you having the company's registered office address and confirming that the letter was sent here this does not mean it was either delivered or received. Had our client received such a letter he would have responded/ taken the necessary steps in a timelier manner. "
35. In my view the Company's position amounts to mere assertions of non- delivery and does not overcome the presumption of delivery provided by reg 15(4)(c) of the 2010 Regs. Accordingly I am satisfied that the notices were received by the Company. Is section 44(2) satisfied?
36. The Company was too late to seek a review by section 43(1)(a) of the 2008 Act due to the expiry of the 28 day time limit in reg 15(1) of the 2010 Regs. However TPR carried out its own review by section 43(1)(b) of the 2008 Act. Therefore the Company was entitled to bring this Reference to the Tribunal by section 44(1) of the 2008 Act as the condition at section 44(2)(a) was satisfied. Review of the grounds of the Reference
37. Having concluded that the notices were issued the matters put forward by the Company are Mr Dale's health and the failure of others to deal with the Company's obligations. Health
38. When AMR wrote to TPR on the 5 September 2025, which led to the review, they said that their client (by which they mean Mr Dale) had been suffering from health conditions which put him in hospital in 2022 and which required surgery and monitoring and that subsequent related health issues were ongoing "today" and were challenging. On 11 September 2025, having carried out its review, TPR told the Company that it upheld its notices. This outcome appears to have been based on an analysis of whether or not the notices were properly issued and it did not appear to respond to the health issues outlined in AMR's letter of 5 September 2025.
39. In the appeal form the Company said that Mr Dale was undergoing a significant health battle during the relevant period which left him unable to oversee day- to -day operations.
40. After the Reference commenced, lawyers for TPR wrote to AMR and asked them to provide further evidence and information so TPR could consider whether the notices should be revoked or not. TPR said: "In your appeal form it is mentioned that your client was suffering a 'significant health battle' during the relevant period. Elsewhere in communications with TPR reference is made to your client having been hospitalised and that he underwent surgery and had to be subsequently monitored. I would be grateful if you could please provide evidence to confirm; the illness(es) he suffered; the treatments he received; the dates of any treatments / hospitalisation; the date range of his illness / subsequent monitoring"

41. In the bundle there is an email from Mr Dale to AMR of 16 October 2025 in which health details were provided. There were also hospital notes and letters in evidence. The email says that he had a further health episode in May 2025 and AMR told TPR on 15 October 2025 that "he suffered another medical episode last night which resulted in a trip to A&E by Ambulance."
42. In its response TPR does not challenge the Company's case that Mr Dale had the medical issues as described. TPR says however that it:- "41...does not consider that these were impactful at the relevant periods of time, ie, when the UCN was issued (12 March 2025) and when the FPN was issued (8 May 2025) and when the EPN was issued (June 2025). The evidence provided at Annex J predominantly relates to periods that well precede these dates. No statement or evidence is provided by the Appellant himself about his current situation beyond assertions made in an email signed and submitted by the Appellant's representatives. The Respondent respectfully submits that the medical information provided does not sufficiently demonstrate that the Appellant has a reasonable excuse for its non-compliance with its Automatic Enrolment duties. "
43. Despite the assertions made in TPR's response about the absence of evidence for the relevant period the Company did not reply to it nor did it provide any formal witness or other evidence even though Directions of 20 November 2025 referred to this possibility.
44. On the basis of the evidence I accept that:-
 - (a) in February 2022 Mr Dale was admitted to hospital with symptoms that would have required absence from work and would have left most people not reasonably able to work. He stayed in hospital for about a week.
 - (b) Mr Dale returned to work after about three months and attended relevant sessions at hospital weekly. He was advised not to drive.
 - (c) symptoms reoccurred thereafter as reported in a consultant's letter of 8 July 2023.
 - (d) he had a further episode in May 2025 (see page 84).
 - (e) he was admitted to A&E in October 2025.
 - (f) the admission to hospital in 2022 has impacted Mr Dale's ability to carry out his professional responsibilities.
45. However there appears to be no evidence from the Company that deals with the medical situation specifically between 6 October 2024 and 31 January 2025 during which period there were unpaid contributions or on and around 12 March 2025 when the UCN was issued to the Company.

46. I accept that the conditions described have had a long term impact on Mr Dale in the ways described. However it does appear that he did return to work even if in a limited capacity and I have concluded that the evidence presented (in particular as regards the dates of the medical issues) does not provide a reasonable excuse for the Company not making the contributions and not responding to the notices. Delegation
47. In AMR's letter of 5 September 2025 they said that it had been discovered that recent finance managers had not provided the level of service expected and, when they left, it was only then that it was discovered how poor their service had been and that it had taken time to catch up with the bookkeeping including the pension contribution submissions. When writing on 11 September 2025 TPR did not directly deal with this excuse.
48. In the appeal form the Company said that because of the health issues Mr Dale was unable to oversee operations and that unfortunately those entrusted with these responsibilities did not fulfil their duties resulting in the missed pension contributions. This issue was referred to being "beyond our clients control".
49. In his email of 16 October 2025 Mr Dale said:- "The stress of running a 24/7 reactive company has forced me to delegate key responsibilities which unfortunately has led to serious operational issues due to staff mismanagement during my absence... I depend heavily on my team to make sound decisions but this has not always been successful."
50. TPR says in its response that it accepts that duties can be delegated but it remains the Company's obligation as employer to ensure its pension duties are complied with. TPR says that its view is that if errors were caused by those to whom the responsibility was delegated that does not provide a reasonable excuse for the Company.
51. Mr Dale is not the only person who works at the Company and he is not the only director. He is entitled to delegate responsibility for dealing with TPR. While not binding I agree with the decision of Judge Buckley in *A M Multi-Utilities Limited v The Pensions Regulator* PEN/2018/0101 in which it was decided that:- "16... It is the Employer's duty to ensure that the duties are complied with, and if it delegates those duties it must take appropriate steps to ensure that the duties are complied with."
52. I do not agree (if this is TPR's submission) that the failure of a delegatee could never be a reasonable excuse for an employers failure. Evidence might be given, for example, to show an employer had taken all appropriate steps but there had been a wholly unforeseeable issue with the performance of those to whom the responsibility had been delegated. However in this case there is not sufficient evidence to conclude that delegation by the Company provides a reasonable excuse. This is because very little information is provided other than that some former staff had delivered poor service. The evidence does not for example say who they were, what they were asked to do in anything other than generic terms, when they were asked to do it and precisely when their errors were discovered.

53. I accept that this is not a case where an employer was deliberately seeking to avoid its responsibilities. I also accept that Mr Dale understandably thought others were dealing with pension issues and TPR. However I do not conclude in this case, on the basis of the evidence submitted, that this provides a reasonable excuse for the Company having failed to make the contributions or to respond to the UCN and FPN. Summary
54. To summarise:-
- (a) the notices were each appropriately issued to the Company and the Tribunal has jurisdiction to hear the Reference.
 - (b) while I accept the EPN in particular is a large amount the level of the FPN and EPN are fixed by the 2010 Regs.
 - (c) TPR did not consider the medical evidence or the delegation issues adequately before reporting the outcome of its review on 11 September 2025 but the Tribunal has had the opportunity to consider that evidence afresh and consider the additional evidence submitted since the Reference was issued.
 - (d) I have not been persuaded, on the basis of the evidence submitted, that Mr Dale's medical issues provide a reasonable excuse for the failure by the Company to deal with its contribution obligations and then the notices.
 - (e) I have not been persuaded, on the basis of the evidence provided, that the failings of those to whom the pensions issues were delegated amount to a reasonable excuse for the failure of the Company to deal with its contribution obligations and then the notices Decision
55. Accordingly the Reference is dismissed and remitted to TPR with no directions.
56. I recognise that this will not be the out-come hoped for by the Company. TPR has pages on its website dealing with penalties. I encourage the Company to continue to engage with TPR generally and about this. I also expect TPR will ensure that in dealing with the Company it will have due regard to any reasonable representations made and to Mr Dale's ongoing health issues about which he has my best wishes. Signed Judge Heald Date: 17 February 2026
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