

Automatic enrolment

# Compliance and enforcement

Quarterly bulletin 1 January – 31 March 2017



The Pensions  
Regulator

This quarterly update provides information about our cases and the powers we have used relating to automatic enrolment and associated employer duties.

It is designed to help employers, their advisers and the pensions industry as a whole understand the type of compliance and enforcement interventions that follow our educative and enabling communications and support.

## Preventing non-compliance

### Ignoring TPR penalties could seriously damage your reputation

Automatic enrolment passed a significant milestone this quarter, with over 500,000 employers having met their duties and nearly eight million of their staff now saving for their retirement. Although we are very pleased with the high level of compliance among employers who are committed to doing the right thing, we're maintaining our tough approach towards those who try to get away with not giving their staff the pension they're due.

As can be seen from the figures relating to this quarter, our use of fixed penalty notices (FPNs) and escalating penalty notices (EPNs) has again increased in line with the staging profile, rising to 14,502 FPNs and 2,517 EPNs. We are now taking the additional step of publishing on our website<sup>1</sup> the details of those who have paid their EPNs but remain non-compliant. We will also publish the details of those who failed to pay their EPN, and as a result have been made subject to a court order. The details will include the employer's name, the penalty amount, and the first part of their postcode to avoid possible confusion with other employers with similar names.

We've taken the decision to publish these details in line with our policy under s89 of the Pensions Act. This gives us the powers to publish details of our activities and cases in the interests of transparency, education and deterrence. We already provide employers with a lot of information and support, in the form of letters, emails, and easy-to-use guidance on our website, so there really are no excuses for not complying with the law.

1  
[www.tpr.gov.uk/eptn](http://www.tpr.gov.uk/eptn)

We also publish in-depth reports of large or complex cases where we think it will be helpful for employers and the wider pensions industry to see the nuts and bolts of a case, including why we took the decisions we did, and what resulted from those decisions. For example, we recently published a regulatory intervention report about Johnsons Shoes<sup>2</sup>, a company that ended up having to pay £40,000 plus court costs, having cited work pressures as an excuse not to meet their duties.

To prevent employers risking their reputation and having their company details published on our website, we encourage them to get in touch with us if they're having problems meeting their duties, to avoid the need for us to issue an escalating penalty.

## Lessons learned from our casework: Case studies

### Case study 1

This employer had a staging date of November 2014. After they failed to fill in their declaration of compliance, we sent them a compliance notice, followed by a FPN, which was also ignored. Once we issued an EPN they got in touch, blaming a number of circumstances for their lack of action, including software problems and being out of the country. They told us that they had put a scheme in place and would backdate the contributions due, but provided no evidence of this and the declaration of compliance remained incomplete. We contacted them repeatedly before the EPN started to accrue, but they persisted in failing to act, and finally completed their declaration in March 2016 after accruing a fine of over £3,000.

### Case study 2

This company ended up with an EPN of over £20,000 and court action that could have been avoided if they had engaged with automatic enrolment on time. Unlike some other employers, they failed to provide an excuse for their lack of action but promised us they would remedy this quickly. Despite our making repeated contact, they failed to enrol the eligible staff, complete the declaration of compliance or pay the backdated employer and employee contributions into a scheme. Two years after their staging date they finally declared compliance and are currently in the process of paying the backdated contributions into the scheme.

2  
[www.tpr.gov.uk/  
section-89](http://www.tpr.gov.uk/section-89)

### Message to employers

Let us know if you're having problems meeting your duties and don't tell us you're carrying out tasks if you're not. Automatic enrolment won't go away if you ignore it, and you risk having to pay a lot of money in fines and potentially be taken to court if you don't take action.

As an employer you have duties to provide a pension scheme, to make contributions for your staff into that scheme and to declare your compliance with TPR. We will be tough on employers who don't meet their duties on time. It's not fair if their workers fail to get the pensions they're entitled to, nor is it fair to those employers who do the right thing and comply with the law.

## Cases closed

### Automatic enrolment cases closed in the period

Cases closed in this quarter:	14,071
Cases closed to date <sup>3</sup> :	47,251

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We define 'to date' as the period commencing from the outset of our compliance and enforcement activity for automatic enrolment (July 2012), and continuing all the way to the end of this reporting period (ie 31 March 2017). We occasionally identify a small number of cases which have been incorrectly marked as relating to automatic enrolment. When this occurs, an adjustment to the numbers from the previous quarter will have been made.

## Selected powers<sup>4</sup> used in the period

Power	Description	Number in period	Number to Mar 2017
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	46	257
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	227	284
Warrant	The power to search premises and take possession of content under section 78 of the Pensions Act 2004	2	4
Compliance Notice	A Compliance Notice under section 35 of the Pensions Act 2008 to remedy a contravention of one or more automatic enrolment employer duty provisions	8,955	40,206
Unpaid Contributions Notice	An Unpaid Contributions Notice under section 37 of the Pensions Act 2008 to remedy a late or non-payment due to a qualifying pension scheme	487	1,592
Fixed Penalty Notice	A Fixed Penalty Notice under section 40 of the Pensions Act 2008 of £400 for failure to comply with a statutory notice or some specific employer duties	4,673	14,502
Escalating Penalty Notice	An escalating penalty under section 41 of the Pensions Act 2008 of between £50 and £10,000 per day (depending on size) for failure to comply with a statutory notice	1,043	2,517
<b>Total</b>		<b>15,433</b>	<b>59,362</b>

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This report only provides data on the main powers that we anticipate using. Our annual commentary and analysis publication on automatic enrolment will provide data on any other powers we have used over the period. The numbers above include all powers that have been used regardless of whether they have been subsequently revoked. A small proportion of powers reported from previous periods will change as a result of retrospective updates or operational activity to replace powers issued in the previous period with those issued in this period.

## Review of statutory notices

A review<sup>5</sup> is where an employer who is the recipient of a statutory notice (such as a Compliance Notice, Fixed Penalty Notice or Escalating Penalty Notice) disagrees with our decision and requests a review.

Confirmed reviews are where we have carried out a review and decided that the statutory notice was issued correctly and appropriately and will continue to be applied to the employer. In some cases we revoke the statutory notice following the review. Where a notice is substituted, this may mean that a different breach has been uncovered and a different statutory power is used instead.

Reviews	Number in period	Number to Mar 2017
Requested	1,757	6,426
Completed	1,394	5,639

These are employer-instigated reviews only.

Outcome of reviews	Number in period	Number to Mar 2017
Confirmed	464	1,114
Revoked, substituted or varied	930	4,525

<sup>5</sup>  
Note that these reviews may not relate to notices issued in the period, and that a review completed in the period may not have been requested in the period. A small proportion of reviews and review outcomes reported from previous periods will change as a result of retrospective updates or operational activity to replace powers issued in the previous period with those issued in this period.

## Tribunals

Employers who receive a penalty notice and disagree with our decision to issue it must first ask us for a review. If they disagree with the outcome of that review they can then appeal the decision to the Tribunal Service. Employers have 28 days after the review decision is issued in which to appeal.

<b>Tribunals</b>	<b>Number in period</b>	<b>Number to Mar 2017</b>
Requested	72	237
Defended	58	171
Not defended	14	66

<b>Outcome of tribunals</b>	<b>Number in period</b>	<b>Number to Mar 2017</b>
Confirmed	56	123
Revoked, substituted or varied	0	1
<b>Total</b>	<b>56</b>	<b>124</b>

Confirmed includes struck out and dismissed.  
Ongoing tribunals where the decision has yet to be made on how to respond: 0.  
Defended tribunals still ongoing at the end of March 2017: 47.

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