

Compliance and enforcement

Quarterly bulletin: April-June 2017

August 2017

The Pensions
Regulator

This quarterly update provides information about our cases and the powers we have used. It is designed to help employers, their advisers, trustees and administrators understand the type of compliance and enforcement interventions we undertake.

Our approach is based on preventing problems developing in the first place by being clear about our expectations, and we have a range of educational materials for all members of our regulated community. These include online resources for employers and their advisers to help them through automatic enrolment, the Trustee toolkit, guidance on scams, and information on other areas including funding and investment, scheme governance and record-keeping.

Schemes named for chair's statement and scheme return failures

In the last quarterly bulletin, we announced our new approach of naming employers who have received EPNs for automatic enrolment failures and CCJs for failing to pay their fines. We are now using the same power under s89 of the Pensions Act to name schemes that have received a financial penalty for failing to complete a scheme return or annual governance statement signed by the chair of trustees in a list on our website at www.tpr.gov.uk/fines. The list includes the name of the scheme, type of breach, and the fine amount.

It is a basic governance activity – as well as a legal requirement – to complete a chair's statement and scheme return, and we fine trustees who fail in their duties. We recently published two enforcement bulletins (see www.tpr.gov.uk/enforce), setting out how we have used our powers to tackle non-compliance with the scheme return and chair's statement requirement, and the standards we expect from trustees. The bulletins revealed that the main cause of governance failings was ignorance of the law, and that smaller schemes were more likely to struggle to meet their duties, especially those with fewer than 12 members.

During this quarter we also fined the London Borough of Barnet (see www.tpr.gov.uk/section-89), which is the first public service scheme we have fined for failing to submit a scheme return. You can read more about our approach to fines, and the variety of fines in our fining policy, at www.tpr.gov.uk/strategy.

The numbers include all powers that have been used, regardless of whether they have subsequently been reviewed, revoked, or fines yet to be issued. A review requested in one quarter may relate to a notice issued in the previous quarter, and/or may be completed in the next quarter. A small proportion of reviews in previous periods may change as a result of retrospective updates or later use of different powers.

Message to trustees

Completing a scheme return and a chair's statement properly are among the basic governance duties trustees need to comply with, and if you fail to provide these when required you risk a fine and having your scheme named on our website.

How we use our powers

Usually we succeed in achieving the desired outcome by talking to trustees and being clear about our expectations, but we won't hesitate to invoke our regulatory powers where it is the right thing to do.

We have a range of powers available to us, and the most frequently used (excluding automatic enrolment powers) are trustee appointments, penalty notices and section 72 notices requesting information. During the last quarter we used this versatile information-gathering power across ten different case and enquiry types. We also secured our first two criminal convictions for non-compliance with a s72 notice, and are in the process of looking at using our powers to challenge a recovery plan that had been agreed between a trustee and employer.

Case study

A London-based solicitors firm and their senior partner were ordered to pay more than £16,000 in fines and costs for refusing to give us documents we needed as part of an investigation. We issued a s72 notice to the firm, who claimed that it was having trouble obtaining the documents as they were stored at a separate site. Shortly afterwards, the managing partner confirmed that he had found the documents, and would send them to us, but failed to do so.

Despite our staff making numerous requests for the information, it was only when we entered the offices with a search warrant that the documents were secured. We decided that the failure to hand over the documents was so serious that it merited the criminal prosecution of both the partner and his firm – the first time we have taken such action.

Message to our regulated community

We will not hesitate to prosecute people who prevent us gathering the data we need for our investigations. Information notices are a key enforcement tool to help us tackle those abusing the system, and we will not tolerate refusal to comply with one of our legal requests.

Selected powers used for frontline regulation

Power	Description	Number in period	Apr 2014 - Jun 2017
Trustee appointments	The power to appoint trustees to schemes to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme under section 7(3)(a) of the Pensions Act 1995	0	18
	The power to appoint trustees to schemes to secure that the number of trustees is sufficient for the proper administration of the scheme under section 7(3)(b) of the Pensions Act 1995	88	1,572
	The power to appoint trustees to schemes to secure the proper use or application of the assets of the scheme under section 7(3)(c) of the Pensions Act 1995	0	1
	The power to appoint trustees to schemes to protect the interests of the generality of the members of the scheme under section 7(3)(d) of the Pensions Act 1995	0	9
	Power to vest or transfer property as consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995	0	4
Mandatory penalty notice	The Occupational Pension Schemes (Charges and Governance) Regulations 2015 require us to issue a mandatory penalty where there has been a failure to prepare a chair's statement	28	112
Scheme return enforcement	Trustees have a legal obligation to give us information about their pension scheme by completing a scheme return when required, a financial penalty under section 10 of the Pensions Act 1995 may apply for this failing	44	98
Information gathering	Our formal information gathering powers under section 72 of the Pensions Act 2004	26	372

Power	Description	Number in period	Apr 2014 - Jun 2017
Regulatory intervention reports	Section 89 of the Pensions Act 2004 gives us the power to publish information on cases where we have exercised or considered exercising our powers	5	39
Clearance	A statement that we will not use our anti-avoidance powers to issue either contribution notices or financial support directions in relation to a defined benefit occupational pension scheme	2	35
Inspection	Statutory inspection powers under Section 74 of the Pensions Act 2004	0	1
Other	Various other powers	8	88
Regulated apportionment arrangement	The application, subject to conditions, to separate a scheme from its employer. It must be approved by us and the PPF must confirm that they do not object to the RAA.	1	5
	Total	202	2,354

Review of statutory notices for frontline regulation

If a trustee or other recipient disagrees with the issuing of a Statutory Notice issued under the 2015 Regulations – for example for failing to prepare a chair’s statement or exceeding the charge cap – they can apply for a ‘review’ of that decision. We set out the right of review in all notices, as well as how to apply for a review. An application for a review must be made within 28 days from when the notice was first issued.

We appoint a review officer, who is someone not previously involved with the case, to carry out the review. We will usually complete the review within 10 working days of the written notification that the application has been accepted and that a review will be carried out. If this is not possible, we will contact the applicant(s) and let them know when they can expect us to make a decision.

Reviews	Number in period	Number to Jun 2017
Requested	2	14
Completed	2	14

Outcome of reviews	Number in period	Number to Jun 2017
Confirmed	2	11
Revoked, substituted or varied	0	3

Automatic enrolment

Employer spot checks help identify failing employers

Our enforcement teams have been making spot checks around the country, to make sure employers are complying with their automatic enrolment duties and that they are giving their staff the workplace pensions they're entitled to. These inspections help us understand any challenges employers are facing, and whether we need to make any changes to our guidance. They also enable us to identify employers who fail to meet their duties, and take enforcement action where necessary – employers getting away with non-compliance isn't fair on businesses who have taken the time to meet their responsibilities. We'll be continuing our checks over the coming months usually sending a statutory notice to the employers we've selected ahead of our visit.

We've also updated the rolling list of employers who have paid their escalating penalty notice (EPN) but remain non-compliant, along with those who failed to pay their EPN and now are subject to a court order. Since the last bulletin, 14 out of the 20 employers originally named for EPN failures are now compliant so their names have been removed from the list. We're maintaining our tough stance on those who fail to pay their EPN, and are pursuing county court action against a number of employers. The list is at www.tpr.gov.uk/eptn.

You've got to be in before you can get out

During the course of our announced inspections we've seen a number of instances of employers agreeing to opt staff out of a workplace pension before they have been enrolled.

Some employers claimed they were unaware as to the formality of their duties or process they needed to follow, and had simply been trying to do their staff a favour by offering them the option of opting out up front. But whether their motivation was genuine, or whether they were simply trying to get out of paying their staff the pension contributions they were due, the result was the same – they were in breach of their legal duties. Eligible staff need to be enrolled first, and can then opt out.

One of the cornerstones of automatic enrolment is capitalising on inertia, and it has proved very successful so far in helping people who might never have saved for retirement before. Employers need to follow all the steps in our duties checker, including setting up a scheme, putting eligible staff into it and writing to them, before they can choose whether to stay in or opt out. See our website for more information on the key steps to follow at www.tpr.gov.uk/employers.

Case study

This London-based car hire company had a staging date in January 2016. They sent a letter to their staff, telling them they'd soon be automatically enrolled, and that if they wanted to opt out ahead of this time they should sign and return the form.

In early April of this year we carried out an inspection as part of our compliance validation drive. They had claimed to have zero workers, but our intelligence suggested otherwise.

The employer claimed that ill health, financial difficulties and bad advice from their accountant had contributed to their failure to comply. Their accountant had drawn up the letter that was sent to employees, with a tear-off slip asking them to fill it in if they wanted to opt out.

As the employer had failed to put any of their staff into a pension scheme, we sent them a compliance notice, warning them that we would fine them unless they quickly put things right.

Six weeks later they sent us proof of their compliance, the letters they'd sent to their staff and confirmation that they'd automatically enrolled the 13 people who were eligible. They also provided evidence that they'd backdated over a year's worth of contributions to their original staging date, and were finally compliant on 8 June 2017.

Message to employers

Whether your intentions are to make things easier for your staff or avoid paying into their pension scheme, the law is the same. They can't opt out before you put them into a pension scheme, even if they've told you it's what they want.

Selected powers¹ used for automatic enrolment

Power	Description	Number in period	Number to Jun 2017
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	64	335
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	276	564
Warrant	The power to search premises and take possession of content under section 78 of the Pensions Act 2004	0	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	9,265	49,123
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	653	2,234
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	4,794	19,300
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	1,384	3,899
Total		16,436	75,459

1

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.

Review of statutory notices for automatic enrolment

A review 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 ²	Number in period	Number to Jun 2017
Requested	1,647	7,789
Completed	1,388	6,868

Outcome of reviews	Number in period	Number to Jun 2017
Confirmed	474	1,533
Revoked, substituted or varied	914	5,335

²
These are employer-
instigated reviews only.

Tribunals for automatic enrolment

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.

Tribunals	Number in period	Number to Jun 2017
Requested	77	314
Defended	63	236
Not defended	12	76

Outcome of tribunals	Number in period	Number to Jun 2017
Confirmed	32	159
Revoked, substituted or varied	1	2
Total	33	161

Confirmed includes struck out and dismissed.
 Ongoing tribunals where the decision has yet to be made on how to respond: 2.
 Defended tribunals still ongoing at the end of June 2017: 75

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	14,823
Cases closed to date: ³	62,074

³
 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 30 June 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.

Online list of employer and trustee fines

We publish details of those who have received penalties either for:

- ▶ not completing a chair's statement on time
- ▶ not completing a scheme return
- ▶ remaining non-compliant after paying an EPN
- ▶ an unpaid EPN leading to a CCJ

We publish enough information to identify:

- ▶ the name and area of those who have been fined
- ▶ the amount they need to pay to us

Online list of employer and trustee fines: www.tpr.gov.uk/fines

How to contact us

0345 600 1011
www.tpr.gov.uk

www.trusteetoolkit.com
Free online learning for trustees

www.pensionseducationportal.com
Free online learning for those running public service schemes

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