

Compliance and enforcement

Quarterly bulletin: October – December 2017

February 2018

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.

Frontline regulation

Schemes named for non-compliant chair's statements

Each quarter, we publish the names of schemes whose trustees have received a fine for failing to produce a chair's statement on time. We are now also publishing the names of schemes whose trustees have received a fine because the chair's statement they prepared didn't meet the legal requirements. The broad areas the chair's statement covers are:

- ▶ the default arrangement and its governance
- ▶ the processing of core financial transactions
- ▶ disclosure of costs and charges (including transaction costs) relating to the default arrangement and other arrangements
- ▶ trustee knowledge and understanding
- ▶ assessment of value for members
- ▶ the trustee board and member representation (for master trusts only)

As set out in our DC code of practice, we expect the statement to provide a meaningful narrative of how the trustees have met the governance standards. This means not only setting out certain information, but also explaining the measures that have been taken to achieve compliance with the regulations. Trustees can find out more about how to make sure their chair's statement is up to scratch by reading the guidance on our website at www.tpr.gov.uk/chair.

We also ran a campaign to help trustees improve their workplace pension schemes, with a focus on strategy, roles, governance and training. The 21st Century Trusteeship programme is for trustees of both defined contribution and defined benefit schemes – for more information, visit the dedicated area on our website at www.tpr.gov.uk/21c-trustee.

Airline's pension scheme trustees fined for failing to get accounts audited for two years

This quarter we also used our powers under section 10 of the Pensions Act to enforce against a scheme for failing to prepare audited accounts. The Determinations Panel, an independent TPR committee, imposed a fine of £500 per trustee, in line with our monetary penalties policy.

Trustees are legally required to obtain audited accounts and an auditor's statement every year, and in this case, the trustees failed to prepare them for two years in a row. Failure to obtain audited accounts can hinder a scheme's ability to obtain a valuation and can also be an indication of wider governance failings.

Case study

The actuary of Pakistan International Airlines' defined benefit (DB) pension scheme sent us a breach of law report in November 2016 to let us know that the trustees had not obtained audited accounts or an auditor's statement about contributions for the 2015 or 2016 scheme years.

We attempted to contact the trustee board but failed to get any meaningful response, nor did they give us a reasonable excuse as to why they hadn't obtained the accounts.

We sent the trustees a Warning Notice in August 2017, which let them know that we intended to fine them under s.10 of the Pensions Act 1995 for their failure. We gave them the opportunity to challenge our conclusion and let them know that if they prepared accounts within two weeks, we would not refer the matter to the Determinations Panel.

Although they sent us copies of the 2015 accounts, the 2016 accounts remained outstanding and we referred the matter to the Determinations Panel, which imposed a fine of £500 on four of the trustees.

Message to trustees

Scheme governance basics are important and we will make full use of the powers available to us if we believe members' benefits are at risk.

Selected powers used for frontline regulation

The numbers in the table below include all powers that have been used, regardless of whether they have subsequently been reviewed, revoked, amended or are fines yet to be issued.

Power	Description	Number in period	Apr 2014 - Dec 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	19
	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	130	1,911
	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 a consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995	1	6
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	49	179
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	0	134

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Selected powers used for frontline regulation continued...

Power	Description	Number in period	Apr 2014 - Dec 2017
Information gathering	Our formal information gathering powers under section 72 of the Pensions Act 2004	43	467
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	0	43
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 DB occupational pension scheme	0	43
Inspection	Statutory inspection powers under Section 74 of the Pensions Act 2004	0	1
Other	Various other powers	6	80
Audited accounts enforcement	Trustees or scheme managers of most schemes are legally required to obtain audited accounts annually, within seven months of the scheme year end. Failure to do so may result in a financial penalty under section 10 of the Pensions Act 1995.	4	4
Improvement/ third party notice	Notices containing directions for anyone with a duty to a scheme to do something to enable compliance with pensions legislation	2	8
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.	0	6
Total		235	2,911

* A regulated apportionment arrangement (RAA) is a non-enforcement use of powers and is included in this bulletin for information only.

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 Dec 2017
Requested	1	21
Completed	3	18

Outcome of reviews	Number in period	Number to Dec 2017
Confirmed	3	16
Revoked, substituted or varied	0	5

Automatic enrolment

We will prosecute employers who deliberately avoid their AE duties

Between October and December 2017 we successfully concluded nearly 32,000 civil enforcement cases, which represents a quarter of all cases closed since the beginning of automatic enrolment in 2012. Compliance Notices (CNs), where we systematically spot and inform an employer that they've failed to complete their AE duties, were used in over half of these cases. The volume of CNs we issued during this time is in proportion to the large number of employers now reaching their staging dates – on 13 February, we announced that the total of employers who have met their duties passed the 1 million mark, showing that auto enrolment has become the norm for businesses in the UK.

The majority of employers who receive a CN go on to meet their duties, but a small proportion who fail to do so will receive a £400 Fixed Penalty Notice. Those who persist in not complying risk receiving an Escalating Penalty Notice (EPN). Over 1,400 employers received an EPN in this quarter – the statutory fine rates vary from £50 per day for employers with four or fewer employees to £10,000 to large companies with over 500 members of staff.

This quarter also saw our first ever guilty plea in a criminal prosecution for a case of wilful non-compliance (see case study below). This is an offence punishable with an unlimited fine in a magistrates' court, and up to two years' imprisonment in the Crown Court.

As set out in the case study, we currently communicate with employers via email and letter, both before and after their staging date (now also known as the duties start date for new employers). We also try to talk to employers once we've begun enforcement action against them to help them comply, so there really is no excuse not to provide staff with the pensions they're due in law.

Case study

Oldham-based Stotts Tours bus company had a staging date of June 2015. This meant that they should have put some of their staff into a pension scheme and started paying contributions from this date, and let us know they'd done it by completing a declaration of compliance within five months.

Despite the fact that we sent the company reminder letters and emails about their automatic enrolment duties, they failed to complete their declaration of compliance, so we began enforcement action against them. This involved sending them a CN, followed by a £400 FPN, and then an EPN that eventually built up to £14,000. Over the months this was happening, we continued speaking to the company to encourage them to meet their duties, at which point we discovered that they had set up a pension scheme, but failed to put any staff into it.

In June 2016 we let them know that our enforcement team would come to inspect the premises, but when we arrived, none of the directors were there. As we believed an offence had been committed, we obtained a search warrant and, following an inspection in November 2016, confirmed that they were still non-compliant. Because of this, we made the decision to launch a criminal prosecution as we believed they were deliberately breaking the law.

In November 2017, managing director Alan Stott pleaded guilty to 16 offences of wilful non-compliance with their automatic enrolment duties. On 7 February 2018 the judge ordered the company to pay £27,000 fine, £7,400 costs and a £120 victim surcharge. Alan Stott was ordered to pay a £4,455 fine and a £120 victim surcharge. This is in addition to the £14,400 in civil fines that the employer already owes for failing to comply with the law on automatic enrolment.

Message to employers

Automatic enrolment is not an option, it is the law. If you refuse to become compliant you could end up with a criminal record – and will still have to give your staff the pensions they are due.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	31,882
Cases closed to date: ¹	115,496

¹ 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 December 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 powers² used for automatic enrolment

Power	Description	Number in period	Number to Dec 2017
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	56	448
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	235	1,104
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	17,949	79,879
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	1,331	4,294
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	7,435	32,211
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	1,440	6,770
Total		28,446	124,710

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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.

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 ³	Number in period	Number to Dec 2017
Requested	2,202	11,567
Completed	1,933	10,202

Outcome of reviews	Number in period	Number to Dec 2017
Confirmed	687	2,585
Revoked, substituted or varied	1,246	7,617

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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 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 Dec 2017
Requested	134	522
Defended	82	361
Not defended	30	139

Outcome of tribunals	Number in period	Number to Dec 2017
Confirmed	70	269
Revoked, substituted or varied	2	14
Total	72	283

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 22.

Defended tribunals still ongoing at the end of Dec 2017: 78

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

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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