

Compliance and enforcement

Quarterly bulletin: April – June 2018

August 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.

Compliance

Recovery plan halved and contributions doubled thanks to engagement with TPR

If a defined benefit (DB) pension scheme doesn't have enough assets to cover its liabilities, the trustees and employer must put a recovery plan (RP) in place. This RP will demonstrate that the employer will pay off the deficit so that the scheme is likely to be able to pay the benefits it has promised. Once agreed, these plans need to be submitted to us within 15 months of the scheme's triennial valuation date, where we review them and decide whether the proposal complies with the legal requirements.

In the following case, we engaged early with the trustees to ensure an RP was agreed that put the scheme in a much better position than the initial proposal. This is a good example of how our case teams are being clear about our expectations and achieving better outcomes for scheme members without having to use our formal legal powers.

Case study

This pension scheme has over 3,000 members and is sponsored by a strong employer that pays large dividends to its parent company. As part of its 2014 valuation, the trustees and employer had agreed a 17 year RP to manage the scheme's £70 million funding deficit. By the time of the 2017 valuation, the deficit had increased to £120 million. We rejected the employer's proposal to retain the length of the 2014 RP, which by that time had reduced to 14 years.

We held a number of meetings with the trustees and employer where we explained how we expected a much shorter RP, and increased deficit repair contributions (DRCs), given the strength of the employer and the size of the dividends it was paying out. The trustees and employer subsequently negotiated a significantly improved proposal of a seven-year RP which we accepted.

Message to trustees and employers

We expect trustees to have robust discussions with their sponsoring employer to secure a fair deal for their scheme, which includes an expectation that employers balance the interests of pension savers with returns to shareholders and investors. We will support trustees in ensuring fair treatment of the scheme compared with shareholders, and will intervene where we believe this is not the case.

Enforcement

TPR takes tough line against governance failings through use of new powers

This quarter we accessed bank statements and financial information that would otherwise have been confidential through our first use of Production Orders under the Proceeds of Crime Act 2002. The orders required a bank to hand over evidentially admissible statements and other details of the accounts linked to the trustees of a pension scheme as part of an ongoing criminal investigation.

In addition to our s.72 information gathering power, we have applied to the court for production orders in cases where we are investigating fraud and money laundering offences with a view to prosecution. We have obtained five production orders so far in the course of our investigations.

We also issued our first fine under s10 of the Pensions Act 1995 against a trustee for failing to complete two scheme valuations, as described in the case study below. This included issuing an Improvement Notice to the trustee and a Third Party Notice to the employer which required the outstanding valuations to be submitted by a deadline, both of which have now been received.

Case study

This DB pension scheme had around 140 members and was closed to future accrual. DB scheme trustees are required to complete an actuarial valuation every three years – and, if the scheme is in deficit, they must submit a recovery plan and a schedule of contributions to TPR. In this case, the trustees had failed to provide a scheme valuation in over five years, giving the merger of two schemes as a reason for delay. We repeatedly told the trustee that the proposed merger was not a valid reason for failing to comply with the statutory requirements and they should progress with agreeing both valuations with the employer.

When the proposed merger failed to happen and the valuations had not been submitted by the end of 2017 as agreed by the trustee, we decided to take formal action. In addition to serving an Improvement Notice to the trustee and a Third Party Notice to the sponsoring employer, we fined the trustee £25,000 for the late valuations, which has subsequently been paid. We are monitoring valuation due dates more regularly and taking tougher action where delays in agreeing the valuation are not being addressed within a reasonable timeframe.

Message to trustees

Getting your valuation to us on time is a basic of good scheme governance, and we are coming down harder on those trustees who put their members' benefits at risk by failing to agree an appropriate valuation within the statutory deadline. Don't ignore your responsibilities – plan ahead, and if you're having trouble agreeing a valuation with your sponsoring employer, get in touch with us as early as possible.

Chair's statement penalty revocations

We frequently request to see chair's statements, including when investigating a scheme, as they can provide evidence of its governance standards. When we assess a chair's statement, the law requires us to issue a fine if we conclude that it is non-compliant.

We recently carried out a review of the mandatory fines we issue in response to non-compliant chair's statements. As a result of this review, we revoked 74 penalties this quarter. We did this due to a time delay on our part in explaining to schemes why their statement was not compliant with the regulations. We have also updated our **guidance** in response to feedback from the trustee community to ensure we are even clearer about what we expect from chair's statements.

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 – June 2018
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, to secure the proper use or application of the assets of the scheme, and/or otherwise to protect the interests of the generality of the members of the scheme	4	35
	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	158	2,211
	The power to vest or transfer property as consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995	2	10
Trustee suspensions	The power to suspend a trustee while we are considering making a prohibition order against them, or if proceedings have been issued against them for an offence involving dishonesty or deception or pending consideration being given to the institution of proceedings for an offence involving dishonesty or deception	1	5
Special procedure	Where TPR considers that there would be an immediate risk to members' interests or scheme assets if a warning notice were to be issued	2	25

Selected powers used for frontline regulation continued...

Power	Description	Number in period	Apr 2014 – June 2018
Mandatory penalty notice	The Occupational Pension Schemes (Charges and Governance) Regulations 2015 require us to issue a mandatory penalty where no chair's statement has been prepared or we are of the opinion that the statement does not comply with the requirements prescribed for a chair's statement in the Occupational Pension Schemes (Scheme Administration) Regulations 1996	121	373
Scheme return enforcement	Trustees have a legal obligation to give us information about their pension scheme by completing a scheme return when required, and an ongoing duty to ensure our records are maintained with up-to-date registrable information. A financial penalty under section 10 of the Pensions Act 1995 may be imposed for this failing.	25	173
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.	0	4
Information-gathering	Our formal information gathering powers under section 72 of the Pensions Act 2004	31	554
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	2	47
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	0	49
Inspection and warrants	Statutory inspection powers under Section 73 to 78 of the Pensions Act 2004	0	6

Selected powers used for frontline regulation continued...

Power	Description	Number in period	Apr 2014 – June 2018
Restitution order	A High Court Order under Section 16 of the Pensions Act 2004 requiring a person to put right a misuse or misappropriation of pension scheme assets in which they were involved	0	4
Production order	A High Court Order under s.345 of the Proceeds of Crime Act 2002 requiring the production of specified material	5	5
Improvement/ third party notice	Notices containing directions for a person to take steps as directed to enable compliance with pensions legislation or remedy any non-compliance	4	66
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
Other	Various powers	9	71
Total		358	3,585

*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 June 2018
Requested	73	105
Completed	76	103

Outcome of reviews	Number in period	Number to June 2018
Confirmed	0	19
Revoked, substituted or varied	74	80

Automatic enrolment

Unprecedented fines for employers who fail to meet their legal duties

This quarter we have seen a record number of employers – over 27,000 – receiving compliance notices (CNs) for failure to meet their legal duties. We also issued an unprecedented 12,000 Fixed Penalty Notices (FPNs), which is in proportion with the numbers of employers who staged during this time, but also demonstrates our tough approach against those who don't give their staff the pension they're due.

We are continuing our strategy of targeting our investigations at employers who pose the greatest risk, and using our powers against those who deliberately attempt to deceive us. For the first time, we prosecuted a company and some of its managers under the Computers Misuse Act 1990 (see case study on page 11) and are also carrying out targeted spot checks against those we suspect of putting false information on their declaration of compliance.

Case study

This recruitment agency had a duties start date in February 2014 and had received a series of five letters from TPR, with information about their AE duties and how to comply with the law. In January, the agency registered with a pension provider and enrolled their staff. When members are put into the scheme they receive an individualised ID number, which they need to quote if they want to opt out of the scheme.

The directors of the company wanted to maximise the number of workers opting out of the scheme as they feared AE would cost the business too much money. To do this, senior staff at the company pretended to be some of the workers. They rang the provider to get the ID numbers, then went online and used the numbers to opt the workers out of their pensions.

The pension scheme became suspicious of the behaviour (a large majority of the workers had opted out, compared to a national average of less than 10%) and contacted TPR. We opened an investigation in conjunction with local police, and the directors and senior staff have since been charged with and pleaded guilty to an offence under the Computers Misuse Act 1990.

Case study continued...

Message to employers

You can't opt an employee out of their automatic enrolment pension scheme – only they can. If you try and do this we will find out and use the full range of our powers to ensure staff get the pensions they are due.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	48,278
Cases closed to date ¹ :	204,680

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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 30 June 2018). 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 in the period

Power	Description	Number in period	Number to June 2018
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	126	650
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	142	1,361
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	27,219	124,825
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	1,495	7,487
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	12,220	55,556
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	2,498	12,037
Total		43,700	201,920

²

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 June 2018
Requested	4,053	19,548
Completed	3,084	16,022

Outcome of reviews	Number in period	Number to June 2018
Confirmed	1,083	4,388
Revoked, substituted or varied	2,001	11,634

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Note that the above numbers represent the number of statutory notices that have been subject to a review request from an employer. The reviews completed in the period may not have been requested in the period. The numbers are subject to change over time as powers issued in a previous period are subsequently replaced as part of ongoing enforcement activity.

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 June 2018
Requested	159	840
Defended	99	575
Not defended	55	260

Outcome of defended tribunals	Number in period	Number to June 2018
Confirmed	78	423
Revoked, substituted or varied	4	23
Total	82	446

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 5.

Defended tribunals still ongoing at the end of June 2018: 129

How to contact us

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www.trusteetoolkit.com
Free online learning for trustees

www.pensionseducationportal.com
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