



Compliance and enforcement

Quarterly bulletin: April-June 2019

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 (AE), the Trustee toolkit, guidance on scams, and information on other areas including funding and investment, scheme governance and record-keeping.

Compliance

Relationship supervision – our approach and progress in the first year

There are now 35 schemes in relationship supervision. These include public service (PS), defined benefit (DB) hybrid and defined contribution (DC) schemes. We will extend this supervision to beyond 100 schemes this financial year.

So far, our supervision teams have mostly seen high standards and well-run schemes, and it is important to stress that including a scheme in One to One supervision does not mean we believe it is failing to meet our expectations. We build strong ongoing relationships with these schemes regardless of whether they trigger our traditional risk indicators.

Our supervisors meet with schemes to complete an assessment on key areas of the schemes' operation. We then set out our findings in a supervisory report and ask the scheme to create an action plan to address any recommendations we make. We have regular meetings to review their progress and work collaboratively with schemes. If appropriate, we may take enforcement action.

Having a close working relationship enables those running the schemes to be open and transparent with us and have a dedicated point of contact at TPR. We will also identify emerging themes and trends and identify examples of best practice. We will share this with others (anonymously) to raise awareness and drive up standards.

Relationship supervision – our approach and progress in the first year continued...

Case study 1

One of the first schemes we engaged with was a DC scheme which historically had minimal dealings with TPR. From the outset both the chair of trustees and the pensions director were open and welcoming, but they expressed concerns as to the value engaging with us would bring and the burden it might place on them – concerns that many of the schemes initially selected for One to One supervision have expressed.

We worked with the chair and employer to agree the best way forward to conduct our review ensuring we had access to trustees, advisers and employer contacts as needed as well as obtaining all supporting documentation.

By the end of first six months it was clear that the scheme was well run and that a new relationship had been forged. Our feedback suggested putting in place succession planning for the chair of trustees and supporting the trustees in asking their external administrator for more detailed reporting. We were also able to provide a fresh set of eyes for a wide range of pensions issues. They also fed back to us that they were surprised that the work involved was not onerous and that the experience was positive and had added value. They found that the supervisory report was clear, succinct and had focused recommendations to action.

Message to trustees, scheme managers and employers

We encourage all schemes selected for relationship supervision to engage openly with your dedicated supervisor. They will be able to offer you a dedicated point of contact at TPR, understand your scheme in detail to build a working relationship, provide you with clear feedback, a greater understanding of our priorities and areas of focus, and share best practice across the industry.

Master trust authorisation – keeping standards high for savers

At the time of writing 18 master trusts have been authorised under s13 of the Pensions Schemes Act 2017.

Since 1 October 2018, all master trusts must apply to us for authorisation in order to operate, and all existing master trust schemes had to either apply for authorisation or exit from the market by 31 March 2019.

Every master trust which has been authorised will have satisfied us that the scheme and those running it meet the standards laid out in the legislation and our code of practice, demonstrating they are run by fit and proper people and have the right systems, processes, plans and finances in place.

To remain in the market they have to demonstrate to us on an ongoing basis that they continue to meet the strict authorisation criteria, including provisions to ensure member funds are protected in the event that a scheme winds up. If they do not continue to meet the criteria laid out in legislation, as well as other relevant legislation and codes of practice, we have the power to enforce against schemes and, ultimately, de-authorise them.

Enforcement

Coming down hard on trustee incompetence

In this quarter we also published a Determination Notice on Dunnes Stores, which was the first time we have used our power to appoint a trustee primarily because of a lack of competence of the existing trustee board. After an investigation by TPR into a series of governance issues, the case was referred to the Determinations Panel. The employer nominated trustees had failed to engage properly with TPR and persistently failed to address a number of governance concerns raised by TPR despite assurances that they would.

Despite more than a decade of being responsible for running the scheme, the employer nominated trustees had failed to “familiarise themselves with the requirements of UK pensions legislation.” The trustees showed “that they do not have, or are not exercising, their knowledge and understanding for the proper administration of the scheme” which led to a series of governance errors with little attempt to rectify them.

In the Dunnes Stores case it was appropriate for us to use our powers – however there are also instances where we are able to achieve good results through engaging with schemes without using our formal powers, as demonstrated by the case study below.

Case study 2

This DB pension scheme had 134 members and three trustees. We got in touch with one of the trustees after the submission of the 2017 valuation to ask some straightforward questions about how the trustees agreed the recent recovery plan and how they assessed the company's affordability. The trustees were not able to answer these questions and instead referred us to their advisers.

We then sent the trustees a governance questionnaire, and the returned responses revealed a number of concerns, including clear conflicts of interests, lack of internal controls and lack of trustee knowledge and understanding (TKU), which resulted in their heavy reliance on the schemes advisers to perform basic trustee functions.

We believed the governance failings to be serious enough for us to consider an Improvement Notice. We informed the trustees that we had opened an investigation, explained in detail the concerns we had identified and clearly set out our expectations. The trustees were given the opportunity to develop a detailed action plan to outline exactly how, and when, they were going to address these concerns and make the necessary improvements.

Our engagement led to the trustees voluntarily agreeing to an improvement plan without the need to exercise our powers. This has resulted in the conflicted trustee resigning, the implementation of a conflicts of interest policy and register, all trustees having completed the trustee toolkit (and other relevant training sessions), and a commitment to regular, minuted trustee meetings. They have also agreed to review their levels of TKU each year to identify any gaps in learning.

Message to trustees

It is not acceptable to delegate responsibility for running your scheme to third-party advisers. You need to have the appropriate level of TKU to oversee, review and challenge any actions and decisions made by your advisers. Where we see evidence of poor scheme governance and TKU we will act to ensure you raise your standards, and if you fail to improve, we may use our powers against you.

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	Number to June 2019
Trustee appointments	The power to appoint trustees to schemes (a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme, (b) to secure the proper use or application of the assets of the scheme, and/or (c) otherwise to protect the interests of the generality of the members of the scheme.	5	56
	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.	177	2,784
	The power to vest or transfer property as a consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995.	2	29
Trustee suspensions	The power to suspend a trustee either (a) whilst we are considering making a prohibition order against them, or (b) if proceedings have been issued against them for an offence involving dishonesty or deception, or (c) pending consideration being given to the institution of proceedings for an offence involving dishonesty or deception.	1	17
	Power to extend the period of suspension.	1	3
Trustee prohibitions	Power to make a prohibition order under section 3 of the Pensions Act 1995.	0	17

Power	Description	Number in period	Number to June 2019
Special procedure	Where TPR considers that there is an immediate risk to members' interests or scheme assets, or would be if a warning notice were to be issued.	2	31
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.	46	568
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.	7	202
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.	19	684
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.	3	57
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.	4	57

Power	Description	Number in period	Number to June 2019
Inspection and warrants	Statutory inspection powers under Section 73 to 78 of the Pensions Act 2004.	0	6
Production order	A High Court Order under Section 345 of the Proceeds of Crime Act 2002 requiring the production of specified material.	0	27
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
Restraint order	A High Court Order under Section 41(1) of the Proceeds of Crime Act 2002 requiring the restraint of assets.	0	2
Criminal	Fraud by Abuse of Position under Section 4 of the Fraud Act 2006.	0	5
	Restriction on Employer Related Investments under Section 40 of the Pensions Act 1995.	0	2
Improvement/ third party notice	Notices containing directions for a person to take steps to enable compliance with pensions legislation or remedy any non-compliance.	0	16
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	7
Master trusts	Master Trusts authorised under section 13 of Pension Schemes Act 2017.	7	10
Other	Various other powers.	11	108
Total		286	4,694

*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 2019
Requested	5	140
Completed	6	135

Outcome of reviews	Number in period	Number to June 2019
Confirmed	0	30
Revoked, substituted or varied	3	97

Automatic enrolment

Re-enrolment – now business as usual for employers

Over 170,000 employers have now met their re-enrolment duties, and tens of thousands more small employers (with less than 50 staff) are approaching the third anniversary of their staging date. Re-enrolment is a two-stage process - firstly, employers must check whether they have any staff to re-enrol and ensure those who are eligible are put back into a pension scheme. They must then complete and submit their re-declaration of compliance.

Even employers with no staff to re-enrol must still complete their re-declaration of compliance to confirm they have checked whether they need to re-enrol any of their staff. This is a legal requirement, and employers who fail to assess, re-enrol eligible staff and re-declare what they have done risk being fined (see case study below).

We have taken enforcement action against over 4,000 employers failing to carry out their re-enrolment duties in this year alone, resulting in over 800 penalty notices being issued for continued non-compliance.

To help employers understand their re-enrolment duties, we've launched a new online tool which will make it even simpler for employers to continue to meet their legal duties so that staff continue to have the opportunity to save.

Tough on non-compliance

Since the start of the year we've continued to carry out country-wide inspections that were targeted at employers where our data and intelligence teams identified a risk of non-compliance. As a result, 74% of spot checks revealed breaches of pensions legislation, with 76% of these resulting in enforcement action. This reflects our continuing move towards being data led - we spot law-breaking employers from the information we hold and target action toward them.

We're also coming down hard on employers who try to dodge their automatic enrolment duties by operating under a new name. We believe that a small number of employers may be trying to hide their non-compliance with the law by opening new businesses, transferring their workforce across and then dissolving the original businesses. The suspicion is that by changing name, those involved hope to avoid having to pay the pension contributions due. Investigators are also looking into whether rogue advisers could be suggesting to employers that they use the tactic to avoid their duties.

Case study 3

We carried out a spot check on a London-based services company with 5,000 employees. We discovered that the employer had failed to re-declare within the required timescales, and subsequently failed to provide documentation to show that it had completed its re-enrolment duties. As a result, we issued the employer with a Compliance Notice, progressing to a £400 Fixed Penalty Notice and an Escalating Penalty Notice, which accrued to £350,000.

We had a follow-up inspection and further onsite meetings to discover how the company was complying with its full automatic enrolment employer duties, which highlighted other failures including incorrect opt-out processes, communication failures to staff and incorrect contribution calculations.

As a result of our intervention the employer has implemented new processes and procedures to ensure ongoing compliance and that future failures do not occur, re-enrolled over 40 staff and paid over £100,000 of backdated pension contributions covering the re-enrolment failure and incorrect contribution calculations which affected over 2,000 staff. It has also paid the £350,000 fine arising from its multiple failures.

Message to employers

Your automatic enrolment duties don't stop at your duties start date – you must still monitor staff age and earnings to see if they need to be put in a scheme, continue to pay contributions to the pension scheme on time, manage requests to join or leave the scheme and keep accurate records. You must also carry out re-enrolment, put staff who opted out back into a scheme, and complete a re-declaration to state this has been done.

Our targeted use of data enables us to identify areas of concern and focus our interventions on employers who appear non-compliant, using our enforcement powers against them, which include compliance notices, fines, inspections, spot checks, and criminal investigations and prosecutions. The only way to avoid our intervention is to comply with your legal duties.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	15,726
Cases closed to date ¹ :	299,530

Selected powers² used in the period

Power	Number in period	Number to June 2019
Information Notice	84	959
Inspection	65	1,698
Warrant	0	4
Compliance Notice	7,147	159,876
Unpaid Contributions Notice	6,891	32,925
Fixed Penalty Notice	6,720	87,191
Escalating Penalty Notice	2,502	24,045
Total	23,409	306,698

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 30 June 2019). 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.

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 2019
Requested	2,180	31,041
Completed	1,757	25,411

Outcome of reviews	Number in period	Number to June 2019
Confirmed	540	6,895
Revoked, substituted or varied	1,217	18,516

³

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 2019
Requested	109	1,499
Defended	37	932
Not defended	45	539

Outcome of defended tribunals	Number in period	Number to June 2019
Confirmed ⁴	69	797
Revoked, substituted or varied	9	47
Total	78	844

Ongoing tribunals where the decision has yet to be made on how to respond: 28

Defended tribunals still ongoing at the end of June 2019: 88

⁴

Confirmed includes Struck out, Dismissed, plus Withdrawn.

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www.tpr.gov.uk

www.trusteetoolkit.com

Free online learning for trustees

www.pensionseducationportal.com

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