

Compliance and enforcement

Quarterly bulletin: January – March 2018

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

Threat of anti-avoidance powers secures £3m and full buyout guarantee for scheme

Successful regulatory interventions don't always mean we have to use our powers – a lot of cases are resolved thanks to clear and robust negotiation by our case team and the early engagement of companies and trustees.

These quarterly compliance and enforcement bulletins have traditionally focused on our use of powers, but we will now also be showcasing examples of interventions where we've managed to get a good outcome for members without having to resort to major enforcement action.

Case study

This company was the sponsoring employer of a DB scheme with 130 members, an estimated deficit of £3 million on an ongoing funding basis, and part of a global group. When the employer had a key license suspended, a decision was made to cease the majority of its operations, and some of its staff were redeployed to work on projects in other companies within the group. During the negotiation of the pension scheme's valuation, the parent company told the trustees that they were considering applying for a regulated apportionment arrangement (RAA).

We reviewed their proposal but concluded that they didn't meet the criteria for an RAA – we weren't satisfied that insolvency was inevitable or that the scheme was being treated fairly compared with other creditors, and considered that a better result might be achieved by using our anti-avoidance powers.

In the meantime, we were concerned that the valuation they submitted didn't represent an achievable funding plan and that it posed a risk to members' benefits and the PPF.

We told the trustees and employer why we were concerned and opened an anti-avoidance investigation to explore whether financial support should be provided by the wider group. This involved issuing a section 72 (s72) notice to the parent company, which required them to give us detailed information to help our enquiry. At the same time, the trustees also approached the parent company for more financial support, as part of the scheme's 2016 valuation negotiation. The parent company confirmed that it was willing to engage with the trustees to find a solution to address the deficit in the scheme, and so we postponed the deadline for the s72 notice to give them time to negotiate.

Shortly after this, the parent company notified us of a proposed agreement with the trustees to provide support for the scheme – a £3 million cash lump sum payment (which represented the full deficit figure on an ongoing funding basis) and a guarantee for the full buy-out deficit (estimated at £33 million). We concluded that this agreement has substantially improved the current funding position and the covenant support to the scheme and, as a result, increased the likelihood of members' benefits being met in full.

Message to employers

If you engage with us and the trustees of your scheme at an early stage to find a solution, we can achieve a good outcome without the need for us to use our formal powers.

Enforcement

First fine against a professional trustee for failing to maintain registrable information

TPR is legally obliged to maintain an up-to-date register of pension schemes. As one of our statutory objectives is to promote and improve understanding of good administration of work-based pensions to protect members, it is vital that our records are kept as up-to-date and accurate as possible, to allow us to identify any potential risks and investigate further should we need to.

Trustees have a legal duty to notify us of any changes to their registrable information within a reasonable time period and the scheme return asks for up-to-date contact details for a scheme's trustees or managers and employers, enabling us to communicate with them quickly and efficiently.

This quarter saw us using our powers for the first time to fine a professional trustee who failed to take all reasonable steps to keep their scheme information accurate and up to date.

Case study

We were communicating with the trustees of a DC pension scheme over their failure to complete a scheme return when we discovered that they had appointed a professional trustee eight months beforehand but had failed to inform us. The appointed professional trustee admitted to us that they had not updated the pension schemes register with details of their appointment.

After using a s72 notice to obtain the information we required, we decided to enforce against the three lay trustees of the scheme and the professional trustee for failing to tell us that their registrable information had changed – a breach of s62 of the Pensions Act. The determinations panel decided to impose a fine of £300 against each of the lay trustees, and £3,000 against the professional trustee. The panel did not make any finding as to whether the professional trustee had acted with a lack of integrity, but noted that their failure to update the registrable information was apparently due to concerns over other possible penalties. The trustees have all paid their fines and completed their latest scheme return on time.

Message to trustees

You need to get the basics right, including giving us up-to-date information about the scheme, and we will take action if you fail. We expect a higher standard from professional trustees who should bring expertise to the trustee board and support the delivery of good outcomes for members.

How we use our powers against scammers

This quarter we launched an investigation into a number of pension schemes we suspect are linked to cold calling. The joint operation between TPR and the North East Regional Special Operations Unit (NERSOU) involved search warrants being executed at four homes and businesses in Newcastle, Sunderland and West Bridgford, near Nottingham, on 11 January. We also inspected a business in the North East in connection with the investigation, before serving a s72 notice on them. One man and one woman have been interviewed by police under caution on suspicion of Fraud Act offences. A second man has been arrested and questioned by police on suspicion of fraud. He has been released while the investigation continues.

We also used a new power in another case – for the first time we obtained a court order under s16 of the Pensions Act requiring four scammers to pay back the money they had taken from pension schemes. The case study below describes how the scammers were ordered to pay back over £13 million for the benefit of the 245 people they cheated out of their savings.

Case study

Between November 2012 and September 2014, 245 victims were cold-called or lured by a series of scam websites and persuaded to transfer their pension funds into one of 11 scam schemes. The victims were told their pensions would be reinvested and they would be paid an upfront cash lump sum for making the transfer.

They were falsely led to believe that their funds would be put into assets, bonds and HMRC-compliant investments to meet the target return of 5% growth a year. False documents were used to trick staff at the schemes where the victims had their pensions into believing that the pension holders worked for companies linked to the scam schemes. This meant the staff were persuaded to allow £13.7 million of funds to be transferred to the scam schemes.

Just £3.2 million of the funds was invested. Among the investments were £2 million in an off-plan hotel development in St Lucia and an unregulated commercial property bond. £120,000 went to a company registered to one of the scammers' daughters to fund her father's legal costs in a separate case.

A whistleblower contacted us about the scam in November 2014, and we then appointed an independent trustee to take over the running of the schemes to prevent further members joining the schemes and prevent further funds from being taken out.

We asked the High Court to order the defendants to repay the funds they dishonestly misused or misappropriated from the pension schemes – the first time such an order has been obtained. On 23 January the judge ruled that the scammers must repay all of the victims' savings and also pay our costs and those of the independent trustee.

Message to trustees

This case has shown that we can and will chase after the assets of pension scammers. But prevention is always better than cure, and it's not always possible to get money back once it's been scammed. Read our trustee scams material to make sure you're doing everything you can to protect your members.

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 – Mar 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	1	20
	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	103	2,064
	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	1	2
	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	2	8
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	4	4
Special procedure	Where TPR considers that there would be an immediate risk if a warning notice were to be issued	2	23

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Selected powers used for frontline regulation continued...

Power	Description	Number in period	Apr 2014 – Mar 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	41	227
	The Occupational Pension Schemes (Charges and Governance) Regulations 2015 require us to issue a mandatory penalty where 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	17	25
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 apply for this failing.	4	146
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.	0	4
Information gathering	Our formal information gathering powers under section 72 of the Pensions Act 2004	45	519
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	1	44

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Selected powers used for frontline regulation continued...

Power	Description	Number in period	Apr 2014 – Mar 2018
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	6	49
Inspection and warrants	Statutory inspection powers under section 73 to 78 of the Pensions Act 2004	5	6
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	4	4
Other	Various powers	3	62
Improvement/ third party notice	Notices containing directions for anyone with a duty to a scheme to do something to enable compliance with pensions legislation	1	11
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		241	3,237

*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 Mar 2018
Requested	11	32
Completed	8	26

Outcome of reviews	Number in period	Number to Mar 2018
Confirmed	3	19
Revoked, substituted or varied	1	6

Don't give TPR false information – we'll find out and take action

We take non-compliance with automatic enrolment very seriously, and will enforce against employers who fail to give their staff the pension they're due. This quarter's enforcement action represented over 20% of the AE powers we've ever used, including nearly 20,000 Compliance Notices (CNs), over 11,000 £400 Fixed Penalty Notices (FPNs) and over 2,500 Escalating Penalty Notices (EPNs) for those who persistently failed to meet their duties. This high number was due to a bulge of employer staging dates in autumn 2017, with their declaration of compliance due date falling five months later.

We also successfully prosecuted a company and its managing director for falsely claiming they had put their staff into a pension. Employers who deliberately put incorrect information on their declaration of compliance risk being found out in a number of ways, including from spot checks or whistleblowers.

We will take those who deliberately mislead us to court, so employers who are genuinely having trouble meeting their duties should engage with us as early as possible to avoid enforcement action.

Case study

This healthcare business failed to complete their declaration of compliance on time, so we sent them a CN. The company's managing director contacted us and sent in their declaration soon after, claiming that 25 staff members had been put into a workplace pension scheme.

A few months later a whistleblower called us, and we opened an investigation. We discovered that, contrary to what was claimed on the declaration of compliance, the employer hadn't set up a pension scheme, enrolled any staff or written to them about automatic enrolment. They did start deducting contributions from the staff, but kept them in the company bank account and didn't pay them over to the pension scheme for over eight months.

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Case study continued...

We brought three charges against both the company and managing director: each faced two counts of wilful failure to comply with their automatic enrolment duty and one count of knowingly or recklessly providing false or misleading information to us. Both the company and its director pleaded guilty to all charges – the company was fined £13,000 and the director over £1,600, plus prosecution costs.

Message to employers

While the majority of employers are doing the right thing, this case shows that it is unacceptable to avoid your pension responsibilities – and we will take action against those who try to.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	40,906
Cases closed to date ¹ :	156,402

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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 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 Mar 2018
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	76	524
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	112	1,218
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	19,986	98,489
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	1,762	6,022
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	11,156	43,338
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	2,770	9,537
Total		35,862	159,132

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 Mar 2018
Requested	3,925	16,754
Completed	3,275	14,097

Outcome of reviews	Number in period	Number to Mar 2018
Confirmed	845	3,384
Revoked, substituted or varied	2,430	10,713

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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 Mar 2018
Requested	156	679
Defended	100	469
Not defended	53	202

Outcome of tribunals	Number in period	Number to Mar 2018
Confirmed	74	344
Revoked, substituted or varied	5	19
Total	79	363

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 8.

Defended tribunals still ongoing at the end of Mar 2018: 106

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www.trusteetoolkit.com
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