

Compliance and enforcement

Quarterly bulletin: July – September 2017

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

Trustees must remedy basic governance failings or face a fine

Following last quarter's 'first' (of securing the first criminal convictions for non-compliance with a s72 notice), this quarter sees another – the first Tribunal decision about a trustee fine for failing to keep scheme information up to date on our online register. The fine was successfully upheld and the case study below sets out some of the details.

We also concluded some high-profile casework and published three regulatory intervention reports about the Nortel pension plan settlement, our first fining of a public service pension scheme (the London Borough of Barnet) and the criminal convictions secured against Anthony Ashley Wilson, Ashley Wilson Solicitors and Patrick John McLarry.

While our case teams have been working on some high-profile cases, we've also been focusing on the basic governance and administration duties that all trustees should meet. We issued 37 fines to trustees for failure to submit a scheme return, and 18 for failing to submit a chair's statement – for more details, including the names of professional trustees who were fined for these breaches, see www.tpr.gov.uk/fines.

Trustees should note that not only do they have to prepare a chair's statement, but it must fulfil certain quality criteria. They can see examples of what we think this should look like in our '**Quick guide to the chair's statement**'.

Case study

We sent a scheme return notice to the corporate trustee of a 19-member defined contribution (DC) scheme, which it failed to return within the deadline. After three further attempts to contact the trustee in writing, we issued a £300 fine and a Determination Notice (DN), giving them 28 days within which to refer our decision to the Upper Tribunal. The trustee did this, claiming that the scheme had wound up a year before, and that the first they had heard from us on the matter was the DN.

We challenged this, as not only was the correspondence address the same for the DN as for our previous four communications (so the argument that they had only received the DN did not stand up) but the trustee had not told us that the scheme was winding up. Although there is no legal duty for trustees to submit a scheme return once a scheme is wound up, they do have to let us know about the wind-up as soon as possible, and failure to do this attracts a penalty.

The Upper Tribunal accepted that it was appropriate for us to have fined the trustee £300 for failing to let us know about the scheme wind-up and upheld our determination. The trustee has since paid the fine in full.

Message to trustees

It's important for trustees to get the basics right. So whether it's letting us know that a scheme has wound up and that its registrable information has changed, or completing a chair's statement or scheme return, trustees should be on top of the basics or they risk a fine.

TPR getting tougher on late scheme funding valuations and recovery plans

Between July and September this year we issued improvement notices and third party notices to three sets of trustees and three employers who failed to send us the valuation of their defined benefit (DB) scheme within the statutory timeframe. These notices require the trustee and employer to improve by submitting an appropriate valuation within a reasonable timeframe. Failure to do so can result in a fine of up to £50,000.

We are particularly concerned that trustees and employers agree an appropriate scheme valuation within the statutory deadline and send it to us on time. Failing to agree an appropriate scheme valuation can put member benefits at risk, and can also indicate governance and administrative problems.

Case study

In April this year, the trustees of an 87-member DB scheme sent us a breach report, telling us that they had been unable to agree the valuation of the scheme with the employer by the statutory deadline of 1 April and were instead aiming to submit the funding documents to us by mid-August.

We issued a warning notice to both the trustee and employer and, as neither came back to us within the two-week period we had given them to provide us with information, we then sent them an improvement notice and third-party notice. This prompted them to agree their valuation and they submitted this (and the corresponding recovery plan) before the deadline given in the notices.

Message to trustees and employers

Make sure you get your valuation and recovery plan to us by the statutory deadline. We're taking a tougher approach to late scheme funding valuations and won't hesitate to use our powers if you fail to take all reasonable steps to submit your valuation on time.

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 - Sep 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	1	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	209	1,781
	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	5
	Power to vest or transfer property as a consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995	1	5
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	18	130
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	35	133

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Selected powers used for frontline regulation continued...

Power	Description	Number in period	Apr 2014 - Sep 2017
Information gathering	Our formal information gathering powers under section 72 of the Pensions Act 2004	42	425
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	6	45
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	8	43
Inspection	Statutory inspection powers under Section 74 of the Pensions Act 2004	0	1
Other	Various other powers	2	73
Improvement/ third party notice	Notices containing directions for anyone with a duty to a scheme to do something to enable compliance with pensions legislation	4	6
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	6
Total		327	2,671

*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 Sep 2017
Requested	4	20
Completed	2	17

Outcome of reviews	Number in period	Number to Sep 2017
Confirmed	1	13
Revoked, substituted or varied	1	4

Automatic enrolment

If you don't keep up your pensions contributions, we'll find out.

Our automatic enrolment (AE) enforcement work is increasing as the number of employers with duties continues to rise – this quarter accounted for roughly 25% of all the AE enforcement actions that we have ever taken. We use a variety of enforcement strategies, from issuing compliance notices when an employer fails to declare their compliance on time, to spot checks and proactive drives, where our enforcement team carry out targeted investigations.

Our teams work with pension providers to obtain details of schemes that have been set up by employers but haven't received payment schedules or contributions. We will investigate to check whether the problem may be due to a technical error, or the scheme is empty because the employer has chosen to use another provider for AE. If, however, we find out that the employer has made no effort to pay in contributions or rectify any problems, we'll begin enforcement action. That will usually include issuing an Unpaid Contributions Notice (UCN), which requires all backdated contributions to be paid within 28 days. We also issue a UCN where the employer has started to pay contributions but fails to keep up their payments. We issued 753 UCNs in total in this quarter alone.

Minimum pension contributions for employers and employees are increasing from April 2018. This means that employers who fail to pay in the correct amounts on time from after this date won't only receive a fine but will also have to pay back the missed contributions at the higher rate. To make sure the payments are smoothly processed in the first place, employers should check that their payroll software is designed to carry out all the automatic enrolment tasks they need it to and is set up to handle the increased contributions from April 2018.

Our proactive compliance work in this area means that we don't just wait for employees to report their concerns to us, although we are always grateful to receive such reports. We can and do intervene quickly to help make sure all staff get the pension they're due.

Case study

As part of our compliance work, we ask pension providers to give details of employers who have set up a scheme with them and enrolled staff, but subsequently fail to submit any payment schedules or pay over any contributions. We investigated a Nottingham-based employer after its details appeared in such a report from a provider.

After sending the employer two emails asking him to explain the situation, and not receiving a reply, we sent him a Section 72 (s72) notice. This type of notice requires the recipient to provide us with information by law. As he failed to reply within the given timeframe, we issued the employer with a £400 fixed penalty notice (FPN) for non-compliance with the s72 notice.

As soon as he received the FPN, the employer contacted us to say he had been having problems with his business and that AE had slipped his mind. He also admitted that he hadn't written to his staff, nor had he assessed any new starters since the initial assessment at his staging date.

We told him how he could rectify the situation, as well as showing him the template letters for employers that are available on our website. However, because the employer had yet to pay over any contributions we issued a UCN, requiring him to backdate those that had been missed. The employer finally met all his AE duties, and paid the backdated contributions within the timeframe on the UCN. As he is now fully compliant and has paid the fine, we have stopped any further enforcement action against him.

Message to employers

It's not enough just to put your staff into a pension scheme – you have to send the correct information to the scheme provider, keep paying contributions in, and assess new starters as they join. If you fail to pay in, we will find out.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	21,540
Cases closed to date: ¹	83,614

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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 Sept 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 Sep 2017
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	53	391
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	283	851
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	13,752	62,462
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	753	2,972
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	5,479	24,779
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	1,433	5,331
Total		21,753	96,790

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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 Sep 2017
Requested	1,744	9,456
Completed	1,479	8,317

Outcome of reviews	Number in period	Number to Sep 2017
Confirmed	449	1,946
Revoked, substituted or varied	1,030	6,371

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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 Sep 2017
Requested	71	386
Defended	28	267
Not defended	22	98

Outcome of tribunals	Number in period	Number to Sep 2017
Confirmed	39	198
Revoked, substituted or varied	7	9
Total	46	207

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 21.

Defended tribunals still ongoing at the end of Sep 2017: 60

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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