



Compliance and enforcement

Quarterly bulletin: July - September 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

TPR's new approach leads to speedier trustee action

In the last bulletin we highlighted our action in a case where our intervention with trustees and employers led to the recovery plan being halved from 14 to seven years. Our new approach to engaging earlier with schemes has already had a marked effect. When schemes submit a late recovery plan as a result of the employer and trustee failing to agree, we received the plan an average of 65 days earlier in 2017 than in the previous year. This is a result of us being clearer with trustees when we are notified of the breach, and quicker to move to enforcement powers – such as issuing improvement notices and penalties – when the breach persists.

In the same time period, we saw a 10% increase in trustees of defined contribution schemes submitting their scheme return before the deadline (over 99% of members are in schemes that submitted their return on time). We now actively pursue late scheme returns and will issue penalties when trustees continue to fail to submit their scheme information to us.

Message to trustees

The evidence shows we're getting tougher on the basics and expect you to meet your legal duties. We're engaging earlier at the start of the valuation process, so if you receive a letter from us, make sure you act on it without delay.

Enforcement

Criminal investigations part of tougher scams approach

In the last compliance and enforcement bulletin we reported on our first use of Production Orders in scams cases. These enable us to require people and organisations including banks to give us trustee's and schemes' financial data including bank statements as part of a criminal investigation. We can use this as evidence. This quarter we issued a further nine orders as part of eight complex criminal cases underway where we're investigating suspected fraud and money laundering offences against members or schemes.

Last year we began criminal investigations as part of a new approach to reports of pension scams – we want to achieve convictions against people who target members or schemes and we are beginning to see results of our work. We have also tested our use of criminal investigation powers in further prosecutions under section 77 of the Pensions Act 2004 over the last 12 months and are carrying out a number of investigations into allegations that trustees have made prohibited employer related investments and committed fraud and money laundering offences.

We now have a number of staff who are NCA accredited financial investigators or financial intelligence officers, which has strengthened our ability to conduct financial investigations. As well as financial investigation, we are interviewing suspects under caution, obtaining witness statements, executing search warrants and seizing digital and other evidence.

TPR leads Project Bloom, a multi-agency taskforce which is working with government, the pensions industry, law enforcement agencies and other regulators to combat pension scams. Building on this, we are also working with local police and other authorities, including the City of London Police, National Crime Agency (NCA), Financial Conduct Authority and regional organised crime units to share evidence. We have also applied to the Home Office to be given powers to use communications data analysis to identify networks of criminals targeting members which we hope parliament will grant us in February 2019.

Message to trustees

TPR is getting even tougher on scammers – as a trustee you can do your bit by doing your due diligence, reporting suspicious transfer requests and including the four-step booklet in your member statements and transfer packs.

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 Sept 2018
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	0	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	170	2,342
	The power to vest or transfer property as a consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995	0	10
Trustee suspensions	The power to suspend a trustee while a) we are considering making a prohibition order against them, 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	0	5

Power	Description	Number in period	Number to Sept 2018
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	0	25
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	35	392
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.	33	195
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	43	586
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	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	2	51

Power	Description	Number in period	Number to Sept 2018
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	9	14
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
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	1	12
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	5	73
Total		299	3,807

*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 September 2018
Requested	11	116
Completed	14	116

Outcome of reviews	Number in period	Number to September 2018
Confirmed	9	28
Revoked, substituted or varied	4	84

Automatic enrolment

Employers who fail to keep on top of their ongoing duties risk large fines

Automatic enrolment is a continuing process for employers – it doesn't end once you've put your staff into a workplace pension. Employers have ongoing responsibilities that they need to complete, and to stay compliant you will have to:

- ▶ assess the age and earnings of staff who aren't enrolled in a workplace pension each time you pay them, to see if they need to be put into one
- ▶ work out how much money you need to pay into your staff's scheme every time you pay them
- ▶ continue to make the payments that are due into the scheme every time you run payroll
- ▶ write to staff to let them know what's happening
- ▶ keep records relating to your workplace pension scheme

The ongoing duties survey we published last month showed that the majority of employers had no difficulty with their ongoing duties, finding them less onerous than expected, and spent an average of under two hours per month meeting them. Plus, in October we launched the latest phase of the workplace pensions advertising campaign we're running with the Department for Work and Pensions, focusing on the importance of keeping track of automatic enrolment after declaring compliance – so there's no excuse not to be aware. Our enforcement teams have also been conducting spot checks around the country – so employers should make sure they're staying on top of their legal duties as we may pay them a visit.

Case study

This household name employer automatically enrolled its eligible staff into a master trust pension scheme in 2013. The scheme was 'self certified' by the employer. Employers using certification to calculate contributions must re-assess their workforce every 18 months to ensure that it still meets the relevant criteria.

In 2016, the company assessed the workforce and realised that the circumstances had changed and the contributions should have been calculated another way (in this case, the company had originally based calculations for pensionable earnings on 85% of total earnings). The changes meant that the calculations for pensionable earnings would be based on 100% of their total earnings. However, the company failed to amend its payroll or update the pension scheme rules, meaning that the pension contributions paid fell below the minimum required by law.

The employer wrote to their staff to explain they would meet the full costs of the underpaid employer contributions (over £350,000), plus an additional allowance to compensate for lost investment returns. The company got in touch with us in 2017 and said that there had been an oversight and they had failed to make required changes because the business was very busy. We were not satisfied with their explanation or proposed rectification plan and, in April 2018, issued the company with a notice requiring them to pay the shortfall of both employer and employee contributions, adding up to a total of over £700,000. They confirmed that they had paid the outstanding amount in July 2018 and are now compliant with their automatic enrolment responsibilities.

Message to employers

It's important to keep track of your ongoing automatic enrolment responsibilities and be aware of any changes which might affect your pension contributions. Even if you've outsourced it to an adviser, you are still legally responsible and could end up with a costly bill if you get it wrong.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	36,953
Cases closed to date ¹ :	241,633

Selected powers² used in the period

Power	Number in period	Number to September 2018
Information Notice	92	743
Inspection	111	1,472
Warrant	0	4
Compliance Notice	14,997	138,145
Unpaid Contributions Notice	6,413	13,846
Fixed Penalty Notice	12,551	68,102
Escalating Penalty Notice	3,931	15,967
Total	38,095	238,279

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 September 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.

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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 September 2018
Requested	4,383	23,728
Completed	3,355	19,293

Outcome of reviews	Number in period	Number to September 2018
Confirmed	813	5,119
Revoked, substituted or varied	2,542	14,174

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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 September 2018
Requested	137	979
Defended	86	661
Not defended	42	308

Outcome of defended tribunals	Number in period	Number to September 2018
Confirmed	99	523
Revoked, substituted or varied	5	28
Total	104	551

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 10

Defended tribunals still ongoing at the end of September 2018: 110

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www.pensionseducationportal.com

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