



# Compliance and enforcement

Quarterly bulletin: October-December 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 intervention leads to fairer treatment for pension schemes

If a defined benefit (DB) pension scheme doesn't meet its statutory funding objective, its trustees need to work with the employer to put an appropriate recovery plan (RP) in place. For schemes with strong employers, we would expect to see short RPs. Our scheme funding statistics show that the average recovery plan length for strong employers is 5.9 years, and we are likely to have concerns where RPs for strong employers extend beyond this.

In the last quarter of 2018, our intervention led to a number of employers and trustees agreeing a shorter recovery plan and better ratio of deficit repair contributions (DRCs) to dividends than had been initially proposed (see an example in the case study below). We have also worked with trustees to encourage them to front rather than back-end load their RPs (meaning the employer pays more DRCs at the beginning of the RP) and have had a number of successes helping trustees to negotiate robustly with employers.

In December we issued a regulatory intervention report about Southern Water which, after negotiations between TPR and the trustees, led to significantly higher DRCs under a shorter RP. The company also put a dividend-sharing mechanism in place to ensure pension scheme members are fairly treated relative to shareholders. We initially opened an investigation with a view to using our scheme funding powers, and we issued a Warning Notice to the employer telling them we were considering imposing a new recovery plan under section 231 of the Pensions Act 2004. However, we were able to agree a strong settlement for the scheme that avoided the need for us to use our powers.

As we have set out in our last two annual funding statements, where dividends are disproportionate, we expect to see a relatively short RP. If not, we will take steps to encourage a more appropriate balance to be struck between the interests of the scheme and shareholders. We will be publishing our next annual funding statement this spring, and would urge trustees and employers to follow our guidance. We are also communicating directly with a selection of trustees ahead of their scheme valuation as part of our new supervisory approach, with the aim of helping them to agree recovery plans that are appropriate given the ability of the employer to support the scheme.

### Case study

This employer is the UK arm of a multinational business with a DB pension scheme. We had concerns about their 2014 valuation, and their unwillingness to engage with us over the concerns we raised at the time. The trustees did not appear to have conducted a reasonable level of due diligence on the employer covenant (the employer's legal obligation and financial ability to support the scheme), nor had they carried out an appropriate affordability assessment.

We set clear expectations around how the trustees should approach the 2017 valuation and subsequently set up a case to engage ahead of the valuation submission. As part of this proactive case we investigated the level of dividends that the employer intended to pay and how that related to affordability and the support they were giving to the pension scheme (recovery plan under the 2014 valuation was £5 million per year in DRCs over nine years).

We maintained regular contact with the employer and trustees and told them we strongly objected to the employer's intention to pay dividends at the expense of contributions to the scheme. Thanks to the willingness of the trustees to engage with the valuation process (as well as seeking professional advice), they and the employer eventually agreed on a dividend-matching mechanism, and the scheme is now benefiting from £13 million a year in DRCs over the length of the recovery plan (nine years).

The trustees will also be notified in advance if certain events are proposed where value could pass from the employer to the group (not limited to dividends) that could have a material impact on the covenant.

### Message to trustees and employers

Make sure you read the annual funding statement before submitting your recovery plan to us. We will take action where we see substantial dividends with low scheme contributions and long recovery plans.

# Enforcement

## Prosecution firsts demonstrate TPR's tough approach to pension fraudsters

In the last quarter we continued to use new approaches and powers to disrupt, deter and punish dishonest activity. In December, we served a summons in our first prosecution for fraud and employer-related investments against a trustee who was also a qualified accountant. These offences carry maximum prison sentences of 10 years and two years respectively.

In the same month on another case, we executed warrants at business and residential premises linked to six people suspected of fraud, which led to arrests and questioning. As part of this investigation, our Determinations Panel appointed an independent trustee to the eight schemes at the centre of the investigation and suspended nine people from acting as trustees for a period of 12 months. For the first time, we requested the suspension on the basis that we were carrying out a criminal investigation with a view to prosecuting the trustees for dishonesty offences. In previous cases, we have relied on investigations carried out by the police.

These powers were used under special procedure, which allows us to act quickly where there is an immediate risk to members. Our investigations are continuing and the suspensions will be part of a compulsory review at a later date.

As we set out in the last compliance and enforcement bulletin we are taking a tougher approach testing our powers through criminal investigations. One of the highest profile investigations was against former BHS owner Dominic Chappell, who was ordered by the courts to pay over £124,000 for failing to give us information about the sale of the company. On 14 December the judge rejected Chappell's appeal against his conviction, saying it was "completely without merit" and that his refusal to comply with our s72 requests made TPR's work "significantly more difficult".

## 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 Dec 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.	8	44
	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.	141	2,483
	The power to vest or transfer property as consequence of appointing or removing a trustee under section 9 of the Pensions Act 1995.	10	20
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. This is under section 4 of the Pensions Act 1995.	11	16
Trustee prohibitions	The power to make a prohibition order under section 3 of the 1995 Pensions Act.	0	17

Power	Description	Number in period	Number to Dec 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. This is under section 97 of the Pensions Act 2004.	3	28
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.	30	422
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.	0	194
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

Power	Description	Number in period	Number to Dec 2018
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.	5	53
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.	0	51
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.	2	16
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.	4	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.*	0	6
Other	Various other powers	4	66
<b>Total</b>		<b>263</b>	<b>4,075</b>

\*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 December 2018
Requested	0	120
Completed	3	120

Outcome of reviews	Number in period	Number to December 2018
Confirmed	1	29
Revoked, substituted or varied	2	86

# Automatic enrolment

## First automatic enrolment adviser prosecution

Earlier this week we reached the milestone of 10 million employees being put into a workplace pension. Business advisers, including accountants, payroll specialists and IFAs, have played a large part in ensuring its success and the majority have worked with us to support their clients through this change.

However, in November 2018 we successfully prosecuted an accountant for falsely claiming his client's staff had been enrolled into a pension – the first time we have prosecuted an employer's adviser for this offence (see case study below). While we acknowledge the vital help that accountants and advisers have been providing to employers since the start of the automatic enrolment programme, we will be tough on those who enable them to avoid their legal duties.

The prosecution is just one of over 20,000 cases we closed in the last quarter, with unpaid contribution notices representing the biggest proportional increase of all the powers we used. The number of compliance notices issued between October and December has fallen significantly since the previous quarter. This is because there was a change in the type of employer subject to AE duties during the second half of 2018, from employers with a staging date to new employers, along with increasing numbers of employers with re-declaration duties. The net effect was a decrease in the volume of employers due to comply with their duties during that period.

### Case study

A London-based cafe with 12 eligible employees had its staging date in October 2015 but failed to declare compliance with us within the five month window. As a result, we began our usual enforcement process, progressing from a £400 Fixed Penalty Notice to an Escalating Penalty Notice, which grew to £5,000. When the employer failed to pay this fine, it became subject to a court order.

In November 2016, the company's accountant filed a declaration of compliance claiming that staff had been enrolled into a pension scheme. When we checked on the company at a later date we discovered this was untrue – a pension scheme had been set up but no staff had been put in and, when we interviewed the accountant under caution, he admitted he had lied on the declaration.

We made the decision to prosecute the accountant for providing us with false or misleading information, the first time we've used this power against an adviser rather than an employer. He pleaded guilty in August 2018 and in November was ordered to pay nearly £7,000.

The company is now compliant, has enrolled eligible employees into a scheme, and backdated their contributions.

### Message to advisers

This case sends a clear warning to accountants and other advisers: providing TPR with false or misleading information may land you with a criminal conviction and a fine or even a prison sentence.

## Cases closed

### Automatic enrolment cases closed in the period

Cases closed in this quarter: 20,439  
 Cases closed to date<sup>1</sup>: 262,072

## Selected powers<sup>2</sup> used in the period

Power	Number in period	Number to December 2018
Information Notice	63	806
Inspection	88	1,565
Warrant	0	4
Compliance Notice	6,795	144,047
Unpaid Contributions Notice	6,421	20,117
Fixed Penalty Notice	5,758	73,833
Escalating Penalty Notice	2,689	18,642
<b>Total</b>	<b>21,814</b>	<b>259,014</b>

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 31 December 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.

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 <sup>3</sup>	Number in period	Number to December 2018
Requested	3,445	26,909
Completed	2,867	22,043

Outcome of reviews	Number in period	Number to December 2018
Confirmed	960	5,967
Revoked, substituted or varied	1,907	16,076

<sup>3</sup>

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 December 2018
Requested	204	1,206
Defended	111	794
Not defended	87	404

Outcome of defended tribunals	Number in period	Number to December 2018
Confirmed	106	647
Revoked, substituted or varied	4	32
<b>Total</b>	<b>110</b>	<b>679</b>

Confirmed includes struck out and dismissed.

Ongoing tribunals where the decision has yet to be made on how to respond: 11

Defended tribunals still ongoing at the end of December 2018: 115

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