

Automatic enrolment

Compliance and enforcement

Quarterly bulletin 1 October – 31 December 2016



The Pensions
Regulator

This quarterly update provides information about our cases and the powers we have used relating to automatic enrolment and associated employer duties.

It is designed to help employers, their advisers and the pensions industry as a whole understand the type of compliance and enforcement interventions that follow our educative and enabling communications and support.

Preventing non-compliance

Don't ignore your pension duties – it's not worth risking your credit rating

We're beginning to see the first employers receive County Court Judgements (CCJs) for a failure to pay their automatic enrolment fines. This can happen when they persistently ignore the penalty notices we send them. If they don't pay up within 30 days of receiving the CCJ, it gets entered on their credit record and remains there for six years, seriously affecting their ability to borrow money for their business in the future.

We're also seeing an increase in the number of people appealing their fines at Tribunal, and yet so far no employer has been able to show that they had a reasonable excuse for failing to comply. Our message from the last compliance and enforcement quarterly bulletin, that a judge won't consider an excuse to be 'reasonable' except under exceptional circumstances, is now more relevant than ever.

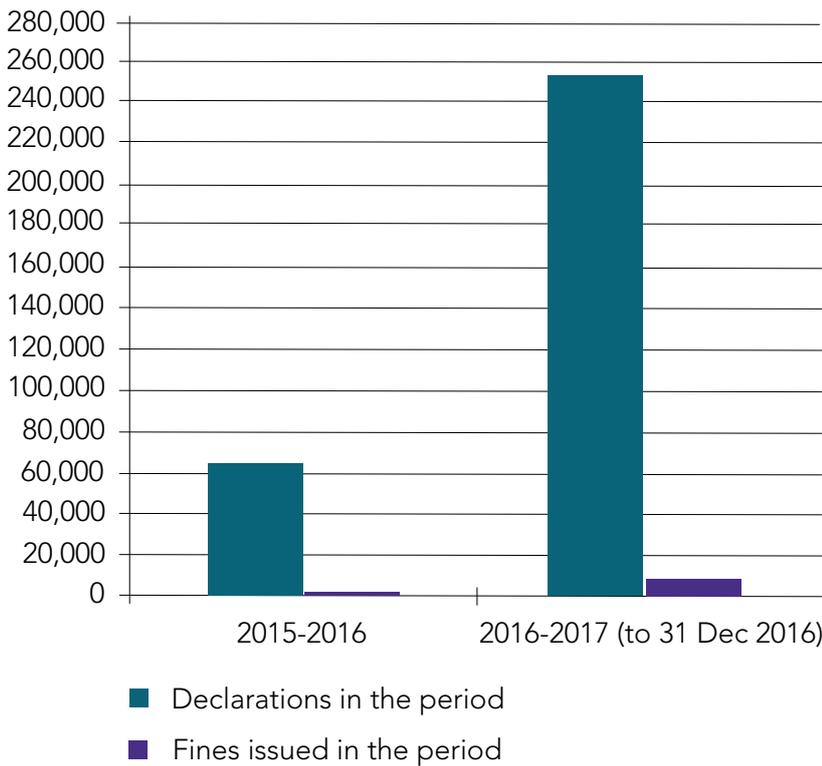


'At Tribunal no employer has been able to show that they had a reasonable excuse for failing to comply'

Number of EPNs nearly doubles – but increase in employers declaring is greater

In the three months from October to December 2016, we issued 870 Escalating Penalty Notices (EPNs) and 2,919 Fixed Penalty Notices (FPNs), bringing the total number issued to date to 1,477 and 9,831 respectively. This is against a backdrop of over 100,000 employers declaring their compliance during the same quarter. The graph on page 3 shows the number of FPNs and EPNs issued since 2015, alongside the number of declarations of compliance.

Figure 1: Number of FPNs and EPNs issued and declarations completed



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 ‘We are here to help – but we will take action if an employer is wilfully non-compliant’

When the rollout of automatic enrolment began for small and micro employers, we recognised that they would face different pressures from larger companies and said publicly that we expected to see a rise in the number of times we would need to use our powers. Small employers can become non-compliant because they are more likely to leave things to the last minute, but in most cases the nudge of a compliance notice is enough to get them back on track. Our message to small and micro employers has always been to ensure they leave enough time and be clear about what they will need to do to comply. We are here to help – but we will take action if an employer is wilfully non-compliant.

Pubs, clubs and restaurants at higher risk of non-compliance

We’ve issued a large proportion of penalty notices to employers within the food and drink sector, including those running, pubs, clubs and restaurants. This is a sector that typically employs a large number of temporary workers, has a high level of English as a second language and a prevalence of non-standard contracts, which in part explains the high levels of non-compliance. There’s plenty of information on our website on how to assess and enrol people who work varying hours, and translations of key documents are available in other languages, so there’s no excuse not to comply.

Lessons learned from our casework

Case study 1

This South London-based removals company became compliant with their automatic enrolment duties after receiving two FPNs and an EPN. We initially attempted to get in touch with the employer after they ignored the CN and FPN we sent them for failing to complete a declaration of compliance.

Following numerous fruitless efforts to engage with them, we visited the employer and inspected the premises. We then liaised with their accountant and let them know that the EPN was accruing. They asked us to review the penalty on the grounds that they were a small company, trading in difficult times. We rejected this request as the employer had exceeded the 28 days they are permitted to ask for a review. However, even if the review request had reached us in time, we still wouldn't have considered it to be a 'reasonable excuse'.

The EPN remained unpaid, so we applied to the court for a CCJ. The threat of this action meant that the employer eventually paid the fine in full and became compliant, nearly two years after their staging date. This meant they not only had to pay a large fine, but also two years' worth of backdated contributions to ensure staff did not miss out on any pension payments they'd been due.

Message to employers: Don't risk the future of your business by getting a CCJ because you've failed to pay your fine. Make sure you get in touch with us and put things right as soon as possible to avoid serious consequences.

Case study 2

This marketing company in Mayfair claimed they were unaware they needed to fill in a declaration of compliance. However, after they failed to complete it and neglected to pay the FPN, we then issued them with an EPN.

We called the employer and advised them to complete their declaration before the EPN started accruing. They declined our offers of help to talk them through how to declare over the phone as they said they'd completed all their other duties so would declare their compliance online. They eventually paid their fine and declared compliance, nine months after their staging date.

Message to employers: The longer you take to comply, the more it will cost you. Save yourself money and hassle and make sure you've completed all your duties on time. We provide plenty of information and tools on our website to help.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	13,130
Cases closed to date ¹ :	33,180

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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 December 2016). 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 Dec 2016
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	15	211
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	14	57
Warrant	The power to search premises and take possession of content under section 78 of the Pensions Act 2004	2	2
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	6,296	31,680
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	205	1,107
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	2,919	9,831
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	870	1,477
Total		10,321	44,365

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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. The numbers above include all powers that have been used regardless of whether they have been subsequently revoked. A small proportion of powers 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.

Review of statutory notices

A review³ 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	Number in period	Number to Dec 2016
Requested	1,884	5,351
Completed	1,745	4,818

These are employer-instigated reviews only.

Outcome of reviews	Number in period	Number to Dec 2016
Confirmed	328	971
Revoked, substituted or varied	1,417	3,847

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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

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 Dec 2016
Requested	67	164
Defended	22	88
Not defended	19	50

Outcome of tribunals	Number in period	Number to Dec 2016
Confirmed	24	66
Revoked, substituted or varied	1	1
Total	25	67

Confirmed includes struck out and dismissed.
Ongoing tribunals where the decision has yet to be made on how to respond: 26.
Defended tribunals still ongoing at the end of December 2016: 21.

How to contact us

PO Box 16314
Birmingham
B23 3JP

0345 600 1011
customersupport@autoenrol.tpr.gov.uk
www.tpr.gov.uk

www.trusteetoolkit.com
Free online learning for trustees

www.pensionseducationportal.com
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