

Automatic enrolment

# Compliance and enforcement

Quarterly bulletin 1 October – 31 December 2015



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

This section highlights recent developments that employers or the industry should be aware of, as they can directly impact compliance with the employer duties.

### Our approach to compliance and enforcement

Our research shows that most employers want to do the right thing by their staff but that smaller employers are more likely to leave things to the last minute. They therefore need a 'nudge' to encourage them to meet their duties, which is why this bulletin shows an increase in the number of compliance notices. A minority still don't comply after receiving such a notice, but many do after receiving a fixed penalty of £400.

As we deal with smaller employers, it is expected there will be more who, despite the message to prepare early, leave it too late or don't act at all. We take this very seriously, as it's not fair if employees don't receive the pension contributions from their employers that they're legally due.

### How our communications are shaping employer compliance

Millions more people are now saving for their retirement thanks to automatic enrolment, and we are committed to ensuring it remains a success.

In 2016, up to half a million smaller employers will need to work out what their automatic enrolment duties are and whether they need to provide a pension for their staff. To do this, it's important that they receive the information they need in an accessible format, using jargon-free language.



Smaller employers often need a 'nudge' to encourage them to meet their duties.

We have tailored our communications to this group of employers to make them as simple and direct as possible, including the introduction of a new duties checker and simple five step guide.

The ways in which we are reaching small and micro employers include:

- ▶ a national TV, radio and digital advertising campaign
- ▶ letters and emails sent directly to the employer
- ▶ e-newsletters
- ▶ a new, interactive online step-by-step guide
- ▶ videos
- ▶ social media

Our communications approach has been very successful – more than 90% of the first 12,000 small and micro employers to reach the date their workplace pensions duties start have complied with the law.

**Employers:** plan early to meet your automatic enrolment deadlines. The reason we communicate with employers through so many different channels is to make sure no one is unaware of their duties. There is no need to risk a fine.

## How to avoid misunderstandings over employer and adviser roles

We've also carried out research among business advisers to find out how they want to learn about automatic enrolment as we know that the majority of smaller employers will approach an adviser for help and advice. From this, we've developed a number of targeted communications for this professional audience, which include:

- ▶ a dedicated area of our website with all the information advisers need
- ▶ business press, radio and digital advertising campaigns
- ▶ emails
- ▶ direct marketing
- ▶ e-newsletters
- ▶ events
- ▶ webinars
- ▶ LinkedIn Q&A sessions
- ▶ engagement with professional bodies
- ▶ videos

We've spoken to a number of small and micro employers who didn't complete a declaration of compliance on time to find out what was preventing them from meeting their duties. One of the main reasons they gave was feeling that the task had 'slipped through the net' or that they felt that the adviser should have known to complete it on their behalf.

**Advisers:** don't let your clients risk a fine. Be clear about which automatic enrolment tasks you will and won't do for them. The best way to do this is to have an agreement in place with your client setting out clearly who will do what. You may not be a traditional pensions specialist adviser but if you visit our website and sign up for our news-by-email service you'll find out everything you need to know about how to help you and your clients.

## Lessons learned for employers from our casework

This section highlights examples of potentially non-compliant behaviour that we've seen. We publish these case studies in order to help other employers avoid these situations.

### Case study 1

An employer in the sports sector is liable to pay a £10,000 fine because it repeatedly failed to engage with us or put things right.

After failing to complete a declaration of compliance and informing us they hadn't even started automatic enrolment, we issued them with a compliance notice requiring them to pay the arrears of their own and the staff contributions. These contributions were payable from their staging date, which was in 2014. They failed to comply within the 60 day deadline, so they were then given a £400 fine and a further 28 days to comply.

The employer informed us that they had engaged an independent financial adviser to help them deal with automatic enrolment; however they subsequently failed to inform us of any action being taken to put things right. Because they repeatedly failed to provide evidence of compliance, we issued them with an escalating penalty notice. This gave them 28 days to comply, after which the fine would increase to £2,500 per day. (The daily accrual rate of escalating penalty notices is determined by the number of employees in the PAYE scheme.)

Eventually the adviser contacted us and within four days a scheme had been chosen and put the relevant staff into it. By then the daily penalty had amounted to £10,000. These fines, along with having to pay staff contributions of approximately £15,000, could have been avoided had the employer complied on time.



We will not tolerate non-compliance. It's not fair to employees if they lose out on contributions they are due.

#### **Don't ignore the workplace pension – it's the law.**

We will not tolerate non-compliance. It's not fair to employees if they lose out on the pension contributions that they are due. We provide clear and direct information to help employers understand what to do, and the consequences of not complying. If you're concerned that you've gone wrong, get in touch with us and we can help you get back on track.

## Case study 2

We began County Court proceedings against an employer in the licensed restaurant sector who had not paid their fixed penalty £400 fine.

They eventually went on to complete the declaration but failed to pay the fine despite the fact that we had written to them on a number of occasions, and given them a reasonable timeframe in which to pay.

As the debt remained outstanding despite our efforts to recover it, we made an application to the County Court to begin proceedings, using our powers under s42 of the Pensions Act. The employer eventually made the payment before the hearing date and so avoided going to court, but still had to pay fees which could have been avoided.



If you receive a fine you should pay it as quickly as possible.

**Employers who don't meet all their duties on time may get fined.** If you receive a fine you should pay it as quickly as possible, even if you eventually comply. We have the power to take you to court to recover the debt if you fail to pay the original fine.

## Cases closed

### Automatic enrolment cases closed in the period

Cases closed in this quarter:	1,327
Cases closed to date <sup>1</sup> :	5,109

<sup>1</sup> 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 31st December 2015). 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 powers<sup>2</sup> used in the period

Power	Description	Number in period	Number to Dec 2015
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	11	58
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	2	21
Warrant	The power to search premises and take possession of content under section 78 of the Pensions Act 2004	0	0
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	2,596	4,818
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	78	224
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	1,021	1,594
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	24	31
<b>Total</b>		<b>3,732</b>	<b>6,746</b>

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. The numbers above include all powers that have been issued 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.

## Reviews of powers

A review<sup>3</sup> is where an employer who is the recipient of a statutory notice (such as a compliance 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 or varied, 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 2015
Requested	407	782
Completed	221	558

Outcome of reviews	Number in period	Number to Dec 2015
Confirmed	21	80
Revoked, substituted or varied	200	478
Total	221	558

<sup>3</sup> 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 fine and disagree with our decision must first ask us for a review. If they disagree with the outcome of the review they can then appeal the decision to the Tribunal Service. Employers have 28 days after the review during which to appeal.

Tribunals	Number in period	Number to Dec 2015
Requested	5	11
Defended	3	7
Not defended	1	3

Outcome of tribunals	Number in period	Number to Dec 2015
Confirmed	2	4
Revoked, substituted or varied	0	0
Total <sup>4</sup>	2	4

4  
Three of the defended tribunals were still ongoing at the end of December 2015.

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### **Compliance and enforcement**

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