

Automatic enrolment

Compliance and enforcement

Quarterly bulletin 1 April – 30 June 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.

Automatic enrolment cases closed in the period

Cases closed in this quarter:	521
Cases closed to date ¹ :	3,303

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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 June 2015).

Selected powers² used in the period

Power	Description	Number in period	Number to June 2015
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	5	36
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	5	13
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	119	1,295
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	50	71
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	68	332
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	0	4
Total		247	1,751

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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. Our investigations can also reveal information that results in changes to the statistics we publish on the use of our powers. This can include, for example, information that confirms an employer has gone out of business and is therefore no longer subject to automatic enrolment. As a result, the cumulative information we provide about powers may differ between quarters.

Preventing non-compliance

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

Awareness of automatic enrolment high but employers warned to act now

In March we warned tens of thousands of small and micro employers to start preparing for their automatic enrolment duties.

Our latest research³ shows that while levels of awareness of automatic enrolment remain high among all employers, more than 20% of those due to stage between June and November this year have not yet drawn up plans to meet their duties.

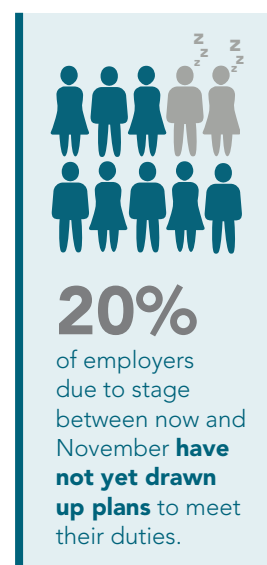
Employers reaching their staging date between now and November should now be well underway with their plans. If they haven't started planning they should act now, and our website should be their first port of call, at www.tpr.gov.uk/employers.

Help for small employers on choosing a pension scheme

Our research suggests that one in five employers (290,000) will not seek advice when choosing a pension scheme, while one in ten (130,000) don't know how to select a scheme, or think it will be difficult.

As a result we've stepped up our support for small and micro businesses preparing for automatic enrolment by publishing guidance to help them find a good quality pension scheme. The refreshed website content includes information to help employers find a scheme including, for the first time, a list of master trust pension schemes open to employers of all sizes, and which have been independently reviewed to help to demonstrate that they are administered to a high standard.

Our research shows that large multi-employer pension schemes such as master trusts and group personal pensions are better placed to meet the standards we believe are necessary for good outcomes for retirement savers. The list we've published will help employers more easily identify master trusts that have demonstrated they can deliver quality standards.



³ Employer automatic enrolment research autumn 2014: Summary report at www.tpr.gov.uk/research#s16192

The trustees of some master trusts have had their pension schemes independently reviewed to help them demonstrate that they meet certain standards of governance and administration. This review is known as the 'master trust assurance framework', and was developed by the Institute of Chartered Accountants in England and Wales (ICAEW) in association with us.

Information on how to find a scheme can be found at www.tpr.gov.uk/finding-a-provider.

A quick guide has been published for small and micro employers on what to look out for when choosing a scheme suited to their needs, which can be found at www.tpr.gov.uk/selectpension. Updates have also been made to website pages for financial advisers and accountants.

Our communications material will continue to signpost employers to NEST, the scheme established by government with a public service obligation to accept all employers, the Association of British Insurers' (ABI) list of automatic enrolment providers and the National Association of Pension Funds' (NAPF) website for 'Pension Quality Mark'-ready schemes.



Our refreshed website includes a list of master trust schemes open to employers of all sizes.

Lessons learned for employers from our casework

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

Employers need to understand contractual relationships in order to identify who is a worker

We've seen a number of employers in the employment business sector fail to understand how their workforce is categorised under the legislation, in particular where workers' contracts are non-standard.

When preparing for automatic enrolment, employment businesses should first identify whether a person is a worker. To do this, they need to understand their contractual relationships. A worker is defined as any individual who:

- ▶ works under a contract of employment (an employee)
- ▶ has any other contract to perform work or services personally and is not undertaking the work as part of their own business

Anyone who has entered into a contract of either type with an individual is an employer and is required to comply with the new employer duties. Zero hours contract workers are a category of worker employers will need to consider as part of their employer duties.

A recent case involved an employment business that provided residential care workers on a temporary basis. The owners assumed that they didn't have any duties because their workers were issued zero hour contracts. In this example the employment business was the employer because it issued contracts to each worker, including to those on zero hour contracts (ie the workers weren't self-employed). The contracts covered all work performed for different nursing homes they were supplied to, for as long as the worker remained employed by the employment business. The workers didn't have to accept the work, but if they did, that worker had to turn up in person and couldn't send a substitute. As a result the employer needed to assess them for automatic enrolment based on their ages, and how much they earn, in the normal way.

The employer was issued with a Compliance Notice and a £400 penalty before they contacted us to check their understanding of the legislation, as a result of which they are now compliant.



Employers will need to consider **zero hours contract workers** as part of their duties.

Employers must assess staff for automatic enrolment based on age and earnings, regardless of the length of employment

Some employers in the employment business sector supply short-term workers for seasonal trades, such as sale periods in retail outlets, event catering and the hotel sector.

Postponement can be used to smooth the process of automatic enrolment in respect of their short-term workers. It gives an employer the flexibility to align the administration of the employer duties to their existing business and payroll processes. However, employers should make this decision in advance. This is because postponement can only be used if written notice is given to the affected workers within six weeks of the day after automatic enrolment would otherwise have applied.

One employer we engaged with was unaware their staff needed to be assessed for automatic enrolment. The employer assumed that 'casual' workers who were employed to assist with outdoor catering during their peak summer period were not eligible for automatic enrolment. Many of the workers were students.

The employer was issued with a Compliance Notice and subsequently complied without the need for further enforcement action. However, going forward, they decided to use postponement to smooth the process of automatic enrolment in respect of their short-term workers, or workers who triggered automatic enrolment just before ceasing employment.



Postponement allows an employer to align their automatic enrolment duties with existing business and payroll processes.

Automatic enrolment earnings threshold

An employer must assess staff for automatic enrolment to determine what duties they will have in relation to each of those workers. Staff must be assessed for automatic enrolment based on their ages and how much they earn. The criteria include whether qualifying earnings are payable by the employer in the relevant pay reference period.

An employment business we recently investigated did not comply with automatic enrolment because they believed that only staff with annual earnings above £10,000 (currently the annual earnings trigger for automatic enrolment) needed to be enrolled. It became clear the employer operated a weekly payroll and this was the usual interval between payments of regular salary or wages. Therefore the length of the pay reference period was one week.

We provided guidance to the employer on how to assess their workforce which highlighted that staff should be automatically enrolled the first time they earn over the automatic enrolment threshold of £192 a week.

Proactive drives

We undertake a wide range of proactive and reactive compliance activities which aim to:

- ▶ establish and maintain a 'pro-compliance culture' among employers
- ▶ maximise deterrence for those who are considering committing a breach
- ▶ prevent non-compliance
- ▶ swiftly detect non-compliance
- ▶ investigate breaches in a fair, objective and professional manner
- ▶ effectively enforce against non-compliance

Working in partnership with other agencies

In our previous bulletin we highlighted our general concern that non-compliance with one area of regulation may indicate a heightened risk of non-compliance with pensions legislation, and that we would work with other agencies on joint operations.

From 9 to 12 February 2015, inspectors from the Employment Agency Standards Inspectorate (EAS) led a number of successful visits to businesses in the Sheffield area. EAS inspectors were accompanied by officers from Her Majesty's Revenue and Customs (HMRC) National Minimum Wage (NMW) team. We also took part in these visits, which built on previously successful joint visits undertaken by EAS and the NMW team.

The decision to target Sheffield was based on EAS risk assessment data and additional information from HMRC's NMW team. All the employment businesses we visited had started automatically enrolling temporary workers into pension schemes, and this was also an opportunity for us to find out more about how they'd done this and any issues that had arisen.

More information can be found on the website for the Department of Business Skills and Innovation at <http://bit.ly/EASSheff>.



We aim to establish and maintain a pro-compliance culture among employers.

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