

Automatic enrolment

Compliance and enforcement

Quarterly bulletin 1 April – 30 June 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

Automatic enrolment now the norm

We are very encouraged to see that thousands of small and micro employers are putting their staff into a pension, and that over six million people have now been able to start saving for their retirement, many for the first time.

Compliance rates remain very high, and we've only had to use our powers on the small proportion of employers who've failed to meet their legal duties. We used our powers a total of 4,489 times during the last quarter, compared with 4,161 in the previous three months – see p6 for a full breakdown of the numbers and types of powers used.

All employers are different but the law is still the law

We appreciate that smaller employers are all different, and because of this, we've adapted our communications so that, for example, more vulnerable employers, (eg those with personal care assistants) have information about automatic enrolment which is tailored just for them. The Duties Checker enables employers to self-identify and then follow the steps that are most relevant to their circumstances.

We do see some employers end up non-compliant for reasons such as not realising they're an employer (despite receiving a letter from us) or thinking they've completed the declaration of compliance when all they've done is register for the Government Gateway.

Some may be experiencing business difficulties, ill health or other difficult personal circumstances, or may make what they perceive to be an 'honest mistake'. We've come across a number of employers who just assumed that it was the job of someone else in their organisation, or their business adviser, to take care of automatic enrolment for them.



Compliance rates remain very high.

We do urge employers to contact us if they're having trouble with any part of the process, so we can work with them and help them avoid fines for non-compliance.

When they've been fined, some people have appealed our decisions and taken them to an independent Tribunal. However, as the figures on p8 show, none of the appeals that have ended up in front of a judge have been successful. In every case the judge rejected the employer's excuse and ruled that the law is the law, regardless of whether the employer intended to break it or not.

Employers need to engage early with automatic enrolment so they don't end up being fined. If they have an adviser, they need to be sure who's doing what, so essential tasks like writing to staff who aren't being put into a scheme, or completing the declaration of compliance, aren't forgotten. The following case studies illustrate how some employers have ended up unintentionally non-compliant, and the consequences of their inaction.



We urge employers to contact us if they are having trouble.

Lessons learned from our casework

Case study 1

The employer was a small independent garage owner who failed to complete their declaration of compliance or respond to the Compliance Notice we subsequently issued.

As a result of this inaction, we then gave them a Fixed Penalty Notice (FPN) of £400, with a deadline of 28 days to pay. The employer asked us to review this decision, as they claimed that the job of completing the declaration of compliance had been delegated to a junior member of staff and that they genuinely believed it had been completed. We responded by confirming the FPN on the basis that this was not a reasonable excuse for failing to comply with their legal duties.

The employer then appealed the decision to the Tribunal. The judge confirmed that we were right to issue the FPN, stating that it was the employer's legal responsibility to ensure that they comply with the law – including the submission of the declaration of compliance by the deadline. He also confirmed that the fact that a junior member of staff had failed to do this on the employer's behalf did not amount to a reasonable excuse.

Employers: Make sure you know who is doing what. If you receive a fine and appeal it because you think it's unfair, be clear on the grounds you are using to appeal.

Case study 2

The employer was a small, independent travel agent who failed to complete their declaration of compliance by the deadline. We issued them with a Compliance Notice, however the employer failed to comply by the deadline or indeed contact us, so we followed up by sending them an FPN.

At this point, the employer's accountant contacted us and explained that their client has only one employee, who is a non-eligible jobholder, and mistakenly assumed that, as they were a small employer, the new pension regime did not apply to them just yet. They also completely misunderstood the significance of the staging date.

We explained that the employer had to write to their worker and offer them the opportunity to opt into a pension scheme and then complete the declaration of compliance. The employer subsequently fulfilled their duties and completed the declaration.

Employers: Some duties apply to all employers, even if your staff aren't eligible to be automatically enrolled into a scheme. Complete our Duties Checker to ensure you understand what you need to do.

Cases closed

Automatic enrolment cases closed in the period

| | |
|-------------------------------------|-------|
| Cases closed in this quarter: | 2,479 |
| Cases closed to date ¹ : | 9,929 |

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 June 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 Jun 2016 |
|-----------------------------|--|------------------|--------------------|
| Information Notice | The power to demand information and documents under section 72 of the Pensions Act 2004 | 15 | 84 |
| Inspection | The power to inspect premises under section 74 of the Pensions Act 2004 | 6 | 30 |
| 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 | 3,392 | 11,099 |
| 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 | 177 | 582 |
| 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 | 861 | 3,045 |
| 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 | 38 | 165 |
| Total | | 4,489 | 15,005 |

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 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 Jun 2016 |
|-----------|------------------|--------------------|
| Requested | 479 | 1,828 |
| Completed | 546 | 1,627 |

These are employer instigated reviews only

| Outcome of reviews | Number in period | Number to Jun 2016 |
|--------------------------------|------------------|--------------------|
| Confirmed | 150 | 412 |
| Revoked, substituted or varied | 396 | 1,215 |

³ 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 Jun 2016 |
|--------------|------------------|--------------------|
| Requested | 27 | 70 |
| Defended | 16 | 44 |
| Not defended | 7 | 22 |

There are four ongoing tribunals where the decision has yet to be made on how to respond.

| Outcome of tribunals | Number in period | Number to Jun 2016 |
|--------------------------------|------------------|--------------------|
| Confirmed | 12 | 22 |
| Revoked, substituted or varied | 0 | 0 |
| Total | 12 | 22 |

Confirmed includes struck out and dismissed. 22 of the defended tribunals were still ongoing at the end of June 2016.

How to contact us

PO Box 16314
Birmingham
B23 3JP

0845 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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