

Automatic enrolment

Compliance and enforcement

Quarterly bulletin 1 July – 30 September 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:	497
Cases closed to date ¹ :	3,782

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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 September 2015). We have uncovered a small number of cases which were incorrectly marked as relating to automatic enrolment. Therefore an adjustment to the numbers from the previous quarter has been made.

Selected powers² used in the period

Power	Description	Number in period	Number to Sept 2015
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	6	44
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	3	18
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	469	2,248
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	85	145
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	107	582
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	2	7
Total		672	3,044

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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. In order to respond more fully to requests for information, we have commenced reporting on reviews requested against the above powers, as well as the outcomes of reviews separately (see the sections overleaf). Therefore, the numbers above include all notices that have been issued regardless of whether they have been subsequently revoked, and would not correspond to the totals in previous quarterly bulletins.

Review of powers³

A review 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. These reviews may not relate to notices issued in the period and a review completed (by us) in the period may not have been requested in that period.

Reviews	Number in period	Number to Sept 2015
Requested	47	379
Completed	55	341

Outcome of reviews	Number in period	Number to Sept 2015
Confirmed	17	62
Revoked, substituted or varied	38	279
Total	55	341

³ 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.

Tribunals

Tribunals	Number in period	Number to Sept 2015
Requested	1	6
Defended	1	4
Not defended ⁴	0	2

Outcome of Tribunals	Number in period	Number to Sept 2015
Confirmed	2	2
Revoked, substituted or varied	0	0
Total ⁵	2	2

4
These notices were revoked by us and the appeals to the Tribunal were subsequently withdrawn.

5
Two of the defended Tribunals were still ongoing at the end of September 2015.

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.

Compliance with automatic enrolment continues to be the norm

Since the start of automatic enrolment in 2012, over 60,000 employers have put more than 5 million members of staff into a workplace pension, with only a small minority failing to comply with their duties on time. The majority of this non-compliance has been unintentional and we have worked with these employers to put matters right at the earliest opportunity.

It is encouraging that according to our latest employer survey, the majority of small and micro employers due to stage this year are well underway with their preparations. The research highlighted that nine in 10 employers staging between August and November 2015 had begun to prepare, and that awareness of automatic enrolment had increased among micro employers, while understanding levels increased significantly amongst both small and micro employers.

In the next 12 months over 500,000 employers will go through automatic enrolment. We expect to see a rise in the number of times we need to use our powers, so our message to employers remains clear: start getting your plans in place early or you risk being fined.

View the employer survey at www.tpr.gov.uk/aware-spring-2015.

In the next 12 months,

500k

employers will go through



Automatic re-enrolment

Every three years employers have a legal duty to assess and re-enrol eligible staff into a workplace pension. This is known as automatic re-enrolment and is broadly a repeat of what the employer did at staging – although employers are likely to already have a scheme in place and well-established processes for assessing workers. Some of the steps in getting ready are the same as those taken when getting ready for automatic enrolment at staging.

Crucially, the automatic re-enrolment duty applies to workers who, more than 12 months before their chosen re-enrolment date, have left the scheme or decided to make contributions that are below the minimum required by the scheme.

Once an employer has re-enrolled eligible workers, they must complete the re-declaration of compliance to let us know how many of their workers have been re-enrolled. This must be completed no later than two months after the re-enrolment date. If an employer has identified no staff to re-enrol, they will still need to complete a re-declaration of compliance to reflect this.

Employers approaching re-enrolment should start preparing early and allow plenty of time to ensure they meet their legal duties.

For detailed guidance on re-enrolment visit www.tpr.gov.uk/detailed-guidance-11.



Every three years, employers have a legal duty to assess and re-enrol eligible staff.

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.

Not completing a declaration of compliance can lead to a fixed penalty. The recipient of a notice or penalty we issue may apply for a review under section 43 of the Pensions Act 2008. If an employer does not agree with the decision we make in respect of a penalty notice, they can appeal to the Tribunal. This type of appeal can only be made in relation to a penalty and must be submitted in writing within 28 days of the date on which the review decision was made. Most appeals are likely to be dealt with by the First Tier Tribunal.

We have recently dealt with two appeals made to the First Tier Tribunal by employers wishing to appeal review decisions. In one instance the case was struck out and in the other the case was dismissed.

Case Study 1

In one case an employer was issued with a £400 penalty for failing to declare compliance by their deadline. The employer challenged the penalty on the grounds that they had not received the preceding compliance notice and said that their post was frequently delivered to the wrong address.

Our review concluded that the employer had received the compliance notice – this conclusion was based on the recording of a telephone conversation between us and the employer, during which the employer acknowledged receipt of the compliance notice.

The employer did not agree with the outcome of our review and contacted the First Tier Tribunal to appeal the decision.

The Tribunal considered the appeal and agreed with us that there was no reasonable prospect of the employer's appeal succeeding whether in whole or part, and consequently struck the case out. In addition it was noted that the decision to impose a penalty of £400 was, in the circumstances, entirely reasonable.

The lesson here is, when considering whether to appeal or not, consider the evidence you have to support your claim and the evidence we may hold, as judgement will be based on facts presented.



We have recently dealt with **two appeals** made to the First Tier Tribunal by employers wishing to appeal review decisions.

Case Study 2

In the second case an employer was also issued with a £400 penalty for failing to declare compliance by their deadline. The employer subsequently completed their declaration of compliance, and then requested a review of the penalty. However the request made by the employer was received more than 28 days after the notice was issued. This is outside the timeframe during which a review should be requested, which was clearly stated on the penalty notice itself. We therefore rejected the employer's request for a review of the penalty.

The employer subsequently appealed, following the decision not to carry out a review of the penalty notice, by making an appeal to the First Tier Tribunal.

The Tribunal decided that it did not have jurisdiction to hear an appeal where the application for a review of the notice is made out of time, and where we have decided not to carry out a review on our own initiative. Consequently this case was dismissed.

The Tribunal went on to consider the grounds of appeal on the hypothetical basis that the Tribunal did have jurisdiction.

The employer's grounds for appeal were that technical difficulties prevented them from completing the online declaration of compliance. It was determined that even if the employer had experienced difficulties in using the online system, it was open to them to complete the declaration of compliance in other ways such as over the telephone.

Lessons from Tribunals:

- ▶ Where an appeal has been requested out of time the Tribunal does not have jurisdiction to hear the request.
- ▶ There are a range of options for declaring compliance, so if an employer is experiencing technical difficulties in one area this does not give them grounds for not complying on time.
- ▶ Not completing a declaration of compliance can lead to a fixed penalty.
- ▶ Employers should contact us if they are experiencing technical difficulties.



Employers should contact us if they are experiencing technical difficulties.

How to contact us

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www.trusteetoolkit.com

Free online learning for trustees

www.pensionseducationportal.com

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