

Automatic enrolment

Compliance and enforcement

**Quarterly
bulletin**

1 October – 31
December
2014

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:	881
Cases closed to date ¹ :	2,161

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 31 December 2014).

Selected powers² used in the period

Power	Description	Number in period	Number to Dec 2014
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	6	16
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	1	7
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	1,139	1,316
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	7	8
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	166	169
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	0
	Total	1,319	1,516

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.

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.

Insolvent employers

Automatic enrolment duties apply to all employers, including insolvent employers that continue to employ staff. Insolvency practitioners acting on behalf of employers have a responsibility to ensure the employer's compliance.

To date our experience has shown that large and medium sized employers have used large corporate insolvency practices to help them meet their duties where they continue to employ staff following an insolvency event. However, over the next three years many small employers are likely to use small high street practices with fewer resources. Insolvency practitioners need to understand the automatic enrolment duties if they are to help insolvent employers comply.

Insolvency practitioners may find it helpful to visit www.tpr.gov.uk/help-clients-prepare which gives advisers the information they need to help their clients with automatic enrolment. From there they can access tools that tell them their staging date and help them develop a plan to get ready.

Following their appointment, insolvency practitioners should get in touch with us to nominate themselves as the primary contact to ensure they receive important communications from the regulator about automatic enrolment.

It's also important that insolvency practitioners contact us if an employer ceases to employ staff (whether because they have all been made redundant or transferred to another employer) so that we can update our records and ensure no further direct communication activity is attempted with that employer.

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.

Completing the declaration of compliance accurately and on time

We have issued a significant number of compliance notices in the period to employers that have failed to complete an automatic enrolment declaration of compliance within five months of their staging date. This includes fining some employers that subsequently failed to comply with the deadline given in the compliance notice.

We have found that many employers miss the deadline for submitting their declaration because they did not realise it was mandatory or they forgot.

For example, an employer which had persistently failed to declare compliance after having been issued with a compliance notice and fined £400 explained to us they had mistakenly believed they had fully completed the online declaration of compliance. It transpired the employer had only partially completed the declaration and forgot to track their progress. Our enforcement action gave the employer the necessary wake-up call to provide the information to us about how they had complied with their duties.

To help ensure they don't miss the deadline, employers should start the declaration as soon as they can and add the required information as it becomes available.

For information about the declaration of compliance visit www.tpr.gov.uk/using-declaration.

Preparing early for automatic enrolment

As expected our use of powers has increased in line with the employer staging forecast and the number of smaller businesses who, despite the message to prepare, leave it too late or do not comply at all.

We have issued a number of compliance notices in the period to employers that have failed to meet their automatic enrolment duties because they did not take timely action to get ready.

We have recently seen a case involving an employer writing to staff in advance of their staging date to raise awareness about workplace pensions. However the employer was then slow to act and the staging date went by without the employer taking any action to comply. Eventually the employer decided to seek independent advice about how and when to implement automatic enrolment, but it was four months after the employer's staging date when an independent adviser was appointed to help prepare for automatic enrolment and set up a pension scheme.

The employer then contacted us to report that they were in breach of their duties but that they were taking remedial action to address the causes of the breach. The employer had not put in place a plan ahead of their staging date, meaning that they had missed the deadline to automatically enrol staff and were on course to miss their declaration of compliance deadline.

We provided the employer with support and information by pointing them to the materials available on our website, such as our interactive tools and employer guidance. We confirmed over the phone what the employer needed to do to comply with the law and issued a compliance notice stipulating a time by which they needed to become compliant. After receiving the compliance notice the employer, with the help of their financial adviser, moved quickly to become compliant.

As a result of their non-compliance, the employer has to make up the contributions that they have missed since their staging date, in addition to paying ongoing contributions.

Employers should allow plenty of time to prepare for automatic enrolment and seek help quickly if they discover that they are at risk of not complying. Where non-compliance persists after we have issued a compliance notice, we have the power to issue a penalty.

Our research shows that the majority of employers who have completed the process regret not allowing more time. Our message to employers remains 'start your preparation early'.

For information about planning for automatic enrolment, visit www.tpr.gov.uk/getting-ready-ae.

Proactive drives

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

- establish and maintain a 'pro-compliance culture' amongst 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, and
- effectively enforce against non-compliance.

Declarations of compliance proactive drive

Completing a declaration of compliance is the legal requirement to submit information to us about how an employer has complied with their automatic enrolment duties, such as how many people have been automatically enrolled and into which pension scheme(s). Employers use a secure online service accessed through the Government Gateway to submit their declaration to us.

Using the systems and data available to us we have been proactively checking the accuracy of information submitted by employers when they declare compliance. As a result of this, we have been selecting employers for further engagement, which has included visiting premises to check records and interviewing key staff.

More than 1.3 million employers need to comply with their new workplace pensions over the next three years and declare compliance with us. Ensuring the accuracy of declarations made by employers will continue to be a focus for us.

Our proactive compliance drives will continue to target areas where there is a risk of non-compliance. We will report on the outcome of this work in future quarterly bulletins.

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