

Automatic enrolment

Compliance and enforcement

Quarterly bulletin 1 January – 31 March 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

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, so as expected we have seen 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.

Escalating penalties: what they are and how to avoid them

Where an employer fails to take the steps necessary to comply (despite having been issued with a Fixed Penalty) we may issue a further penalty to deter or discourage continuing non-compliance by the employer.

This further penalty is based on the number of people the employer has in their PAYE scheme and will build up at a daily rate until compliance is achieved. This is known as an 'escalating penalty' and the daily accrual rate is shown in the following table.



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

Number of people in PAYE scheme	Daily accrual rate
1-4	£50
5-49	£500
50-249	£2,500
250-499	£5,000
500 or more	£10,000

An Escalating Penalty Notice will specify the date by which the employer must comply with the actions laid out in the Compliance Notice and when the escalating penalty will start to build up.

For those who breach the law on a second or subsequent occasion, and in the event a Compliance Notice is issued but not complied with, we may decide to issue an Escalating Penalty Notice, rather than a Fixed Penalty Notice.

As expected, the number of Escalating Penalty Notices we have had to issue is on the increase, in line with the rise in small employers staging, but it's important to remember that this can be avoided by engaging with us early in the process and working to put things right.

Our recently published report issued under Section 89 of the Pensions Act 2004 details a case where we had to use a number of our powers, including issuing Escalating Penalty Notices, when the employer failed to comply with their duties.

The case illustrates the need to engage early with us when we identify non-compliance. The company's initial lack of action led to further delays in complying with their duties, and as a result our intervention escalated from a focus on remedial action to one of sanction and redress. Had the company responded to our initial contact and taken action quickly, £22,900 of penalty fines could have been avoided – an amount which ended up being higher than the actual contributions that were due. More information can be found at www.tpr.gov.uk/section-89.

Employers who are struggling to meet their automatic enrolment duties should contact us to discuss their situation as soon as possible.



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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.

Case study 1

An employer in the licensed restaurant sector was liable to pay a £400 fine because they failed to comply with their automatic enrolment duties. However, because they engaged with us, further penalties were avoided.

After failing to complete a declaration of compliance, we issued them with a compliance notice requiring them to complete their declaration. They didn't comply by the deadline, so they were then given a £400 fine and a further 28 days to comply.

Because they repeatedly failed to provide evidence of compliance, we issued them with an Escalating Penalty Notice. This gave them 28 further days to comply, after which the fine would start to build up at £500 per day.

Following receipt of the Escalating Penalty Notice, the employer eventually contacted us, advising that they were compliant with automatic enrolment and had mistakenly believed their declaration had been completed. The employer subsequently completed the declaration and managed to avoid any further penalties because they engaged with us and put things right.



It is the employer's legal responsibility to make sure the declaration of compliance is completed correctly and on time.

Employers: Don't risk a fine – make sure you have completed your declaration of compliance. Although the declaration can be completed by someone else (such as an accountant, a financial adviser or member of staff), it is still your legal responsibility to ensure that it's completed correctly and on time. Some employers have become non-compliant after failing to complete their declaration in full. We send a confirmation to the employer when the declaration is completed.

If you receive an Escalating Penalty Notice, you should engage with us as soon as possible.

Case study 2

An employer within the private healthcare sector approached us as soon as they realised there would be a problem with an existing pension scheme they intended to use for automatic enrolment. The existing scheme didn't reach the qualifying criteria and the employer hadn't carried out the necessary checks in good time which meant that they passed their staging date without having a scheme in place.

We discussed the issue with the employer, and later issued them with a Compliance Notice. This meant that they had to comply with the employer duties in full and make sure that contributions were paid back to their staging date, which was in 2015. The employer was aware that, if they failed to comply with the directions within the Compliance Notice, they would receive a £400 fine.

The employer was keen to resolve the issue and make sure their staff didn't lose out. The information and guidance we gave them in the Compliance Notice helped them to achieve compliance, set up a new scheme, and pay contributions.

This case demonstrates the value in employers contacting us in good time, or when an issue is first identified. In this instance we were able to give the employer the right information and guidance to help them achieve compliance before receiving a fine.

Employers: If you intend to use an existing pension scheme for automatic enrolment you should contact your provider early to make sure it's suitable. This will give you enough time to make alternative arrangements if necessary. If you discover a problem, please contact us early. We are here to help.

Cases closed

Automatic enrolment cases closed in the period

Cases closed in this quarter:	2,347
Cases closed to date ¹ :	7,456

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 March 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 Mar 2016
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	12	69
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	3	24
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	3,057	7,834
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	187	409
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	806	2,234
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	96	127
Total		4,161	10,697

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 Mar 2016
Requested	575	1,340
Completed	514	1,069

Outcome of reviews	Number in period	Number to Mar 2016
Confirmed	172	250
Revoked, substituted or varied	342	819
Total	514	1,069

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 Mar 2016
Requested	30	41 ⁴
Defended ⁵	15	23
Not defended	10	13

Outcome of tribunals	Number in period	Number to Mar 2016
Confirmed	3	8
Revoked, substituted or varied	0	0
Total	3	8

⁴
There are five ongoing tribunals where the decision has yet to be made on how to respond.

⁵
15 of the defended tribunals were still ongoing at the end of March 2016.

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