

Local Government Association Annual Teacher's Conference

Auto-Enrolment How's it Going?



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The information we provide is for guidance only and should not be taken as a definitive interpretation of the law.

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The Regulator's role

Our approach:

- Educate
- Enable
- Enforce

To meet our statutory objective: to maximise employer compliance with employer duties

- we are **risk** based and **proportionate**.

Follow the principles of good regulation:

- Proportionate, accountable, consistent, transparent and targeted (PACTT)



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Supporting employers – education and enablement

The materials we produce are aligned to meeting the needs of employers in a changing market and they include:

- guidance – both detailed and simplified
- online learning resources
- research and analysis, and
- reports.

We work proactively and flexibly with employers, providers and trustees to resolve non-contentious issues. This includes taking steps to:

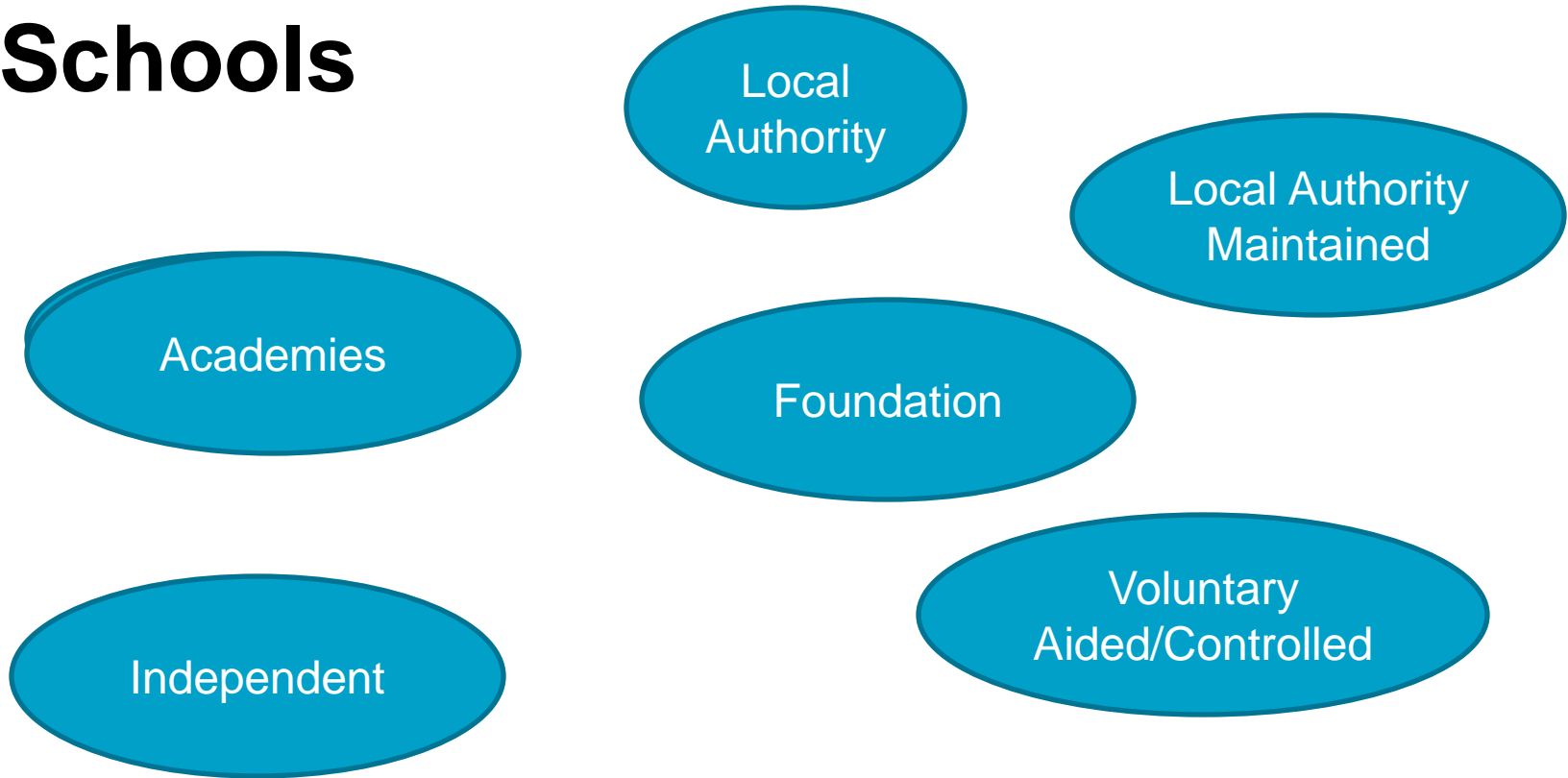
- identify potential problems at an early stage, and
- enable our key audiences to find solutions, which may sometimes include the use of our powers.



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Supporting employers – education and enablement

Schools



Communication!



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Non-compliance

How do we know about instances of non compliance?

- whistleblowing
- information analysis, such as comparing declaration of compliance (registration) data with current PAYE data
- sharing intelligence with other agencies
- targeted pro-active visits to employers who are at high risk of non-compliance (possibly as a result of the industry sector they are in)
- employers call us



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Inspections and record keeping

- Employers, as well as trustees, managers and providers of a pension scheme, must keep records about their workers and the pension scheme used to comply with the employer duties.
- An employer can use electronic or paper filing systems to keep or store any records, as long as these records are legible or can be produced in a legible way.
- Most records must be kept for six years; those that relate to Opting-out must be kept for four years.
- The records must be produced to The Pensions Regulator, if requested.
- The Pensions Regulator can conduct an inspection for the purpose of:
 - investigating whether an employer is complying, or
 - has complied with the employer duties.



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Enforcement powers

Informal action

- instructions by telephone, letter, email and in person
 - provide as much assistance as is reasonably practicable
 - preventative action – sending targeted communications
- warning letter
 - for minor alleged breach – timeframe for compliance set

Statutory powers – gathering information

- formal requests for information (if a breach is suspected)
 - failure to comply may lead to criminal prosecution/civil penalties
- inspection powers
 - failure to comply may lead to criminal prosecution

Enforcement powers continued...

Statutory notices issued to employers or third parties

- Compliance notice
- Third party compliance notice
- Unpaid contribution notice
- Prohibited recruitment conduct compliance notice

Penalties

- Fixed penalty notices £400
- Escalating penalty notices £50-£10,000 daily

Civil debt recovery

Criminal prosecution

Proceeds of Crime Act 2002



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Examples of breaches

- Breaches include (but are not limited to):
 - failure to automatically enrol eligible jobholders
 - eg late issuing of postponement notices may lead to failure to automatically enrol on the staging date
 - failure to enrol non-eligible jobholders who give notice to Opt-in
 - failure to arrange active membership for an entitled worker
 - inducements
 - unpaid contributions - not paid over to pension scheme
 - failure to keep certain records (eg where the employer destroys them)
 - failure to refund contributions following automatic enrolment when an Opt-out notice has been received
 - criminal offences where the behaviour is wilful.

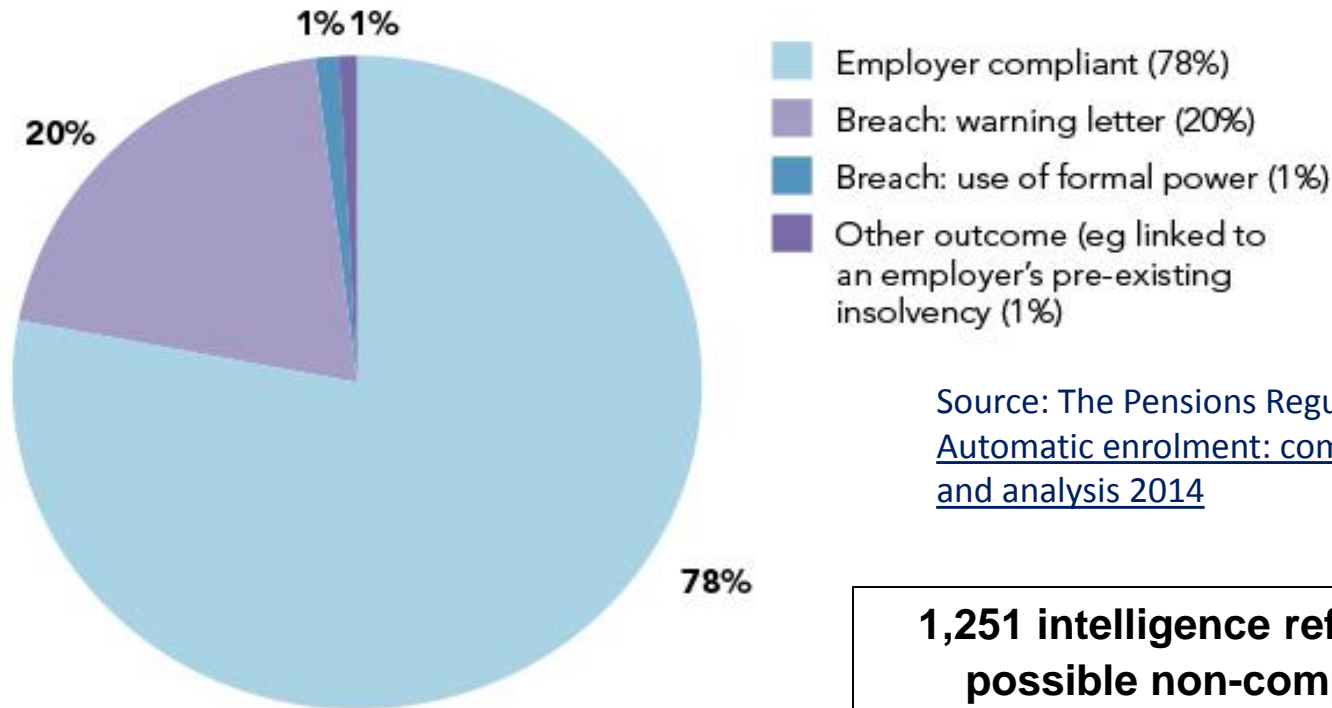


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Investigations

'99% of employers who have completed their declaration of compliance (registration) with us have done so without the need for us to use our powers'.

Outcomes of closed cases April 2013 to March 2014



Source: The Pensions Regulator
[Automatic enrolment: commentary and analysis 2014](#)

1,251 intelligence referrals for possible non-compliance

Use of formal powers

- Formal action (as at 30 June 2014):

- 17 compliance notices
- 1 unpaid contribution notice
- 3 statutory inspection notices
- 2 statutory demands

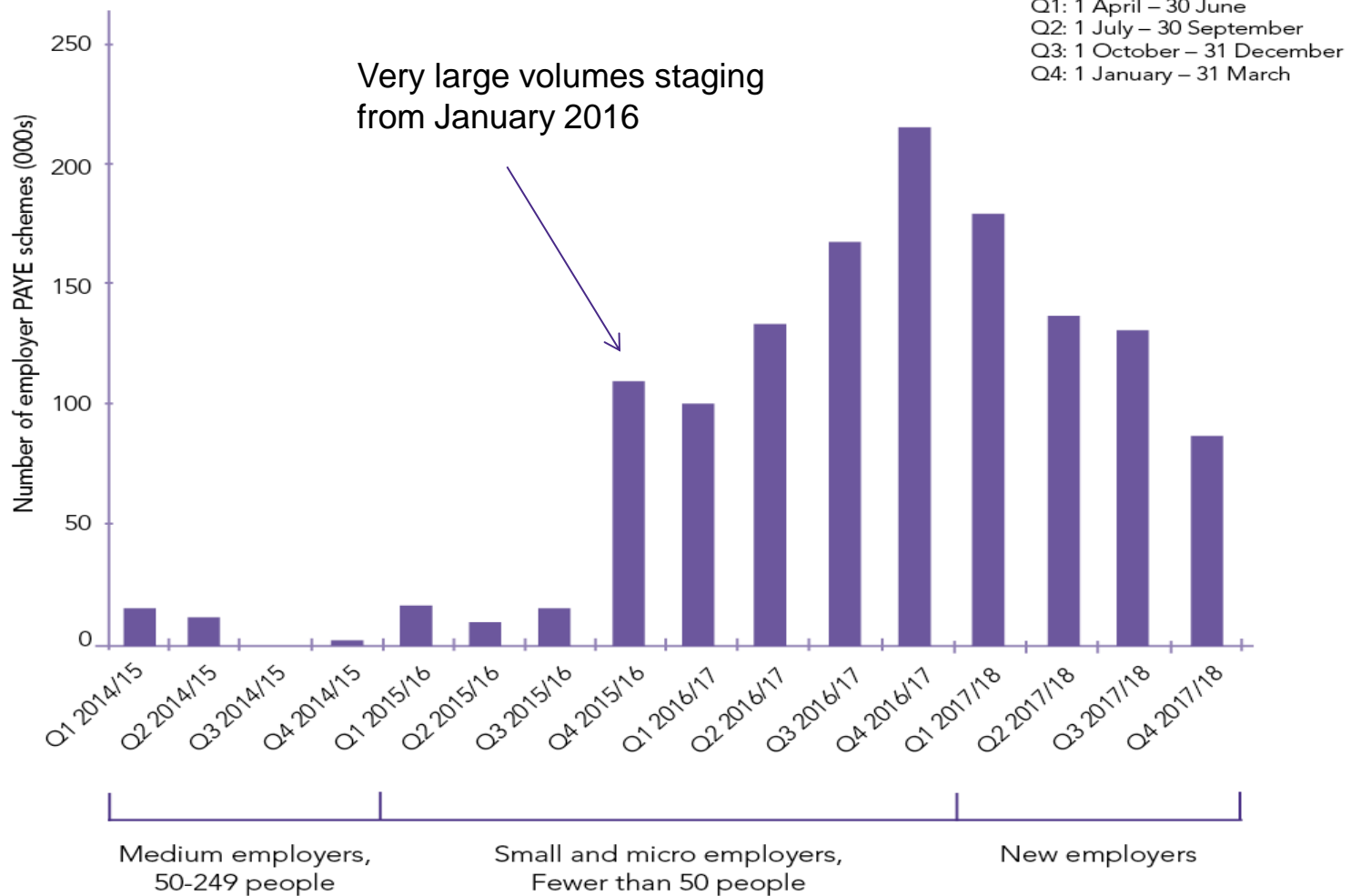
- 2 employers requested a review of our decision:

- review confirmed original decisions

**917 cases closed by
30 June 2014**

**23 uses of our statutory powers by
30 June 2014**

Staging profile (volumes of employers)



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Sample case studies and lessons learnt

Source: The Pensions Regulator
[Automatic enrolment: commentary and analysis 2014](#)



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Case study 3 – governance and software testing

Background:

- Through an investigation we identified an employer who had:
 - failed to enrol all eligible jobholders, and
 - was not paying the correct contributions in some instances.

This was due to:

- key members of staff leaving at critical times
- bespoke payroll solution design flaws, and
- data quality issues experienced when uploading employee information to the pension provider, which prevented active membership being achieved.



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Case study 3 – enforcement

How we supported compliance:

- we undertook an inspection to investigate the payroll software and to engage directly with members of their automatic enrolment project team
- we sent an unpaid contributions notice, and
- we agreed with the employer the rectification plan they would put in place and this resulted in:
 - all outstanding contributions being paid, and
 - enrolment of eligible workers.

The key lessons for employers are:

- to ensure that payroll systems are well tested and have the correct requirements, and
- where possible, seek project team member continuity throughout implementation.



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Case study 4 – early testing of payroll software

Background:

- A whistleblower advised us that their pension contributions were not reflected in their individual pension pot, according to the scheme provider.
- On investigation, this was due to the employer's payroll software not forwarding information about the contributions collected to the provider in a data format that enabled the allocation of individual funds without manual data cleansing.

How we supported compliance:

- we contacted the employer to ensure they were aware of the failure, and
- we agreed the plan of rectification between the employer, the payroll software provider and pension provider.

The key lessons for employers are:

- early testing of payroll software is recommended, to allow sufficient time for any changes to be made and trialled to ensure it functions as required, to
- ensure that software and exchange of data meets the needs of all partners.



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Case study 5 – declaration of compliance

Background:

- An employer, that was part of a corporate group, did not make their declaration of compliance on time.
- The employer had aligned their staging date with other companies in the group, but did not allow sufficient time to gather the required information.

How we supported compliance:

- we contacted the employer to ask them to make their declaration.

The key lesson for employers are:

- employers who are subsidiaries within a corporate group who wish to align their staging dates, need to ensure they complete their declarations on time.
- accountability for doing this falls on **each individual employer**.

Lessons learnt

Key lesson for employers:

- Each employer company has an **individual** responsibility to comply with the automatic enrolment duties and make a declaration of compliance.
- Where an employer used (as of 1st April 2012) the PAYE of another organisation, they may need to stage at the same time as this company.
- If an employer misses their staging date and are no longer able to use postponement (ie more than 6 weeks has elapsed), they will be required to backdate active membership for eligible jobholders to their staging date.
- Early testing of payroll software and cleansing of employee data is highly recommended.
- Seek project team member continuity throughout implementation.



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Remedying a breach

What if an employer makes a mistake and fails to carry out their duties?

Tell the Regulator about the breach. TPR's approach is an employer:

- should take reasonable steps to put the worker back in the position they would have been in if compliance had occurred on time, and
- should **not** profit from their mistake.

That means the employer should:

- enrol them, backdated to the original date, and
- ensure backdated employer pension contributions are paid, and
- ensure backdated employee pension contributions are collected.

If TPR decides to take formal action against the employer and the worker should have been enrolled **more** than 3 months ago, TPR has the power to:

- require the employer to pay **both their own and employee** contributions, and
- require **interest** to be added to outstanding contributions.



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Our approach – in summary

Our approach:

- To educate and enable employers to help them comply.
- Where an employer has not understood the duties or has not complied
 - we will work with them to try and achieve compliance (contact centre)
- We want employers to contact us if they are experiencing difficulties
 - in order to maximise compliance, and
 - ensure workers get their pension contributions.

If an employer chooses to ignore their duties:

- this is unacceptable and the regulator will use its powers where necessary to ensure compliance.

Increase in notices issued and therefore fines for :

- failing to complete a declaration of compliance (register), and
- late payments.



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Useful links

Monthly registration report

www.tpr.gov.uk/docs/automatic-enrolment-monthly-registration-report.pdf

Automatic enrolment: commentary and analysis 2014

www.tpr.gov.uk/docs/automatic-enrolment-commentary-analysis-2014.pdf

Compliance and enforcement quarterly bulletin (June 2014)

www.tpr.gov.uk/docs/automatic-enrolment-use-of-powers-june-2014.pdf

Compliance and enforcement strategy

www.tpr.gov.uk/docs/pensions-reform-compliance-and-enforcement-strategy.pdf

Compliance and enforcement policy

www.tpr.gov.uk/docs/pensions-reform-compliance-and-enforcement-policy.pdf



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Failure to comply by an employer – escalating penalties

Number of persons	Prescribed daily rate (£)
1-4	50
5-49	500
50-249	2,500
250-499	5,000
500 or more	10,000



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Failure to comply by a person other than employer

Notice	Prescribed daily rate (£)
Third party compliance notice (s36)*	200
Compliance notice (s35)**	200
S72 notice***	200

* Section 36 – eg would be used where a scheme provider had failed to process enrolment so active membership was not achieved, causing the employer to be in breach of the employer duties.

**Section 35 - eg would be used where a scheme provider had failed to refund contributions to an employer.

***Section 72 – eg would be used , in respect of a failure by a person other than an employer, for example, a bank/scheme provider.



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Prohibited recruitment conduct (s50/s51)

Number persons	Fixed penalty (£)
1-4	1,000
5-49	1,500
50-249	2,500
250-or more	5,000