

# 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:

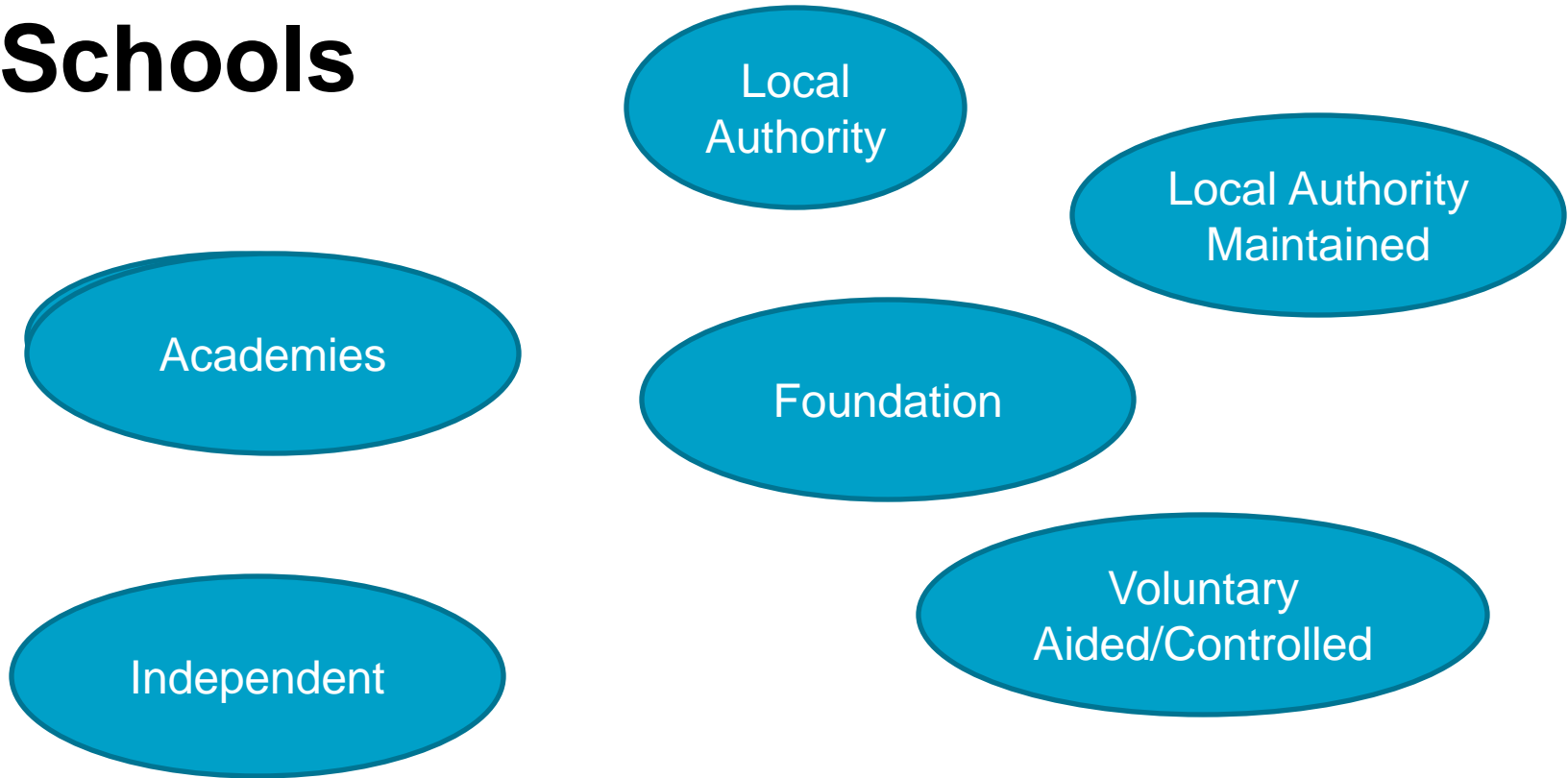
- identify potential problems at an early stage, and
- enable our key audiences to find solutions, which may sometimes include the use of our powers.



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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.

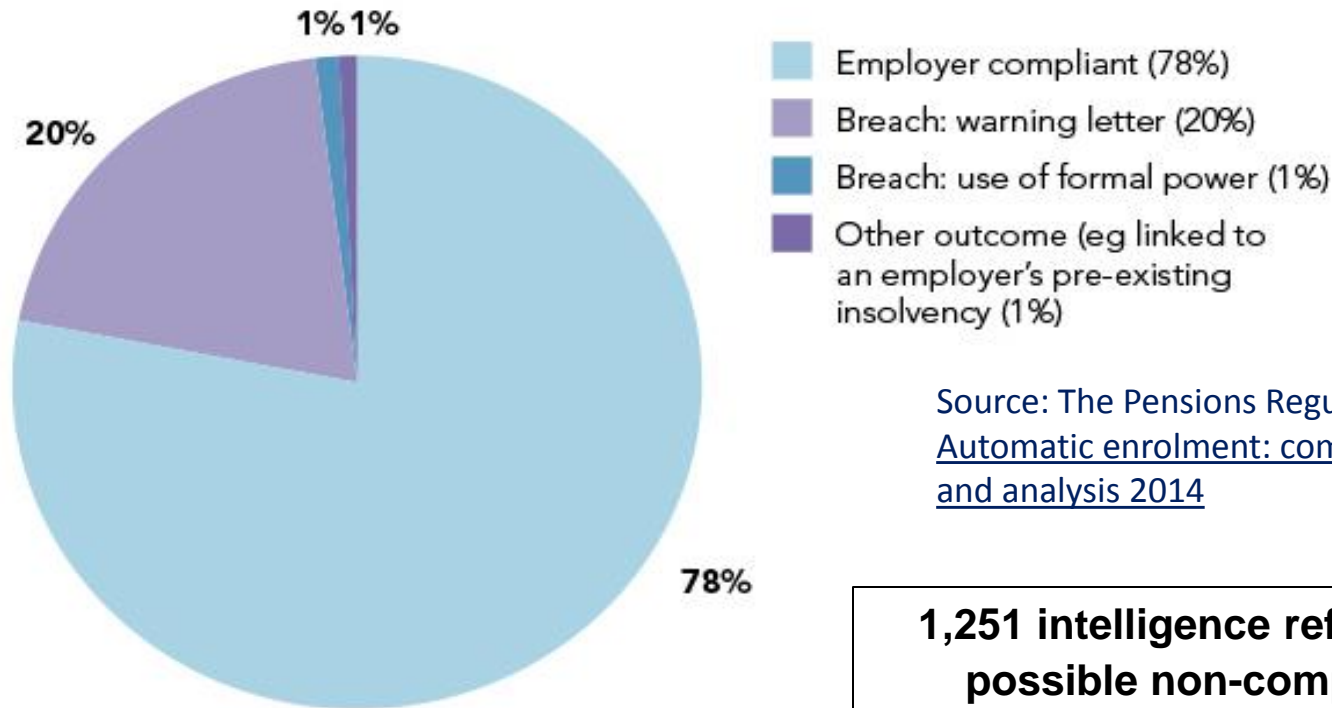


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# Investigations

***'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

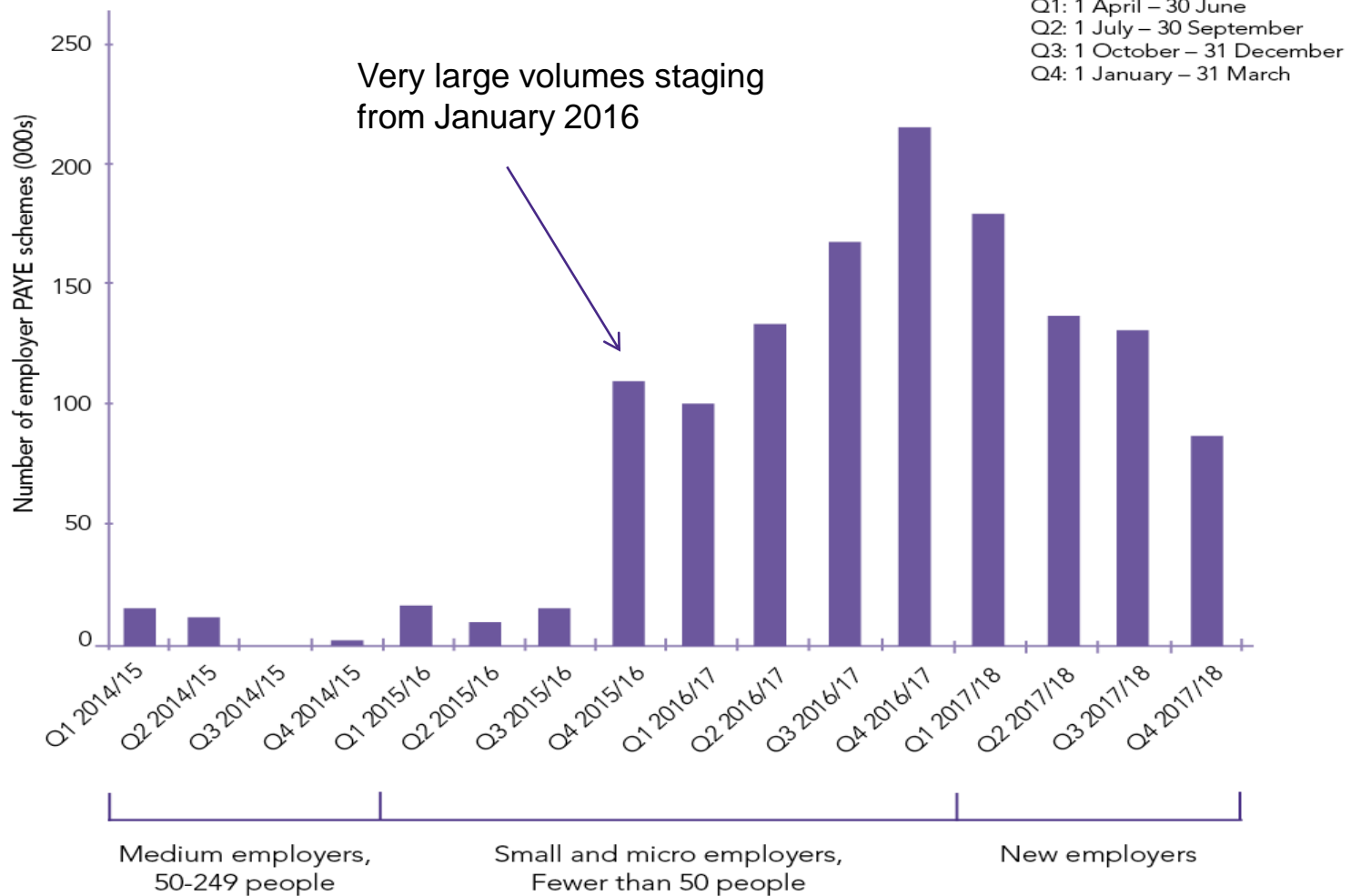
- 2 employers requested a review of our decision:

- 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 1<sup>st</sup> 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](http://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](http://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](http://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](http://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](http://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

