Summary
• Trustees should be aware that reporting deadlines for late DC scheme employer contributions will be reverting in the new year.
• TPR and some providers claim delays to employer contributions have not been widespread.
• But the picture is muddied by some sources who see evidence of a spike in employer contribution delays, with TPO preparing itself for a rise in complaints.

Employer contributions: Should we be sweating?

The coronavirus pandemic has been a rollercoaster ride for many businesses. Duncan Ferris investigates whether employers have been having problems keeping up with their contributions into employee pension schemes amid Covid-19, why this might be a problem and what the consequences for savers might be

Football clubs, airlines and bars have something in common. They are among the businesses having perhaps the toughest time in adapting to pandemic life. Macclesfield Town FC has gone belly up, Flybe has caved, and Corsica Studios has had to launch fundraising efforts.

With so many companies facing uncertainty or worse, it is prudent to examine whether desperate businesses have been seeking to save cash by avoiding their auto-enrolment duties by failing to pay into workplace pension schemes.

It is an issue that will particularly concern the trustees among our readership, as they have the responsibility of reporting any discrepancies to the authorities. But this is a process that has seen some changes in recent months, so it is probably wise to start with an overview of where we currently stand.

Background

The Pensions Regulator (TPR) had initially expanded the reporting window for defined contribution (DC) schemes to report on delayed employer contributions to 150 days in March as a response to the Covid-19 pandemic.

In September, the regulator opted to extend its easements on reporting on employers' late contributions until the end of the calendar year. In the new year, DC schemes and providers will be expected to resume reporting on delayed contribution payments no later than the usual 90 days after the due date.

Aegon head of pensions, Kate Smith, says: "This was designed to give pension providers and trustees breathing space to allow them to focus on other priorities during the early days of the pandemic. It was not designed to allow employers to delay paying pension contributions across to pension providers or pension schemes.

"There has been no change to employers' responsibilities to deduct and pass on the correct contributions to providers in line with their schedule of payments, unless they have made specific arrangements with their providers."

In March, when initially announcing the extension, TPR indicated that it would not seek to take action against trustees who were late in reporting missed payments in the following three-month period.

While it acknowledged the flexibility of TPR's approach, the parliamentary Work and Pensions Committee in June raised concerns that "unscrupulous employers" might be "taking advantage" of easements.

Much ado about nothing?

Now that we understand TPR's approach to reporting on employer contribution delays, it is important to examine how widespread an issue this has been since the emergence of the Covid-19 pandemic. First of all, how would failing to contribute on time affect members of DC pension schemes?

Smith comments: "Delaying to paying employer and employee contributions and passing them on to pension providers for investment will adversely affect members' pension pots as they could lose out on investment timing and growth. Failure to pay will have even more serious consequences on the size of employees' pension pots."

But are there any indications that this is actually happening and harming savers' pension pots?

On the face of it, it appears not. Speaking when late contribution reporting deadlines were extended, TPR director of automatic enrolment, Mel Charles, said: “Our indications are the majority of employers are paying their contributions in full and on time and we have not seen any unusual increase in reports of late payments by pension schemes.”

This is reflected by data published by the regulator in August, which shows that enforcement actions for automatic enrolment breaches were down by 55 per cent in the second quarter, having fallen from 35,174 between January and March to 15,733 between April and June.

Furthermore, the number of fixed penalty notices issued came to 1,555, which is six times fewer than in the previous quarter, while the number of escalating penalty notices issued was five times lower than in the first quarter, coming in at 625.

However, this does not necessarily guarantee that there is not a problem as this could merely be a reflection of TPR’s easements and its decision not to take action against trustees who were late in reporting missed contributions, as referenced earlier.

Speaking from the perspective of a provider, Smith echoes the regulator’s sentiment as she comments: “We have seen very little change and employers are continuing to pay pension contributions on time and correctly. Providers will continue to monitor pension payments to ensure they are paid correctly and on time.”

A twist in the tale

However, this still does not appear to be a cut and dry issue, as survey data from the *Financial Times* showed that 7.54 per cent of employers on Royal London’s books missed payment deadlines by the end of May, compared to just 1.57 per cent before the beginning of lockdown.

When asked about a potential rise in delays, a Royal London spokesperson says: “In the early days of the pandemic we saw an increase in queries about delaying or reducing contributions from employers. There was also an initial increase in the number of employers delaying pension contributions.

“This was largely due to a lot of uncertainty in the market around the Job Retention Scheme and there were also rumours about a potential pause in auto-enrolment. We worked closely with government and regulators to ensure there were clear messages on the JRS and what this meant for pensions and about the continuation of auto-enrolment duties.

“This has meant that since that initial period we have seen a decrease in delayed pension contributions to more normal levels. In addition, the initial questions about reducing contribution level does not seem to have turned into action on the part of employers. This is good news for the future savings outcomes of members.”

Some other providers also appeared to have noticed an increase in missed contribution deadlines, while watchdogs appear to be readying themselves to deal with fallout from the issue.

The Pensions Ombudsman (TPO), Antony Arter, comments: “We are expecting to see an increase in the number of auto-enrolment complaints where businesses struggling financially as a result of the pandemic, either persuade their employees to opt out of auto-enrolment, or continue to deduct contributions from their staff’s salary but do not pay them into the particular pension arrangement as required.

“Although, we are beginning to see a gradual increase in such cases it is too early to tell the extent of this problem as it always takes some time before people realise what has happened and complain to us.”

As such, it could be that the industry ends up feeling the shockwaves of this issue well into the next few years.

Summing up

This all creates a rather cloudy picture, with a great deal of conflicting information. TPR and some providers appear unconcerned about the issue, but it seems clear that there have been some spikes in delayed employer contributions to DC schemes. The picture is surely destined to get clearer as the nation dips back into a period of Covid-19-related restrictions.

Many industries that have already been suffering, such as hospitality and aviation, are at risk of facing further difficulties as pub closing times are pushed earlier and travel restrictions increase. Furthermore, the government’s furlough scheme is coming to an end, set to be replaced by the less generous Job Support Scheme.

This means more businesses, beyond even the likes of football clubs, airlines and bars, are likely to falter and avoid making contributions in a desperate bid to hold on to cash.

With the reporting window set to be cut back to 90 days, trustees will need to be on their game to spot any discrepancies as the process reverts to its pre-pandemic norm in the new year. As for employers who fail to pay contributions, TPO is clear on the consequences.

Arter explains: “If we find that either an employee has not been enrolled when they should have been, or contributions have not been paid, then the employer will be liable to pay the unpaid contributions and any lost investment returns. We will also consider, depending upon the circumstances, an award in respect of the distress and inconvenience suffered.”

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