AE's tipping point

With minimum automatic enrolment contributions for employers having increased to 3 per cent this month, Natalie Tuck looks at the impact of the policy on employers, and whether they can face further increases to contributions

Summary
- Auto-enrolment has been hailed a success but it is widely acknowledged that contributions need to be increased.
- The industry is split over whether employers can take on more contributions.
- The Pensions Regulator is coming down hard on employers that don't comply to AE regulations – and has seen compliance of over 95 per cent.
- There have been calls for auto-enrolment procedures and legislation to be simplified, as there are lots of hurdles to overcome making it easy for employers to trip up.

When the number of employees saving into a pension through automatic enrolment hit 10 million earlier this year, Work and Pensions Secretary, Amber Rudd, declared the policy an "extraordinary success" that will offer people a more "secure future and a better retirement".

With opt-out rates remaining low following last year's minimum contribution rate increase, industry experts are hopeful that the increase to 8 per cent this month (5 per cent employee, 3 per cent employer) will also have little impact. A policy paper by Royal London concludes that it is "highly unlikely to lead to large numbers of people to give up in saving in a workplace pension".

But what has been the impact of the policy on employers and how supportive have they been? Pensions and Lifetime Savings Association (PLSA) director of policy and research, Nigel Peaple, notes that its members have been "extremely supportive" of the work the policy has done in getting "millions more saving for retirement".

Employers, of course, not only have the costs of the contributions but can also incur additional costs associated with payroll, administrative support, communications and appointing a pension provider etc. However, research by The Pensions Regulator (TPR) found that once auto-enrolment has been set up, most employers do not pay anyone outside of their organisation to assist them with completing their ongoing duties (65 per cent of micro, 56 per cent of small, and 71 per cent of medium employers).

TPR's director of auto-enrolment, Darren Ryder, adds that the time burden of duties per month is "typically no more than two hours per month" according to its initial survey conducted in spring 2017.

Room for improvement

Despite the policy being a success, the industry is in agreement that a combined contribution of 8 per cent is not enough to secure savers an adequate income in retirement. The PLSA is one of several voices in the industry calling for the equalisation of employer/employee contributions, with a target of 12 per cent combined contribution.

"We believe that employers can cope with increasing contributions if the government adopts proposals we've previously suggested, which would see a very gradual increase in contributions," Peaple says.

"To help ensure savers have the best chance of enjoying a comfortable retirement we outlined in our *Hitting the Target* report proposals that minimum contribution levels for automatic enrolment need to raise from 8 per cent of band earnings to 12 per cent of total salary between 2025 and 2030, with at least 50 per cent of this coming from employers."

It also seems that employers themselves would support a small increase to their contribution. Recent research by the Association of Consulting Actuaries found that employers would support a contribution rate of 4 per cent employer/4 per cent employee, whilst larger employers were willing to contribute 5 per cent. However, this still falls short of the 'golden' 12 per cent target, so it remains to be seen whether there is support for anything that could achieve this.

Not everyone in the industry is of the opinion that minimum contributions should be increased. However, Hargreaves Lansdown senior analyst, Nathan Long, recently likened auto-enrolment to a "cheap balloon at a kid's party", in that it gets better the more you inflate it, "but at some point it cannot take it anymore".

Long warns that this month's rise could impact savers and employers more than the April 2018 rise. "It's widely expected that opt-out rates will remain low this time round, however this is not quite that simple. Since auto-enrolment was introduced, 10 million employees have been auto-enrolled into pensions, but around 11.5 million were already in a pension.

"Many existing schemes already had contribution structures that required payments of at least 5 per cent, but far fewer paid 8 per cent contributions, so this latest increase will impact on more people."

In addition, Sackers associate director Ferdinand Lovett notes that not only could a further rise in contribution rates run the risk of more members opting out, but some employers might also find the hikes difficult to sustain.

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"The government recently stated that it does not wish to force the pace of change in automatic enrolment, and that it wants to study the impact that the forthcoming DC contribution increases have on opt-out rates first. This seems sensible, as any plans for future increases would no doubt involve a careful balancing act," he explains.

"In the meantime, we expect discussion to continue around other potential changes, such as reducing the lower age limit from 22 to 18, removing the earnings trigger, and extending auto-enrolment to the self-employed."

Regulation

For employees, auto-enrolment is of course still optional, with the policy relying partly on people's inertia, in the hope that very few will actually opt-out – something that seems to be working well so far.

Employers, however, have to enrol their staff in a workplace pension; those that try and evade their duties face the wrath of the regulator. In reality, Ryder says that if the regulator finds an employer that is non-compliant, its case teams take a positive approach and work to help them.

"We know that most employers want to do the right thing for their staff and we are here to help, but we will take action where an employer is non-compliant to ensure staff receive the pensions they are due. If employers don't comply with all of their auto-enrolment duties, they face being fined at least £400. This can increase to up to £10,000 a day for large employers so the cost to a business can be substantial.

"If we have to take the next step and prosecute employers because of non-compliance this could result in them ending up with a sizeable bill from the court and a criminal conviction – as well as still having to become compliant."

The regulator has not been shy with its regulatory action. Its compliance and enforcement quarterly bulletin for October to December 2018 revealed it had issued 22,000 compliance notices in the final quarter of 2018. The figure was down on the previous quarter, but the regulator said it continues to use new approaches to "disrupt, deter and punish dishonest activity".

There have also been a number of stories in the press recently on cases in which employers, and others with responsibilities for workplace pensions, have been prosecuted by the regulator for failing to comply. An accounts manager for a chain of Indian restaurants was recently ordered to pay £5,000 to the regulator for attempting to conceal the fact that the restaurants had not enrolled their staff into a workplace pension.

In another example, an accountant was fined almost £7,000 for falsely telling TPR that one of his clients' staff, for which he acted on its behalf, had been enrolled into a pension scheme. It was the first time that TPR has prosecuted a third party, working on behalf of an employer, for this offence.

The regulator's action against non-compliant employers has the support of the PLSA, with Peaple stating: "Where employers have deliberately evaded their duties, there is clearly a case for the regulator to action." However, he points out that compliance is very high; TPR's most recent figures show that compliance with the law is above 95 per cent.

From a legal perspective, whilst Lovett notes that having an effective regulation and enforcement regime is an "essential component", he believes the legislation is "overly complex". He adds that there are many "procedural hurdles to overcome, making it all too easy for an employer to unwittingly trip up". Therefore, he would welcome any scope for simplifying the procedural steps, for example at the next statutory review in 2020.

For now, employers will have to navigate the current processes in order to comply. Ryder's words for any employers that think they can get away with not complying: "Put simply, don't," he says.

"Our systems highlight cases of non-compliance for us to investigate and we remain committed to tackling those who are snubbing the law. There is guidance on our website and we also have people on hand to offer employers and advisers help on how to comply with their automatic enrolment duties. If you fail to become compliant, or try to hide the facts from us, you should be prepared to be prosecuted."

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