Regulatory intervention report

issued under section 89 of the Pensions Act 2004 in relation to
Johnsons Shoes Company ('Johnsons')

May 2017

The Pensions Regulator

Background

Johnsons had an automatic enrolment staging date of 1 May 2014, which was the date their automatic enrolment duties started to apply. They were due to complete their declaration of compliance – where an employer confirms to us that they've met their duties – by 30 September 2014, but failed to meet the deadline. As a result, we couldn't be satisfied they had met their automatic enrolment duties by enrolling all eligible staff into a pension scheme from the staging date, paying contributions into it, and writing to staff explaining how automatic enrolment affected them.

We had regularly attempted to communicate with Johnsons to educate and enable them to meet their duties, but their lack of action led us to use a number of our enforcement powers. When we issued them with a Fixed Penalty Notice (FPN) they finally began to communicate with us and took some steps to meet their duties. However, despite our ongoing support and assistance, Johnsons remained non-compliant and we then issued them with an Escalating Penalty Notice (EPN).

Illustrated summary



£400
FPN paid



£2,500
amount EPN increased per day



£2,000
cost of court fees



£40,000
total EPN paid

Regulatory action

When Johnsons first asked us to carry out a review of the FPN, they said that pressures of work were to blame for not meeting their automatic enrolment duties. We do not consider this to be a reasonable excuse, as we'd sent Johnsons several reminders in the 12 months before the date their duties began to apply and they'd had significant time to prepare. After the unsuccessful review request, Johnsons paid the fine, began to engage with us and took some initial steps to comply. However, despite the ongoing support we offered, Johnsons remained non-compliant and we therefore issued an EPN on 9 November 2015. This EPN warned Johnsons that if they didn't meet the requirements of a Compliance Notice (CN) issued on 30 April 2015 by 7 December 2015, they would be fined £2,500 per day. This accrual rate was based on the number of workers in Johnsons' PAYE scheme. The CN had set out the steps Johnsons were required to take by 7 December to comply with their duties, which included a requirement to provide us with evidence that they had done so. As Johnsons remained non-compliant, the penalty began to accrue on 8 December 2015.

After receiving the EPN, Johnsons began to communicate with us more regularly and we were able to advise them on what they still needed to do. The EPN accrual was stopped on 23 December 2015 once Johnsons had completed a declaration of compliance, they had provided the appropriate evidence of compliance, and we were satisfied that a system to allow the backdating of contributions was in place. The EPN eventually amounted to £40,000.

Johnsons wrote to us saying they would not pay the fine. We treated this as a request to review the EPN but, because we received it outside of the 28 day time period allowed for requesting a review, and there were no exceptional circumstances for the delay included in the application or any real grounds against our having issued it, we declined to conduct a review and the EPN remained in force and payable. Johnsons also made an out of time appeal to the First Tier Tribunal which was struck out because the Tribunal no longer had any jurisdiction.

We sent debt reminder notices and a letter advising that if they didn't pay the fine, we would take civil recovery action through the courts. Johnsons failed to pay, so we lodged a money claim in the County Court to recover the debt.

Outcome

Johnsons entered a defence against the proceedings which essentially challenged our power to issue the EPN in the first place. Because of this, we made an application to the court to strike out the defence because it displayed no reasonable grounds of appeal. We also stated that it was an abuse of process because the correct way to challenge the EPN was through a review request to us, and then to the First Tier Tribunal. Johnsons did neither within the prescribed timeframe.

After receiving our application to strike out their defence, Johnsons paid the fine in full, including the £2,000 court fee we had to pay to start the claim. This eventual co-operation allowed us to withdraw the claim. Johnsons are now compliant with their automatic enrolment duties and the staff in their pension scheme are in the same position as they would have been had Johnsons automatically enrolled them on the staging date.

Our approach

This case illustrates the need to engage early with us where we have identified non-compliance. Johnsons' 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 Johnsons acted quickly, a £40,000 fine, court action and a £2,000 court fee could have been avoided. We welcomed Johnsons' eventual co-operation, even at this late stage, as it prevented a lengthy court process which could have resulted in them being liable for further costs.

To be sure that employers have complied with their automatic enrolment duties, we need to see a completed declaration of compliance and, when requested, specific evidence that the steps stated in the CN have been completed. Where this is the case, as it was here, it's not enough for the employer to simply tell us they are compliant – they need to be able to prove it by providing the evidence we have requested.

In cases where an employer has not understood their duties or has been unable to comply, we will work with them to try and achieve compliance. Employers experiencing challenges in meeting their automatic enrolment duties should contact us as early as possible to discuss their situation. However, if an employer has chosen to ignore their duties, we will use all the powers available to us where necessary to enforce compliance, make sure employers comply with their duties and meet our statutory objectives.

Our overall approach is always to educate and enable employers to comply with the legislation. We are focused on maximising employer compliance and ensuring that workers get the pensions contributions they are entitled to. Our automatic enrolment compliance and enforcement strategy and policy set out our objectives and regulatory approach and can be viewed at www.tpr.gov.uk/compliance.

Timeline of events

1 May 2014: Johnsons' staging date

30 Sept 2014: Johnsons fail to complete their declaration of compliance

30 April 2015: CN issued requiring the declaration of compliance to be completed by 29 June 2015

3 July 2015: FPN issued for failure to comply with the CN with deadline for payment and to complete the declaration of compliance by 30 July 2015

30 July 2015: Johnsons request a review on grounds that they did not complete their automatic enrolment duties due to excessive workloads. We decide to uphold the FPN and amend the penalty payment and CN deadline to 18 Sept 2015

25 Sept 2015: Johnsons pay the £400 FPN but still do not comply with the CN

9 Nov 2015: EPN issued for continuing failure to comply with the CN of 30 April 2015

23 December: Johnsons provide requested evidence and EPN stops accruing

The regulator's consideration and approach to individual cases is informed by the specific circumstances presented by a case, not all of which are referred to or set out in this summary report.

This summary report must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Employers and other parties should, where appropriate, seek legal advice on the facts of their particular case.

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