

Regulatory intervention report

issued under s89 of the Pensions Act 2004 in relation
to Swindon Town Football Company Limited

April 2016

The Pensions
Regulator

Background

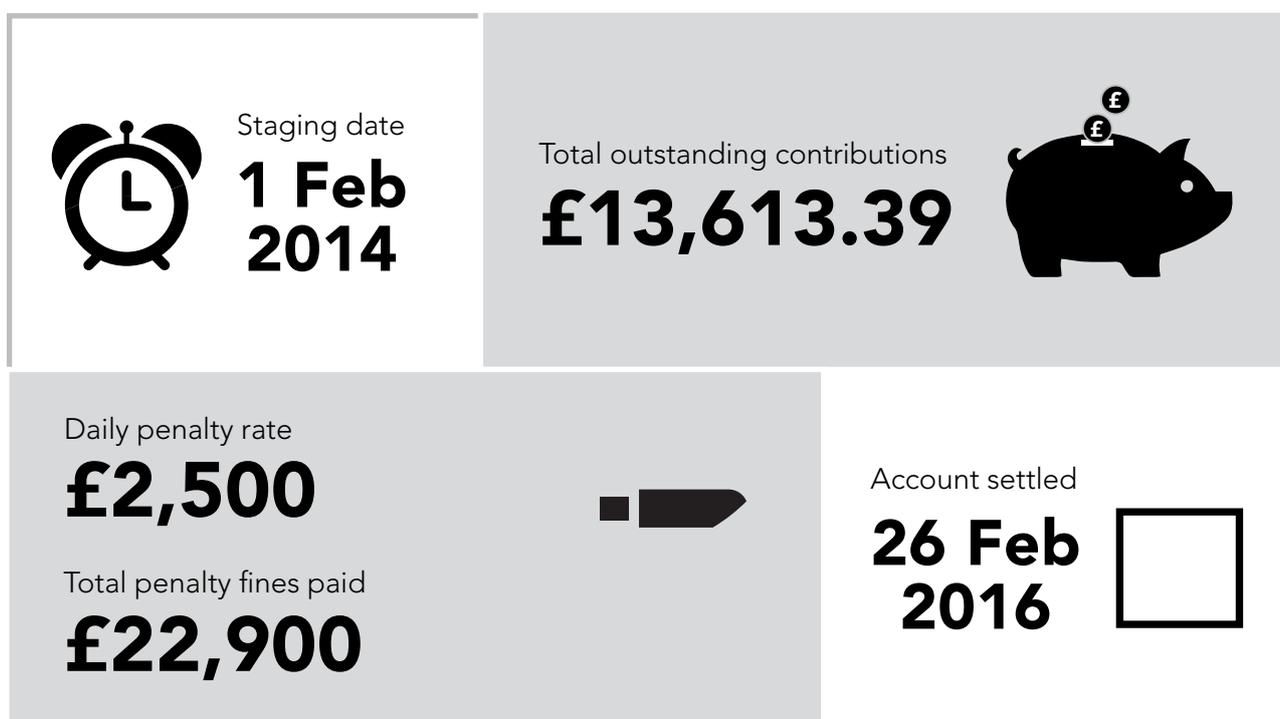
Swindon Town Football Company Limited (STFC) had a staging date of 1 February 2014. This was the date when automatic enrolment started to apply to them. STFC was due to complete its Declaration of Compliance, indicating it had complied with its employer duties, by 1 July 2014.

STFC failed to put eligible staff into a pension scheme from their staging date, pay contributions or write to staff explaining how automatic enrolment affected them. The company also failed to complete the Declaration of Compliance.

Our initial attempts to educate and enable STFC to meet its duties were unsuccessful and this resulted in a number of our powers being used. When the company was issued with an Escalating Penalty Notice (EPN), it started to engage with us and steps were taken to comply with its duties. Further enforcement action was taken to make sure the missing pension contributions were paid to the provider.

In this case, we applied a variety of enforcement options. We will use all the powers available to us to make sure employers comply with their duties and to ensure that we meet our statutory objectives.

Illustrated summary



Regulatory action

STFC was issued with a compliance notice on 18 August 2014 directing it to automatically enrol staff and pay contributions but failed to comply by the deadline of 17 October 2014. As a consequence, we issued a £400 Fixed Penalty Notice (FPN) which the company failed to pay. An EPN was issued on 20 January 2015 as the compliance notice still hadn't been complied with, informing the club that, if it did not comply within a 28-day period, it would be fined at the rate of £2,500 per day (the accrual rate based on the number of workers in STFC's PAYE scheme).

STFC then made contact with us and we provided guidance to the company on what it needed to do. The escalating penalty was stopped on 26 February 2015 once STFC had completed a declaration of compliance, provided supporting evidence and assured us that backdated contributions would be paid within two weeks. However, we subsequently received a late payment report from the pension provider that confirmed no pension contributions had been made, including back payments owed.

In response to a request from the company to review the EPN, we wrote to STFC explaining that the request was received outside the statutory 28-day period, and asked the company to get in touch urgently to discuss the outstanding pension contributions.

With no payments forthcoming, on 12 June 2015 an Unpaid Contributions Notice was issued requiring STFC to make the payments within 28 days. No response was received to this notice, and as a result we conducted an inspection on STFC, during which the company agreed to take specific action to fulfil its duties.

Despite initial progress, liaison with the pension provider revealed that some contributions were still outstanding. As a consequence, STFC was issued with a second EPN on 17 December 2015 requiring the missing contributions to be made by 28 January 2016. However, the provider informed us on 18 January 2016 that the contributions had been paid up so no penalty accrued.

The following page shows the full timeline of events.

Timeline of events

1/7/14: STFC didn't complete their Declaration of Compliance.

18/8/14: Compliance Notice served on STFC. Declaration remained incomplete by deadline.

28/10/14: Fixed Penalty Notice served. Minimal correspondence from STFC.

£400 fine

20/1/15: Escalating Penalty Notice issued.

STFC then made contact with us and we provided guidance to the company on what it needed to do. However they were still not fully compliant and the Declaration remained incomplete.

18/2/15: Escalating Penalty Notice starts to accrue.

£2,500 fine a day

26/2/15: Escalating Penalty Notice accrual stopped as STFC had completed their Declaration of Compliance and a spreadsheet covering the backdated contributions had been provided. They also informed us that backdated payments would be made within two weeks.

16/3/15: STFC requested review of Escalating Penalty Notice.

23/3/15: Late payment report sent to us from provider, informing us that STFC hadn't made any contributions to the scheme including backdated payments.

17/4/15: We confirmed EPN review couldn't go ahead as past the deadline. STFC was asked to make contact with us as a matter of urgency to discuss the outstanding contributions.

12/6/15: Unpaid Contributions Notice issued, directing the company to comply.

22/9/15: Inspection carried out by us. After the inspection a letter was sent to STFC confirming the agreed actions.

17/12/15: Further Escalating Penalty Notice issued for unpaid contributions.

18/1/16: Provider informed us STFC had brought all outstanding contributions up to date and because STFC had complied with the EPN, the penalty accrual did not start.

Outcome

The total amount of outstanding contributions that STFC paid to their pension provider was £13,613.39. Payments for all the back contributions up to December 2015 were made in three instalments between 15 and 19 January 2016.

Data on the staff who were due pension contributions for January 2016 was uploaded to the pension provider and paid on 26 February. This brought their account fully up to date.

As a result of our intervention, employees of STFC who were eligible for automatic enrolment were in the same position they would have been had STFC automatically enrolled them on their staging date.

The penalty fine of £22,900, which included the £400 FPN, was settled in full on 16 February 2016.

This case illustrates the need to engage early with us where we have identified non-compliance. STFC's 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. In respect of STFC's automatic enrolment duties we issued a Compliance Notice, a FPN and an EPN. In respect of the failure to pay the pension contributions due, we issued an unpaid contributions notice and an EPN, and conducted a section 74 inspection. Had STFC responded to our initial contact and taken action quickly, £22,900 of penalty fines could have been avoided.

Our approach

Our overall approach is to educate and enable employers to comply with the legislation.

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 who are struggling to meet their automatic enrolment duties should contact us to discuss their situation.

We are focused on maximising employer compliance and ensuring that workers get the pension contributions they are entitled to. If an employer has chosen to ignore their duties, we will use our powers where appropriate to ensure compliance.

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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Swindon Town Football Company

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