

## **Automatic enrolment – addendum**

### **Background**

We recently issued a briefing note in respect of your responsibilities in relation to automatic enrolment of your members. Subsequent to this, we have received a number of queries on the subject of exclusions to auto-enrolment responsibilities for those who have previously opted not to remain a member of their scheme. These queries appear to flow from an answer given by The Pensions Regulator (TPR) at a national conference. Not knowing exactly how the question was posed to TPR, we can not put their answer (or seeming contradiction to the legislative position) in context – and it would not be fair to make assumptions. Nonetheless, we have set out our position on this and another query raised below.

### **Our understanding**

Our view is that the legislation covering the exclusion - for those who have previously opted out of the police schemes - from being auto-enrolled at your staging date is clear. The relevant legislation is reproduced below for information. [Our addenda in red.]

#### **The Occupational and Personal Pension Schemes (Automatic Enrolment) Regulations 2010**

##### **5C Former members [As inserted by SI 2015/501 from 1 April 2015.]**

(1) This regulation applies where a person (P) is a jobholder and-

(a) P ceased to be an active member of a qualifying scheme because of an action or omission by P or an action by the employer at P's request; or [Intentional omission to (3).]

(3) Where this regulation applies in relation to the jobholder mentioned in paragraphs (1) or (2)-

(a) during the period of 12 months beginning with the date that jobholder ceased to be an active member or gives notice, sections 3(2)\* and 5(2)\* of the Act [Pensions Act 2008] are to be read as if for "must" there were substituted "may"; and [As per our briefing note.]

(b) after the expiry of that period, section 3(2) of the Act does not apply. [As per our briefing note.]

\*Sections 3 and 5 are auto-enrolment and re-enrolment respectively.

Regulation 5C(1) effectively covers ALL previous optants-out from the police schemes. It is not further qualified in any way, the single requirement having been (in this case) the "action by P" of opting out and thereby ceasing to be an active member; there is no differentiation as to whether they subsequently received a refund from the Authority or are entitled to benefits within the scheme.

Under the scheme regulations, officers in the 2015 scheme and your direct civilian employees are contractually enrolled upon commencing their employment and can not opt out prior to their first day of membership as they are not in a scheme from which such an election would be valid – i.e. it can only have effect upon their first day of active membership.

However, there will be cases where the individual makes an election to opt out of their scheme which is acted upon before any contributions are deducted (i.e. within their initial payroll period); this does not affect the fact that they were an active member of the scheme and have taken an action not to remain so (and indeed have you at their request) as per Reg. 5C(1), above.

Consequently, it is our opinion that those who have opted out of the scheme(s) previously and received a refund (or never had contributions deducted from their initial pay period) do not have to be automatically enrolled, although you may choose to do so if that opting out occurred within twelve months of your staging date.

Another query has been raised in respect of civilian “contractors” used by Authorities and what pension provisions apply. Other than to state that in no circumstances can these be entered into the police pension schemes, we can not advise as to what provisions you should make. It is up to individual Authorities to satisfy themselves of what (if any) employment relationship exists between the contractor and the Authority and place them into an appropriate scheme if such a relationship exists. Further guidance is contained in the detailed guidance for employers at:

<http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-1.pdf>

We must state at this point that all of the above, and our earlier briefing note on auto-enrolment, are Kier’s understanding of the provisions and exemptions which currently apply in relation to auto-enrolment. It is not intended to be, nor should it be construed as, an authoritative statement of law or of the responsibilities of your Authority. If you are in any doubt as to whether your actions are compliant, the matter should be raised with your own legal advisors and/or The Pensions Regulator.