Enrol with the punches

Clients who employ care or support staff directly will have pension obligations under the new auto-enrolment scheme, and professional deputies have a key role in advising them on compliance. ***Jane Bennett*** *and* ***Sean McSweeney*** *explain*

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The UK pension landscape is changing at a fast pace in the wake of the Pensions Act 2008. Workplace pensions reform, usually known as 'auto-enrolment' (AE) is, without a shadow of a doubt, the most fundamental change to UK pensions law ever made. The idea was devised by the last Labour government, but it has cross-party support. The largest private sector employers began their AE processes in October 2012. The AE stage will be complete by the end of 2017, by which time all employers in the UK will have complied with their AE duties.

Reforms are being brought in because the UK is facing an unprecedented retirement savings crisis. There are three main reasons for this.

First, the population is ageing. When the state pension was first introduced in 1908, life expectancy was 63 years. Now, life expectancy increases by one day for each week that we live. For example, 10 million people alive in the UK today can expect to live to age 100. This means there is a much longer period of retirement to be funded.

Second, the birth rate is too low to support the 'baby-boomers', who are now starting to retire. That means that the UK has a proportionately smaller workforce going forward, compared with an ageing, retired / retiring population.

Third, over the last 30 years, we have become a nation of poor savers, in comparison to our European neighbours. Work-based pension savings have been in particular decline for years.

> *Deputies need to be aware of the implications of getting AE wrong. For persistent non-offenders, there is an escalating penalty, up to £10,000 per day*

It is a stated aim of government to change us from being a nation of borrowers to a nation of savers, and to increase the household savings ratio to 12% by 2020. This would bring us more in line with our European neighbours. If we do nothing, it is projected that by 2050, the UK could be paying 100% of every penny we earn as a country, just to support our ageing population. Something had to be done to address this issue, and AE is key to the solution.

Between now and 2017, employers will be required to devise their own AE plan and follow due process in line with the regulatory framework that has been set out by, and is monitored and enforced via, the Pensions Regulator (PR).

WHAT DOES AN EMPLOYER HAVE TO DO?

AE duties lie squarely with employers. Effectively, employers must:

- meet their duties by a date specific to them (their "staging date");
- have a qualifying workplace pension scheme in place – one which meets certain criteria (many schemes already in place will not meet this test);
- assess their workforce to identify which of three different groups they fit into, based on age and income level (see below for more details);
- auto-enrol certain workers into a pension scheme, and potentially enrol others at their request;
- pay contributions; and
- keep good records and inform the PR how they have met their duties.

In addition to the key requirements above, employers must have the infrastructure in place to keep records and provide them to the PR when required to do so.

Worker assessment

One key action for employers is to assess their workers in order to clarify which level of AE will apply to each worker. There are three possible categories: eligible jobholders; non-eligible jobholders; and entitled workers. The figure right outlines the process for worker assessment.

WHAT DOES THIS MEAN FOR COURT OF PROTECTION DEPUTIES AND THEIR CLIENTS?

Where a client directly employs carers (that is, not via an employing agency or care provider company), it is highly probable that they will have AE obligations to meet. On a practical level, most, if not all, clients or, where appropriate, their families, will expect their deputy to know about AE and provide them and the carers with both a clear explanation of its implications, and necessary support throughout the AE process. The deputy will also need to provide support and information to payroll and / or HR providers. In cases where a trust

is involved, the trustees will also need to be aware of their employer-related duties where relevant. Where the trustee is an employer, they may have direct AE duties to meet.

WHAT DO DEPUTIES NEED TO DO NOW?

AE is a complex area, and is likely to be a new one for most deputies. In order to provide seamless service, and avoid passing on to the clients the costs associated with getting to grips with the changes, the deputy would be well advised to seek specialist advice to ensure compliance with the regulations. As most clients are likely to employ relatively few carers, it is unlikely that many will reach their staging date before mid-2015. However, the PR recommends that employers give themselves up to 12 months before staging to complete their planning. Chase de Vere's recommendation is that deputies should consider AE implications now, and in particular:

- understand their clients' staging dates;
- understand the likely costs for clients, both in terms of contributions and compliance;
- for new personal injury / clinical negligence claims, ensure AE costs are taken into account;
- understand, as far as possible in advance of annual budgeting, the impact of AE costs on monthly cashflow and investment strategy; and
- consider the client's current employment structure of care teams, and investigate potential alternatives.

Quite aside from the new challenges deputies will face in setting up their AE process for clients, deputies will need to be aware of the ongoing costs to the client in implementing AE, and seek to minimise those. They could, for example, look to create an AE framework which can be used and / or adapted for each of their deputyship clients, without reinventing the wheel in each case.

There is no doubt that AE will be a major challenge for deputies and their clients, but with careful planning and the right support, it can be made as pain-free as possible.

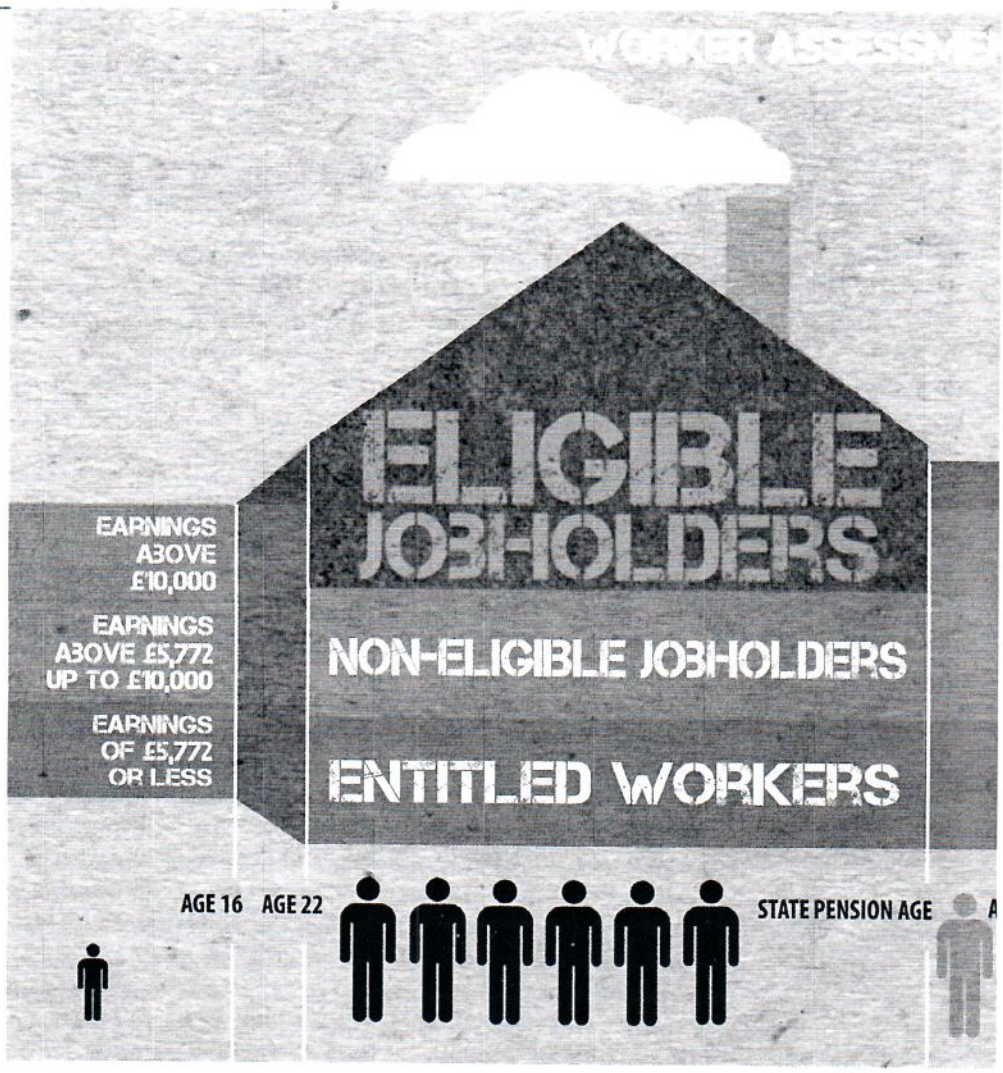
WHAT ARE THE PENALTIES FOR GETTING AUTO-ENROLMENT WRONG?

Deputies need to be aware of the implications of getting AE wrong, as there are fines involved. The first stage would be a warning, via a compliance / unpaid contribution notice. If the employer remained non-compliant, the second stage would be a fixed penalty of £400 – a 'wake-up call' for those not yet realising the importance of compliance. And for persistent non-offenders, there is an escalating penalty, up to an eye-watering £10,000 per day, as follows:

- for employers employing one to four workers: £50 per day;
- for five to 49 workers: £500 per day;
- for 50 to 249 workers: £2,500 per day;
- for 250 to 499 workers: £5,000 per day; and
- for 500 workers or more: £10,000 per day.

If the deputy does not advise the client about their obligations and the client faces any of these penalties, the deputy could face a reprimand from the Court of Protection, including the court potentially calling in the security bond if there is a serious breach of the deputy's duties amounting to negligence.

The message to deputies is clear: act now!



If you want to know more…

- … about the auto-enrolment scheme for law firms as employers, follow the link below for exclusive access to the Law Management Section's article on the scheme, by Georgina Beechinor. The article appeared in the February 2014 edition of *Managing for Success*, the Section's magazine, which is sent to all Section members quarterly.

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