



Guidance on completion of the report of suspected non-remittance

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Introduction

This guidance document has been drafted to assist you when making a report to the Pensions Authority (the Authority) of suspected non-remittance of employee pension and/or personal retirement savings account (PRSA) contributions and non-payment of employer pension and/or PRSA contributions. The circumstances of each case are unique, and the report and guidance cannot cover every eventuality. The Authority's objective is to protect the interests of employees linked to occupational pension schemes, trust retirement annuity contracts (trust RACs) and PRSAs, and to secure compliance without recourse to legal action. However, enforcement action will be taken where necessary.

In order for the Authority to investigate allegations of deduction, non-remittance, and non-payment, it is important that it has supporting documentation to substantiate the allegations. This format will help to achieve consistency of approach in how reports are submitted to the Authority. The information and documentation required are outlined in the 'Completion of the report form' section, appended to this document.

Timeframe for reporting

There is a limitation imposed by statute with respect to the time within which an offence can be prosecuted. This will not necessarily prevent the Authority from making enquiries, but it may be prevented from initiating a summary prosecution under the Pensions Act, 1990, as amended (the Act), due to the lapse of time. It is therefore imperative that where there is a suspicion of non-remittance or non-payment of contributions that this is reported to the Authority as soon as practicable. The Authority considers that in general this should be no later than three months after the first incidence of non-remittance or non-payment. However, prior to making a report to the Authority, all avenues should be exhausted by you with regard to issuing contribution reminders and warning letters to the employer and the trustees. Signed and dated copies of these reminders should be retained and forwarded to the Authority along with the completed report form. Note that the general three-month rule should be disregarded if there are repeated instances of remittance of employee contributions and/or payment of employer contributions outside the statutory deadline.

Trustee obligations in relation to remittance of contributions

Pursuant to section 59(1)(a) of the Act, trustees are required to ensure insofar as is reasonable that the contributions payable by the employer and the members of the scheme, where appropriate, are received and that the sums are invested, in

accordance with section 59(1)(b), within 10 days of the latest date on which those sums should have been remitted or paid by the employer under section 58A(1) or (2).

Pursuant to section 59(1)(aa) of the Act, trustees are required to ensure that the contributions to a trust RAC are invested, in accordance with section 59(1)(b), within 10 days of the end of the month in which they are received.

Employer obligations in relation to remittance of contributions

Pursuant to section 58A of the Act (occupational pension schemes/trust RACs) and section 121 of the Act (PRSAs), the employer must ensure that all contributions deducted from the employees' pay are remitted to the trustees/PRSA provider within 21 days of the end of the month in which the contributions were deducted. Employer contributions payable in respect of each employee must be paid within 21 days of the end of the month in which they became payable (DC schemes only).

Other obligations apply but are not outlined here.

Guidance on completion of the report form is provided below.

Completion of the report form

You are required to complete each section within the report and send the completed and signed report to the Supervision and Enforcement Unit of the Authority by post to Verschoyle House, 28-30 Lower Mount Street, Dublin 2 or by email to: supervisionreports@pensionsauthority.ie

1. Contact details

(a) Person completing the report

The person completing the report must provide their contact details and the report must be signed by that person and dated (see Section 7). If relevant information becomes available at a later date, you are required to send it to the Authority as soon as possible – it is important that the Authority is made aware of any new developments in the case in a timely manner.

(b) Life office/administrator associated with the scheme/trust RAC/PRSA

Insert the contact details of the life office or administrator where indicated.

(c) Broker/intermediary associated with the scheme/trust RAC/PRSA

Insert the contact details of the broker or intermediary where indicated.

2. Scheme/trust RAC/PRSA details and employer details

It is important that all information requested is given. The principal employer details must be the most up-to-date details you have.

3. Preliminary contribution analysis

The preliminary contributions analysis section gives us an indication of the amount of contributions which may not have been remitted and how many employees may be affected. We may request more detail at a later date.

4. Further information required

(a) Explanation of background of issue

You should outline the details of when and how you became aware that there is, or might be, a case of non-remittance of contributions, explaining why you believe that

an issue exists. You should indicate whether any employee or any other person has complained. If possible, and if the complainant is agreeable, please include their contact details.

All possible legitimate reasons for non-receipt of contributions should be investigated before the report is completed and submitted to the Authority. Examples of where a report should not be made to the Authority include: the ceasing of contributions is due to the employee leaving service, the employee is no longer contributing, the employee is taking unpaid leave, or the scheme/trust RAC is frozen.

(b) Possible re-direction of contribution payment to another party

You should investigate the possibility that contributions were paid to an intermediary, trustee or third party and confirm that you have done this. The possibility that contributions could have been paid to another department within your organisation should also be investigated and closed off before making a report.

(c) Arrears accumulated as a result of an error

If the employer attempted to pay the contributions and the monies were returned as a result of being deemed 'unallocated' or if the arrears were accrued as a result of a direct debit error this should be stated in the report along with any action that was taken by the administrator to rectify this issue.

(d) Evidence that contributions were deducted from employee's salary

You should indicate whether you have requested or received any evidence that contributions have been deducted from the employee's salary e.g., their payslip. To successfully prosecute an employer for non-remittance of employee contributions, the Authority ultimately requires payslip/payroll documentation showing that a pension deduction was made during the relevant period. To commence an investigation, the Authority requires, insofar as is possible, that you establish that deductions have actually been made. Copies of this documentation should be submitted with this report.

(e) Reason for non-remittance/non-payment and whether there are any mitigating factors

The employer should be asked to explain the reason for failing to make the payment. Any submissions received from employers/trustees in relation to their business and/or personal circumstances should be brought to the attention of the Authority in this report.

(f) Has the employer offered any solution to pay outstanding contributions? If yes, give details

You should describe whether the employer is offering to pay the outstanding contributions and give details as to how this arrangement will be implemented and any steps taken as at the date of the report.

(g) Associated employers/pension schemes/trust RACs/PRSAs linked to this employer

This information is necessary to investigate whether the issue of non-payment is wider.

5. Notifications regarding non-remittance

Communications to relevant parties will depend on how the scheme/trust RAC or PRSA is administered. All avenues should be exhausted by issuing contribution reminders and warning letters to the employer and trustee. You should endeavour to ensure that all communication is relevant, signed and dated. Guidance is set out below that should be followed in this regard:

Occupational pension scheme/trust RACs

Trustee communication

The trustee is responsible for acting in the best interests of the members of the scheme/trust RAC and for ensuring that contributions due to the scheme have been received and are invested. The trustees should be notified in a timely manner that the contributions have not been received. This affords them the opportunity to take steps to remedy the situation.

Employer communication

The employer should be notified of non-receipt of contributions and warned of the consequences of non-remittance. The employer's obligations should be highlighted, and you should advise that you are/will be issuing a report to the Authority. Copies of this signed and dated communication must be submitted with this report.

Separate communication is required even where the trustee is the employer – their responsibilities under the Act are different and this allows them the opportunity to take remedial action and/or to explain the position as trustee. You should advise that you are/will be issuing a report to the Authority. Copies of this signed and dated communication must be submitted with this report.



Employee communication (PRSA)

The contributor should be notified that contributions have not been paid and that their employer has been notified. The employee should be asked to respond to confirm if deductions continue to be made from their pay and asked to supply evidence of deductions in the form of payslips. Copies of this signed and dated communication must be submitted with this report.

Third-party communication

Third parties involved with the scheme, such as the financial adviser or broker, should be contacted about suspected non-remittance and asked whether they have any relevant information which would explain or give clarity to the issue.

(h) Other information

It is important to give all relevant information that you are aware of whether or not it has been requested above.

6. Checklist for enclosures to the Authority

Include a 'yes' or 'no' answer as to whether you have included the relevant copy documents as listed here.

7. Declaration

Your report must be signed and dated before being submitted to the Authority.

Note on sections 83 and 84 of the Act

Compulsory reports under section 83 of the Act must be made by relevant persons e.g., PRSA providers, trustees, insurance intermediaries, scheme/trust RAC actuaries, key function holders (the full list is given under section 82) when they become aware of possible material misappropriation or fraudulent conversion of the resources of a scheme/trust RAC or PRSA. These reports are compulsory and there is a statutory requirement that such a report be made in writing. Failure of a relevant person to make a compulsory report to the Authority in circumstances where they were aware of material misappropriation or fraudulent conversion of the resources of a scheme/trust RAC or PRSA is itself a breach of the Act and may render that relevant person liable to prosecution.

Voluntary reports can be made by any person regarding concerns they may have about the state and conduct of a scheme/trust RAC or the state of a PRSA. There is no statutory requirement to put such a report in writing. However, where possible the 'whistle-blower' should put their concerns in writing to the Authority. Where a person makes a report to the Authority in good faith, section 84 of the Act provides that no duty to which the person may be subject shall be regarded as contravened and no liability or action shall lie against the person in any court for so doing.

PRSA providers should note that section 83(2C) of the Act requires them to make a report in writing as soon as is practicable where they have reason to believe that an employer has failed or is failing to comply with the provisions of section 121 and section 83(2D) specifically requires them to make a report in writing as soon as is practicable where they know that an employer has failed to remit one or more contributions on behalf of employees.