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What’s the time, Mr Wolf?

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Dinner time! Or rather, it’s time for our near annual reminder of the perils of ignoring The Pensions Regulator (TPR). We know by now that it really does bite!

In 2017 we wrote about the first high profile uses by TPR of its power to prosecute individuals for failing, without reasonable excuse, to comply with an order to provide information to TPR when required to do so under section 72 of the Pensions Act 2004. In the first case, TPR secured convictions against a firm of solicitors and its managing partner; in the next, they secured a conviction against the Chief Executive of a charity.

In 2018 we wrote about the TPR’s prosecution of Dominic Chappell (of BHS fame). TPR had issued 123 section 72 notices in connection with its investigation into BHS. Mr Chappell was prosecuted for failing to comply with the section 72 notices and for the unauthorised disclosure of “restricted information” under section 82 of the Pensions Act 2004.

Now, in September 2019, TPR has launched two prosecutions in a week against company directors for failing to comply with section 72 notices. In the second such case, the accused is a director of a pension trustee company which acts as trustee of at least 16 pension schemes and is under investigation for investments made in another company owned by the accused.

This all aligns well with the “tougher” part of TPR’s “clearer, quicker, tougher” message announced in its 2018-2021 Corporate Plan. An interesting aspect though is TPR’s choice of target in these cases. The fact that, in the first case, TPR targeted both the law firm *as an entity* and its managing partner individually shows that the power extends to legal persons generally and not just natural persons. Hence why we have warned that professional advisers need to comply without delay when faced with section 72 notices, even if they themselves are not under investigation. By contrast, in all the other cases, TPR has targeted a private individual when corporate targets (including, in the most recent case, a professional trustee company) were evidently available. Trustees, trustee directors and professional trustees should reflect on this choice of target bearing in mind that: (a) breaching section 72 is a criminal offence; (b) it is punishable by an unlimited fine; and (c) no indemnity or insurance policy will operate to cover any fine that is levied. This is quite apart from the potentially calamitous reputational damage that such a prosecution / conviction could bring.

TPR shed its sheep’s clothing a number of years ago – the number of fines and prosecutions listed in its recent compliance and enforcement bulletins bears witness to this. It seems appropriate on

Pensions Awareness Day to remind the industry that, whatever goes wrong, ignoring TPR adds to the problem.

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