

Regulatory intervention report

Issued under s89 of the Pensions Act 2004 in relation to two cases:

- ▶ Ashley Wilson Solicitors LLP and Anthony Ashley Wilson
- ▶ Patrick John McLarry

Background

This report details two cases involving failures to comply with information notices issued under section 72 of the Pensions Act 2004.

We have the power under section 72 to require pension schemes, employers and third parties to provide us with information and documents relevant to our statutory functions. Information notices are a key enforcement tool for TPR.

Neglecting or refusing to provide information or produce documents required in an information notice without a reasonable excuse is a criminal offence under section 77(1) of the Pensions Act 2004. Failure to produce the required documents in these cases resulted in us bringing charges against a firm and two individuals.

Our approach to criminal offences is set out in our Prosecution Policy at www.tpr.gov.uk/strategy. Prosecution is one of a range of enforcement powers available to us. Like our other powers, we use prosecution in a proportionate and risk-based way to maximise compliance. When deciding whether to prosecute, we apply the same two-stage test as other public authorities. We first consider whether there is enough evidence to give a realistic prospect of conviction, and then we consider whether a prosecution would be in the public interest. Where the offence is one of failing to hand over documents or provide information, there is always a strong public interest in bringing a prosecution because obstruction of our investigations hinders our ability to protect pension scheme members.

Regulatory action – Ashley Wilson Solicitors LLP

Ashley Wilson Solicitors LLP is a solicitors firm and Anthony Ashley Wilson is the senior partner at the firm.

We issued an information notice under section 72 of the Pensions Act 2004 to the firm to obtain conveyancing documents relating to a residential property. These documents were required for our investigation into a suspected pension scam. The notice was issued on 26 June 2015 and required the documents to be produced by 30 June 2015.

Anthony Ashley Wilson handled the matter personally but, despite many chaser emails, telephone calls and letters, the firm did not produce the documents to us until 17 March 2016, when TPR staff attended the firm's offices with a search warrant.

It was clear that the firm neglected to produce the documents when required to do so under the information notice. While there was no explicit refusal to produce the documents, the fact that they were not produced, and over such a long period, can be viewed as a refusal.

The defendants' initial excuse for the delay in producing the documents was that they were stored offsite, but this had been resolved by August 2015 and did not explain the continued failure to comply.

Because of this failure to produce documents, we considered whether it would be appropriate to use our prosecution powers in accordance with our Prosecutions Policy.

We apply our risk-based approach and consider each case on its particular facts. In this case, we considered the offence as being at the top end of the scale of seriousness for offences of this kind.

This was for a number of reasons:

- ▶ The failure to produce the documents continued for a period of more than eight months.
- ▶ The failure persisted despite numerous demands to produce the documents.
- ▶ The failure was deliberate – this was a case of refusal rather than mere neglect.
- ▶ A higher standard of behaviour is expected here, as solicitors are subject to strict professional and ethical rules.

At court, Ashley Wilson Solicitors LLP argued that it was oppressive and an abuse of process for us to prosecute them as well as the senior partner Anthony Ashley Wilson. The district judge rejected that argument. The information notice was addressed to the firm, and it was the firm that was responsible for compliance. Our Prosecution Policy makes it clear that, where an offence is committed by an organisation and an individual, we may prosecute both, if this is in the interests of justice and will maximise the deterrent effect.

Timeline of events

26 June 2015: Information notice issued by TPR

30 June 2015: Deadline for responding

7 July 2015: Email from firm saying they had been unable to recover documents from storage

14 August 2015: Email from firm saying documents had been recovered and were being copied

12 November 2015: Phone conversation in which firm asked for seven more days to produce documents

17 March 2016: Search warrant executed and documents retrieved

15 August 2016: TPR applies for court summonses for Anthony Wilson and Ashley Wilson Solicitors LLP

7 December 2016: Both defendants appear at Brighton Magistrates' Court and plead not guilty

4 April 2017: Both defendants appear at the same court for trial, but change their plea to guilty (after legal argument, in the case of Ashley Wilson Solicitors LLP)

Case outcome

Mr Wilson and Ashley Wilson Solicitors LLP pleaded guilty to refusing to provide documents required under section 72 of the Pensions Act 2004 without a reasonable excuse, which is an offence under section 77 of the Act. The district judge ordered Mr Wilson to pay a £4,000 fine, £7,500 costs and a £120 victim surcharge. He ordered Ashley Wilson Solicitors LLP to pay a £2,700 fine, £2,500 in costs and a £120 victim surcharge.

Regulatory action – Patrick John McLarry

Patrick John McLarry was director of a company called VerdePlanet Limited, which acted as trustee of a workplace pension scheme called the Yateley Industries for the Disabled Limited Pension and Assurance Scheme.

In light of concerns about the management of the scheme, TPR appointed an independent trustee to manage the scheme in the company's place in September 2013.

Investigation of the activities of VerdePlanet Ltd by the independent trustee revealed that the company had arranged for the scheme to make a loan to a company called Plane Sailing Sales Limited. This led to funds being transferred from the scheme to an account in the names of the defendant and his wife, with the Crédit Agricole Bank in France.

As part of our investigation, we wanted to learn how the funds had been used, and wished to obtain copies of bank statements for the account from 28 May 2012 onwards.

We issued an information notice under section 72 of the Pensions Act 2004 on 1 May 2015. The deadline for compliance was 22 May 2015. On 4 May 2015, Mr McLarry asked for an extension until 31 July 2015, which was granted. The documents were not provided by this revised deadline.

Patrick McLarry put forward various legal reasons why he should not be required to give us the bank statements. He claimed they were legally privileged because they might be used by him in future proceedings, that disclosing them would breach French privacy laws, and that the contents might be self-incriminating.

We explained to him in detail why his excuses were misconceived, including providing evidence from an expert in French law, but he insisted he did not have to hand over the documents and took the matter to trial. The district judge rejected all of his claims and concluded that he did not have a reasonable excuse for his failure to comply with the information notice.

Timeline of events

6 September 2013: In light of concerns about the management of the scheme, TPR appoints an independent trustee to manage the scheme in the company's place

1 May 2015: Information notice issued by TPR with deadline of 22 May 2015

4 May 2015: Defendant asked for an extension until 31 July 2015

23 July 2015: Replacement information notice issued by TPR with deadline of 31 July 2015

16 January 2017: TPR applies for a court summons for Patrick McLarry

15 February 2017: Patrick McLarry appears at Brighton Magistrates' Court and pleads not guilty

5 April 2017: Patrick McLarry is tried at the same court and found guilty

Case outcome

Mr McLarry pleaded not guilty to refusing to produce, without a reasonable excuse, documents required under section 72 of the Pensions Act 2004, but he was convicted of the offence and was ordered to pay a £2,500 fine, £4,000 in costs and a £120 victim surcharge.

The week after his conviction, Mr McLarry sent us the bank statements we were seeking. If he had not done so, he would have continued to commit the criminal offence and could have faced further prosecution.

General

Our power to require information and documents from pension schemes, employers and third parties under section 72 of the Pensions Act 2004 is an important enforcement tool. If we request information in this manner, it is important to provide the information to us and avoid legal action, which could result in a fine and serious reputational damage.

In these cases, it was not the detail in the papers we had requested that was the trigger for prosecution activity; it was the failure to provide them to us under law. Had they been produced by the required deadline, the firm and individuals would have avoided court appearances, fines and reputational damage.

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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Ashley Wilson Solicitors LLP and Anthony Ashley Wilson;
Patrick John McLarry

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