

	<p>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>Protector Lamp Pension Scheme (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM 7101</p>
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1. The Determinations Panel (the “Panel”, on behalf of the Pensions Regulator, met on 1 July 2009 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 25 June 2009. The Pensions Regulator considered under section 10(2) of the Pensions Act 2004 that the exercise of a reserved regulatory function was appropriate.

2. **Matter to be determined:**

The Panel was asked to consider whether to appoint an independent trustee to the Scheme pursuant to Section 7 of the Pensions Act 1995. In addition, the Panel was asked to issue a vesting order pursuant to Section 9 of the Pensions Act 1995.

3. **Parties**

The Warning Notice specified the following parties as being directly affected by the regulatory action outlined in the Warning Notice:

- (a) David Mather (“Individual Trustee”)
- (b) Julie Mather (“Individual Trustee”)
- (c) Robert Graham Trustees Limited (“Independent Trustee”)
- (d) Jill Barnes (“Beneficiary”)
- (e) Joyce Barnes (“Beneficiary”)
- (f) Sean McParland (“Nominated Trustee”)
- (g) Protector Holdings Limited (“Employer”)

4. **Decision**

The Panel granted the application for an order to be issued under section 7(3)(d) of the Pensions Act 1995. The Panel determined that an order be issued in the following terms:

The Pensions Regulator hereby orders that:

- a) Sean McParland of Finance House, 17 Kenyon Road, Lomeshaye Estate, Nelson, Lancashire, BB9 5SP be appointed as trustee to the Scheme with effect from the date of this order.

- b) This order is made because the Pensions Regulator is satisfied that it is necessary to do so in order to protect the interests of the generality of the members of the scheme pursuant to Section 7(3)(d) of the Pensions Act 1995.
- c) The powers and duties exercisable by Sean McParland shall be to the exclusion of all other trustees of the schemes pursuant to Section 8(4)(b) of the Pension Act 1995.
- d) Sean McParland's fees and expenses shall be paid partly by the employer and partly out of the resources of the scheme, pursuant to Section 8(1)(c) of the Pensions Act 1995 as amended by section 35 of the Pensions Act 2004.
- e) This order will take immediate effect on the date of this order; and may be terminated at the expiration of 28 days notice from the Pensions Regulator to the trustees, pursuant to Section 7(5)(c) of the Pensions Act 1995.

The Panel also granted the application for an order to be issued pursuant to Section 9 of the Pensions Act 1995. The Panel determined that an order be issued in the following terms:

- f) the Pensions Regulator hereby orders the vesting in, and the assignation and transfer to, Sean McParland of Finance House, 17 Kenyon Road, Lomeshaye Estate, Nelson, Lancashire, BB9 5SP, as trustee of the Protector Lamp Pension Scheme, appointed under Section 7 of the Pensions Act 1995 by the Pensions Regulator, of all property and assets of the above scheme, heritable and moveable, real and personal, of every description and wherever situated;.
- g) this order is made by the Pensions Regulator pursuant to Section 9 of the Pensions Act 1995, as amended;
- h) this Order will take immediate effect on the date of this order.

5. **Submissions of the parties**

In making the determination the Panel took into account the evidence and submissions included in the Warning Notice. It also took into account the responses and submissions to the Warning Notice sent by:

- (a) David Mather
- (b) Julie Mather
- (c) Protector Holdings Limited

There was no evidence in dispute by the parties. The beneficiaries (Jill Barnes and Joyce Barnes) confirmed in response to a request for clarification from the Panel that they agreed with the proposal that Sean McParland should be appointed by the Panel to the Scheme as a new Independent Trustee.

6. Details of scheme and employer

The application was in relation to an open Small Self Administered Scheme with four beneficiaries.

7. Background to application

- a) The Scheme has four beneficiaries, two of whom are also individual trustees and the only directors of the employer.
- b) The Scheme's administration is frustrated due to differences between the individual trustees and the independent trustee. The resulting administrative issues include:
 - the calculation of pensioner entitlements;
 - the payment of certain pensions;
 - the management of the Scheme's main investment (a property of which the employer is the letting agent);
 - the management of the Scheme's bank accounts;
 - the appointment of Scheme advisers and administrators;
 - the administration of the Scheme in accordance with its Trust Deed and Rules; and
 - the attempted removal of the Independent Trustee
- c) The Individual Trustees and the Independent Trustee agree that there are differences between them.
- d) In an effort to address the Scheme's frustrated administration, the Regulator invited the Individual Trustees (who also represent the Employer) to support the Regulator's appointment of a trustee to the Scheme on certain terms. The Individual Trustees supported the Regulator's application on the terms put forward and given in the Warning Notice.
- e) The Independent Trustee and the Beneficiaries were all aware of the Regulator's intention to seek to appoint a trustee.
- f) At the Regulator's invitation the Individual Trustees put forward the Nominated Trustee (Sean McParland) as their candidate.
- g) The Nominated Trustee is also a member of the Regulator's Trustee Register.

- h) The Nominated Trustee is prepared to accept this appointment.
- i) The Regulator has no objection to the Nominated Trustee being appointed.

8. **Statutory issues**

In making their decision the Panel had regard to the objectives of the Regulator as set out in section 5 of the Pensions Act 2004 and to the matters mentioned in Section 100, as set out in **Appendix 1**.

9. **Reasons for decision**

The Panel considered that it was appropriate to appoint a new Independent Trustee to the Scheme under Section 7(3)(d) of the Pensions Act 1995 to protect the interests of the generality of members and for the new Trustee to be granted exclusive powers under Section 8(4) of that Act on the following grounds:-

- (a) The differences between the Individual Trustees and the current Independent Trustee, had frustrated the administration of the Scheme, in particular in relation to the issues outlined in paragraph 7b above and this represented a risk to the interests of the members.
- (b) All the Directly Affected Parties, with the support of the Pensions Regulator, were agreed that it was appropriate to appoint a new Independent Trustee with exclusive powers to resolve the stalemate over the administration of the scheme

The Panel further considered that it was reasonable to appoint Sean McParland as the new Independent Trustee since he was acceptable to all the Directly Affected Parties and to the Pensions Regulator and was on the Regulator's list of Registered Trustees.

The Panel also concluded that it was reasonable to issue an order under Section 9 of the Pensions Act 1995 vesting in, and assigning and transferring to the said appointed trustee all property and assets of the scheme, given that the management of the scheme's main asset was one of the issues on which there were differences of view between the existing trustees.

10. Recommendations to the Pensions Regulator

The Panel recommends to the Pensions Regulator that they should invite the new Independent Trustee to report back to them within eight weeks of his appointment on the nature of the problems relating to the issues listed in paragraph 7b above and on how he proposes to resolve them. The Panel also considers it important that the new Independent Trustee should keep both the Trustees and the other Scheme beneficiaries informed of his findings and his intended actions.

11. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the parties against this decision.

Signed: ***Geoffrey Fitchew***

Chairman: Geoffrey Fitchew

Dated: 17 July 2009

Section 5 of the Pensions Act 2004
Regulator's objectives

- (1) The main objectives of the Regulator in exercising its functions are –
 - (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
 - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),
 - (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2), and
 - (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.

- (2) For the purposes of subsection (1)(b) the members of personal pension schemes within this subsection are-
 - (a) the members who are employees in respect of whom direct payment arrangements exist, and
 - (b) where the scheme is a stakeholder pension scheme, any other members.

- (3) In this section-

“stakeholder pension scheme” means a personal pension scheme, which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (c.30)(register of stakeholder schemes);

“work-based pension scheme” means-

 - (a) an occupational pension scheme,
 - (b) a personal pensions scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
 - (c) a stakeholder pension scheme.

Section 100 of Pensions Act 2004
Duty to have regard to the interests of members etc

- (1) The Regulator must have regard to the matters mentioned in subsection (2) –
 - (a) when determining whether to exercise a regulatory function –
 - (i) in a case where the requirements of the standard or special procedure apply, or
 - (ii) on a review under section 99, and
 - (b) when exercising the regulatory function in question.
- (2) Those matters are –
 - (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
 - (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

Referral to the Pensions Regulator Tribunal

You have the right to refer the matter to which this Determination Notice relates to the Pensions Regulator Tribunal (“the Tribunal”). Under section 103(1)(b) of the Act you have 28 days from the date this Determination Notice is given to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Determination Notice. The Tribunal’s address is:

The Pensions Regulator Tribunal
15-19 Bedford Avenue
London
WC1B 3AS
Tel: 020 7612 9649.

The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and the Tribunal Rules.

You should note that the Tribunal rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to The Pensions Regulator. Any copy reference notice should be sent to:

Determinations Support
The Pensions Regulator,
Napier House
Trafalgar Place
Brighton
BN1 4DW.
Tel: 01273 627698