

	<p>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>XXXXXX XXXXXX XXX XXXXXXXXX Pension Scheme (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM9083</p>
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1. The Determinations Panel, on behalf of the Pensions Regulator, met on 29 March 2010 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 10 March 2010. 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 function the Panel was asked to exercise was the application made by the Regulator for an order to be issued under section 7(3)(c) of the Pensions Act 1995 to appoint a trustee.

3. **Parties**

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

- (a) Ms **XXXXXX XXXXXXXX**, trustee and member of the Scheme.
- (b) Mr **XXXXXX XXXXXXXX**, former trustee and member of the Scheme;
and
- (c) Legal and General, insurer of the Scheme

4. **Background**

(a) This is a small earmarked defined contribution scheme that was established in 1993 in order to provide benefits for Mr **XXXXXX XXXXXXXX** (“Mr **XXXXXX**”) and Ms **XXXXXX XXXXXXXX** (“Ms **XXXXXX**”) who are the only members. The principal employer **XXXXXX XXXXXXXX** Ltd, was dissolved on 23 September 2003. The Scheme has been in statutory wind up since 1999. Ms **XXXXXX** is the only trustee of the Scheme.

(b) Mr **XXXXXX** wishes to exercise his right under the scheme to bring his benefits into payment. For various reasons Ms **XXXXXX** appeared to be unwilling to execute the necessary release forms to allow Legal and General to take the necessary action to give effect to

this. No reason has been given for this which is appropriate within the terms of the trusts of the Scheme and the general law. There were other issues, unconnected with the scheme where Mr and Ms **XXXXXXX** did not agree and it was suggested that these were getting in the way of the proper administration of the Scheme.

- (c) Legal and General in the circumstances has requested the Regulator to appoint an Independent Trustee to the Scheme. Whilst the Regulator did not feel it appropriate to consider the merit of any disagreement between Mr and Ms **XXXXXXX** it did have an obligation to promote good administration of work based pension schemes and in all the circumstances considered it appropriate that an Independent Trustee be appointed. It was pointed out that the winding up of the Scheme could not be completed until the benefits due to both Mr and Ms **XXXXXXX** had been appropriately secured.

5. Decision

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

The Pensions Regulator hereby orders that:

- i. PAN Trustees Limited of Cumberland House, 35 Park Row, Nottingham NG1 6EE is hereby appointed as trustee of the **XXXXXXX** Pension Scheme ("the Scheme") with effect on and from 29 March 2010.
- ii. This order is made because the Pensions Regulator is satisfied that it is reasonable to do so, pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c);
- iii. The powers and duties exercisable by PAN Trustees Limited shall be to the exclusion of all other trustees of the Scheme pursuant to Section 8(4)(b) of the Pensions Act 1995.
- iv. PAN Trustees Limited fees and expenses shall be paid out of the resources of the Scheme pursuant to Section 7(5)(b) of the Pensions Act 1995
- v. This order:
 - (a) will take immediate effect on the date of this order;
 - (b) may be terminated, or the appointed trustee replaced, at the expiration of 28 days notice from the Pensions Regulator to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995.

6. 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) Ms **XXXXXXXX**
- (b) Mr **XXXXXXXX**

6. 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**.

7. Reasons for decision

The reasons given by the Panel for their decision were as listed below:

- (a) The Panel found that the trustee, Ms **XXXXXXXX**, was not dealing with the issues of the Scheme which required consideration in the way a trustee should. She appeared to be taking into account other issues, such as the divorce settlement, which were not relevant.
- (b) It is important that this scheme should be properly administered in the interests of all the members and that the trustee should consider the use and application of its assets in accordance with the terms of the applicable trusts and statutory and other principles applicable to the scheme and any trusteeship.
- (c) Accordingly it was essential to appoint an independent trustee who could and would do this.

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

Signed:

Chairman: Michael Maunsell

Dated:

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
 - (i) 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 Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”)

You have the right to refer the matter to which this Determination Notice relates to the Tribunal. Under section 103(1)(b) of the Pensions Act 2004 (“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 Tax and Chancery Chamber of the Upper Tribunal
15-19 Bedford Square
London
WC1B 3DN

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