

<p>The Pensions Regulator</p>	<p>DETERMINATION NOTICE under 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>T & S Heating Limited Retirement Benefits Plan (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM8307</p>
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1. The Determinations Panel (the “Panel”) on behalf of the Pensions Regulator, met on 31 August 2010 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 4 August 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 functions the Panel were asked to exercise were the applications made by the Regulator:

- (a) to appoint a Trustee to the Scheme under Section 7(3)(d) of the Pensions Act 1995 (“the 1995 Act”);
- (b) under Section 8(4)(b) of the 1995 Act to make provision for the powers or duties of a Trustee appointed under Section 7 of the 1995 Act to be exercisable to the exclusion of the Current Trustee if such an order is granted;
- (c) under Section 8(1)(a) of the 1995 Act to require that the Trustee appointed be paid fees and expenses by the Employer;
and
- (d) under Section 9 of the 1995 Act to make an order vesting any property in, or transferring property to, a Trustee appointed under Section 7 of the 1995 Act.

3. **Parties**

The Warning Notice specified the following parties at (a) to (c) as being directly affected by the regulatory action outlined in the Warning Notice. The Warning Notice did not include the party listed at (d).

- (a) T and S Heating Limited (“Employer”)
- (b) Mr Malcolm Theakstone (Current Trustee and Director of T and S Heating”)
- (c) XXXXXX – remaining scheme Member; and
- (d) Temple Trustees Limited as the newly appointed Trustee.

- (h) In view of the above the Regulator considers that the Current Trustee has not secured the proper use or application of the assets of the scheme as it has not applied the funds earmarked for XXXXXX towards the payment of his benefits in accordance with the scheme rules or his duty as Trustee.

5. Decision

- a) The Panel agreed that it was appropriate to make the following orders:
 - i. to appoint a Trustee under Section 7(3)(d) of the 1995 Act;
 - ii. under Section 8(1)(a) of the 1995 Act to provide for any fees and expenses of any Trustee appointed under Section 7 to be paid by the Employer;
 - iii. under Section 8(4)(b) of the 1995 Act to make provision for the powers or duties of a Trustee appointed under Section 7 of the 1995 Act to be exercisable to the exclusion of the other Trustees.
 - iv. Under Section 9 of the 1995 Act to make an order vesting any property in, or transferring property to, a Trustee appointed under Section 7 of the 1995 Act.

- b) The Pensions Regulator hereby orders that:

Appointment of Trustee under Section 7 of the 1995 Act

1. Temple Trustees Limited of Narrow Quay House, Narrow Quay, Bristol BS1 4AH is hereby appointed as trustee of the T & S Heating Limited Retirement Benefits Plan ("the Scheme") with effect on and from 1 September 2010.
2. 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:
 - i. to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d);
3. The powers and duties exercisable by Temple 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.
4. Temple Trustees Limited's fees and expenses shall be paid by the Employer pursuant to Section 8(1)(a) of the Pensions Act 1995.
5. This order:
 - i. will take immediate effect on the date of this order;
 - ii. 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.

Vesting Order under Section 9 of the 1995 Act

1. The Pensions Regulator hereby orders the vesting in, and the assignation and transfer to Temple Trustees Limited of Narrow Quay House, Narrow Quay, Bristol BS1 4AH, as trustee of the T & S Heating Limited Retirement Benefits Plan, 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.
2. This order is made by the Pensions Regulator pursuant to section 9 of the Pensions Act 1995, as amended.
3. This Order will take immediate effect on the date of this Order.

6. Submissions of the parties

In making the determination the Panel took into account the evidence and submissions included in the Warning Notice.

7. 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**.

8. Reasons for decision

- (a) Despite commencing the process for securing his benefits from the Scheme in September 2006 XXXXXX has still not received any payments of his benefits.
- (b) The Current Trustee has failed to respond to numerous written, telephone and email requests from Scottish Provident, XXXXXX, TPAS and the Regulator to sign the necessary forms.
- (c) Even though contact was made with a representative of the Current Trustee and a promise given from the Regulator not to proceed with this case if the necessary forms were signed, no signed forms were forthcoming.
- (d) For these reasons the Panel felt that the only way to secure XXXXXX benefits was for an independent trustee to be appointed and for the powers and duties of that trustee to be to the exclusion of the Current Trustee.

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

Signed: *Suzanne McCarthy*

Chairman: **Suzanne McCarthy**

Dated: 3 September 2010

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 sub (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 sub (1)(b) the members of personal pension schemes within this sub 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 -
- “stakeholder pension scheme” means a personal pension scheme, which is or has been registered under 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.

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 sub (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 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 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
45 Bedford Square
London
WC1B 3DN
Tel: 020 7612 9700

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 811852