

	<p>Special Procedure</p> <p>DETERMINATION NOTICE under Section 98(2)(a) of the Pensions Act 2004 (the “Act”)</p> <p>The Hugh Mackay Retirement Benefits Scheme (the “Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM 8515</p>
---	--	---

1. The Determinations Panel (the “Panel”), on behalf of the Pensions Regulator (the “Regulator”), met on 7 December 2009 to consider whether a trustee ought to be appointed to the Scheme with exclusive powers, pursuant to Section 7 of the Pensions Act 1995; a vesting order under Section 9 of the Pensions Act 1995 should be issued and if the use of the Special Procedure (the “Special Procedure”) was appropriate pursuant to Section 97 of the Act.

In summary the Panel determined that the use of the Special Procedure was appropriate, for the reasons set out in paragraph 6 below.

2. **Matter to be determined**

Pursuant to Section 97(2) of the Act the Panel was asked to use the Special Procedure, and therefore dispense with the giving of a warning notice, because there is, or the Regulator considers it likely, that if a warning notice were to be given there would be an immediate risk to:

- i. the interest of the members of the Scheme; or
- ii. the assets of the Scheme.

In addition the Panel was asked to issue an order under Section 7(3)(c) and 7(3)(d) of the Pensions Act 1995 to appoint a trustee to this Scheme if it was satisfied that it was reasonable to do so in order:

- i. to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c); or
- ii. otherwise to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d);

and for the powers or duties of any trustee so appointed to be to the exclusion of other trustees and for any fees and expenses of a trustee so appointed to be paid from the employer’s resources.

The Panel was also asked to issue a vesting order under Section 9 of the Pensions Act 1995 to vest the scheme property in any appointed trustee.

3. Directly affected parties

The following are the parties considered as being directly affected by the regulatory action as set out in paragraph 7 below.

- i. Mr Robert Angus Hill – employer-appointed trustee
- ii. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- iii. XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- iv. Mr Simon Christopher Ragg – member-nominated trustee
- v. Mr Nicholas Halton – member-nominated trustee
- vi. Chartpoint Limited – Principal Employer
- vii. Leathers LLP – accountants for Chartpoint Limited
- viii. Pi Consulting (Trustee Services) Limited

4. Details of Scheme and the principal employer

This is a closed defined benefit scheme with 460 members. The fund on the PPF basis was approximately £28million at 5 April 2007.

5. Background to application

The facts of the case as presented by the Regulator

- i. In October 2009, the Regulator received information
XX
XX
XX
XX
XXXXXXXXXXXX.
- ii. The Regulator subsequently established that the Scheme was an occupational defined benefit pension scheme which was founded in 1977. It has 460 members, assets of approximately £26 million and liabilities of approximately £25 million.
- iii. Chartpoint Limited (“Chartpoint”) is the Principal Employer of the Scheme. Mr Hill and XXXXXXXXXXXXXXX are the sole shareholders and directors of Chartpoint (whose Registered Office is located at Mr Hill’s residential address).
- iv. Independent investigations conducted by the Regulator supported the information received and have revealed concerning irregularities in the management of the Scheme’s assets. These require further investigation and are explained in further detail below.

6. Reasons for Decision

In making its 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**.

On the evidence before it, the reasons for the Panel's decision to grant the Regulator's application to appoint an independent trustee and to issue a vesting order were as given below.

- i. The Panel determined to exercise the function immediately because they were satisfied on the evidence presented that if a warning notice had been issued to affected parties there would have been an immediate risk to the scheme assets and to the interests of the scheme members. They were so satisfied because having regard to the ongoing pattern of behaviour in relation to scheme assets and the transferring of monies, there would be a consequent risk **XX** if the trustees had become aware of possible action.
- ii. The Panel noted the fact that Brighton and Hove Magistrates' Court had considered it appropriate to issue Warrants to enable the Regulator's case team to enter two properties on 8 December 2009 and seize relevant documents.
- iii. On the evidence presented the pattern of behaviour by the trustees and the actions they had taken had exposed the scheme funds to consequent risk and had resulted in some **XXXXXXXXXXXX** losses to the detriment of scheme members.

7. Decision

A. Appointment of independent trustee

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

1. Pi Consulting (Trustee Services) Limited of The White House, 57-63 Church Road, Wimbledon, London SW19 5SB is hereby appointed as trustee of the Hugh Mackay Retirement Benefits Scheme (the "Scheme") with effect on and from 7 December 2009.
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 secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c);
 - ii. otherwise 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 Pi Consulting (Trustee Services) 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. Pi Consulting (Trustee Services) Limited's fees and expenses shall be paid out of the resources of the Scheme pursuant to Section 8(1)(b) of the Pensions Act 1995 and an amount equal to the amount paid out of the resources of the Scheme by virtue of Subsection 8(1)(b) is to be treated for all purposes as a debt due from the employer to the trustees of the Scheme pursuant to Section 8(2) of the Pensions Act 1995 as amended by Section 35 of the Pensions Act 2004.
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.

B. Vesting order

1. The Pensions Regulator hereby orders the vesting in, and the assignation and transfer to, Pi Consulting (Trustee Services) Limited of The White House, 57-63 Church Road, Wimbledon, London SW19 5SB, as trustee of the Hugh Mackay Retirement Benefits 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.
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.

8. Important Notices

This Determination Notice is given to you under Sections 98(2)(a) of the Act. The following statutory rights are important.

9. Representations to the Pensions Regulator

Take notice that you have the opportunity to make representations to the Pensions Regulator which will make up your defence to the allegations.

In your reply to this notice, please say whether you accept that the Determination Notice is accurate and if you intend to oppose it. You may believe that:

- the determination is wrong in some particular detail; or
- the Regulator should not have used its power in this case.

In any of these circumstances you will need to provide evidence to support your argument.

10. Compulsory review

This determination is subject to a compulsory review by the Regulator under Section 99 of the Act. Any representations received will be considered by the Regulator before a determination is made on review. This review must be determined as soon as reasonably practicable.

The Regulator's powers on a review under this Section include power to:

- i. confirm, vary or revoke the determination;
- ii. confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination;
- iii. substitute a different determination, order, notice or direction;
- iv. deal with the matters arising on the review as if they had arisen on the original determination, and
- v. make savings and transitional provision.

You will be informed of the outcome of the review by way of a "Final Notice".

11. Referral to the Pensions Regulator Tribunal

After the compulsory review, you will have the right to refer the matter, to which this Determination Notice relates, to the Pensions Regulator Tribunal ("The Tribunal") under Section 99(7) of the Act. The Final Notice will give more details regarding referrals to the Tribunal.

Signed: *John Scampion*.....

Chairman: **John Scampion**.....

Dated: 10 December 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
 - (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.