

<p>The Pensions Regulator</p>	<p>Special Procedure DETERMINATION NOTICE under Section 98(2)(a) of the Pensions Act 2004 (the “Act”)</p> <p>Tudor Capital Management Limited</p>	<p>The Pensions Regulator case ref:</p> <p>TM8648</p>
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1. The Determinations Panel (the “Panel”), on behalf of the Pensions Regulator (the “Regulator”), met on 4 October 2011 to consider whether the use of the Special Procedure (the “Special Procedure”) was appropriate pursuant to Section 97 of the Act.

2. **Matter to be determined:**

Pursuant to Section 97(2) of the Act the Panel was asked to use the Special Procedure to suspend Tudor Capital Management Limited (the corporate trustee) (“TCML”) from being a trustee of trust schemes in general immediately and for the Regulator to dispense with the giving of a Warning Notice to the parties and an opportunity to submit representations in respect of the 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 interests of the members of the Schemes; or
- ii the assets of the Schemes involved.

In addition, if the suspension was granted, the Regulator also requested that a further order be made under Section 4(6) of the 1995 Act for matters arising out of the corporate trustee’s suspension.

3. **Directly Affected Parties**

The following are the parties considered as being directly affected by the regulatory action as set out in point 5 below:

- i Tudor Capital Management Limited (corporate trustee)
- ii Peter Spencer Bradley (director of corporate trustee)
- iii Alison Bradley (director of corporate trustee)
- iv Andrew Meeson (director of corporate trustee)
- v The co-trustee members and employers of the Directly Affected Schemes as set out below.

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4. The Application

Procedural Background

- i The Panel has previously suspended TCML from exercising the functions of a trustee of trust schemes in general, pursuant to Section 4(1)(aa) of the 1995 Act pending consideration being given to the institution of proceedings against it for an offence involving dishonesty or deception. The relevant history of this matter is set out below.
- ii The original application to suspend TCML was made by the Regulator to the Panel on 8 April 2010 under the Special Procedure provided for at Section 97(2) of the 2004 Act.
- iii The Regulator was informed in early 2010 that both HM Revenue and Customs (HMRC) and the Financial Services Authority (FSA) had a concurrent interest in TCML. HMRC suspected that TCML and its directors were involved in criminal activity relating to the pensions for which TCML were trustee and administrator. In particular, HMRC was concerned that TCML had appeared to obtain substantial amounts of tax relief (over £4.5 million) from HMRC on contributions allegedly made to those pension schemes.
- iv By letter dated 8 April 2010, HMRC confirmed to the Regulator that, as part of an ongoing criminal investigation, HMRC had executed search warrants at the business premises of TCML and the arrests of

the Directors had been authorised on suspicion of offences under
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- v The Regulator also noted that on 8 April 2010, the Crown Prosecution Service (CPS) confirmed that their Proceeds of Crime Unit had applied for, and obtained, a worldwide all assets restraint order against Peter Spencer Bradley (one of the Directors) on the basis that His Honour Judge Pontius of the London Central Criminal Courts was satisfied that there were reasonable grounds to believe that Mr Bradley had benefited from criminal conduct.
- vi On 8 April 2010 the Panel determined to suspend TCML as trustees of trust schemes in general pursuant to Section 4(1)(aa) of the 1995 Act, for a period of twelve months until 7 April 2011.
- vii Following a Compulsory Review, the suspension was upheld on 23 June 2010.
- viii By letter dated 28 February 2011, HMRC confirmed to the Regulator that the criminal investigation was ongoing into TCML and relevant persons, and that additional arrests had been made in November 2010 and January 2011. At that time a draft report had been submitted to the CPS and enquiries were ongoing.
- ix By letter dated 3 March 2011 the CPS confirmed to the Regulator that Mr Bradley's assets remained restrained as at that date and the relevant order would remain in force until such time as Mr Bradley's criminal case had been considered by the courts. In the event that Mr Bradley is convicted, the restraint order will remain in force until any confiscation order has been paid in full.
- x In March 2011 the Regulator issued a warning notice seeking to extend the period of suspension by a further period of twelve months pursuant to Section 4(2) of the 1995 Act, on the basis that the HMRC investigation was still ongoing and consideration was still being given to the institution of proceedings against TCML.
- xi This extension was granted by order dated 5 April 2011, extending the period of suspension until 8 April 2012.

Recent Developments

- xi The Regulator has been informed by the CPS that proceedings for dishonesty have now been instituted against the Directors.
- xii The suspension order made against TCML (which prevented TCML from being a trustee of trust schemes in general until 8 April 2012) was made on the basis that HMRC was, at that time, giving

consideration to the institution of proceedings against TCML for an offence involving dishonesty or deception.

- xiii The Regulator has now been informed that summonses have been issued by the Birmingham Magistrates Court and have been served on parties (including the Directors) who are to be charged with the offences detailed below. The Panel noted that there was no communication from HMRC in the evidence before the Panel.
- xiv By virtue of the summonses, the Directors (namely, Andrew Meeson, Alison Jane Bradley and Peter Spencer Bradley) are charged with the following offences and are due to attend the Birmingham Magistrates Court on 31 October 2011:
 - Conspiracy to Cheat the Commissioners of Her Majesty's Revenue and Customs, contrary to Section 1(1) of the Criminal Law Act 1977;
 - Using a False Instrument, contrary to Section 3 of the Forgery and Counterfeiting Act 1981.

TCML

- xv The Regulator noted that at the time of this application TCML remained registered as trustee of twenty-five small occupational pension schemes as listed above.

5. Special Procedure Application

- i By virtue of the institution of proceedings against the Directors for an offence involving dishonesty and deception, and by virtue of the fact that the Regulator would have the power to suspend the Directors as trustees of trust schemes pursuant to Section 4(1)(b) of the 1995 Act if they were trustees individually, the Regulator submitted that the requirements of Section 4(1)(b) and (f) of the 1995 Act are met, and that TCML should be suspended from acting as trustees of trust schemes in general until the criminal proceedings against the Directors have concluded.
- ii The Regulator's submission was that on the *institution* of proceedings, the existing suspension under 4(1)aa of the 1995 Act would lapse. As soon as the Directors became aware of this, as they would once they had been charged and the summons served, an immediate risk to the interest of the scheme members would arise. The Regulator therefore submitted that it was necessary to effect a new suspension immediately and without notice. For this reason the application was heard under the Special Procedure provisions provided for at Section 97(2)(c) of the Act.

6. Decisions

The Panel agreed that it was appropriate to make the following orders:

A. Suspension Order

1. With effect on and from 4 October 2011 and pursuant to Section 4(1)(f) and (b) of the Pensions Act 1995, The Pensions Regulator hereby suspends Tudor Capital Management Limited from acting as a trustee of trust schemes in general, in light of the institution of criminal proceedings with the Birmingham Magistrates Court in September 2011 relating to dishonesty offences.
2. This order has the effect of prohibiting Tudor Capital Management Limited during the period of the suspension, from exercising any functions as a trustee of trust schemes in general, pursuant to Section 4(3) of the Pensions Act 1995.
3. This order will remain in effect until such time as the proceedings now instituted are concluded, pursuant to Section 4(2)(b) of the Pensions Act 1995.

B. Section 4(6) Order

1. During the duration of Tudor Capital Management Limited's suspension as a trustee it is authorised and entitled to execute any instrument the sole purpose of which is to effect its removal or resignation as a trustee of any trust scheme.
2. This order will take immediate effect on the date of this order.

7. Reasons for decisions

In making its decisions the Panel had regard to the matters mentioned in Section 100 of the Act, as set out in **Appendix 1**, and to the objectives of the Regulator as set out in Section 5 of the Act.

On the evidence before it, the reasons for the Panel's decision were:

- i The Panel was satisfied, based on the information provided to the Regulator relating to summonses issued by the Birmingham Magistrates Court, that proceedings for dishonesty had been instituted against the Directors. There was clear written evidence that informations for the summonses had been placed before the magistrates and that this, in the Panel's view, constituted the institution of proceedings.

- ii In deciding whether the offences involved dishonesty or deception the Panel took account of the nature of the alleged offences and specifically that the alleged evidence related to the Directors' role as fund trustees and provided sufficient doubt as to TCML's ability to be a fit and proper trustee.
- iii In deciding whether to suspend TCML the Panel had regard to the interests of the members of the schemes listed above and the interests of TCML and its Directors. They considered the seriousness of the offences of dishonesty with which the Directors had been charged and the need for the members' interests to be protected. In weighing the interests of TCML and the Directors, the Panel took account of the fact that they had not appealed the suspension or submitted any representations to the compulsory review held on 23 June 2011, or the subsequent application for an extension of the suspension. The Panel considered that the interests of the generality of the members outweighed TCML's interests in this matter and that there should be no lapse in the suspension of TCML.
- iv The Panel were satisfied that the circumstances of HMRC's investigation of the offences had changed and that they were no longer considering the institution of proceedings but had taken the clear step of instituting proceedings. It was therefore in the Panel's view more appropriate that any suspension should be effected under the provisions of Section 4(1)(b) and (f) of the 1995 Act.
- v The Panel considered that there was certainly an arguable case that the earlier suspension had lapsed immediately on the institution of proceedings and the interests of scheme members would therefore be at risk from any action of the Directors if a further suspension were not put in place immediately. Moreover, as TCML had not made any representations as regards previous suspensions or extensions, there would not appear to be any material disadvantage to them by use of the Special Procedure. The Panel therefore agreed to make the decision using the Special Procedure under Section 97 of the Act.

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 Regulator which will make up your defence to the allegations in the 'Notice of Intention to exercise a Regulatory Function', and its exhibits, which accompany this Determination Notice.

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:

- i. the determination is wrong in some particular detail; or
- ii. 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 possible.

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 Tax and Chancery Chamber of the Upper Tribunal ("the Tribunal")**

After the compulsory review, you will have the right to refer the matter, to which this Determination Notice relates, to the Tax and Chancery Chamber of the Upper 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: 13 October 2011.....

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 member
- (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.