

<p>The Pensions Regulator</p>	<p>COMPULSORY REVIEW</p> <p>FINAL NOTICE</p> <p>pursuant to Section 99(4) of the Pensions Act 2004</p> <p>(“the Act”)</p> <p>TWM Pension Trust</p> <p>(the “Scheme”)</p>	<p>The Pensions Regulator case ref: C15903889</p>
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1. The Determinations Panel (“the Panel”) of the Pensions Regulator (“the Regulator”) has reviewed its determination made following a Special Procedure hearing on 13 June 2013 when xxxxxxxx xxxxxxxx xxxxxxxx xxxxx an independent trustee, Dalriada Trustees Ltd, was appointed with a vesting order.

Directly affected parties

2. The following parties are directly affected by this determination:

Martin Brown
The current trustee

Marley Administration Services Ltd
Scheme administrator

Turnberry Wealth Management Ltd
The employer

Margaret Brown
Co-director of TWM Ltd and trustee.

Margaret Cartwright
Employee and co-signatory to pension schemes

Dalriada Trustees Ltd
The new trustee

At the time of the initial special procedure hearing the Regulator did not know that Mrs Brown was also a trustee. She has, however, always been a directly affected party by virtue of her role as co-director of Turnberry Wealth Management Ltd.

Background

3. This is the compulsory review of the decision taken by the Panel on 13 June 2013 to xxxx xxxxx xxxxx xxxx appoint an independent trustee, Dalriada Trustees Ltd.
4. The decision taken at the special procedure hearing followed serious concerns being raised by the Regulator regarding the Scheme. xx xxxx xxxxxxxx xxxx xxxxxx xxxxxxxx xxx xxxxx xxxxxx xx xxxxxxx xxxxx xx xxxxx xxxxxxxxxxxxxx xxxxxxx. The Regulator was concerned that the Scheme displayed many indicators that it was being used as a vehicle for pension liberation fraud and at the special procedure hearing relied, in particular, on the following:-
 - i. Xxxx xxxxxxxxxxxxxx xxx xxxxxxx xxxxx xxxxxxxxxxx xxxxx xxxxxxx xxxxxx xxxxxxxxxxx xxxxxxx xx xxxxx;
 - ii. the fact that Mr Brown acted as trustee of the Scheme and as director of both the sponsoring employer and the administrator;
 - iii. the fact that the Regulator had received reports implicating the Scheme in suspicious activities and;
 - iv. a “Q&A document” found on the desk of xxxxxx xxxxxxx, who identified himself as being a ‘paraplanner’ employed by TWM Ltd. This document appeared to be a list of answers to common questions that might be raised by potentially transferring members and appeared to give an inaccurate answer regarding questions on tax penalties and transactions which may be unlawful under current legislation.
5. The Regulator also raised the following concerns:-
 - i. that the Scheme might be concentrating investment in high risk assets;
 - ii. that Mr Brown had sought to mislead the Regulator xxxxxxxxxx xxxxxxxxxx about the extent of his skill and knowledge by indicating, amongst other claims, that he had almost completed the trustee’s “toolkit”. The Regulator’s records indicated that Mr Brown had never had an online account that would have allowed him to access the toolkit;
 - iii. that Mr Brown might be in breach of registration requirements set out in s.62 of the Act;
 - iv. that there had been a breach of s255(1) of the Act relating to the requirements of trustees to limit their activities to providing retirement benefits.
6. Xxxx xxxxx xxxxx xxxxxxxxxxxxxx xxxxxx xxxxxxxxxx xxxxxx xx xxxxxxx x xxxxxx xxxxx xxxxxxx xxxxxxxxxx xxx xxxxx xx xxx xxxxx xxxxxxxxxx xxx xxxxx xxxxxxx xxxxxxxxxx xxx xxxxxxxxxxxxxx xxx xx xxxxxxxxxx xxxxxx xxxxxx . The Panel further noted the evidence that Mr Brown did not have the requisite standard of knowledge and understanding required of a trustee of an occupational pension scheme and the possibility that Mr Brown might be in breach of registration requirements.

Compulsory Review Determination

7. Having completed the compulsory review, the Panel determined to confirm the determination referred to in paragraph 1 above, and to confirm the Orders made on 13 June 2013 under sections x 7 - 9 of the Pensions Act 1995.
8. In reaching its decision, the Panel considered representations received from xxxxxx on behalf of Mr Brown, xxxxxx xxxxxx on behalf of Dalriada Trustees Ltd and from the Regulator's case team.

Reasons for Decision

9. The Panel gave careful consideration to the issues raised and had regard to the objectives of the Regulator as set out in Section 5 of the Act and to the matters listed in Section 100. It determined to uphold its previous determination for the following reasons.
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11. At the special procedure hearing, the Panel gave significant weight to the evidence of investments being made in assets inappropriate for an occupational pension scheme. At the time of the initial determination, there was limited evidence of specific investments in inappropriate, high-risk assets. The Panel noted that, following receipt of Dalriada's representations, there is further evidence in relation to the xxxxxx xxxxxx and xxx xxxxxx investments. From the Scheme bank statements, Dalriada have identified a payment to xxxxxx xxxxxx in an amount of £2,684,000 to the xxxxxx xxxxxx and of £125,000 to xxxxxx xxxxxx. Given these payments the Panel remained concerned both as regards whether there had been appropriate diversification of investments, and the lack of documentary evidence/investment advice in relation to these payments. xxxxxxxxxxxxxxxxxxxxxx xx xxxxxx xxxxxx xxxxxx xxxxxxxxxxxxxx xxxxxx xxxxxx xxxxxx xxxxxxxxxxxxxx xxx xx xxxxxxxxxxxxxx xxxxxx xxxxxxxxxxxxxx xxx xxxxxxxxxxx xxxxxxxxxxx xxx xxxxxx xxx xxx xxx xxxxxx xxxxxx xxxxxx xxx xxxxxxxxxxxxxx xxxxxx xxx xx xxxxxxxxxxxxxx xxxxxx xx xxx xxxxxxxxxxxxxx. The Panel noted that Mr Brown, has, xxxxxxxxxxxxxx xxx done nothing to allay concerns about the investment of the Scheme's assets and therefore the concerns relating to diversification and security of the investments remain.

12. In its initial determination the Panel was also strongly influenced by the evidence about pension liberation, which by its nature has the implication that trustee duties are not being complied with. Mr Brown's representations for the compulsory review disputed the relevance of evidence not directly relating to the TWM scheme. In the Panel's view, this evidence was relevant. XXXXXX xxx xxxxx xxxxx xxxxxxxx xxxxxxxx
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xxxxxxxxxxxxx xxx xx xxxxx xx xxxxxxx xxxxx xxxxxxx xxxxxxx. This was particularly so where there was no independent scrutiny of the trustee's actions and given the evidence submitted by the Regulator of a very large number of schemes administered by Marley Administration Services and which all have a limited number of scheme addresses, scheme trustees and employer addresses.
13. Similarly, the Panel was not prepared to ignore the evidence relating to xxxxx xxxxxxx Q&A document. The Panel was not convinced by Mr Brown's response that this document had no bearing on the scheme in question, given that xxxxx xxxxxxx identified himself as associated with TWM Ltd, and that Mr Brown is associated with all the schemes administered by Marley Administration Services.
14. Questions about Mr Brown's knowledge and understanding of the role of a pension fund trustee and about registration requirements were considered as additional matters supporting the Panel's decision to xxxxx
xxxx xxxxx xxxxx appoint Dalriada as trustee rather than as the primary reason for the decision. Mr Brown's representations regarding registration of the Scheme with TPR were accepted by the Panel. The Panel also noted Mr Brown's account of his interaction with the trustee toolkit, but was conscious that no evidence was submitted in support of this account. In the Panel's view the concerns about knowledge and understanding were wider, and some of those concerns had been reinforced by confusion in the deeds of the Scheme between the nature of occupational pension schemes and personal pension plans, by the absence of independent oversight of the activities of Mr Brown in his multiple roles, by the apparent absence of any business activity associated with the employer registered at that same address and by Mr Brown's incomplete account of the documentation held by the Scheme.
15. The issues raised in Mr Brown's representations relating to his authorisation by the FCA were noted but the Panel had made no presumption about the currency of Mr Brown's FCA authorisation at the special procedure stage.
16. The Panel was concerned that there may have been a breach of s.255 of the Act which requires schemes to limit activities to those relating to providing retirement benefits. The Panel noted that Mr Brown stated that he had fully complied with his obligations but, given the Panel's concerns regarding pension liberation, it was not in a position to say that there had

been no breach. In any event, breach of s.255 was not decisive in the Panel's decision to appoint Dalriada.

17. The Panel took note of the fact that it was now known that Mr Brown was not the sole trustee of TWM. Following both the representations of Mr Brown and Dalriada, it is clear that Mrs Margaret Brown is also a trustee.
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Appendix 1 to this Final Notice contains important information about the Directly Affected Parties' rights of appeal against this decision.

Chairman : Alasdair Smith

Date : 29 October 2013

Referral to the Tax and Chancery Chamber of the Upper Tribunal

You have the right to refer the matter to which this Final Notice relates to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”). Under Section 103 of the Act you have 28 days from the date this Final Notice is sent to you 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 Final Notice.

The Tribunal’s address is:
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 Panel Support
The Pensions Regulator,
Napier House
Trafalgar Place
Brighton
BN1 4DW

Tel: 01273 811852

A copy of the form for making a reference ‘Reference Notice (Financial Services)’ can be found at:

<http://www.tribunals.gov.uk/financeandtax/Documents/forms/FTC31.doc>