

	<p>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>The Tartan Company Pension Scheme (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM5046</p>
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1. The Determinations Panel, on behalf of the Pensions Regulator, met on 16 March 2009 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 10 February 2009. The Pensions Regulator considered under Section 10(2) of the Act that the exercise of a reserved regulatory function was appropriate.

2. **Matter to be determined:**

The function the Panel was asked to exercise was to determine whether to make an order to be issued under Section 11(1)(c) of the Pensions Act 1995 to authorise the wind up the Scheme, as requested in the application made by Alexander Forbes Trustee Services on 10 November 2008.

3. **Parties**

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

(a) Alexander Forbes Trustee Services Limited (the ‘Trustee’)

4. **Decision**

The Panel granted the application for an order to be issued under Section 11(1)(c) of the Pensions Act 1995. The Panel determined that an order be issued in the following terms:

The Pensions Regulator hereby:

1. authorises that the Tartan Company Pension Scheme be wound up as soon as is reasonably practicably possible after 16 April 2009 (that is twenty eight days from the date of this order) in accordance with Section 96(5)(a) of the Pensions Act 2004. This order is made because the Pensions Regulator is satisfied that it is necessary in order to protect the interests of the generality of the members of the Scheme that it be wound up pursuant to section 11(1)(c) of the Pensions Act 1995;

2. and authorises in accordance with section 11(4) of the Pensions Act 1995 that the Scheme be wound up subject to the following provisions:

the Scheme be wound up in accordance with the provisions of Sections 73-75 of the Pensions Act 1995 (as modified by the Occupational Pension Schemes (Winding Up) Regulations 1996) and any relevant provision of those regulations, or such other statutory provisions and regulations as may be in force from time to time and may be applicable to the winding up of the Scheme

5. Submissions of the parties

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

6. Details of scheme and employer

The Scheme is a defined contribution arrangement and is contracted in and paid up. There are nine members and as at 30 June 2008 the size of the fund was £38,355. Contributions were last paid into the Scheme in March 1992.

The Employer, Tartan Limited, was dissolved on 1 November 2000.

7. Background to application

- (i) The Scheme was established by the Employer on 18 September 1989. The Employer was placed into liquidation in 1993 and dissolved on 1 November 2000.
- (ii) The Scheme is governed by a Definitive Pension Trust Deed dated 8 March 1989.
- (iii) On 10 November 2008 the Trustee formally requested that the Regulator grant an order authorising or directing that the Scheme be put into wind-up. A summary of the reasons provided is given below:
 - (a) no benefits have been settled, although one of the 9 members is approaching retirement age;
 - (b) in the absence of an Employer there is no mechanism in the Scheme Rules to trigger wind up;
 - (c) the ongoing costs of running the Scheme would be prohibitive, for instance Trustee fees, investment management charges and audit fees;
 - (d) the contact details for the members are incomplete and so the Trustee is unable to obtain their consent that the scheme be placed into wind up. Having consulted an Insolvency lawyer, it

- believes that the costs of applying to a Court for a winding up Order would seriously reduce the funds available to settle members' benefits;
- (e) once winding up has been triggered, the Trustee will be in a position to settle members' benefits.

In light of the information provided, it would appear that the Scheme does not qualify for either the Financial Assistance Scheme or the Pension Protection Fund

8. **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**.

9. **Reasons for decision**

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

- (i) the ongoing costs of running the Scheme - the Trustee's fees, investment management charges and audit fees - would be prohibitive to its continuance;
 - (ii) winding up the Scheme will put the Trustee in a position to settle members' benefits;
 - (iii) For these reasons it is in the interests of the generality of the members of the scheme that the scheme should be wound up in order to protect their benefits;
 - (iv) as there is no longer an Employer in existence there is no mechanism in the Scheme Trust Deed or any Rules to trigger wind up;
 - (v) the contact details of the members are incomplete which means that the Trustee is unable to secure their consent to the winding up of the scheme. The only other alternative for the Trustee would be to apply to a Court for a winding up order and the costs involved in doing this would seriously reduce the scheme funds. For these reasons the Panel is satisfied that it is necessary for it to authorise that the scheme be wound up in order to protect the interests of the generality of the members.
10. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the parties against this decision.

Signed: GEOFFREY FITCHEW ..

Chairman: **Geoffrey Fitchew**.....

Dated: 19TH March 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.

Referral to the Pensions Regulator Tribunal

You have the right to refer the matter to which this Determination Notice relates to the Pensions Regulator Tribunal (“the Tribunal”). Under section 103(1)(b) of 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 Pensions Regulator Tribunal
15-19 Bedford Avenue
London
WC1B 3AS
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