

	FINAL NOTICE under section 99(4) of the Pensions Act 2004 (“the Act”)	The Pensions Regulator case ref: 881/05
---	--	---

	Scheme: The Roy Bishop & Son Ltd (1982) Retirement Fund
To:	Mr Geoffrey S Bishop
Of:	XXXXXXXXX XXXXX XXXXXXXXX XXXXXXXXX
To:	Mr Kenneth A Kendrick
Of:	XXXXXXXXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXX XXXXXXXXXXXXXXXX
To:	Roy Bishop & Son Ltd
Of:	Town Green Farm Kings Lane Engelfield Green Surrey TW20 OUD
To:	R H Thompson & Co Ltd
Of:	18 East Market Buildings Central Market Smithfield London EC1A 9PQ
To:	Burges Salmon Pension Trustees Limited
Of:	Narrow Quay House

	Narrow Quay Bristol Avon BS1 4AH
Date:	21 April 2006
	TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW has reviewed a determination on 19 April 2006.
1.	Determination
1.1	This is an adjourned Compulsory Review of the determination made under the Special Procedure by the Determinations Panel on 7 February 2006 to appoint Burges Salmon Pension Trustees Limited as an independent trustee to this scheme with effect on and from 7 February 2006.
1.2	The above decision was confirmed.
2.	Procedure Followed
2.1	By its Determination Notice dated 10 February 2006 ("the Determination Notice") the Pensions Regulator gave notice that it decided to use its power to make the determination described in the Determination Notice.
2.2	<p>Following the issue of the Determination Notice from the hearing on 7 February 2006 Mr Kenneth A Kendrick and Mr Geoffrey S Bishop exercised their right to make representations to the Pensions Regulator under section 98(2)(c) of the Pensions Act 2004 ("the Act"). These were submitted by way of written material delivered to the Pensions Regulator on 22 and 27 February 2006 respectively and comprised:</p> <ol style="list-style-type: none"> 1. Letter dated 21 February 2006 from Mr Kenneth A Kendrick to Determinations Support 2. Letter dated 24 February 2006 from Mr Geoffrey S Bishop to Determinations Support <p>Following the issue of the Determination Notice from the adjourned hearing on 15 March 2006 Mr Geoffrey S Bishop exercised his right to make representations to the Pensions Regulator under section 98(2)(c) of the Pensions Act 2004 ("the Act"). These were submitted by way of written material and comprised:</p> <ol style="list-style-type: none"> 1. Letter dated 5 April 2006 from Mr Geoffrey S Bishop to Determinations Support enclosing: <ul style="list-style-type: none"> • Valuation for the property Unit 2, Wandle Way, Mitcham Surrey dated 8 June 2005;

	<ul style="list-style-type: none"> • Minutes of the meeting of the Trustees of the Roy Bishop & Son Ltd (1982) Retirement Fund. <p>2 The Determinations Panel also had before them a copy of an email report dated 14 March 2006, from the appointed independent trustee, Burges Salmon Pension Trustees Limited.</p>
2.3	<p>The Pensions Regulator has taken those representations into account and has considered those materials carefully but has nevertheless determined to take the action as mentioned in 1 above for the reasons set out below:</p> <p>(1) The Panel felt that on all the papers before them there was no evidence to show that consideration had been given to the advantages or disadvantages of a gilts matching policy or that its implication was considered from the point of view of the interests of the scheme members.</p> <p>(2) The Panel did not feel that Mr Bishop had sufficiently responded to the two critical issues of the conflict of interest and the compromise of the debt as outlined in the Determination Notice from 7 February 2006 and therefore confirmed the appointment of the independent trustee in the same terms as previously made.</p>
3	Relevant Statutory Provisions / Legislation
	<p>The Regulator's powers on a review under section 99 of the Act, include power to:</p> <ol style="list-style-type: none"> a) confirm, vary or revoke the determination, b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination, c) substitute a different determination, order, notice or direction, d) deal with the matters arising on the review as if they had arisen on the original determination, and e) make savings and transitional provision.
4.	Case Summary
	<ol style="list-style-type: none"> 1. On 27 January 2006 Nabarro Nathanson, the scheme's legal advisers, sent the Regulator a copy of a letter dated 25 November 2005. The letter proposed that the debt to the scheme be compromised. 2. On 7 February 2006 a determination was made by the Determinations Panel under the Special Procedure appointing Burges Salmon Pension Trustees Limited as independent trustee for this scheme with effect on and from 7 February 2006. All directly affected parties were sent a copy of the order of appointment. The reasons given for this determination were: <ol style="list-style-type: none"> i. The Panel considered that the appointment of an independent trustee (IT) was necessary in order to secure:

- that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme pursuant to section 7(3)(a) of the Pensions Act 1995;
 - the proper use or application of the assets of the scheme pursuant to section 7(3)(c) of the Pensions Act 1995.
- ii. In relation to deciding to appoint an IT under section 7(3)(a) the Panel considered that Mr Bishop did indeed have a conflict of interest as he was still the sole director and owner of Roy Bishop & Son Ltd and still retained an interest in R H Thompson & Co Ltd because of the set-off detailed in the legal charge document (RB4).
 - iii. Counsel had advised Mr Bishop in a footnote to point 5(3)(c) of his Opinion dated 4 February 2005 that he was conscious *“that issues such as this (consideration of a gilts matching policy) will give rise to an acute conflict of interest and duty on the part of (at least) Mr Geoffrey Bishop”*. When asked by the Regulator at the meeting on 31 October 2005 if he considered there was a conflict of interest, Mr Bishop answered that he did not. He was further asked about the set-off and was unable to explain whether in his view that meant his having an interest in the valuation of the deficit.
 - iv. Counsel also advised that Mr Bishop should consider resigning because of his possible conflict: he did not.
 - v. The panel reviewed the evidence presented and concluded that actions of the trustees appeared to have been taken other than in the interest of the proper use of fund assets and in the general interest of scheme members.
 - (a) The trustees had not given full and appropriate consideration to adopting a gilts matching policy to bridge at least some of the gap between the modified MFR and buyout deficit levels, despite having been advised to do so by Counsel.
 - (b) There had been inadequate investment advice sought or given following the commencement of the scheme wind-up. No evidence was provided to show that the trustees had taken any action towards seeking investment advice.
 - (c) The sale of the property part of the fund had been dealt with without seeking any independent valuation.
 - (d) The calculations of the certified debts on the employers Roy Bishop & Son Ltd and R H Thompson & Co Limited used asset valuations that were not based on audited accounts. The trustees did not appear to have ensured that audited accounts were obtained as required by the legislation.
 - vi. No evidence was put forward to indicate that the other trustee, Mr Kendrick, (an employer-nominated trustee) played any significant part in the administration/decision making processes pertaining to the scheme. There was currently no independent or member-nominated trustee.

- vii. The Panel noted the comments in the papers pertaining to the former administrator/trustee, Gill Dennis, still having possession of the scheme records and the fact that the Regulator is endeavouring to deal with this situation. As the scheme records are not available it has not been possible to progress the winding-up of the scheme.
 - viii. Because of the above, the Panel did not feel that the trustees had demonstrated that they had the necessary knowledge and skill for the proper administration of the scheme or, that their actions overall, demonstrated proper use of the assets of the scheme resulting in the maximum benefits being obtained for the scheme members.
 - ix. The Panel considered that it was necessary to exercise the regulatory function under section 7 of the Pensions Act 1995 (as amended) immediately 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 the interests of scheme members or to scheme assets. In this regard, the Panel took account of the contents of the letter dated 25 November 2005, sent to the Regulator on 26 January 2006, and in the absence of any further information considered it likely that no compromise had yet been entered into and that there was a continuing prospect that such a compromise would be reached in view of Mr Bishop's conflict of interest.
 - x. The Panel agreed that the directly affected parties should be given the opportunity to attend in person at the Compulsory Review hearing to make their representations if they so wished.
3. On 13 February 2006 the determination notice, detailing the reasons for the appointment, was sent to all directly affected parties.
 4. In view of the contents of the letter dated 25 November 2005, and the need to address them urgently, no warning notice had been issued prior to the determination as per the special procedure. When sending the determination notice the directly affected parties were notified that a compulsory review would be held as soon as was practicably possible and they were entitled to submit any representations to be considered at the compulsory review hearing.
 5. Representations were received as detailed in 2.2 above and duly considered by the Determinations Panel.
 6. A compulsory review hearing took place on 15 March 2006 but was adjourned for the following reasons:

4.1 from Determination Notice of 15 March 2006 *“Before any discussion of the case took place the Legal Adviser said that she had a point to make in relation to the procedure that had been followed after the Special Procedure hearing. It had come to her knowledge that the two responses received from Mr Bishop and Mr Kendrick had not been circulated to all the directly affected parties before the hearing took place. This was not in accordance with the Determinations Panel's own draft procedures relating to the Special Procedure. She advised the*

	<p><i>Determinations Panel to consider whether they wished to proceed in all the circumstances.”</i></p> <p>6. Facts and Matters Relied Upon (from 15 March 2006)</p> <p>i. In view of the points made at 4.1 above the Panel did not feel able to fully consider this matter and make a final decision.</p> <p>ii. They considered that Mr Bishop should be invited to present the following further information referred to in his response to the determination notice:</p> <p>(a) particulars of the independent valuation of the property obtained on 8 June 2005;</p> <p>(b) minutes or notes of the Board Meeting on 26 April 2005 at which he said that a gilts matching policy was considered.</p> <p>The Panel considered that provision of the information by Mr Geoffrey Bishop would assist their deliberations at the next hearing.</p> <p>iii. The Panel noted that Mr Kendrick was continuing to deal with the administration of paying out the pensions.</p> <p>7. Mr Bishop responded on 5 April 2006 and supplied the information requested.</p>
5.	Conclusion: Details of Determination
	<p>The Determinations Panel confirmed its decision made on 7 February 2006 to appoint Burges Salmon Pension Trustees Limited as independent trustee to the above named scheme with exclusive powers and for the independent trustee’s fees and expenses to be paid by the employer.</p>
6.	Decision Maker
	<p>The determination which gave rise to the obligation to give this Final Notice was made by the Determinations Panel.</p>
7.	Important Notices
	<p>This Final Notice is given to you under sections 98(2)(e) of the Act. The following statutory rights are important.</p>
7.1	Referral to the Pensions Regulator Tribunal
	<p>You have the right to refer the matter to which this Final 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 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: 15-19 Bedford Avenue, London WC1B</p>

	<p>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.</p> <p>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 at The Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW.</p>
	<p>Signed: <i>John Scampion</i></p> <p>Chairman: John Scampion</p> <p>Dated: ...21 April 2006.....</p>