

	<p>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>The Blagden Industries Pension Scheme and The Sunley Turriff Pension Scheme (“the Schemes”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM4162</p>
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1. The Determinations Panel, on behalf of the Regulator, met on 17 December 2008 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 11 September 2008. The Regulator considered under section 10(2) of the Pensions Act 2004 that the exercise of a reserved regulatory function was appropriate.

At the start of the hearing it was recorded that:

- (a) Michael Maunsell had met John Quarrell (“Mr Quarrell”) in a social capacity in the past and had worked on a transaction where he and Mr Quarrell were both involved as partners of their respective firms;
- (b) James Rickards (legal support) had been instructed by Graham Ness who is mentioned in the warning notice.

The Panel agreed that neither situation gave rise to a conflict of interest.

The Regulator had been informed that the Solicitors’ Regulatory Authority (“SRA”) panel met on 16 December 2008 and had determined to intervene into Quarters Solicitors and Quarters Trustees Limited.

2. **Matter to be determined:**

The function the Panel was asked to exercise was the application made by the Regulator for an order to be issued under section 7(3)(c) of the Pensions Act 1995 to appoint an independent trustee to the Schemes in order to secure the proper use or application of the assets of the Schemes and for that trustee’s powers or duties as a trustee to be exercisable to the exclusion of the other trustees. Alexander Forbes Trustee Services Limited (“AFTS”) was recommended as a suitable independent trustee for appointment and it was proposed that all of its fees and expenses should be paid out of the Schemes’ resources.

3. Parties

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

- (a) Quarters Trustees Ltd (“QTL”) in their capacity as corporate trustee of both of the Schemes;
- (b) The Financial Assistance Scheme;
- (c) AFTS – appointed trustee.

4. Decision

The Panel granted the application for orders to be issued under section 7(3)(c) of the Pensions Act 1995. The Panel determined that orders be issued in the following terms:

The Regulator hereby orders that:

- i. Alexander Forbes Trustee Services Limited of 6th Floor, Market Square House, St James Street, Nottingham, NG1 6FG is hereby appointed as trustee of The Blagden Industries Pension Scheme and The Sunley Turriff Pension Scheme with effect on and from 17 December 2008;
- ii. this order is made because the Regulator is satisfied that it is necessary to do so in order to secure the proper use or application of the assets of the Schemes pursuant to Section 7(3)(c) of the Pensions Act 1995;
- iii. the powers and duties exercisable by Alexander Forbes Trustee Services Ltd shall be to the exclusion of all other trustees of the Schemes pursuant to section 8(4)(b) of the Pensions Act 1995;
- iv. Alexander Forbes Trustee Services Ltd’s fees and expenses shall be wholly paid out of the Schemes’ resources pursuant to section 7(5)(b) of the Pensions Act 1995;
- v. This order :
 - a. will take immediate effect on the date of this order;
 - b. may be terminated at the expiration of 28 days notice from the Regulator to the trustees, pursuant to section 7(5)(c) of the Pensions Act 1995.

5. Submissions of the parties

In making the determination the Panel took into account the evidence and submissions included in the Warning Notice. It also took into account the responses and submissions to the Warning Notice sent by:

- (a) QTL;
- (b) Mr Quarrell.

Notice. As noted above the SRA has determined to intervene in Quarters and QTL.

Blagden

- viii. QTL received a VAT repayment of £47,406 in respect of Blagden between 22 and 30 August 2005. The money was deposited on 14 October 2005 into QTL's office account, rather than QTL's client account and was never returned to Blagden. Mr Quarrell, in response to a query raised sometime before 27 October 2006 by DTE, the then chartered accountants to Quarters, stated, in his letter dated 27 October 2006, that he was entitled to debit Quarters' fees against that VAT repayment.
- ix. In a statement to the Regulator, on 25 February 2008, Mr Quarrell said that the £47,406 was paid into Quarters' office account in error. The Regulator understands from his explanation that, to rectify the problem, QTL purported to offset the £47,406 against an invoice not raised until 31 July 2007 addressed to "The Blagden Pension Scheme Trustees, c/o Quarters Trustees Limited" for the work Quarters had carried out on behalf of Blagden, which was specified in a narrative attached to the invoice.

Sunley

- x. QTL received a VAT repayment of £46,057 in respect of Sunley on 6 October 2006. This money remains unaccounted for and there is no evidence that it has ever been returned to Sunley or that credit has been given for it.
- xi. On several occasions, since 25 February 2008, the Regulator has asked for information in relation to the whereabouts of this money and has requested that this information be provided in response to a statutory request. QTL have sought to clarify the whereabouts of the money from a variety of sources but have been unable to locate the money. On 28 April 2008 and 11 July 2008, QTL told the Regulator and the SRA that proposals would be put forward to repay the money to Sunley, as it could not be located. To date, no such proposals have been received from QTL. This is nearly two years after the money was received into QTL's office account.

8. Statutory issues

In making its decision the Panel had regard to the objectives of the Regulator as set out in Sections 5 and 100 of the Act as set out in **Appendix 1**.

9. Conclusions and Reasons for decision

A. With respect to Sunley the facts on which the Panel relied are as follows:

- a. A VAT refund of £46,057 was received by QTL on 6 October 2006;
- b. It was paid into the QTL office account and not the appropriate client account. The reasons why this happened are not clear but in the circumstances that is not relevant;
- c. The money has never been paid over to Sunley nor has credit been given for it;
- d. Despite extensive enquiries by QTL the money has not been located.;
- e. Various letters have indicated that restitution would be made but nothing has happened;
- f. XX
XXXX Mr Quarrell appeared to XXXXX that this represented a shortage in the bank account. Where he deals with these paragraphs in his response he does not specifically deny this.

It appears to the Panel that the money is due and owing to Sunley by QTL and it appeared to the Panel that QTL were faced with an inherent conflict of interest in relation to its recovery and that an independent party ought to take control of this process. It is the responsibility of the Trustee of a scheme to know what the assets of any scheme under its care are and where these assets are to be found. The way this has been handled is not acceptable of a trustee.

For all of the reasons given above the Panel is of the view that that the test required by Section 7(3)(c) of The Pensions Act 1995 is met.

B. With respect to Blagden, the facts on which the Panel relied are as follows:

- a. In August 2005 a VAT refund of £47,406 was received by QTL which was paid into QTL's office account. The reasons why this happened are not clear but in the circumstances that is not relevant;
- b. The money has never been paid over to Blagden;
- c. QTL's position is that it is entitled to the money by way of giving credit to Blagden in respect of outstanding legal fees which it estimated to be £67,500 net;
- d. On 31 July 2007, two years after the money had been received, QTL rendered Invoice QTL87. This incorporated a charge for professional services of £65,000 and disbursements and other payments of £2,500. Against this was set VAT recoveries of £55,835 and also a sum of £4,890 was allowed by way of interest, presumably in respect of the money which had been wrongly paid into the QTL office account.
- e. The Panel was concerned, on the evidence before it, that the invoice failed to break down how the figure for professional charges had been arrived at and provided no particulars as to what work had been carried out, by whom and when. Further there was no

evidence that Blagden's administrators had seen the invoice or that it had been correctly assessed. The Panel considered that there remained significant concerns as to whether the invoice could properly give credit against the money owing to Blagden. The Panel was also concerned as to whether QTL were entitled to offset legal fees against the money owing to Blagden.

It therefore appeared to the Panel that Blagden could have a claim against QTL for the money. It appeared to the Panel that QTL were faced with an inherent conflict of interest in relation to its recovery and that an independent party ought to take control of this process.

For all of the reasons given above the Panel is of the view that the test required by Section 7(3)(c) of The Pensions Act 1995 is met.

The Panel were satisfied that appointing AFTSL under section 7(3)(c) of the Pensions Act 1995 was necessary in order to secure the proper use or application of the assets of both these Schemes.

10. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the parties against this decision.

Signed: *M B Maunsell*

Chairman: **Michael Maunsell.....**

Date: 23 December 2008

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 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 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