

<p>The Pensions Regulator</p>	<p>Special Procedure DETERMINATION NOTICE under Section 98(2)(a) of the Pensions Act 2004 (the “Act”) Hollywell Enterprises Pension Scheme (the “Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>C8407400</p>
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1. The Determinations Panel (the “Panel”), on behalf of the Pensions Regulator (the “Regulator”), met on 17 October 2011 to consider whether an independent trustee ought to be appointed to the Scheme with exclusive powers, pursuant to Sections 7 and 8 of the Pensions Act 1995; a vesting order under Section 9 of the Pensions Act 1995 should be issued and if the use of the Special Procedure (the “Special Procedure”) was appropriate pursuant to Section 97 of the Act.

In summary the Panel determined that the use of the Special Procedure was appropriate, for the reasons set out in paragraph 6 below.

2. **Matter to be determined**

Pursuant to Section 97(2) of the Act the Panel was asked to use the Special Procedure, and therefore dispense with the giving of a warning 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 Scheme; or
- ii. the assets of the Scheme.

In addition the Panel was asked to issue an order under Section 7(3)(a), 7(3)(c) and 7(3)(d) of the Pensions Act 1995 to appoint a trustee to this Scheme if it was satisfied that it was reasonable to do so in order:

- i. 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);
- ii. to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c); or
- iii. otherwise to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d);

and for the powers or duties of any trustee so appointed to be to the exclusion of other trustees and for any fees and expenses of a trustee so appointed to be paid from the employer’s resources.

The Panel was also asked to issue a vesting order under Section 9 of the Pensions Act 1995 to vest the scheme property in any appointed independent trustee.

3. **Directly affected parties**

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

- i. Elizabeth Vago - trustee
- ii. Desmond Murray – trustee
- iii. Hollywell Enterprises Limited
- iv. Independent Trustee Services Limited

4. **Background to application**

The facts of the case as presented by the Regulator

- i. The Scheme was registered with HMRC on 22 June 2011 as an occupational pension scheme governed by a trust deed dated 22 June 2011. The Regulator has not been able to obtain the rules of the Scheme, described in the Trust Deed as the "*Hollywell Enterprises Pension Scheme Rules 2010*".
- ii. Ms Elizabeth Vago and Mr Desmond Murray, are the trustees of the Scheme and are understood both to be employer-nominated trustees from information provided apparently by Ms Elizabeth Vago to the Regulator via the Exchange database. The employer of the Scheme is Hollywell Enterprises Limited which was incorporated on 25 May 2011. The director of Hollywell Enterprises Limited is Ms Elizabeth Vago.
- iii. The Scheme was registered with HMRC by Tudor Capital Management Ltd ("TCML") acting as administrator to the Scheme. Recital D to the Trust Deed identifies that Eagleway Consulting Limited was selected as the first administrator of the Scheme; TCML notified HMRC of a change of administrator to Eagleway Consulting Limited from 6 July 2011. The director of Eagleway Consulting Limited is Ms Elizabeth Vago.

The assets and operation of the Scheme

- iv. The Scheme appears from the Trust Deed to have been set up in order to provide "*pensions and lump sum benefits under occupational pension arrangements made by individuals and individuals' employers in accordance with the Hollywell Enterprises Pension Scheme Rules 2010*".

- v. The Trustees set up a bank account with XXXXXXXXXXXXXXXXXXXX, which was opened on 12 July 2011 (the "Scheme Account"). As at 23 September 2011, the Scheme had assets in the Scheme Account of £4,017,376.58. It is not known whether the Scheme has any other assets.
- vi. There are a number of features of the structure and operation of the Scheme that the Regulator considers are unusual and which require further investigation. In particular:
- The assets of the Scheme appear to be made up from various transfers from other pension schemes and private individuals or are unspecified giro credits. There do not appear to be any contributions from Hollywell Enterprises Limited as employer of the Scheme.
 - It is not apparent what role Hollywell Enterprises Limited actually performs or that the sums transferred into the Scheme relate to employees or former employees of Hollywell Enterprises Limited. A representative from XXXXXXXX who was able to make contact with Mr Desmond Murray asked a number of questions in relation to the pension scheme. In particular:
 - When asked about the nature of the business of Hollywell Enterprises Limited, Mr Desmond Murray said that it was incorporated "*primarily as an investment vehicle*" for the monies transferred into the Scheme.
 - When asked about the membership of the Scheme, Mr Desmond Murray "*was hesitant with his answer*" and said that members come from "*previous clients, effectively a collective investment scheme but member directed. The members are not linked to Hollywell as such, but are connected in the sense that they have done business with the directors and personnel involved with Hollywell*".
 - The Scheme seems to operate through unspecified "Arrangements" with individual members. Under clause 13 of the Trust Deed, the Trustees are required to ensure that "*in relation to each Arrangement of a Member, all contributions and other amounts paid by or in respect of the Member to the Scheme as permitted by the Rules are applied in accordance with the Arrangement*". It is also a requirement in clause 13 that "*in the case of each and every Arrangement, a separate and clearly designated account is maintained in respect of each Member's Fund under the Scheme*". It not known what these "Arrangements" are or how they relate to the Rules of the Scheme.

The Trustees

vii. According to HMRC tax records, Mr Desmond Murray is a self employed taxi driver and Ms Elizabeth Vago was previously self employed as a greengrocer and then employed as a sales consultant for a removal firm.

viii. The Regulator also has concerns in respect of Mr Desmond Murray that have arisen as a result of the contact details that Mr Desmond Murray gave to XXXXXXXXXXXX on opening an account on behalf of the Scheme:

- Mr Desmond Murray has provided a mobile and landline telephone number but both the Regulator and XXXXXXXXXXXX have failed to reach him on this number. On one occasion that his mobile was answered, it was answered as "Simon's phone".
- The call made by the Regulator to the landline was answered as being the number of Hollywell Enterprises Limited. The person who answered the phone had not heard of a Desmond Murray.
- When the email address provided by Mr Desmond Murray to XXXXXXXXXXXX is googled, a blog entry appears posted by someone from Spain offering offshore financial advice whose user name is "XXXXXXXXXXXX" and who signs off "Simon". A person called Mr Simon MXXXXX is a director of XXXXX XXXXXXXXXXX XXXXXX XXXXXXXX. The advert was in the following terms:
 - *"Have you considered buying or re-financing your properties in an offshore structure?"*
 - *May suit you if:*
 - *You want to minimise or eliminate future tax liabilities*
 - *You want to ring fence your important assets*
 - *You want the flexibility to transfer ownership of your property without incurring taxes*
 - *You want to protect your assets in the event of a lawsuit/divorce/bankruptcy*
 - *You want to keep your affairs private and your money safe*
 - *Advice on the most suitable jurisdiction for your personal circumstances, offshore companies setup in a few days for less than \$1500 / £750 / €950.*
 - *Also UK and European finance available to non EU residents, no personal guarantee required - no credit check.*
 - *Global multi-currency finance with fund manager.*

- 100% confidentiality - all data and documents kept offshore.
- Please email me at XXXXXXXXXXXXXXXXXXXXXXXX with your name and a contact number if you would like to find out more”.

The Proposed Transfer

ix. On 24 August 2011, a transfer request was sent to XXXXXXXXX requesting that the sum of £500,000 be paid from the Scheme Account to an account in Germany of the entity Chesterton Investments Limited. The transfer request was not actioned.

x. Chesterton Investments Limited is understood to be an unregulated entity based in Belize. In response to a question by XXXXXXXX about Chesterton Investments Limited, Mr Desmond Murray stated that:

“Chesterton are based outside the UK. This is an occupational pension scheme, it is not regulated and care is taken not to promote this to members of the general public. It is effectively a private collective investment. Chesterton are not acting as a FSA authorised investment manager. Hollywell are purchasing Shares in Chesterton, who are then investing these funds and Members will then take a portion of that company based on their investment with Hollywell. Hollywell chose to invest with Chesterton rather than invest directly. Chesterton are based in Belize, they are not regulated, and not required to be.”

xi. The Proposed Transfer was a subsequent transfer request made by the Trustees for the transfer of £2 million from the Scheme Account to Chesterton Investments Limited. There are in fact two such requests, one from Ms Elizabeth Vago dated 5 September 2011 and one from Mr Desmond Murray on 7 September 2011. It is not known whether these are two separate requests or repetitions of the same request but it appears that XXXXXXXX has treated it as a single request. The completion of the transfer was chased by letter from the Trustees dated 9 September 2011.

xii XXXXXXXX XXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXX.

5. Decision

The Panel granted the application for an order to be issued under Section 7 of the Pensions Act 1995. The Panel determined that orders be issued.

A. Appointment of independent trustee

1. Independent Trustee Services Limited of 2 Seething Lane, London EC3N 4AT is hereby appointed as trustee of the Hollywell Enterprises Pension Scheme with effect on and from 17 October 2011.
2. This order is made because the Pensions Regulator is satisfied that it is reasonable to do so, pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order:
 - i 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);
 - ii to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c);
 - iii otherwise to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d).
3. The powers and duties exercisable by Independent Trustee Services Limited shall be to the exclusion of all other trustees of the Scheme pursuant to Section 8(4)(b) of the Pensions Act 1995.
4. Independent Trustee Services Limited's fees and expenses shall be paid out of the resources of the Scheme pursuant to Section 8(1)(b) of the Pensions Act 1995 and an amount equal to the amount paid out of the resources of the Scheme by virtue of Subsection 8(1)(b) is to be treated for all purposes as a debt due from the employer to the trustees of the Scheme pursuant to Section 8(2) of the Pensions Act 1995 as amended by Section 35 of the Pensions Act 2004.
5. This order:
 - i will take immediate effect on the date of this Order;may be terminated, or the appointed trustee replaced, at the expiration of 28 days notice from the Pensions Regulator to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995.

B. Vesting order

1. The vesting in, assignation to and transfer to Independent Trustee Services Limited of 2 Seething Lane, London EC3N 4AT as trustee of the Hollywell Enterprises Pension Scheme, as appointed under Section 7 of The Pensions Act 1995 by The Pensions Regulator, of all property and assets of the above scheme, heritable, moveable, real and personal, of every description and wherever situated.
2. This Order is made by The Pensions Regulator pursuant to Section 9 of The Pensions Act 1995, as amended.
3. This Order will take immediate effect as at the date of this Order.

6. Reasons for the Decision

The Panel considered the Regulator's concerns and submissions concerning the grounds for making the application set out in paragraphs 32 – 45 of the notice. They also considered the grounds for considering the application under the Panel's special procedure in paragraphs 46-48

The Panel accepted the Regulator's estimate of the numbers of scheme members based on the accounts submitted in the accounts in exhibit 7. The scheme was an occupational pension scheme with defined contribution and hybrid status.

On the evidence submitted, the Panel was satisfied that it was reasonable to appoint an independent trustee on each of the three grounds referred to in the request.

Dealing with Section 7(3)(c) the trustees' apparent intention was to transfer one half of the total scheme assets to an entity, Chesterton Investments Ltd, about which they knew very little and certainly explained little when interviewed on behalf of the XXXXXX bank. It is based in Belize and understood not to be regulated, The trustees were to purchase shares in Chesterton who would then invest the funds. No information was offered by Mr Murray when interviewed by the bank about the nature and purpose of the company or about its financial status, nor any information about the security of the funds which would be transferred or the purpose to which they would be applied. No information was offered about the nature and range of any investments that company might make. The Regulator explained that they were not able to assess the status and strength of the company. The Panel concluded that this was a fundamentally unsound proposal which would put scheme assets seriously at risk and that it was reasonable to make the appointment to secure the proper application or use of the assets.

Moreover in the Panel's view the proposal would be in breach of paragraph 7 of the Occupational Pension Schemes (Investment) Regulations 2005 which require trustees in making investments to have regard to the need for diversification of investments insofar as appropriate to the circumstances of the scheme. The Panel found that paragraph 4 of the Occupational Pension Schemes (Investment) Regulations 2005 did not apply because on the evidence it was unlikely that the number of members would be under 100. Nevertheless, they considered that a proposal to place one half of the assets of the scheme into one investment as insecure and uncertain as this constituted inadequate diversification under paragraph 7; and there were no circumstances relating to the scheme that would justify it.

The Panel concluded that the transfer would have been likely to be an unauthorised delegation of the power to invest since in the answer Mr Murray gave to the bank he explained that "Hollywell are purchasing

shares in Chesterton who are then investing these funds. Hollywell chose to invest with Chesterton rather than invest directly". The Panel further concluded that they were in breach of Section 241(1) of the Act in failing to appoint a member nominated trustee.

The Panel was therefore satisfied that the trustees lacked the necessary skills for the proper administration of the scheme. They were prepared to proceed with the investment of funds without having given proper consideration to their fiduciary responsibilities as trustees. The Panel concluded that they were not sufficiently aware of the nature of those responsibilities. They were not able to satisfy the bank that they had researched the company to which they intended to entrust the funds. They saw the scheme as an unregulated opportunity to create a private collective investment. Further there was nothing in the evidence submitted about the backgrounds of the two trustees to indicate that they had any appropriate professional or pension management experience or training.

The Panel concluded that, were the two trustees to remain in place and the proposed transfer to be made, the members' interests would be prejudiced and the scheme funds at risk. Furthermore, given the inadequate skill and knowledge shown by the trustees there would be a continuing risk to the scheme funds in the way they would be likely to be applied.

The Panel was satisfied that this request should be heard under the special procedure in Section 97(2) because it was critical to the interests of the members that this transfer should not proceed. XXX. But, in any event, the Panel concluded that given the evidence they had before them of the trustees' lack of skill there was a realistic possibility that other similar decisions with regard to scheme assets would be taken by the trustees at short notice.

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.

7. Important Notices

This Determination Notice is given to you under Section 98(2)(a) of the Act. The following statutory rights are important.

8. Representations to the Pensions Regulator

Take notice that you have the opportunity to make representations to the Pensions Regulator which will make up your defence to the allegations.

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:

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

9. 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 before a determination is made on review. This review must be determined as soon as reasonably practicable.

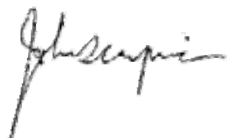
The Regulator's powers on a review under this Section include power to:

- confirm, vary or revoke the determination;
- confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination;
- substitute a different determination, order, notice or direction;
- deal with the matters arising on the review as if they had arisen on the original determination, and
- make savings and transitional provision.

You will be informed of the outcome of the review by way of a "Final Notice".

10. Referral to the Pensions Regulator 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:
Chairman: John Scampion
Dated: 24 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 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.