

<p>The Pensions Regulator</p>	<p>Special Procedure</p> <p>DETERMINATION NOTICE under Section 98(2)(a) of the Pensions Act 2004 (the “Act”)</p> <p>Brownberrie Pension Scheme Bucephalus Pension Scheme Cranborne Star Pension Scheme DGK Pension Scheme Grosvenor Parade Pension Scheme LJK Ventures Pension Scheme PPF Management Pension Scheme Queensbury DF Pension Scheme Tallton Place Pension Scheme Lancaster Pension Scheme Portman Pension Scheme The RJS Pension Scheme Woodcroft House Pension Scheme</p> <p>(the “Schemes”)</p>	<p>The Pensions Regulator case ref:</p> <p>C4177180</p>
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1. The Determinations Panel (the “Panel”), on behalf of the Pensions Regulator (the “Regulator”), met on 31 May 2011 to consider whether the use of the Special Procedure (the “Special Procedure”) was appropriate pursuant to Section 97 of the Act and in relation to the following thirteen Schemes:

- i. Brownberrie Pension Scheme
- ii. Bucephalus Pension Scheme
- iii. Cranborne Star Pension Scheme
- iv. DGK Pension Scheme
- v. Grosvenor Parade Pension Scheme
- vi. LJK Ventures Pension Scheme
- vii. PPF Management Pension Scheme
- viii. Queensbury DF Pension Scheme
- ix. Tallton Place Pension Scheme
- x. Lancaster Pension Scheme
- xi. Portman Pension Scheme
- xii. RJS Pension Scheme
- xiii. Woodcroft House Pension Scheme

whether a trustee ought to be appointed pursuant to Section 7 of the Pensions Act 1995 and a vesting order issued under Section 9 of the Pensions Act 1995.

In summary the Panel determined that the use of the Special Procedure was appropriate, for the reasons set out in paragraphs 6 B. ix and x below and that a trustee ought to be appointed and a vesting order issued in respect of the Schemes listed above for the reason set out in paragraphs 6 A. i - viii below.

2. Matter to be determined

Pursuant to Section 97(2) of the Act the Panel was asked to use the Special Procedure to appoint a trustee immediately and for the Regulator to dispense with the giving of a warning notice and an opportunity to submit representations, 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 interest 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), (c) and (d) of the Pensions Act 1995 to appoint a trustee to the Schemes 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 Schemes pursuant to Section 7(3)(a);
- ii. to secure the proper use or application of the assets of the Schemes pursuant to Section 7(3)(c); or
- iii. otherwise to protect the interests of the generality of the members of the Schemes pursuant to Section 7(3)(d);

and in addition if a trustee was appointed to the Schemes for the following provisions to be included in those orders:

- iv. for the powers or duties of a trustee so appointed to be to the exclusion of other trustees pursuant to Section 8(4)(b) of the Pensions Act 1995;
- v. for any fees and expenses of a trustee so appointed to be paid out of the resources of the relevant Scheme pursuant to 8(1)(b) of the Pensions Act 1995;

and if an independent trustee was appointed to each Scheme:

- vi. for a vesting order to be issued in relation to each Scheme under Section 9 of the Pensions Act 1995.

3. Directly affected parties

The following are the parties considered as being directly affected by the regulatory action as set out in point 7 below.

- i. Athena Pension Services Limited ("**Athena**") as sole trustee of the **Bucephalus** Pension Scheme, the **Cranborne Star** Pension Scheme, the **DGK** Pension Scheme, the **Grosvenor** Pension Scheme, the **Lancaster** Pension Scheme and the **RJS** Pension Scheme.
- ii. Minerva Pension Services Limited ("**Minerva**"), the sole trustee of the **LJK Ventures** Pension Scheme, the **Portman** Pension Scheme, the **Tallton Place** Pension Scheme and the **Woodcroft House** Pension Scheme.
- iii. Oracle Pension Services Limited ("**Oracle**"), the sole trustee of the **Brownberrie** Pension Scheme, the **PPF Management** Pension Scheme and the **Queensbury DF** Pension Scheme;

Athena, Minerva and Oracle collectively "the Ark Trustee Companies".

- iv. Dalriada Trustees Limited the newly appointed independent trustee with exclusive powers ("**Dalriada**").
- v. The sponsoring employers of the thirteen Schemes as follows:
 - (a) Brownberrie Limited – Brownberrie Pension Scheme
 - (b) Bucephalus Equine Training Limited – Bucephalus Pension Scheme
 - (c) Cranborne Star Limited – Cranborne Star Pension Scheme
 - (d) DGK Investments Limited – DGK Pension Scheme
 - (e) Grosvenor Parade Limited - Grosvenor Parade Pension Scheme
 - (f) LJK Ventures Limited – LJK Ventures Pension Scheme
 - (g) PPF Management Limited – PPF Management Pension Scheme
 - (h) Queensbury DF Limited – Queensbury DF Pension Scheme
 - (i) Tallton Place Limited – Tallton Place Pension Scheme
 - (j) Lancaster TC Limited – Lancaster Pension Scheme
 - (k) Portman TC Limited – Portman Pension Scheme
 - (l) RJS (2010) Limited – RJS Pension Scheme
 - (m) Woodcroft House Limited – Woodcroft House Pension Scheme

And, in addition to the above, the Panel considered that the following should also be considered to be directly affected by the proposed regulatory action:

- vi. Ark Business Consulting LLP

- vii. Ark Commercial Retirement Planning LLP – administrator to some of the Schemes
- viii. Ark Commercial Pension Planning LLP – administrator to some of the Schemes

4. Details of the Schemes and Principal Employers

Details of Schemes

All the Schemes are open, defined contribution schemes.

Scheme	Date Scheme established	Number of members	Date principal Employer incorporated
Brownberrie PS	6 April 2011	2	18 February 2011
Bucephalus PS	9 June 2010	3	25 May 2010
Cranborne Star PS	26 January 2011	17	26 January 2011
DGK PS	2 August 2010	2	15 July 2010
Grosvenor Parade PS	26 January 2011	5	26 January 2011
LJK Ventures PS	21 June 2010	2	10 June 2010
PPF Management PS	10 January 2010	2	16 September 2010
Queensbury DF PS	3 April 2011	2	5 November 2010
Tallton Place PS	26 January 2011	14	26 January 2011
Lancaster PS	12 May 2010	2	17 May 2010
Portman PS	12 May 2010	2	14 May 2010
RJS PS	30 April 2010	3	10 May 2010
Woodcroft House PS	26 January 2011	2	26 January 2011
PS = Pension Scheme			

Employers

None of the employers linked to the Schemes appears to have filed any documentation with Companies House to indicate that they are in fact trading; accordingly they appear to be dormant companies.

5. The application

Relevant parties

- i This application involves various schemes, all of which are under the trusteeship of one of Athena, Minerva or Oracle (together the “**Ark Trustee Companies**”).
- ii Athena is the sole trustee of six defined contribution (“**DC**”) occupational pension schemes as noted above and was incorporated on 29 April 2010. Its sole director is Andrew Hields.
- iii Minerva is the sole trustee of four DC occupational pension schemes as noted above and was incorporated on 30 April 2010. Its sole director is Carl Hanson.

- iv Oracle is the sole trustee of three DC occupational pension schemes as noted above and was incorporated on 30 April 2010. Its sole director is Carl Hanson.
- v All three companies have the same registered address.
- vi The directors of the Ark Trustee Companies are also members of Ark Business Consulting LLP (“**Ark**”), along with Mark Tweedley, Rebecca Tweedley and Amanda Clark. Ark’s business address is in Wakefield.
- vii The Regulator understands that one of **Ark Commercial Retirement Planning LLP** and **Ark Commercial Pension Planning LLP** acts as the scheme administrator (for the purposes of section 270 of the Finance Act 2004) in relation to each of the Schemes. Both these partnerships share the same business address as Ark in Wakefield.
- viii The Regulator does not know whether Ark Commercial Retirement Planning LLP or Ark Commercial Pension Planning LLP carry out administration functions (outside the meaning of the Finance Act 2004) in relation to the Schemes.

Evidence put before the Panel by the Regulator

Summary

- ix The Regulator became aware at the beginning of 2011 of a business model known as the **Pensions Reciprocation Plan (“PRP”)**. The PRP is essentially a method by which a member can obtain a loan against the value of his or her pension fund, although such a loan is not directly taken out of the value of this particular member’s fund.
- x In particular the model works by Member A transferring their occupational scheme benefits into a new DC scheme (“Scheme A”), in relation to which one of the Ark Trustee Companies is trustee. Upon transfer, Member A receives a loan of up to 50% of his or her transfer value from a different scheme, (“Scheme B”), in relation to which the same company, or one of the other Ark Trustee Companies, acts as trustee. The balance of Member A’s transfer value is then invested by the trustee of Scheme A. Scheme B is able to make the loan to Member A because it has assets, sourced from another person, Member B, transferring their occupational scheme benefits into that scheme.
- xi An application for a Community Trade Mark for the “PRP”, was made to the Office for Harmonization in the Internal Market (Trade Marks and Designs) on 28 March 2011. This Trade Mark application was made by Ark. In a letter from Ark to HMRC dated 21 April 2011 Ark confirm that they were the designers of the PRP.

The PRP Model

- xii Ark's literature "Maximising Pension Value" sets out how the PRP works. This confirms that Ark makes the PRP "available" to members, and that the "*The PRP provides members with a special facility by which they can benefit from money held within UK pension schemes. Members using the PRP will receive a cash sum*".
- xiii The payment of this cash sum is facilitated by what is referred to as a "**Maximising Pension Value Arrangement**" ("MPVA"). The MPVA is issued over a fixed period and there are no requirements to make repayments during the term, but "*the MPVA is usually discharged in full at maturity*".
- xiv Although not described as such, the MPVA is a loan from the trustees of the lending scheme to the member. It is not clear from the information in the Regulator's possession whether the loans are made from (for example) the trustee of Scheme B to Member A, or whether there are intermediaries involved.
- xv The amount of cash that can be released from the pension transfer amount will be dictated, according to evidence exhibited in the Application Notice, by reference to the "MPVA maturity period". So for example it appears that 25% of the transfer value amount could be released in cash if the term was 10 years. By contrast, 50% of cash release would be allowed for a 25 year term. It is not clear how this "maturity period" is assessed, but it seems likely that it correlates to the period remaining until the member is able to receive authorised member payments from the scheme in accordance with the Finance Act 2004. The Regulator does not know whether the loans made to members by the Schemes actually correspond to this ratio.
- xvi The balance of each Scheme's assets (not used to make loans to other Scheme's members) is invested in other assets by the trustee. Under the "Trustee Investment Approach" section of the MPV literature, trustees are said to be able to invest in the "XXXXXXXX XXXXX Fund" which is described as a "*specialist investment portfolio of property*". However as noted later it is not clear whether the trustees actually invest in this fund.
- xvii Ark also confirm in their letter of 21 April 2011 to HMRC that Ark and "XXXXXXXX XXXXXXXX" act as introducers for this product. A print off from "XXXXXXXX XXXXXXXX" web site sets out that a PRP "*provides a mechanism to allow immediate access to a capital sum of up to the equivalent of 50% of the value of the pension fund transferred. Pension Reciprocation Plans do not give the client access to their own pension fund*". This site also states "A Pension

Reciprocation Plan or PRP is a new facility from which you can access cash having transferred your UK pension fund”.

- xviii On 22 February 2011, HMRC held a meeting with a representative from Ark, Craig Tweedley; XXXX XXXXXXXX, pensions advisor and XXXXXXXX XXXX from XXXXXXXX XXXXXXXX. A copy of a note of this meeting has been provided to the Regulator. During this meeting XXXX XXXXXXXX states at paragraph 5:

“trustees of the Master Trusts [as the Schemes are referred to by Ark] may decide (although there is no obligation) on other forms of investment which may include making loans to persons. These persons will not be members of the registered pension scheme but may be members of another registered Master Trust. Members are unable to withdraw funds from their own ...”

- xix In relation to funds released to members, at paragraph 6 XXXX XXXXXXXX continues: *“Any funds come from another pension scheme which is unconnected with the member.”* At paragraph 11 Craig Tweedley states that *“.. the PRP is designed to provide an income in retirement as well as maximising funds today without liberation.”*

- xx At paragraph 20 of the 22 February meeting note, Craig Tweedley also confirms that there were no credit checks conducted on individuals who want to receive loans. This is confirmed by the “Membership Consideration Form”.

- xxi The PRP is advertised on a number of internet web sites, including a web site called XXXXXXXXXXXXXXXXXXXX this web site a document is available to be downloaded entitled “Guide to the Pension Reciprocation Plan”. The second bullet point down on page 3 of this exhibit identifies that up to 50% of any transferred amount, is *“invested in a vehicle that will provide a secure investment return based upon a growth date of 3% per annum simple.”* This is later identified as the MPVA. Also on page 3 of this document the balance of the fund is said to be invested:

“at the discretion of the MPS trustees and will typically include the XXXXXXXX XXXXXXXX Holdings Fund (XXH). The primary objective of the XXH is to protect capital whilst providing investors with attractive risk-adjusted returns through opportunistic finance-related investments with a residential real estate focus. The XXH where utilised will be on the basis of independent advice provided to MPS trustees.”

- xxii It is therefore not clear whether the trustees of the Schemes invest in either the XXXXXXXX XXXXXXXX Holdings Fund or the XXXXXXXX XXXXXXXX Fund (or whether these are the same investments under different names). Notwithstanding this, the Regulator notes that the only investments that were referred in the

meeting on 22 February 2011 and in Ark's literature relate to the MPVA (i.e. the reciprocal member loans) and property investments.

xxiii The Regulator has also obtained bank statements for the Lancaster Pension Scheme and the Portman Pension Scheme. These statements indicate that there have been a large number of transfers into the Schemes and payments out to individuals. This would be consistent with the loan (or MPVA) arrangements set out in Ark's own literature.

xxiv From an analysis of these bank statements the Regulator has identified various transfers in from scheme members. Subsequently there have been transfers out to the same members but from a different scheme. The amounts transferred back to the members are just below half of what was originally transferred in. This analysis is set out below:

Member	Amount in (£)	Receiving Scheme	Date received	Amount out (£)	Paying Scheme	Date paid
XX	119,458.17	Lancaster	18/11/10	59,975.00	Portman	26/11/10
XX	25,483.85	Lancaster	23/11/10	12,475.00	Portman	14/12/10
XX	58,280.65 & 53,561.40	Lancaster	24/11/10 25/11/10	54,975.00	Portman	13/12/10
XX	48,397.59	Lancaster	07/01/11	22,475.00	Portman	19/01/11
XX	125,444.16	Portman	05/10/10	62,475.00	Lancaster	07/10/10
XX	39,346.84	Portman	19/11/10	18,475.00	Lancaster	15/12/10
XX	36,406.06	Portman	13/12/10	16,175.00	Lancaster	12/01/11
XX	19,117.28	Portman	21/12/10	9,125.00	Lancaster	12/01/11
XX	43,434.10	Portman	23/12/10	18,525.00	Lancaster	28/01/11
XX	34,830.99	Portman	24/12/10	14,975.00	Lancaster	12/01/11
XX	56,062.41	Portman	17/01/11	26,375.00	Lancaster	23/02/11
XX	31,369.80	Portman	18/01/11	14,975.00	Lancaster	01/02/11

Fees

xxv The MPV literature sets out the fees that would be charged on amounts transferred into the Schemes. A 5% fee is applied to the amount transferred into the Schemes as shown under the section "PRP Illustration". Under the section "PRP Comparison Chart", reference is made to an annual 1% administration charge. This is also confirmed at paragraph 15 of the note of the meeting on 22 February 2011.

Number of Scheme Members

xxvi The Schemes are intentionally designed to have less than 100 members, Craig Tweedley at paragraph 22 of the note of the meeting on 22 February 2011 states : *"CT said that two schemes were currently in use (Lancaster and Portman) although 4 additional schemes had recently been set up to be used when*

The Regulator's key submissions

xxxi Bearing in mind the factual background above, the Regulator therefore submits:

- (a) There appears to be a systematic breach of trustee investment duties by the Ark Trustee Companies both in terms of (i) the statutory duty of diversification, contained within the Investment Regulations and (ii) the common law duty to exercise their investment powers prudently
- (b) The Ark Trustee Companies are not exercising their powers of investment for the purposes for which those powers were granted. This constitutes a fraud on the power of investment, since the investment power seems to be being exercised for the purpose of providing loans and not being used for a bona fide investment purpose.
- (c) By restricting each of the Schemes to 99 members, the Ark Trustee Companies are pursuing a deliberate strategy to avoid the provisions contained within regulation 4 of the Investment Regulations. These provisions exist to protect members of schemes.
- (d) The high fees involved for a prospective member wishing to transfer to one of the Schemes.
- (e) The irregular transfers from the Schemes to a travel agent and to an overseas company that is not registered.
- (f) The inconsistencies between the information provided by the Ark Trustee Companies to the Regulator and that provided to their bankers.

In view of all the above the Regulator considered that an independent trustee, with exclusive powers, should be appointed to all of the above named schemes together with vesting orders.

6. Reasons for Decisions

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 .

On the evidence before it, the reasons for the Panel's decisions were as follows.

A. Appointment of Independent Trustee and Vesting Order

- i The Panel made their decision on the evidence presented to them by the Regulator and in making it took into account all of the grounds and concerns of the Regulator set out in paragraphs 33 to 84 of the Application Request Notice (“the Notice”). They concluded that it was reasonable to appoint an independent trustee to secure the proper use of scheme assets, to secure that the scheme trustees had the necessary knowledge and skills for the proper administration of the schemes and to protect the interests of the generality of the scheme members.
- ii They based their decision on each of the 6 grounds put forward by the Regulator but gave particular consideration:
 - (a) to the failure of the trustees to pay sufficient regard to the need for diversification of investments, as required under Regulation 7 of the Occupational Pension Schemes Investment Regulations (SI 2205/3378); and
 - (b) to breaches of the fiduciary responsibilities of the trustees and to their responsibilities under common law to make investments for the sole and unequivocal benefit of the beneficiaries of each of the Schemes.
- iii As explained in the Schemes’ promotional material “Maximising Pension Value” the scheme funds were to be invested in two ways. A substantial proportion of the funds of the Schemes were to be applied by way of loans to other scheme members within the Ark group of schemes described as “the Pension Reciprocation Plan”. Many, if not all, of these loans would only be redeemed on the maturity of the particular member’s benefits. It was evident from the promotional material exhibited that the rationale of the schemes promoted as Maximising Pension Value was to make these cash advances from other schemes within the group thereby offering to members a facility not generally available to trustees, namely the ability freely to make advances to members from their own scheme funds. It was an evident consequence of this approach that investments made by way of such loans would be in place for a term until the maturity of each member concerned, in many cases for 25 years; that would leave the trustees with limited flexibility to vary the investment having regard to the circumstances of the markets and of the Schemes themselves.
- iv The one other investment vehicle open to them, as set out in the Trustee Investment Approach within the promotional material, was a property fund - XXXXXXXX XXXXXX Fund - whose objectives were not specified and into which there did not appear to have been placed any significant funds. Significant placings of funds that had occurred had been the transfer of £1 million into an account in Cyprus in the name of South Horizon Trading Ltd, a

company not recorded in the international companies house data bases and the transfers to a travel agent mention in para 5.xxx above. The Panel were unable to decide whether these companies had any connection with the XXXXXXXX XXXXX Fund, or indeed what the purposes of the transfers of funds were.

- v The Panel concluded that these circumstances constituted an inadequate diversification of investments within the Schemes and a serious breach of Regulation 7.
- vi The MPVA, or loans to members from scheme funds other than their own, was obviously a key feature of the promotion. It gave members of all the group schemes the opportunity to access cash immediately thus avoiding the normal restrictions on members in UK pension schemes. As such this was an investment strategy that did not have as its primary purpose the proper, most advantageous and secure application of funds to further the interests of the scheme members whose funds they were. It was not a strategy that furthered beneficiaries' interests by aiming to secure the most advantageous investment returns from scheme funds consistent with an appropriate assessment of risk.
- vii The Panel considered that there were serious disadvantages for members from this investment strategy. They were not satisfied that the rate of return on the loans had been compared with that of other investments, indeed the overall purposes of the MPVA would be frustrated if that were done. The loans were unsecured, the means of the debtors untested and a substantial sum - in the region of £6million - had been applied to loans before the trustees decided to take out group insurance on the lives of members who had taken loans. The intention of the plan was that pension benefits of members taking loans would be used to defray the amount outstanding on maturity. If those should prove to be inadequate the evidence before the Panel was that the repayment would come from members' pension payments.
- viii These investment arrangements were not sufficiently secure, they were uncertain and inflexible. They did not constitute a proper application of scheme assets and the trustees in committing to an investment strategy whose primary purpose was to make cash available to all members of the Schemes were compromising their duty to give first priority to the interests of their beneficiaries ie members of the Schemes from which loans were made. Further, the Panel concluded from the evidence of the practices employed by the trustees in promoting and managing these Schemes that they lacked the necessary knowledge and skill for proper administration of the Schemes.

B. Use of Special Procedure

- ix The Panel decided to exercise the function of appointing an Independent Trustee immediately under the Special Procedure because they considered there would otherwise be an immediate risk to scheme members' interests and to scheme assets. They were concerned that the practice of transferring assets abroad would continue having noted that £1million had been transferred from two schemes into an account in Cyprus in the name of a company whose objectives were unclear and which was not recorded on international companies house data bases. There was evidence of two other transfers to travel agents each of £250000 for no clearly specified purpose. Given that there was no clarity about the purpose of these funds transfers there was an immediate and continuing risk to other scheme funds.
- x The Panel also considered that the making of unsecured loans to members of the Schemes would be likely to be actively promoted and likely to continue given that such loans were a fundamental feature of the MPVA thereby putting scheme funds at risk.

7. Decisions

A. Appointment of independent trustee

The Panel granted the application for an order to be issued under Section 7 of the Pensions Act 1995. The Panel determined that an order be issued in the following terms in respect of the Schemes listed above:

1. Dalriada Trustees Limited of Chamber of Commerce House, 22 Great Victoria Street, Belfast BT2 7BA is hereby appointed as trustee of *the Schemes listed above* (the "Schemes") with effect on and from 31 May 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 Schemes pursuant to Section 7(3)(a);
 - ii to secure the proper use or application of the assets of the Schemes pursuant to Section 7(3)(c);
 - iii otherwise to protect the interests of the generality of the members of the Schemes pursuant to Section 7(3)(d).
 - a. The powers and duties exercisable by Dalriada Trustees Limited shall be to the exclusion of all other trustees of the Schemes pursuant to Section 8(4)(b) of the Pensions Act 1995.

- b. Dalriada Trustees Limited's fees and expenses shall be paid out of the resources of the Schemes pursuant to Section 8(1)(b) of the Pensions Act 1995.
- 4. This order:
 - iii. will take immediate effect on the date of this order;
 - iv. 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

The Panel granted the application for an order to be issued under Section 9 of the Pensions Act 1995. The Panel determined that an order be issued in the following terms in respect of the Schemes listed above:

1. The Pensions Regulator hereby orders the vesting in, and the assignation and transfer to, Dalriada Trustees Limited of Chamber of Commerce House, 22 Great Victoria Street, Belfast BT2 7BA as trustee of the Schemes listed above, appointed pursuant to 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.

8. Important Notices

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

9. 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 the Application Request Notice and its exhibits which accompanies this Determination Notice.

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:

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

10. **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 by the Regulator before a determination is made on review. This review must be determined as soon as reasonably possible.

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

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

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

11. **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 Upper Tribunal ("The Tribunal") under Section 99(7) of the Act. The Final Notice will give more details regarding referrals to the Tribunal.

Signed: John Scampion

Chairman: John Scampion

Dated: 7 June 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
 - (ii) 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.