

<p>The Pensions Regulator</p>	<p>Standard Procedure DETERMINATION NOTICE under Section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>The Eastern Counties Leather Company Pension Fund (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>C6647646</p>
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1. Matters to be determined:

The Determinations Panel (“the Panel”) met on 15 November 2012, 16 January 2013 and 4 February 2013 to determine whether Mr Hugh Anthony Byrne and Mrs Jacinta Louise Dean should be given notice in writing pursuant to section 29(5)(a) of the Pensions Act 1995 (“the 1995 Act”) waiving their disqualification to act as trustees of The Eastern Counties Leather Company Pension Fund. This is a reserved regulatory function under the Act and may only be exercised by the Panel. The request to exercise this power is an application under section 10(2)(b) of the Act.

The Panel determined that the above function should be exercised.

2. Directly Affected Parties

The Warning Notice specified the following parties as being directly affected by the regulatory action outlined therein.

- (a) Mr Hugh Anthony Byrne; and
- (b) Mrs Jacinta Louise Dean (“the Applicants”)
- (c) X; and
- (d) The Hanover Trustee Company Limited (“the Trustees”)
- (e) Cambridge Construction Limited (“the Employer”)

3. Details of the Scheme

The Scheme is a defined contribution scheme open to future accrual with three members, which was established as a small self-administered pension scheme (SSAS). The SSAS status was revoked following the pensions tax simplification which took place in April 2006. However, many of the relaxations that applied to SSAS continue to apply to small occupational pension schemes (SOPS). The Pensions Regulator (“the Regulator”) understands that the Scheme qualified as a SOPS prior to the Applicants’ resignation.

4. Background to Application

1. The Applicants and Xxxxxxxxxxxxxx (one of the Trustees) are the members of the Scheme. One of the Applicants, Mr Byrne, is a pensioner member.
2. The Hanover Trustee Company Limited is an independent trustee of the Scheme.
3. The Employer has assumed responsibility for the Scheme, following Eastern Counties Leather Limited (the Former Employer) going into liquidation.
4. The Panel had evidence before it that on the 24 October 2011 Mr Hugh Byrne signed a form of Disqualification Undertaking. This showed that Mr Byrne was disqualified from acting as a company director under section 1A of the Company Directors Disqualification Act 1986 from 15 November 2011 to 14 November 2017. As a consequence, he was automatically disqualified from being a trustee pursuant to section 29(1) of the 1995 Act. Had he not already resigned from his position as trustee of the Scheme, he would automatically have been removed as a trustee of the Scheme pursuant to section 30(1) of the 1995 Act by virtue of his disqualification as a director.
5. The Panel also had evidence before it that on the 24 October 2011 Mrs Jacinta Dean signed a form of Disqualification Undertaking. This showed that Mrs Dean was disqualified from acting as a company director under section 7 of the Company Directors Disqualification Act 1986 from 15 November 2011 to 14 November 2013. As a consequence, she was automatically disqualified from being a trustee pursuant to section 29(1) of the 1995 Act. Had she not already resigned from her position as trustee of the Scheme, she would automatically have been removed as a trustee of the Scheme pursuant to section 30(1) of the 1995 Act by virtue of her disqualification as a director.
6. The undertaking in respect of Mr Hugh Byrne gives the following reason:

xx

7. The undertaking in respect of Mrs Jacinta Dean gives the following reason:
xx
8. The Applicants were aware of the consequences of entering into their respective Disqualification Undertakings, and resigned as trustees of the Scheme prior to signing the undertakings and thereby becoming automatically disqualified from acting as trustees.
9. The Applicants have made a formal application to the Regulator requesting that it consider granting an order for a waiver of disqualification from acting as trustees of the Scheme. In support of their application they have stated that their reason for requesting the waiver is the requirement for all members of the Scheme to be trustees in order for it to qualify as a SOPS.
10. Taylor Vinters Solicitors, acting on behalf of the Applicants, have provided an explanation of the circumstances which led to the disqualification of the Applicants xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx.
11. The application for a waiver of disqualification from acting as a trustee is supported by both Trustees.
12. As a SOPS, the Scheme was able to enjoy certain exemptions which reduced its running costs and permitted an investment strategy which included a loan of £640,000 from the Scheme to the Employer. This would be contrary to pensions legislation (section 40 of the 1995 Act) in the event that the Scheme did not regain its SOPS status. (The Trustees have confirmed that the Employer would repay this loan in the event that the waiver of disqualification was not granted).
13. Unless the waiver was approved, the Scheme would need to take compliance steps which are more appropriate to a normal occupational pension scheme. This would increase running costs of the Scheme and thereby reduce members' benefits. The existence of the loan along with the additional administrative requirements (and therefore costs) of running the Scheme other than as a SOPS were cited as the reasons for wishing to regain SOPS status.
14. The Trustees have confirmed that it would be their intention to reappoint the Applicants as trustees of the Scheme in the event that the waiver was granted. The Trustees have the power to appoint trustees by Clause 2.2 of the trust deed and Rule 4.1 of the Scheme rules.
15. The Applicants have stated that the response by the Trustees is also a response on their behalf.

16. Given the requirement for all decisions in respect of a SOPS to be made unanimously, the Regulator did not believe that there was a risk to the members of the Scheme should the Determinations Panel be minded to give notice in writing to the Applicants waiving their disqualification to act as trustees in respect of the Scheme only.

5. Decision

The Panel agreed that it was appropriate to make the following orders:

A. Mr Hugh Anthony Byrne

The Pensions Regulator hereby orders as follows:

1. That a waiver is made of the disqualification of Mr Hugh Anthony Byrne of xxxxxxxxxxxxxxxx with effect on and from 4 February 2013 in relation to The Eastern Counties Leather Company Pension Fund pursuant to section 29(5)(a) of the Pensions Act 1995.
2. This waiver is only valid in relation to The Eastern Counties Leather Company Pension Fund.

B. Mrs Jacinta Louise Dean

The Pensions Regulator hereby orders as follows:

1. That a waiver is made of the disqualification of Mrs Jacinta Louise Dean of xxxxxxxxxxxxxxxx with effect on and from 4 February 2013 in relation to The Eastern Counties Leather Company Pension Fund pursuant to section 29(5)(a) of the Pensions Act 1995.
2. This waiver is only valid in relation to The Eastern Counties Leather Company Pension Fund.

6. Reasons for decision

In making their decisions the Panel had regard to the objectives of the Regulator as set out in Section 5 of the Act and to the matters mentioned in Section 100, as set out in **Appendix 1**.

On 16 November 2012 the Panel asked whether the Trustees of the Scheme would be in agreement to amend the wording within the Scheme's Trust Deed to give effect to the following wording:

"All future decisions of whatever nature affecting the scheme shall be by unanimous agreement of all of the General Trustees and (for the avoidance of doubt) shall require the express agreement of the Independent Trustee".

This amendment to the Trust Deed was to take effect until at least 15 November 2017.

On 4 February 2013 a signed amended Trust Deed was received by the Panel. Whilst the amended wording in Rule 8.2 of the Trust Deed, dated 4 February 2013, was not completely identical to the wording above, the Panel agreed that the amended wording of Rule 8.2 adequately met their concerns.

In particular, the Panel agreed that the amended wording, requiring all decisions to be made unanimously by the General Trustees with the express agreement of the Independent Trustee, provided a sufficient level of protection to the Scheme's assets whilst enabling the Scheme to benefit financially from regained SOPS status.

7. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the Directly Affected Parties against this decision.

Signed: ***Suzanne McCarthy***

Chairman: Suzanne McCarthy

Dated: 12 February 2013

Section 5 of the Pensions Act 2004
Regulator's objectives

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),
- (ca) to maximise compliance with the duties under Chapter 1 of Part 1 (and the safeguards in sections 50 and 54) of the Pensions Act 2008, 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 pension 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.

Referral to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”)

You have the right to refer the matter to which this Determination Notice relates to the Tribunal. Under Section 103 of the Pensions Act 2004 (“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 Tax and Chancery Chamber of the Upper Tribunal
45 Bedford Square
London
WC1B 3DN
Tel: 020 7612 9700

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 Panel Support
The Pensions Regulator,
Napier House
Trafalgar Place
Brighton
BN1 4DW.
Tel: 01273 811852