

<p>The Pensions Regulator</p>	<p><b>COMPULSORY REVIEW</b></p> <p><b>FINAL NOTICE</b></p> <p><b>pursuant to Section 99(4) of the Pensions Act 2004</b></p> <p><b>(“the Act”)</b></p> <p><b>The St George Structured Assets Limited Pension Scheme (“St Georges”)</b></p> <p><b>The Wicker Shine Limited Pension Scheme (“Wicker Shine”)</b></p> <p><b>The Halfords Assets Limited Pension Scheme (“Halfords Assets”)</b></p> <p><b>The Bardwell Heights Limited Pension Scheme (“Bardwell Heights”)</b></p> <p><b>Five Rings Limited Pension Scheme (“Five Rings”)</b></p> <p><b>Beausale Limited Pension Scheme  (“Beausale”)</b></p> <p><b>Berkeley Securities Limited Pension Scheme (“Berkeley Securities”)</b></p> <p><b>(the “multi-member Schemes” or “the Schemes”)</b></p>	<p>The Pensions Regulator case ref: <b>C12131131</b></p>
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1. The Determinations Panel (“the Panel”) of the Pensions Regulator (“the Regulator”) met on 11 August 2014 and has reviewed its determination made following a Special Procedure hearing on 19 May 2014 when Brian Kensington, Christopher Kensington, BPK & Associates Limited, Sanjay Gambhir, Kanwaljit Gambhir, William Donald-Adkin and Oliver Pyle (“the suspended trustees”) were suspended as trustees from trust schemes in general with effect on and from 19 May 2014 to 18 May 2015 and an independent trustee, Independent Trustee Services Ltd, was appointed to the Schemes with a vesting order. The terms of the Orders were as follows:

Appointment of an Independent Trustee

*“Independent Trustee Services Ltd of The St Botolph Building, 138 Houndsditch, London, EC3A 7AW is hereby appointed as trustee of:*

*The St George Structured Assets Limited Pension Scheme  
The Wicker Shine Limited Pension Scheme*

*The Halfords Assets Limited Pension Scheme  
The Bardwell Heights Limited Pension Scheme  
Five Rings Limited Pension Scheme  
Beausale Limited Pension Scheme  
Berkeley Securities Limited Pension Scheme*

*(together “the Schemes”) with immediate effect from 19 May 2014.*

*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).*

*The powers and duties exercisable by Independent 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.*

*Independent Trustee Services Ltd’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 and an amount equal to the amount paid out of the resources of the Schemes by virtue of Subsection (1)(b) is to be treated for all purposes as a debt due from the employer to the trustees of the Schemes pursuant to Section 8(2) of the Pensions Act 1995 as amended by Section 35 of the Pensions Act 2004.*

*Pursuant to Section 9 of the Pensions Act 1995, it is ordered that all property and assets of the Schemes, heritable, moveable, real and personal, of every description and wherever situated be vested in, assigned to and transferred to Independent Trustee Services Ltd as trustee of the Schemes.*

*This appointment 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.”*

#### Suspension of Existing Scheme Trustees

*“The Pensions Regulator hereby suspends:*

*Antony Brian Kensington  
Christopher Kensington*

*BPK & Associates Limited  
Sanjay Gambhir  
Kanwaljit Gambhir  
William Donald-Adkin  
Oliver Pyle  
(‘the Trustees’)*

*as trustee of trust schemes in general pursuant to Section 4(1)(a) and 4(3) of the Pensions Act 1995, with effect on and from 19 May 2014 until 18 May 2015.*

*This order has the effect of prohibiting each of the persons listed above during the period of the suspension, from exercising any functions as a trustee of trust schemes in general.*

*During the duration of the trustee’s suspension, he/she is authorised and entitled to execute any instrument the sole purpose of which is to effect his/her removal or resignation as a trustee of any trustee scheme pursuant to Section 4(6) of the Pensions Act 1995. This will take immediate effect on the date of this order.”*

2. A determination notice (“DN”) was issued to that effect on 6 June 2014.

#### **Matters to be determined**

3. Pursuant to section 99 of the Pensions Act 2004, the Panel met to review the determination made on 19 May 2014 and decide whether to exercise any of its powers under that section, which are:

*“(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.”*

#### **Background to the decision on 19 May 2014**

4. This matter relates to seven schemes, referred to as the multi-member schemes (or “the Schemes”). The name of the sponsoring employer for each Scheme mirrors the Scheme’s name and each of the employers was incorporated between 8 November 2011 and 15 February 2013.
5. The corporate trustee for each of the multi-member schemes is registered with the Regulator as BPK & Associates Ltd (“BPK”). Antony Kensington is the director and 100% shareholder of BPK and the joint signatory of bank accounts of four of the multi-member schemes alongside Christopher Kensington. Christopher Kensington is the [REDACTED]

signatory for bank accounts at HSBC for the St George scheme and the Halfords Assets scheme.

6. The remaining four trustees who are the subject of the Regulator's action are member nominated or employer nominated trustees of three of the Schemes.
7. The schemes in relation to which this matter relates are identified as "the multi-member schemes". There are, however, two distinct categories of schemes in relation to which the suspended trustees act:-
  - (i) The multi-member schemes;
  - (ii) The small single or several member schemes which have the appearance of small self-administered schemes ("SSAS").
8. Whilst not the primary focus of the Regulator's concerns, the SSAS are affected by the Regulator's actions.

#### The multi-member schemes

9. Each of the multi-member schemes was established and registered with the Regulator within a short period after the employer was incorporated i.e. between November 2011 and February 2013.
10. The Schemes received substantial member contributions totalling at least £13.93 million. The Regulator submitted that of this approximately £6.11million (and the entirety of the scheme funds of Berkeley Securities and Halfords Assets) was invested directly in [REDACTED], a single high-risk investment. According to the Regulator's evidence, a further £2.3million was invested indirectly in [REDACTED] via [REDACTED] [REDACTED] Ltd ([REDACTED]). In summary therefore approximately £8.41million was paid to [REDACTED] [REDACTED]. Approximately £4.73 million of member contributions were frozen in HSBC bank accounts (see further below).
11. The Regulator identified a "concerning pattern" in relation to the Schemes, namely that:-
  - (i) There was a large number of transfers for each Scheme into the Scheme bank account;
  - (ii) The transfers into the account accumulated until they reached a large amount (typically £1 to £2million), which was then invested in a single entity;
  - (iii) The bank accounts of the investment vehicles were layered via a mechanism which showed gradual dissipation of the fund to a number of other destinations which did not appear to be onward investments;
  - (iv) There had been payments to people who appeared to have been involved in introducing members to the Schemes.

[REDACTED]

12. The multi-member schemes were all registered with the Regulator by [REDACTED] of [REDACTED]. From what the Regulator could ascertain [REDACTED] was neither trustee nor administrator of the Schemes. The Regulator was unaware what service [REDACTED] was offering (although noted that it had been paid large amounts of “fees” – see below) but it was the Regulator’s belief that [REDACTED] was the “controlling mind” behind the Schemes given:-

- (i) The level of fees paid to [REDACTED] from scheme assets;
- (ii) It had a shared address with BPK;
- (iii) The registered contact for the multi-member schemes was [REDACTED] of [REDACTED]
- (iv) [REDACTED] was also an officer for the bank accounts of [REDACTED]
- (v) [REDACTED] was listed as “Introducer & UK Pension Fund Advisers” for the [REDACTED] 2013 from which funds were paid on to [REDACTED]
- (vi) A large proportion of the invested sums had been paid directly to [REDACTED]
- (vii) Sums appeared to have been paid from [REDACTED] to introducers.

13. The Regulator was of the view that there was a close connection between [REDACTED] and BPK/the Kensingtons, despite no formal position having ever been held by [REDACTED] or its directors in relation to the multi-member schemes.

#### The introducers

14. The Regulator’s Request identified a number of “introducers” to the multi-member schemes who had approached members of the public offering them the chance to unlock their pensions:-

(i) [REDACTED] Global  
The Regulator submitted that [REDACTED] who was the [REDACTED] of [REDACTED] Global, had been closely involved in the introduction of members to the multi-member schemes. According to the evidence submitted by the Regulator, Schemes’ monies totalling almost £1.5million had been paid to [REDACTED] Global.

(ii) [REDACTED] Solutions  
At least one member was introduced to the Beausale scheme by [REDACTED] of [REDACTED] Solutions. [REDACTED] Solutions was previously known as [REDACTED] Ltd.  
The Regulator identified payments out of the [REDACTED]

account to [REDACTED] and [REDACTED] (who the Regulator believes to be relations of [REDACTED]).

x

(iii) Kanwaljit Gambhir / Pensions Helpdesk

Kanwaljit Singh Gambhir was a director of a company called Pensions Helpdesk Ltd (since dissolved). Based on witness evidence provided to the Regulator, it was submitted that Kanwaljit Gambhir was also running a company introducing members to the Schemes and was directly involved in offering cashback to members.

15. In further evidence, it has become apparent that Oliver Pyle, another trustee, appeared to be involved in an organisation known as "Pension Key" and had sent an email making reference to a payment of a "rebate" to a member, with Pension Key operating as the introducer.

### Scheme Assets

16. The Regulator identified at least 435 payments into the multi-member schemes, totalling at least £13.93 million. All of the Schemes' bank accounts (except for Bardwell Heights) were held by HSBC which had frozen the accounts in light of its concerns as to the use of the funds. Approximately £4.473 million remained frozen in HSBC bank accounts. HSBC had come under pressure to release the assets and in relation to one of the Schemes, had been asked to work with a new corporate trustee, [REDACTED] Ltd. From the Regulator's investigations, however, it appeared that the individuals behind the schemes linked to [REDACTED] had set up [REDACTED] in order to take over the management of the Schemes.
17. Of the approximately £9.457 million that was transferred onwards from the multi-member scheme accounts, the evidence suggested that the monies were mostly (£8.41 million) transferred either directly or indirectly (for example via [REDACTED] Fund) to a single "investment" destination, [REDACTED]. A significant proportion of the remainder appeared to have been paid directly in fees to [REDACTED].
18. The Regulator was concerned that investments in the [REDACTED] or [REDACTED] were not appropriate investments for pension schemes being undiversified, unregulated and high risk.  
  
[REDACTED]
19. The trade description for the company was the "cultivation and maintenance of teak trees for its own benefit and the provision of cultivation and maintenance services to third parties". The Regulator conducted an analysis of the [REDACTED] bank accounts from which it concluded that:-

- (i) The account activity across the [REDACTED] accounts from 25 July 2012 was wholly attributable to direct or indirect receipts of money from four of the Schemes and there was no other source of income. From the evidence, the Regulator stated that there was no prospect of investments in [REDACTED] achieving the returns apparently promised to members.
  - (ii) All of the [REDACTED] accounts were closed in November / December 2013 and prior to their closure, the totality of the funds were transferred to accounts linked to [REDACTED] Global and [REDACTED] accounts held by [REDACTED] (a director of [REDACTED]) and accounts held by [REDACTED]. [REDACTED] was a Guernsey company which appeared to be linked to [REDACTED] insofar as the “administration” contact for [REDACTED] in Guernsey was [REDACTED] Limited whose director and 100% shareholder was [REDACTED]. She was also listed as a previous director of [REDACTED]. The Regulator therefore submitted that there was compelling evidence of a link between [REDACTED] and [REDACTED].
20. According to the Regulator’s analysis of the multi-member schemes funds, the funds had ultimately been paid to destinations which did not appear to be onward investments but included payments to individuals and commission payments and legal and marketing fees. The Regulator argued that there had been a deliberate and careful “layering” of the funds to allow for the gradual dissipation of the starting fund to a number of further destination accounts.
21. The Regulator’s concern was that substantially all of the Schemes’ funds which had not been frozen, had been misappropriated as there was no obviously valid basis for the movement of funds in the way that they had been. It was argued that substantial Schemes’ funds had been paid other than in onwards investments, for example, for a Ferrari, school fees and mortgage repayments.

### **The Regulator’s concerns**

22. In summary, the Regulator’s concerns can be summarised as follows:-
- (i) Investment Concerns
  - (ii) Misappropriation Concerns
  - (iii) Fee Concerns
  - (iv) Mis-selling Concerns
  - (v) Liberation Concerns.
- (i) Investment Concerns
23. The Trustees have duties in relation to investment under both statute and general trust law and the Regulator submits that these duties have

been breached in that assets of the multi-member schemes have been invested in a single investment which is high risk and without proper advice as required by s.36 of the Pensions Act 1995. Far from being an extant investment vehicle, [REDACTED] sole income was in fact the member contributions to the Schemes. The Regulator has further concerns that persons linked to the Trustees have a financial interest in the investment which would be a breach of trust law regarding conflicts of interest.

(ii) Misappropriation concerns

24. The Regulator suspects that the suspicious onward movement of funds via [REDACTED] accounts and the layering involved in these transactions, together with the large amounts taken out of [REDACTED] in fees (see below), demonstrates that parties involved in setting up the Schemes have deliberately attempted to misappropriate Schemes' funds. The Regulator submits that, even if the Trustees were themselves not aware of such misappropriation, they have failed to exercise proper control and oversight of the Schemes' funds.

(iii) Fee concerns

25. The Regulator's evidence suggests that substantial fees have been paid out of Schemes' funds, most significantly to [REDACTED], [REDACTED] and [REDACTED] without any apparent legitimate basis. Even if the fees were "legitimate", the Regulator submits that the Trustees have failed adequately to safeguard the Schemes' assets in so far as they have allowed or approved unreasonably high and unnecessary levels of fees.

(iv) Mis-selling concerns

26. The Regulator submits that members appear to have been induced to transfer their pensions to the Schemes on the promise of unrealistically high rates of investment return which are not supported by the evidence in relation to the onward investment of scheme funds. In particular the majority of the witnesses were informed that their monies would be invested in a "Protected Portfolio Bond" with a return of 40% over 5 years whilst others were promised a return of 69% over 10 years.

(v) Pensions liberation concerns

27. The Regulator believes that the multi-member schemes were involved in pensions liberation as the Schemes were marketed by introducers as a way of releasing cash from pensions. In particular, and based on witness evidence obtained by the Regulator:-

- (i) Almost all of the witnesses were targeted via unsolicited mass marketing techniques or following efforts to locate pension extraction companies;



- (ii) The introducers used language associated with pension liberation including “unlock” a pension and get “access to cash”;
- (iii) Witnesses were promised lump sum payments on completion of the transfer;
- (iv) In several cases, the witness evidence suggests that the introducers knew or suspected that the promised cash-back payments should not be offered;
- (v) Three of the witnesses received small cash-back payments; and
- (vi) None of the witnesses were informed of the tax implications of releasing pension monies prior to retirement age.

### **The SSAS Model**

28. In addition to acting as trustees of the multi-member schemes, some of the Trustees also act as trustees of a number of SSAS. These SSAS will be affected by the suspension of the Trustees. The Regulator has not requested the appointment of a trustee to the SSAS, although the Regulator has concerns in relation to them, including that there is no legitimate pension investment, substantial and unexplained fees have been paid to third parties and that the SSAS may be vehicles for pension liberation.
29. The Regulator submits that a typical pattern in relation to the SSAS is as follows:
- (i) a scheme is established by a corporate entity (the “Provider”);
  - (ii) fees of between 15% and 50% are paid to [REDACTED] or BPK, in most instances from scheme assets; and
  - (iii) almost the entirety of the total amount transferred by the ceding scheme into the scheme is transferred out (net of fees to [REDACTED] or BPK) to a corporate vehicle (the “Provider”), in many instances bearing a name connected to the scheme name. The provider establishes the scheme and is the entity that receives the funds.
30. According to the Regulator, 66 of the SSAS deeds confirm that for those schemes:
- (i) the trustee is Antony Kensington, Christopher Kensington or BPK with one or both of the Kensingtons acting on its behalf;
  - (ii) the administrator is the Provider; and
  - (iii) the scheme name is the same as the name of the Provider.
31. In relation to the 13 SSAS whose deeds the Regulator has seen and where the administrator is not the scheme’s Provider, the administrator is [REDACTED] (in 9 cases) or [REDACTED] (in 3 cases). From its database the Regulator is aware that 6 of the SSAS were registered with the Regulator by [REDACTED] which is a corporate trustee that was suspended following action by the Regulator pending a criminal investigation by another agency and which

resulted in the director being convicted and imprisoned for dishonesty offences.

## **Representations received since the decision on 12 May 2014**

32. Since the original decision, representations were received from (i) BPK and Christopher Kensington (ii) Kanwaljit Gambhir and Sanjay Gambhir (iii) William Donald-Adkin and Oliver Pyle and (iv) Independent Trustee Services Limited (“ITS”). The case team of the Regulator responded to the various representations and these responses were circulated to all Directly Affected Parties.
33. In their representations, BPK Associates, Kensington and Christopher Kensington referred to correspondence they had had with the scheme administrator to five of the schemes in October 2013 in which they raised concerns regarding pension liberation fraud and purported to resign with immediate effect. In representations dated 13 June 2014 BPK stated that it was “in agreement with the determination to suspend” BPK, and Christopher Kensington from acting as trustees. Their representations also stated, however, that they had no financial interest in the investment and that they did not understand the basis of the Regulator’s statement that they were “closely involved in the matters of concern”.
34. The brief representations from Kanwaljit Gambhir and Sanjay Gambhir similarly referred to correspondence with the Regulator in October 2013. In this letter Kanwaljit Gambhir and Sanjay Gambhir also purported to formally resign as trustees of the Wicker Shine and Bardwell Heights schemes. Kanwaljit Gambhir and Sanjay Gambhir neither accepted nor challenged the Regulator’s Orders.
35. The representations from William Donald-Adkin and Oliver Pyle in relation to the Beausale Limited Pension Scheme seek to rebut all suggestions that they may have acted improperly or negligently. They request immediate lifting of the suspension orders relating to them. Their representations are dealt with in detail below.
36. In its representations ITS explained that it had not yet received full details in relation to the investments. It was, however, able to conclude that “these investments are highly illiquid and undiversified in nature and are therefore unsuitable investments for a DC pension arrangement”.

## **Directly affected parties**

37. The directly affected parties (DAPs) have changed following the Panel being informed on 27 June 2014 that the Regulator’s case team had identified an additional 52 parties that they considered to be directly affected by the regulatory action. The Panel agreed. The SSAS needed to be taken into account when considering the requested suspension and appointment as, although they were not the focus of the case before the Panel, two or three of the suspended trustees are common to them, and they will therefore be affected by the suspension. The Panel considered that any practical difficulties in relation to the number of such parties were outweighed by the risk that the suspension might potentially

affect the ability of the co-trustees to carry out their duties. The Panel therefore considered that the decision to designate all of the co-trustees of the connected SSAS as directly affected parties was correct. Following contact with five of the SSAS DAPs the Pensions Regulator made a submission to the Panel that these five SSAS should no longer be considered a DAP. The Panel agreed and on 25 July 2014 these five DAPs were removed from the full list of DAPs. The parties listed in Appendix 2 are therefore those directly affected by this determination.

### **Compulsory Review Determination**

38. Having completed its review the Panel determined to confirm the order made on 19 May 2014. The trustees remain suspended pending prohibition and ITS remains appointed as the independent trustee.

### **Reasons for Decision**

39. In making its decision the Panel had regard to the objectives of the Regulator as set out in Section 5 of the Act and to the matters listed in Section 100. The Panel considered the representations made, as set out below.

#### BPK, Brian Kensington and Christopher Kensington

40. In relation to the letter dated 21 May 2014 from BPK, Antony Kensington and Christopher Kensington, the Panel considered and agreed with the Case Team that there had not been an effective resignation. In particular, the trustees had not complied with the provisions of Clause 25 of the Trust Deed (requiring the written consent of the Provider) and/or rule 9.4 of the Scheme (requiring replacement by another corporate trustee). The Panel therefore concluded that BPK, Antony Kensington and Christopher Kensington were trustees at the time the Panel's orders were made. The Panel further considered that these trustees' failure to consult or be aware of the terms of the rules or deed governing their scheme was evidence of the trustees' failure to properly acquaint themselves with the trust deed, or its rules, or demonstrate the knowledge and understanding required of DC pension trustees.
41. The Panel rejected the representation that there was no link between BPK and [REDACTED] other than the former's role as accountant and corporate trustee of the Schemes and provider of registered office facilities. It also rejected the assertion that BPK had no conflict of interest and was unaware of any misappropriation and layering structure in the scheme investments. As accountant to [REDACTED] it is likely that BPK knew that an employee of [REDACTED] was an official signatory for the [REDACTED] bank accounts and paid introducers and that [REDACTED] was identified as the "introducer" for [REDACTED]. The Panel also noted that BPK held large sums of scheme assets as unexplained "fees" to [REDACTED]. Further, the Panel found it very surprising that

BPK, as accountant to [REDACTED] and corporate trustee of the schemes would have been unaware of irregular investments, the misappropriation of scheme assets, the substantial fee payments to [REDACTED] [REDACTED] [REDACTED] Global and [REDACTED] and the characteristics of pension liberation in the selling of the schemes. At the very least, such ignorance would indicate a lack of knowledge and understanding and a failure to carry out due diligence. As to the representation regarding BPK's receipt of scheme assets, the Panel noted that the Determination Notice did not say that fees were being paid directly to [REDACTED]. Similarly, the Panel did not conclude in the Determination Notice that BPK had a connection with the promotion of the schemes, but that they must or should have been aware of the nature of the promises being made. As to the representation made that the Regulator had not set out the matters of concern, the Panel found that paragraphs 26 to 35 and 43 to 49 of the Determination Notice (reiterated in paragraphs 22-27 and 57-63 of this Final Notice) clearly specify both the Regulator's concerns and the reasons for the Orders

Kanwaljit Gambhir and Sanjay Gambhir

42. In relation to the representations made by Kanwaljit Gambhir and Sanjay Gambhir, the Panel determined that this could not be considered an effective resignation for the reasons stated above in relation to BPK, Kensington and Christopher Kensington. The Panel also considered that the purported resignation in this representation further evidenced the trustees' lack of appropriate knowledge and understanding.

Oliver Pyle and William Donald-Adkin

43. In relation to the representation regarding the alleged failure to pursue the matter through the Courts, the Panel agreed with the Case Team and considered that Oliver Pyle and William Donald-Adkin's representations in this regard were misconceived: the Regulator has acted in accordance with both the Case Team and Determinations Panel procedures and the Compulsory Review itself afforded all parties the opportunity to make representations.
44. In relation to the representation regarding HSBC's freezing of the accounts containing uninvested scheme assets, the Panel agreed with the Regulator that HSBC took the action as a result of their own concerns and investigations.
45. In relation to the representation that the Regulator has pre-judged the case, the Panel considered this to be wrong, as it was the Panel that made the decision.
46. In relation to the representation that the Panel had unfairly connected Beausale with the other schemes, the Panel considered that it was legitimate to connect them given the common corporate trustee and

common investment vehicle, but that in any event there was more than sufficient evidence to substantiate the concerns in relation to Beausale, even taking it in isolation, including, although not limited to, those concerns outlined in the HSBC letter of 10 March 2014. In addition, the Panel noted that all the schemes had a common corporate trustee and a common single investment vehicle.

47. The Panel found that the Regulator had not produced evidence to contradict Oliver Pyle and William Donald-Adkin's assertion that Beausale scheme members had been able to contact them and that, on one occasion, there had been a face to face meeting. However the Panel did not consider that this by itself was sufficient materially to affect its decision.
48. The Panel rejected the representation that diversification was not relevant and found that it illustrated an astonishing misunderstanding of trustee responsibilities. It equally rejected the assertion that HSBC's freezing of the account had prevented diversification not least because it noted that in Oliver Pyle and William Donald-Adkin's letter to HSBC there was no evidence of a request to HSBC to invest the frozen monies in liquid assets.
49. The Panel rejected the representation that the [REDACTED] was not high risk. The Panel agreed with the Case Team that the fund prospectus itself repeatedly states that it involved "*a high degree of risk*". The Panel further agreed with the Case Team that, given that the prospectus was issued on 4 February, only 2 days prior to the meeting on 6 February (at which the decision was taken to invest), it was unlikely that any proper due diligence can have been carried out.
50. The Panel agreed that the trustees had the power to invest Scheme monies, but noted that that right was not to be exercised without regard to the trustees' wider duties imposed by statute and as a matter of law.
51. The Panel agreed that there was no statutory requirement to obtain separate external investment advice if trustees themselves were sufficiently experienced to make suitable investments. However the Panel noted that there was a statutory requirement, where advice is being provided by a suitably qualified trustee, for such advice to be documented in writing (section 36 of the Pensions Act 1995). There was no evidence of such advice, nor specific detail in the minutes of the investment meeting as to the way in which trustees were "sufficiently experienced". Indeed their conclusion in that meeting that the [REDACTED] is a "secure investment with minimal volatility" casts serious doubt on the adequacy of their investment experience. The Panel noted that there was no evidence that other investments had been considered although it conceded that it was possible other investments had been considered prior to 4 February. However the Panel did not consider that this by itself was sufficient materially to affect its decision.

52. As to the representation that no scheme monies were paid to any third party (including [REDACTED] the Panel accepted that there was no evidence of direct payments but there was evidence of indirect payments to introducers, members and other third parties. The Panel further took into account an email sent from Oliver Pyle, making reference to a “rebate” to a member payable via “Pension Key”. The Panel noted that Oliver Pyle’s email address was a Pension Key address.
53. The Panel acknowledged the possibility – as recorded in the Determination Notice - that Oliver Pyle and William Donald-Adkin were not aware of any misappropriation. However a failure to detect, monitor or respond appropriately to evidence of misappropriation would, at the very least, indicate of a lack of competence and capability on their part.
54. The Panel rejected the representation that Oliver Pyle at least had not been involved in promoting schemes. In light of the email referred to above, Oliver Pyle appears to have involved in such activity. For the same reason, the Panel similarly rejected the representation that Oliver Pyle was not aware of pension liberation.
55. More generally, the Panel considered that the fact that Oliver Pyle and William Donald-Adkin were each 50% shareholders in Belmont Wealth UK Limited, a company offering administrative services to the Beausale scheme, indicated that they were compromised and in a position of conflict. They displayed no recognition of this conflict or of their fiduciary duties. The Panel was particularly concerned by the unusual service agreement between Belmont Wealth UK Limited and Beausale signed on behalf of Beausale by William Donald-Adkin as “scheme administrator” and on behalf of Belmont by Oliver Pyle as “managing director” providing for three years’ fees (some £66,069) to be paid in advance. The Panel was equally concerned by the fact that Oliver Pyle and William Donald-Adkin’s representations to HSBC appeared to be directed towards permitting these fees to be paid out of the frozen sums.
56. The Panel considered the new deeds brought to its attention by the Case Team under cover of its representations dated 24 June 2014. The Panel agreed with the Case Team’s analysis of the legal effect of these deeds and in particular that there could not be multiple “establishing deeds”. The Panel accepted that the deeds did not have the effect of removing trustees and therefore that the seven suspended individuals were trustees at the time the order was made. The Panel also considered that the existence of multiple deeds, all purporting to be establishing deeds, constitutes significant additional evidence of all trustees’ lack of the requisite knowledge and understanding.

The reasons given in the Determination Notice

57. Having considered the representations made, the Panel reconsidered its reasons in the Determination Notice, which for ease of reference, are set

out below. The Panel considered that such reasoning remains correct and that the additional evidence and representations in fact strengthen the case for suspension.

58. The Panel considered that [REDACTED] was a high risk, single investment that appeared unsuitable as an investment for pension funds. No written advice from an independent financial adviser or advice in writing from a suitably qualified trustee had been taken and there was no evidence that the Trustees had investigated sound investment options, despite statements made to members that this would be done. The Panel therefore accepted significant concerns regarding the lack of diversification and the Trustees' failure to take proper investment advice from appropriately qualified advisers. The Panel also considered that there was sufficient evidence to show that excessive fees had been charged to members which could / would have been avoided if proper advice had been obtained.
59. As evidenced by the case background and the strong evidence presented, the Panel considered there to be sufficient evidence of significant misappropriation of the Schemes' assets. There appeared to be a complex web of layering transactions to disguise the investment of the Schemes' assets.
60. The Panel accepted the Regulator's considerable concerns regarding the substantial fees being paid out of Schemes' funds, including to [REDACTED] and [REDACTED] Management and the apparent conflict of interest in that [REDACTED] is neither trustee nor administrator for the Schemes but appears to have received substantial fees and had been listed as the administrator for the [REDACTED] Scheme. The Panel were further concerned that Oliver Pyle and William Donald-Adkin's representations to HSBC were designed to secure a payment to Belmont, a company which is wholly owned by Oliver Pyle and William Donald-Adkin.
61. The Panel agreed that mis-selling had occurred throughout the life of a number of the Schemes. In particular:-
  - (i) there appeared to have been unrealistically high rates of return promised to members;
  - (ii) from the evidence it appeared that members were not made fully aware of the nature and risk level of investment of their pension funds;
  - (iii) the Trustees did not appear to have placed the Schemes' funds in a secure environment as promised.
62. Whilst the Panel noted that the mis-selling is attributable to the introducers to the Schemes, rather than the Trustees, the Panel accepted that some of the Trustees must, or should, have been aware of the nature of the promises being made. In particular, this was suggested by the connection between Pensions Helpdesk and Kanwaljit Singh



Gambhir, the apparent connections between [REDACTED] [REDACTED], [REDACTED] and [REDACTED] the fact that BPK and [REDACTED] shared an address, and the connections between Oliver Pyle and Pension Key.

63. The Panel considered that there was compelling evidence that the Schemes demonstrated a number of characteristics of misleading pension liberation. In particular:-
- (i) introducers made misleading statements that pension funds could be released “tax free”;
  - (ii) pension funds have been released by means of “commission rebates “ or “reward bonuses”;
  - (iii) very high “fees” were paid;
  - (iv) the introducers were not authorised by the Financial Conduct Authority;
  - (v) mass marketing techniques were utilised included texting and cold-calling;
  - (vi) the seven schemes in question were established in quick succession with non-trading sponsoring employers; and
  - (vii) members were provided with inadequate scheme documentation at point of transfer. In several of the cases, once entering the scheme, the members were unable to easily contact a scheme administrator.
64. For the reasons set out above, the Panel noted that pension liberation appeared to be the conduit for misappropriation of the Schemes’ assets.
65. From the evidence provided by the Regulator and some of the directly affected parties, the Panel considered that there was ample material to support the Regulator considering prohibition proceedings against all seven Trustees. In the Panel’s view, this justified the suspension pending consideration of prohibition. In particular the Panel noted the Regulator’s concerns over the honesty and integrity of some of the Trustees and specifically the apparently inaccurate information provided to members with regards to investments and the likely returns available. The Panel also considered that the apparent misuse of trust funds, for example to pay school fees and mortgage payments, were factors that may be relevant to prohibition proceedings. Finally, the Panel was influenced by the apparent breaches of trust or pensions law including the requirements to diversify investments, to take proper investment advice under s36 of the Pensions Act 1995 and the repeated seemingly deliberate attempts to avoid compliance with specific investment regulations by limiting the number of members.
66. As regards the individual trustees named in the Regulator’s Special Procedure Request, the Panel determined that each of the listed trustees should remain suspended and the case for suspension had significantly strengthened. The Panel noted that Antony Brian Kensington, Christopher Kensington and BPK and Kanwaljit Gambhir (to

which it now also adds Oliver Pyle and William Donald-Adkin) appeared to have been more closely involved in the matters of concern. It had not been presented with any further evidence in respect of Sanjay Gambhir, save for the fact that he had not acquainted himself with the terms of the Trust Deed or the Scheme Rules.

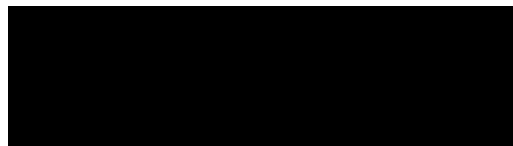
67. In the Panel's view, and at the very least, each of the Trustees demonstrated a lack of sufficient care and competence in acting as trustee and should have appreciated what was happening with the Schemes' funds.
68. The Panel considered that its original decision that the suspension should be for 12 months was correct and should apply to trust schemes in general given the information submitted by the Regulator in relation to the SSAS as well as the multi-member Schemes. At the very least the evidence suggested that the Trustees were negligent. Even if the Trustees were not themselves aware of the apparent misappropriation / misuse of the Schemes' funds, there appears to have been a serious failure to exercise proper oversight or control of Schemes' assets. In order to protect other schemes of which the Regulator is not currently aware, it is appropriate that the suspension should apply to all schemes.

#### **Terms of the suspension**

69. By Section 6 of the Pensions Act 1995, any person who purports to act as a trustee of a trust scheme whilst suspended in relation to the scheme under section 4 of the Pensions Act 1995 is guilty of an offence and liable (a) on summary conviction to a fine not exceeding the statutory maximum and (b) on conviction on indictment to a fine or imprisonment or both.

**Appendix 1** to this Determination Notice contains important information about the Directly Affected Parties' rights of appeal against this decision.

**Signed**



**Chair**



**Date**

**18 August 2014**

**Referral to the Tax and Chancery Chamber of the Upper Tribunal**

You have the right to refer the matter to which this Final Notice relates to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”). Under Section 99(7) 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:  
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

A copy of the form for making a reference, FTC3 ‘Reference Notice (Financial Services)’, can be found at:

[http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court\\_forms\\_id=3043](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3043)