

<p>The Pensions Regulator</p>	<p style="text-align: center;"><b>COMPULSORY REVIEW</b></p> <p style="text-align: center;"><b>FINAL NOTICE</b> pursuant to Section 99(4) of the Pensions Act 2004 ("the Act")</p> <p style="text-align: center;"><b>Marley Administration Services Ltd and Ochil Birch RBS Binnian Cedar RBS Bodmin Stincher RBS Sidlaw Larch RBS Lawers Tay RBS Quantock Yew RBS (the "Schemes")</b></p>	<p style="text-align: center;">The Pensions Regulator case ref: <b>C15903889</b></p>
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1. The Determinations Panel ("the Panel") of the Pensions Regulator ("the Regulator") has reviewed its determination made following a Special Procedure hearing on 13 June 2013 when:
  - i. Timothy Walker and Macalister Lindsay were suspended as trustees from the Schemes with effect on and from 13 June 2013 until 12 June 2014; and
  - ii. an independent trustee, Dalriada Trustees Ltd, was appointed to the Schemes with a vesting order.

**Directly affected parties**

2. The following parties are directly affected by this determination:

Timothy Walker  
Macalister Lindsay  
*Together the former trustees*

Dalriada Trustees Limited  
*The new trustees*

Ochil Birch Limited  
Binnian Cedar Limited  
Bodmin Stincher Limited  
Lawers Tay Limited  
Quantock Yew Limited  
Sidlaw Larch Limited  
*Together the Schemes' sponsoring employers*

Marley Administration Services Limited  
*The administrator*

Martin Brown  
*Sole director of Marley Administration Services Ltd*

Margaret Cartwright  
*Employee of Marley Administration Services Ltd and co-signatory on the scheme bank accounts*

## **Background**

3. This is the compulsory review of the decision taken by the Panel on 13 June 2013 to suspend Timothy Walker and Macalister Lindsay as trustees for one year pending consideration being given to the making of a prohibition order, and to appoint an independent trustee, Dalriada Trustees Ltd.
4. The decision taken at the special procedure hearing followed concerns being raised by the Regulator regarding the Schemes. The Regulator's principal concerns were that:-
  - i. evidence suggested that the Schemes were involved in pension liberation. If so, and if the former trustees were complicit in such activities, then, the Regulator submitted, they were not fit and proper persons to be trustees;
  - ii. there was evidence to suggest that the assets of the Schemes were being invested in risky investments. In particular, the Regulator submitted that a significant investment in the XXXXXXXX Fund, a Gibraltar-based fund, was unsuitable for pension schemes given the lack of diversification, the apparent high risk nature of the investment and the evidence that the XXXXXXXX Fund might be a vehicle for fraud. The Regulator submitted that the fact that the former trustees had permitted such investment was either indicative of complicity in pension liberation activities, or demonstrated a lack of skill and knowledge to ensure proper administration of the Schemes or otherwise demonstrated a failure by the former trustees to discharge their duties;
  - iii. the former trustees appeared not to have sufficient skill, knowledge or understanding to protect the Schemes' assets or to act in the best interests of members of the Schemes and had acted in breach of their duties as trustees.
5. At the special procedure hearing, the Panel determined to appoint Dalriada Trustees Ltd and to suspend Timothy Walker and Macalister Lindsay in light of the evidence presented about pension liberation and the investment in the XXXXXXXX Fund contrary to the duties of trustees. In its determination, the Panel noted the evidence that Mr Walker and Mr Lindsay did not seem to have the requisite knowledge and understanding required of trustees of occupational pension schemes and were not

exercising independent judgement in their trusteeship of the Schemes. The Panel noted that Mr Brown had been permitted to exercise control over the Scheme's assets and investments XXXXXXXX XXX XXXXXXXX XXXXXXXXXX XXXXX XXXX XXXXX XXXX XXXXXXX XXXX and that the former trustees had not taken appropriate action to safeguard the interests of the Schemes XXXX XXX XXXXX.

### **Compulsory Review**

6. For the purposes of the compulsory review the Panel considered representations received from XXXXXXXX on behalf of Mr Brown (on a related matter), from XXXXXXXX XXXXXXXX on behalf of Dalriada Trustees Ltd and from the Regulator's case team.
7. In its representations for the compulsory review hearing, the Regulator indicated that its initial concerns regarding the Schemes had not been alleviated and rather had been confirmed/heightened. The Regulator reiterated the three key areas of concern regarding the Schemes, namely:-
  - i. that the Schemes are involved in pension liberation;
  - ii. that the assets of the Schemes have been invested in risky investments; and
  - iii. that Mr Walker and Mr Lindsay do not have sufficient skill, understanding or interest in the management of the Schemes to protect the Schemes' assets, act in the members' best interest or act in accordance with their common law or statutory duties as trustees.
8. With regard to its concerns over investments, the Regulator's case team submitted representations which included the report from the Financial Services Commission ("FSC") in Gibraltar in respect of the XXXXXXXX investment, in which approximately two thirds of the assets of the Schemes, namely £7,760,500, appear to have been invested. This report concluded as one of its findings that "*in the Commission's view it seems highly probable that XXXXXXXX has been used as part of a fraud perpetrated on pension investors*".
9. No representations were received from the suspended trustees Mr Walker or Mr Lindsay.

### **Compulsory Review Determination**

10. Having completed the compulsory review, the Panel determined to confirm the determination referred to in paragraph 1 above, and to confirm the Orders made on 13 June 2013 under sections 4 and 7 - 9 of the Pensions Act 1995, namely to suspend the former trustees and appoint an independent trustee.

## Reasons for Decision

11. The Panel gave careful consideration to the issues raised and 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.
12. The Panel determined to uphold its previous determination for the following reasons:-
  - i. the evidence regarding the former trustees' investment strategy gave rise to significant concerns. In particular, the fact that the Schemes had invested considerable sums in just two investments and, more significantly, the Gibraltar FSC findings in relation to the larger of those investments (the XXXXXXXX Fund) highlighted the need for an independent trustee to consider the investments and the strategy behind it.
  - ii. The fact that the former trustees had permitted the investment in the XXXXXXXX Fund demonstrated either that XXXXXXXX XX XXXXXXXXXXXX XX XXX XXXXXXXXXXXX XXXXXXXXXXXX XXXXXX XX XXX or that they were unaware of their duties to invest in assets appropriate to pension schemes. In either case, it gave great cause for concern over their suitability to act as trustees;
  - iii. whilst there was limited new evidence of pension liberation activities since the special procedure hearing, there remained a number of pension liberation indicators, including XXXX XXXXX XXX XXX XXXX XXXXXXXXXXXX XXX XXXXXXXXXXX XXXXXXXXXXXXXXXX, set up of the Schemes and sponsoring employers over a short period of time, evidence of loans being made to members and the investment in high risk offshore investments. This evidence suggested that the former trustees were complicit in pension liberation activities and/or demonstrated that the former trustees' activities were not limited to providing retirement benefits. In either case, the former trustees had demonstrated a lack of skill and understanding to ensure the proper administration of the Schemes and a general failure to discharge their duties including to act in members' best interests;
  - iv. there was no evidence to contradict the previous indications that the former trustees had ceded control of the Schemes to Mr Brown. Given that Mr Brown was the director of the administrator to the Schemes XXX XXXX XXX XXXX XXXXXXXXXXXX XXXXXXXXXXXX XX XXXXXX XXX XXXX XXXXXXX, XXXXX, this was of concern. XXXX XXX XXXXX XXXXXXXXXXX XX XXXX XXXXX XXX XXXX.
13. The Panel noted that no further evidence of breach of regulatory requirements had been provided.
14. In the Panel's view, the concerns identified above justified both the suspension of the former trustees and the appointment of an independent

trustee with the necessary knowledge and skill for the proper administration of the Schemes.

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

**Chairman : Alasdair Smith**

**Date : 3 February 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 103 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 ‘Reference Notice (Financial Services)’ can be found at:

<http://www.tribunals.gov.uk/financeandtax/Documents/forms/FTC31.doc>