

<p>The Pensions Regulator</p>	<p>DETERMINATION NOTICE under section 10 of the Pensions Act 1995 and section 64 of the Pensions Act 2004 New Station Bodyworks Ltd Retirement Benefits Scheme 550085 (the “Scheme”)</p>	<p>The Pensions Regulator case ref: E70624665</p>
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1. The Determinations Panel (the “Panel”) of the Pensions Regulator (the “Regulator”) met to consider the issues in a Warning Notice dated 12 May 2016.

Matters to be determined

2. The Warning Notice asked the Panel to determine whether to issue a penalty under section 10 of the Pensions Act 1995 (“the 1995 Act”) resulting from the failure to comply with section 64 of the Pensions Act 2004 (“the Act”).
3. The power to issue a penalty under section 10 is a reserved regulatory function and is, therefore, only exercisable by the Panel.

The Decision

4. The Panel determined to issue a civil penalty notice in the amount of £300 to the trustee of the Scheme, New Station Developments Ltd (“the Trustee”). The Panel concluded that a penalty was appropriate as the Trustee had failed to take all reasonable steps to secure compliance with the obligation to provide a scheme return. The period prescribed for payment of a penalty under section 10(1) of the 1995 Act is 28 days from the date of the penalty notice (Regulation 21 of SI 1997/794).
5. The penalty notice will not be issued until at least 28 days after the date of this determination in case a reference (or challenge) is made to the Upper Tribunal.
6. This Notice gives the Panel’s reasons for its determination.

Directly Affected Parties

7. The Panel considered New Station Developments Ltd, which is also the Scheme employer, to be the only party directly affected by its determination.

The Scheme

8. The Warning Notice states that the Scheme is a defined contribution scheme which is open with 6 members. The Scheme has been registered with the Regulator and the Regulator has no information which

16. The Regulator has not received any response to the contents of its letter of 18 April 2016.

Warning Notice and Representations

17. In the Warning Notice, the Panel was asked to determine that a financial penalty be issued to the Trustee. The Regulator ultimately recommended a penalty of £300. The Regulator stated that it had not previously fined the Trustee and that it was not aware of any aggravating or mitigating factors which might otherwise increase or decrease the proposed penalty.
18. No representations were received from the Trustee in response to the Warning Notice.

The Law

19. Section 59 of the Act provides that

“(1) The Regulator must compile and maintain a register of occupational pension schemes and personal pension schemes which are, or have been, registrable schemes (referred to in this Act as “the register”).

“(2) In this section and sections 62 to 65 “registrable scheme” means an occupational pension scheme, or a personal pension scheme, of a prescribed description...”

20. Section 63 of the Act states that:-

“(1) The Regulator must issue scheme return notices in accordance with this section requiring scheme returns to be provided in respect of registrable schemes...”

21. In accordance with section 64 of the 2004 Act:

“(1) The trustees or managers of a registrable scheme in respect of which a scheme return notice is issued must, on or before the return date, provide a scheme return to the Regulator.

“(2) If a scheme return in respect of a scheme is not provided in compliance with subsection (1), section 10 of the Pensions Act 1995 (c. 26) (civil penalties) applies to any trustee or manager of the scheme who has failed to take all reasonable steps to secure compliance.”

22. Section 10 of the 1995 Act provides:

“Civil penalties

(1) Where the Authority are satisfied that by reason of any act or omission this section applies to any person, they may by notice in

writing require him to pay, within a prescribed period, a penalty in respect of that act or omission not exceeding the maximum amount.

- (2) *In this section "the maximum amount" means-*
- (a) *£5,000 in the case of an individual and £50,000 in any other case, or*
 - (b) *such lower amount as may be prescribed in the case of an individual or in any other case,*
- and the Secretary of State may by order amend paragraph (a) by substituting higher amounts for the amounts for the time being specified in that paragraph..."*

23. Regulation 21 of The Occupational Pensions Regulatory Authority (Determinations and Review Procedure Regulations 1997 (SI 1997/794)) stipulates that:

"For the purposes of section 10(1) of the 1995 Act (civil penalties) the period prescribed for the payment of a penalty to the Authority shall be 28 days from the date of the notice in writing sent by the Authority requiring payment of that penalty."

Reasons for the Decision

24. 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.

25. The Panel was satisfied of the following:-

- (i) The Scheme has been registered with the Regulator and the Regulator has no information which would indicate that the Scheme has ceased to be a registrable scheme. The Panel concluded that the scheme is a registrable scheme;
- (ii) The Trustee remains the trustee of the Scheme in spite of the sale of the business in April 1998;
- (iii) A scheme return notice was issued to the Scheme on 7 August 2015 with a Return Date of 18 September 2015. The Scheme Return was issued by post to the Trustee at its registered office;
- (iv) The Trustee was required to provide a scheme return in accordance with section 64(1) of the Act on or before the Return Date and has failed to do so;
- (v) The Trustee has not provided any evidence to the Regulator of having taken all reasonable (or indeed any) steps to secure compliance;
- (vi) In the circumstances, the Regulator has the power to impose a penalty in accordance with section 10 of the 1995 Act; and

- (vii) It is an appropriate exercise of the Regulator's functions to impose a penalty. The Panel concluded that a figure of £300 is appropriate, given the Regulator's objectives, including to promote and improve the understanding of the good administration of work based pension schemes.

Conclusion

26. For these reasons the Panel determined to issue a penalty notice in the amount of £300 to the Trustee, New Station Developments Ltd, payable 28 days from the date of the notice.
27. By virtue of section 96(5) of the Pensions Act 2004 the penalty notice will not be issued during the 28 day period within which this determination may be referred to the Upper Tribunal and, if so referred, until the reference and any appeal against the Upper Tribunal's determination has been disposed of. If no referral to the Upper Tribunal is made within 28 days, then a penalty notice will be issued to the Trustee.
28. **Appendix 1** to this Determination Notice contains important information about the rights of the parties to refer this decision to the Upper Tribunal.

Signed:

Chairman: Elizabeth Neville

Dated: 5 August 2016

Referral to the Tax and Chancery Chamber of the Upper Tribunal

You have the right to refer the matter to which this Determination Notice relates to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”). Under section 99(7) of the Act you have 28 days from the date this Determination 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 Determination Notice.

The Tribunal’s address is:

Upper Tribunal
(Tax and Chancery Chamber)
Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL

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:

<https://hmctsformfinder.justice.gov.uk/HMCTS/FormFinder.do>