

	DETERMINATION NOTICE under section 98(2)(a) of the Pensions Act 2004 (“the Act”)	The Pensions Regulator case ref: 881/05
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Scheme: The Roy Bishop & Son Ltd (1982) Retirement Fund	
To:	Mr Geoffrey Bishop
Of:	XXXXXXXXX XXXXXXX XXXXXX XXXXXXX XXXXXXXXX
To:	Mr Kenneth A Kendrick
Of:	XXXXXX XXXXXXX XXXXXXX XXXXXX XXXXXXXXX
To:	Burges Salmon Pension Trustees Limited
Of:	Narrow Quay House Narrow Quay Bristol Avon BS1 4AH
Date:	10 February 2006

TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on **7 February 2006**.

1.	Determination
1.1	The Pensions Regulator is to determine whether an order should be made to appoint an independent trustee to the Roy Bishop & Son Ltd (1982) Retirement Fund.
1.2	An independent trustee was appointed: Burges Salmon Pension Trustees Limited.

2.	Procedure Followed: Special
2.1	The Regulator considered it necessary to exercise a regulatory function immediately under section 98 of the Pensions Act 2004 (“the Act”) because there is, or the Regulator considers it likely that if a warning notice was to be issued there would be, an immediate risk to the interests of members and/or the assets of this scheme.
2.2	The Regulator therefore decided to exercise its function immediately, details of which are given below.
2.3	<p>The Regulator determined that the following parties are directly affected by this determination:</p> <ol style="list-style-type: none"> 1. Mr Geoffrey Bishop In his role as a trustee of the scheme 2. Mr Kenneth A Kendrick In his role as a trustee of the scheme. 3. Burges Salmon Pension Trustees Limited In its role as the independent trustee appointed. <p>(collectively referred to as “the directly affected parties”)</p>

3.	Relevant Statutory Provisions/Legislation
	<p>Section 97(2) of the Pensions Act 2004 Sections 7(3)(a) and (c) of the Pensions Act 1995 as amended by section 35 of the Pensions Act 2004 Section 8 of the Pensions Act 1995</p>

4.	Background to the Application / Case
	<ol style="list-style-type: none"> 1. This scheme became frozen on 28 February 2000 when it was closed to new members and future accrual ceased. It was subsequently confirmed to be in wind-up with a crystallisation date of 14 November 2000. This fact was disputed by the former trustee and scheme administrator, Gill Dennis, until her removal in January 2005. The remaining trustees sought and obtained confirmation of the factual position by way of a Counsel’s Opinion dated 4 February 2005. An additional Note from Counsel on 22 March 2005 stated: <i>“Accordingly, in my opinion, the position is as follows: (1) I remain of the clear view that winding up of the scheme commenced before 11 June 2003; (2) I think it probable that winding up commenced no later than 14 November 2000...”</i>. 2. Whether, and when, the scheme commenced winding-up had important implications for both the scheme members and the participating employers as they would determine <i>inter alia</i> the extent to which the Employers remained liable to remedy the scheme’s funding deficiency pursuant to a section 75 debt (Pensions Act 1995). 3. The remaining trustees were unable to progress the wind-up as the

	<p>scheme records had been retained by the former administrator.</p> <ol style="list-style-type: none"> 4. The scheme had two participating employers R H Thompson & Co Ltd and Roy Bishop & Son Ltd. Both companies were owned by Mr Geoffrey Bishop (trustee) until 2005 when R H Thompson & Co Ltd was sold. 5. In a legal charge dated 2 June 2005 the purchaser of R H Thompson had a right to set-off against the purchase price a sum up to a maximum of £850,000 in respect of all costs and expenses incurred, or to be incurred, by the vendor Geoffrey Bishop in discharging any liability arising under section 75 of the Pensions Act 1995 in relation to this fund being wound up. 6. In his Opinion dated 4 February 2005 Counsel stated in relation to section 75: <i>“(3) In selecting the applicable time for s.75 purposes, the trustees (a) should aim to maximise their recovery against the Employers so that as great a proportion of members’ benefits may be paid as is possible (c) should consider adopting a gilts matching policy (as defined in Regulator 7(9)(a) MFR Regulations) which would bridge at least some of the gap between the modified MFR and buyout deficit levels.”</i> 7. On 31 October 2005 a meeting was held between the Regulator, the trustees and their legal and actuarial advisers. Geoffrey Bishop, a trustee and sole director and owner of Roy Bishop & Son Limited (principal employer), advised the meeting that the trustees had not considered gilts matching and that the calculations of the winding-up debt had been made on a modified MFR basis. In addition Mr Bishop stated that no negotiations had taken place with the employer regarding gilts matching. The Regulator pointed out that the gilts matching policy would probably have resulted in a much higher figure for the debt on the employer and this statement was confirmed by the actuary. 8. Also at this meeting, Mr Bishop was asked by the Regulator about any agreement with the buyer of R H Thompson: Mr Bishop did not provide any factual answers but did say that there might have been an agreement. The Regulator then showed Mr Bishop the legal charge document, as available from Companies House, and he stated that he would need to speak to his solicitor about this and could not answer. The existence of this document meant that Mr Bishop had a continuing interest in the amount of the pension debt payable by R H Thompson. 9. The scheme actuary provided copies of the GN19 certificates in respect of R H Thompson & Co Ltd and Roy Bishop & Son Ltd at the meeting. On 3 November 2005 the Regulator subsequently contacted the actuary requesting clarification, including background information, on the choice of date for calculation and for the revised amount of liabilities if a gilts matching policy had been adopted. 10. On 16 November 2005 the scheme actuary advised that the calculation date had been decided by the trustees using a 2005 figure as it gave the highest figure. Details of the assumptions for the GN19 calculations were also detailed. They were not carried out on a gilts matching policy. However, on 7 December 2005 the actuary provided the comparison
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	<p>figures of a gilts matching and non gilts matching policy. The gilts matching policy figures were in excess of the original GN19 calculation.</p> <ol style="list-style-type: none"> 11. As a footnote to point 5(3)(c) of his Opinion dated 4 February 2005 Counsel wrote: <i>“I am conscious that issues such as this will give rise to an acute conflict of interest and duty on the part of (at least) Mr Geoffrey Bishop which will be extremely difficult to manage. Mr Bishop should consider resigning as a trustee.”</i> When subsequently asked by the Regulator (at the meeting on 31 October 2005) whether he considered there was a conflict of interests Mr Bishop replied that there was not. 12. On 27 January 2006 Nabarro Nathanson, the scheme’s legal advisers, sent the Regulator a copy of a letter dated 25 November 2005. The letter proposed that the debt to the scheme be compromised. 13. It was because of the information detailed in the letter of 25 November 2005 that the Regulator asked for this application to be dealt with under the special procedure pursuant to section 97 of the Pensions Act 2004. 14. The Regulator considered that there was a conflict of interest as Mr Bishop is the sole director and owner of the Principal Employer and had retained an interest in the amount of debt payable by R H Thompson & Co Ltd. Therefore, in order to ensure that the scheme assets were secured and applied for the maximum benefit of the scheme members an application was submitted for an independent trustee to be appointed with exclusive powers.
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5.	Facts and Matters Relied Upon
	<ol style="list-style-type: none"> 1. The Panel considered that the appointment of an independent trustee (IT) was necessary in order to secure: <ul style="list-style-type: none"> • that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme pursuant to section 7(3)(a) of the Pensions Act 1995; • the proper use or application of the assets of the scheme pursuant to section 7(3)(c) of the Pensions Act 1995. 2. In relation to deciding to appoint an IT under section 7(3)(a) the Panel considered that Mr Bishop did indeed have a conflict of interest as he was still the sole director and owner of Roy Bishop & Son Ltd and still retained an interest in R H Thompson & Co Ltd because of the set-off detailed in the legal charge document (RB4). 3. Counsel had advised Mr Bishop in a footnote to point 5(3)(c) of his Opinion dated 4 February 2005 that he was conscious <i>“that issues such as this (consideration of a gilts matching policy) will give rise to an acute conflict of interest and duty on the part of (at least) Mr Geoffrey Bishop”</i> When asked by the Regulator at the meeting on 31 October 2005 if he considered there was a conflict of interest, Mr Bishop answered that he did not. He was further asked about the set-off and was unable to explain whether in his view that meant his having an interest in the

valuation of the deficit.

4. Counsel also advised that Mr Bishop should consider resigning because of his possible conflict: he did not.
5. The panel reviewed the evidence presented and concluded that actions of the trustees appeared to have been taken other than in the interest of the proper use of fund assets and in the general interest of scheme members.
 - a. The trustees had not given full and appropriate consideration to adopting a gilts matching policy to bridge at least some of the gap between the modified MFR and buyout deficit levels, despite having been advised to do so by Counsel.
 - b. There had been inadequate investment advice sought or given following the commencement of the scheme wind-up. No evidence was provided to show that the trustees had taken any action towards seeking investment advice.
 - c. The sale of the property part of the fund had been dealt with without seeking any independent valuation.
 - c. The calculations of the certified debts on the employers Roy Bishop & Son Ltd and R H Thompson & Co Limited used asset valuations that were not based on audited accounts. The trustees did not appear to have ensured that audited accounts were obtained as required by the legislation.
6. No evidence was put forward to indicate that the other trustee, Mr Kendrick, (an employer-nominated trustee) played any significant part in the administration/decision making processes pertaining to the scheme. There was currently no independent or member-nominated trustee.
7. The Panel noted the comments in the papers pertaining to the former administrator/trustee, Gill Dennis, still having possession of the scheme records and the fact that the Regulator is endeavouring to deal with this situation. As the scheme records are not available it has not been possible to progress the winding-up of the scheme.
8. Because of the above, the Panel did not feel that the trustees had demonstrated that they had the necessary knowledge and skill for the proper administration of the scheme or, that their actions overall, demonstrated proper use of the assets of the scheme resulting in the maximum benefits being obtained for the scheme members.
9. The Panel considered that it was necessary to exercise the regulatory function under section 7 of the Pensions Act 1995 (as amended) immediately 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 the interests of scheme members or to scheme assets. In this regard, the Panel took account of the contents of the letter dated 25 November 2005, sent to the Regulator on 26 January 2006, and in the absence of any further information considered it likely that no compromise had yet been entered into and that there was a continuing prospect that such a compromise would be reached in view of Mr Bishop's conflict of interest.

	10. The Panel agreed that the directly affected parties should be given the opportunity to attend in person at the Compulsory Review hearing to make their representations if they so wished.
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6.	Conclusion: Details of Determination
	<ol style="list-style-type: none"> 1. Burges Salmon Pension Trustees Limited of Narrow Quay House, Narrow Quay, Bristol, Avon BS1 4AH is hereby appointed as trustee of the Roy Bishop & Son Ltd (1982) Retirement Fund with effect on and from 7 February 2006. 2. This order is made because the Pensions Regulator is satisfied that it is necessary to do so in order to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme pursuant to section 7(3)(a) of the Pensions Act 1995 and in order to secure the proper use or application of the assets of the scheme pursuant to section 7(3)(c) of the Pensions Act 1995. 3. The powers and duties exercisable by Burges Salmon Pension Trustees Limited shall be to the exclusion of all other trustees of the scheme pursuant to section 8(4)(b) of the Pensions Act 1995. 4. The appointed trustee's fees and expenses shall be wholly paid by the employer pursuant to section 8(1)(a) of the Pensions Act 1995 as amended by section 35 of the Pensions Act 2004. 5. This order: <ul style="list-style-type: none"> a will take immediate effect on the date of this order b may be terminated at the expiration of 28 days notice from the Pensions Regulator to the trustees, pursuant to section 7(5)(c) of the Pensions Act 1995.

7.	Decision Maker
	The determination which gave rise to the obligation to give this Determination Notice was made by the Determinations Panel.

8.	Scheme details	
	Type of scheme	Defined Benefit
	Status of scheme	Winding up
	Membership	75 as at 20.06.2005 (12 pensioners and 63 deferred members)
	Size of fund	£3,120,180 as at 28.02.2005
	Contracted in/out	Contracted Out

9. Scheme trustees			
	Name	Period of office	Status of trustee
1.	Mr Geoffrey Bishop	from 1982 to present	Employer Nominated
2.	Mr Kenneth A Kendrick	from 1982 to present	Employer Nominated

10. Scheme advisers				
	Type	Name	Period of office	Company
1.	Scheme Actuary	Paul Barnes	27/3/1997 - present	Barnes & Sherwood Ltd
2.	Scheme Auditors	Sutton Dipple	Not known	Sutton Dipple
3.	Investment Manager	Dryden Wealth Management Ltd	Not known	Dryden Wealth Management Ltd
4.	Independent Financial Adviser	Barnes & Sherwood	12/01/05 - present	Barnes & Sherwood (Investment) Ltd
5.	Scheme Administrator	Barnes & Sherwood	1/2/2005 - present	Barnes & Sherwood Ltd
6.	Legal Advisers	Nabarro Nathanson	Appointed 12/1/2005 but to take effect from 1/11/1998	Nabarro Nathanson

11. Employer details	
Principal Employer	
Name	Roy Bishop & Son Ltd
Address	Town Green Farm Kings Lane, Englefield Green, Surrey TW20 0UD
Nature of business	Wholesale of meat and meat products
Number of employees	Not known
Company Registered Number	00665468
Current Status	Active

Associated Employer	
Name	R H Thompson & Co Limited
Address	18 East Market Buildings , Central Market Smithfield, London, Middlesex
Nature of business	Wholesale of meat and meat products
Number of employees	Not known
Company Registered Number	00902699
Current Status	Active

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

13.1	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.
	In your reply to this notice, please say whether you accept that the Determination Notice is accurate and if you intend to oppose the application. You may believe that:
	<ul style="list-style-type: none"> • the determination is wrong in some particular detail; or
	<ul style="list-style-type: none"> • 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.

13.2	Compulsory review
	<p>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 practicable.</p> <p>The Regulator’s powers on a review under section 99(3) include power to:</p> <ol style="list-style-type: none"> 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. <p>You will be informed of the outcome of the compulsory review by way of a “Final Notice”</p>

13.3	Referral to the Pensions Regulator Tribunal
	After the compulsory review, you will have the right to refer the matter, to which the Final Notice relates, to the Pensions Regulator Tribunal (“The Tribunal”) under section 99(7) of the Act. The Final Notice will give more details regarding referrals to the Tribunal.

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Signed: <i>John Scampion</i>
Chairman: John Scampion
Date: 10 February 2006