

	DETERMINATION NOTICE under section 96(2)(d) 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 S Bishop
Of:	XXXXXXXX XXXX XXXXXX XXXXXXXX
To:	Mr Kenneth A Kendrick
Of:	XXXXXX XXXXXXXX XXXXXXXX XXXXXX XXXXXXXXXX
To:	Roy Bishop & Son Ltd
Of:	Town Green Farm Kings Lane Engelfield Green Surrey TW20 OUD
To:	R H Thompson & Co Ltd
Of:	18 East Market Buildings Central Market Smithfield London EC1A 9PQ
To:	Burges Salmon Pension Trustees Limited
Of:	Narrow Quay House Narrow Quay Bristol Avon BS1 4AH
Date:	20 March 2006

TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 15 March 2006.

1.	Determination
1.1	This is a Compulsory Review of the determination made under the Special Procedure by the Determinations Panel on 7 February 2006 to appoint Burges Salmon Pension Trustees Limited as an independent trustee to this scheme with effect on and from 7 February 2006.
1.2	The above decision was adjourned.

2.	Procedure Followed: Standard										
2.1	By its Warning Notice dated 3 February 2006 (“the Warning Notice”) the Pensions Regulator gave notice that it proposed to take the above action pursuant to the application of the Regulator.										
2.2	<p>The Regulator determined that the following parties are directly affected by this determination:</p> <table border="0"> <tr> <td>1. Mr Geoffrey S Bishop</td> <td>In his role as a trustee of the scheme</td> </tr> <tr> <td>2. Mr Kenneth A Kendrick</td> <td>In his role as a trustee of the scheme</td> </tr> <tr> <td>3. Roy Bishop & Son Ltd</td> <td>In its role as the Principal Employer</td> </tr> <tr> <td>4. R H Thompson & Co Ltd</td> <td>In its role as the Associated Employer</td> </tr> <tr> <td>5. Burges Salmon Pension Trustees Limited</td> <td>In its role as the independent trustee appointed</td> </tr> </table> <p>(collectively referred to as “the directly affected parties”)</p> <p>These directly affected parties were entitled to make representations to the Pensions Regulator about the determination.</p>	1. Mr Geoffrey S 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. Roy Bishop & Son Ltd	In its role as the Principal Employer	4. R H Thompson & Co Ltd	In its role as the Associated Employer	5. Burges Salmon Pension Trustees Limited	In its role as the independent trustee appointed
1. Mr Geoffrey S 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. Roy Bishop & Son Ltd	In its role as the Principal Employer										
4. R H Thompson & Co Ltd	In its role as the Associated Employer										
5. Burges Salmon Pension Trustees Limited	In its role as the independent trustee appointed										
2.3	Following the issue of the Warning Notice Mr Geoffrey Bishop and Mr Kenneth Kendrick exercised their right to make representations to the Pensions Regulator.										
2.4	The Pensions Regulator has taken those representations into account and has considered those materials carefully but has nevertheless determined to take the action as detailed in 7 below for the reasons set out in 6 below:										

3.	Relevant Statutory Provisions/Legislation
	<p>The Regulator’s powers on a review under section 99 of the Act, 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

	<p>given as a result of the determination,</p> <p>c) substitute a different determination, order, notice or direction,</p> <p>d) deal with the matters arising on the review as if they had arisen on the original determination, and</p> <p>e) make savings and transitional provision.</p>
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4.	Relevant Guidance
4.1	<p>Before any discussion of the case took place the Legal Adviser said that she had a point to make in relation to the procedure that had been followed after the Special Procedure hearing. It had come to her knowledge that the two responses received from Mr Bishop and Mr Kendrick had not been circulated to all the directly affected parties before the hearing took place. This was not in accordance with the Determinations Panel's own draft procedures relating to the Special Procedure. She advised the Determinations Panel to consider whether they wished to proceed in all the circumstances.</p>

5.	Background to the Application / Case
	<ol style="list-style-type: none"> 1. 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. 2. On 7 February 2006 a determination was made by the Determinations Panel under the Special Procedure appointing Burges Salmon Pension Trustees Limited as independent trustee for this scheme with effect on and from 7 February 2006. All directly affected parties were sent a copy of the order of appointment. The reasons given for this determination were: <ol style="list-style-type: none"> i. 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. ii. 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). iii. 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</i>

an acute conflict of interest and duty on the part of (at least) Mr Geoffrey Bishop". 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.

- iv. Counsel also advised that Mr Bishop should consider resigning because of his possible conflict: he did not.
- v. 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.
 - (d) 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.
- vi. 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.
- vii. 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.
- viii. 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.
- ix. 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

	<p>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.</p> <p>x. 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.</p> <p>3. On 13 February 2006 the determination notice, detailing the reasons for the appointment, was sent to all directly affected parties.</p> <p>4. In view of the contents of the letter dated 25 November 2005, and the need to address them urgently, no warning notice had been issued prior to the determination as per the Special Procedure. When sending the determination notice the directly affected parties were notified that a Compulsory Review would be held as soon as was practicably possible and they were entitled to submit any representations to be considered at the Compulsory Review hearing.</p> <p>5. Representations were received from Mr Kenneth Kendrick and Mr Geoffrey Bishop as detailed in 2.3 above and duly considered by the Determinations Panel.</p>
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6.	Facts and Matters Relied Upon
	<p>1. In view of the points made at 4.1 above the Panel did not feel able to fully consider this matter and make a final decision.</p> <p>2. They considered that Mr Bishop should be invited to present the following further information referred to in his response to the determination notice:</p> <p>(a) particulars of the independent valuation of the property obtained on 8 June 2005;</p> <p>(b) minutes or notes of the Board Meeting on 26 April 2005 at which he said that a gilts matching policy was considered.</p> <p>The Panel considered that provision of the information by Mr Geoffrey Bishop would assist their deliberations at the next hearing.</p> <p>3. The Panel noted that Mr Kendrick was continuing to deal with the administration of paying out the pensions.</p>

7.	Conclusion: Details of Determination
	<p>The Determinations Panel adjourned making a final decision on this matter and will reconvene as soon as is practicably possible.</p>

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

9.	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

10.	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

11.	Scheme advisers			
	Type	Name	Period of office	Company
1.	Mr Geoffrey Bishop	from 1982 to present	Employer Nominated	Mr Geoffrey Bishop
2.	Mr Kenneth A Kendrick	from 1982 to present	Employer Nominated	Mr Kenneth A Kendrick
3.	Mr Geoffrey Bishop	from 1982 to present	Employer Nominated	Mr Geoffrey Bishop
4.	Mr Kenneth A Kendrick	from 1982 to present	Employer Nominated	Mr Kenneth A Kendrick
5.	Mr Geoffrey Bishop	from 1982 to present	Employer Nominated	Mr Geoffrey Bishop
6.	Mr Kenneth A Kendrick	from 1982 to present	Employer Nominated	Mr Kenneth A Kendrick

12.	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

12. Employer details	
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

Signed: *John Scampion*

Chairman: John Scampion

Date: 20 March 2006