

	<p>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>M4 Data Limited Money Purchase Scheme (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM3275</p>
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1. The Determinations Panel, on behalf of The Pensions Regulator, met on 12 March 2008 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 13 February 2008. The Pensions Regulator (the Regulator) considered under section 10(2) of the Act that the exercise of a reserved regulatory function was appropriate.

2. **Matter to be determined:**

The function the Panel was asked to exercise was the application made by Independent Trustee Services Limited (the “Trustee”) for an order to be issued under section 11(1)(c) of the Pensions Act 1995 to authorise the wind up of the Scheme on the grounds that it was necessary in order to protect the interests of the generality of the members of the Scheme.

3. **Parties**

The Warning Notice specified the following party as being directly affected by the regulatory action outlined in the Warning Notice:

(a) Independent Trustee Services Limited

4. **Decision**

The Panel granted the application for an order to be issued under section 11(1)(c) of the Pensions Act 1995. The Panel determined that an order be issued in the following terms:

The Pensions Regulator hereby authorises:

1. that the M4 Data Limited Money Purchase Scheme commence wind up proceedings as soon as is reasonably practicably possible after 9 April 2008 (that is 28 days from the date of this order) in accordance with section 96(5)(a) of the Act;
2. this order is made because the Pensions Regulator is satisfied that it is necessary in order to protect the interests of the generality of the members of the Scheme that it be wound up pursuant to section

11(1)(c) of the Pensions Act 1995. In accordance with section 11(4) of the Pensions Act 1995, the Regulator authorises that the Scheme be wound up subject to the following provisions:

- the Scheme be wound up in accordance with the provisions of sections 73-75 of the Pensions Act 1995 (as modified by the Occupational Pension Schemes (Winding Up) Regulations 1996) and any relevant provision of those regulations, or such other statutory provisions and regulations as may be in force from time to time and may be applicable to the winding up of the Scheme.

5. Submissions of the parties

In making the determination the Panel took into account the evidence and submissions included in the Warning Notice. It also took into account the response to the Warning Notice sent by:

(a) The Trustee

There were no other submissions or evidence placed before the Panel and there was no evidence in dispute.

6. Details of scheme and employer

The Scheme is a paid up, contracted in money purchase scheme with total assets of £1,306,303 as at 21 September 2007 and 68 deferred members.

M4 Data Limited (the “Employer”) was formally dissolved on 14 March 2006. KPMG Corporate Recovery was appointed as liquidator to the employer on 10 September 2004. The liquidator removed the Employer as trustee of the Scheme and appointed the Trustee in place of the Employer by a Deed of Amendment, Appointment and Removal on 9th August 2005. The Employer was formally dissolved on 14 March 2006.

7. Background to application

- (i) On 24 July 2007 the Trustee applied to the Regulator for an order to be issued to authorise the wind up of the Scheme on the ground that it is necessary in order to protect the interests of the generality of the members of the Scheme.
- (ii) The Scheme Rules state that the power to wind up the Scheme is vested in the Employer who according to Companies House was formally dissolved on 14 March 2006.
- (iii) *Rule 21(4) states: “.... The Principal Employer may at any time give notice in writing to the Trustee specifying a date upon which the trusts of the Scheme shall be determined whereupon the*

Scheme shall be dealt with in accordance with sub-Rule (5) hereof with effect from the said date.

- (iv) The liquidator appointed to the Employer on 10 September 2004 had failed to provide the Trustee with written instructions to wind up the Scheme before the liquidator's appointment was terminated, despite requests from the Trustee on 9 February and 13 June 2006 to do so. Friends Provident, the Scheme's insurers, advised the Trustee that as the Employer had completed its liquidation it required the written instructions of the liquidator to trigger the wind up of the Scheme.
- (v) In an email to the Regulator dated 26 September 2007 the Trustee stated in support of its request: *"By triggering the wind up the Scheme would benefit from not having to pay ongoing expenses for all the advisers involved including payment of levies and the preparation and audit of annual Scheme accounts. This would only serve to reduce each member's share of the assets with there being no possibility of extra funds given the Employer is insolvent."*
- (vi) In an email to the Regulator dated 5 November 2007 the Trustee stated: *"In relation to the ongoing costs that the scheme would incur, there is an annual management charge applied by Friends Provident of 0.6% which is deducted from members' policies monthly via unit cancellation. There would also be drafting and auditing of the annual scheme accounts that would be required with estimated costs of around £3,000 - £5,000 per annum. There would also be our ongoing costs as Independent Trustee which would be in the region of £4,000 - £5,000 per annum."*
- (vii) The Trustee accepted the contents of the Warning Notice as being accurate.

8. **Statutory issues**

In making their decision the Panel had regard to the objectives of the Regulator as set out in section 5 of the Act and to the matters mentioned in section 100 of the Act, as set out in **Appendix 1**.

9. **Reasons for decision**

The reasons given by the Panel for their decision were as listed below:

- (i) On the evidence before it the Panel was satisfied that it was necessary that the Scheme should be wound up in order to protect the interests of the generality of the members because, until the Scheme is put into wind-up, its assets will continue to be depleted by the payment of the expenses involved in administering the Scheme.
- (ii) The Panel decided that it was necessary that it should authorise the Trustee to wind up the Scheme because there was no-one else in a

position to do this as the Employer no longer existed and KPMG Corporate Recovery had failed to respond to the Trustee's requests.

10. **Note:**

In order to assist the Trustee to implement the order to wind up within a reasonably practicable time after 9 April 2008 the Panel requests that the liquidator, KPMG Corporate Recovery, assist the Trustee. Specifically the liquidator is requested to provide the Trustee with any documentation or information in its possession that the Trustee might reasonably request in order to progress the wind up of the Scheme.

The Panel expressed disappointment that the Trustee had not received any responses to the requests made in its letters to KPMG Corporate Recovery dated 9 February and 13 June 2006 respectively given the contents of paragraphs 3 and 4 of the 'Deed of Amendment, Appointment and Removal in relation to the M4 Data Limited Money Purchase Scheme' dated 9 August 2005'.

11. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the parties against this decision.

Signed: ***GEOFFREY FITCHEW***.....

Chairman: **Geoffrey Fitchew**.....

Dated: 16TH March 2008.....

Section 5 of the Pensions Act 2004
Regulator's objectives

- (1) The main objectives of the Regulator in exercising its functions are –
- (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,
 - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),
 - (c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2), and
 - (d) to promote, and to improve understanding of, the good administration of work-based pension schemes.
- (2) For the purposes of subsection (1)(b) the members of personal pension schemes within this subsection are-
- (a) the members who are employees in respect of whom direct payment arrangements exist, and
 - (b) where the scheme is a stakeholder pension scheme, any other members.
- (3) In this section-
- “stakeholder pension scheme” means a personal pension scheme, which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (c.30)(register of stakeholder schemes);
- “work-based pension scheme” means-
- (a) an occupational pension scheme,
 - (b) a personal pensions scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
 - (c) a stakeholder pension scheme.

Section 100 of Pensions Act 2004
Duty to have regard to the interests of members etc

- (1) The Regulator must have regard to the matters mentioned in subsection (2) –
- (a) when determining whether to exercise a regulatory function –
 - (i) in a case where the requirements of the standard or special procedure apply, or
 - (i) on a review under section 99, and
 - (b) when exercising the regulatory function in question.

- (2) Those matters are –
- (a) the interests of the generality of the members of the scheme to which the exercise of the function relates, and
 - (b) the interests of such persons as appear to the Regulator to be directly affected by the exercise.

Referral to the Pensions Regulator Tribunal

You have the right to refer the matter to which this Determination Notice relates to the Pensions Regulator Tribunal (“the Tribunal”). Under section 103(1)(b) of the Act you have 28 days from the date this Determination Notice is given 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:

The Pensions Regulator Tribunal
15-19 Bedford Avenue
London
WC1B 3AS
Tel: 020 7612 9649.

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 Support
The Pensions Regulator,
Napier House
Trafalgar Place
Brighton
BN1 4DW.
Tel: 01273 627698