

The Pensions Regulator	Standard Procedure DETERMINATION NOTICE under section 3 of the Pensions Act 1995 and section 96(2)(d) of the Pensions Act 2004 Julian Hanson	The Pensions Regulator case ref: C11277666/3
------------------------	---	---

1. The Determinations Panel (“the Panel”), on behalf of the Pensions Regulator (“TPR”), met on 8 August 2018 to decide whether to exercise a reserved regulatory function in relation to the issues in a Warning Notice dated 31 May 2018. The matter was referred to the Panel by the Case Team of TPR (“the Case Team”) on 4 July 2018 following a period for representations.

Matters to be determined

2. In the Warning Notice the Panel was asked to determine whether to make an order under section 3(1) of the Pensions Act 1995 (“PA 95”) to prohibit Julian Hanson from acting as a trustee of trust schemes in general.
3. The power to prohibit a trustee under section 3(1) PA 95 is a reserved function under paragraph 4 of Schedule 2 to the Pensions Act 2004 (“PA 04”) and can therefore only be exercised by the Panel.

Decision

4. The Panel determined to prohibit Julian Hanson from acting as a trustee of trust schemes in general as the Panel is satisfied that he is not a fit and proper person to be a trustee of trust schemes.
5. The reasons for the Panel’s decision are set out below. Where the Panel reaches findings of fact, it does so on the balance of probabilities whilst recognising that the more serious an allegation, the more convincing must be the proof required to tip that balance.

Directly Affected Parties

6. The Panel considers Julian Hanson to be the only party directly affected by this determination.

Background to regulatory action

7. The Warning Notice sets out the background to the regulatory action against Mr Hanson and invites the Panel to base its conclusion that Mr Hanson is not a fit and proper person to be a trustee entirely on findings previously made by HHJ Pelling QC (“*the Judge*”) in the High Court decision dated 23 January 2018 (“*the Judgment*”) in *TPR -v- PAYAE and*

Others [2018] EWHC 36 (Ch) “(the High Court proceedings”) and the consequential order made (“the Order”). These proceedings were brought by TPR against Mr Hanson and others pursuant to section 16 of PA 04 to recover sums lost as a result of the misuse or misappropriation of pension scheme assets.

8. The Judge in the High Court proceedings found that Mr Hanson (and others) was knowingly, and dishonestly, involved in the misuse or misappropriation of pension scheme assets which constituted fraudulent breaches of trust. As a result of the High Court proceedings, it was ordered that Mr Hanson and others should pay specified sums to the independent trustee appointed to the schemes concerned (“the Schemes”), Dalriada Trustees Limited (“Dalriada”). The Judge also ordered that a referral be made to the Director of Public Prosecutions “for consideration as to whether there are grounds for prosecution” of Mr Hanson (and others) “in relation to the facts and matters the subject of these proceedings”.
9. The case against Mr Hanson is that he is not a fit and proper person to be a trustee as he lacks the requisite honesty and integrity. In its Warning Notice the Case Team argues that the Judge’s findings alone are sufficiently serious to discharge the burden of proof and warrant prohibition of Mr Hanson and that this is consistent with the terms of TPR’s Prohibition Statement (see below).
10. The Warning Notice sets out that the determination sought does not require a re-examination of the underlying evidence or issues before the Judge in the High Court proceedings. It also highlights that there is no risk of unfairness to Mr Hanson because (i) the Judge’s findings were based on extensive evidence (including over 2000 documents), (ii) Mr Hanson had the opportunity to challenge the evidence at trial but did not do so and (iii) TPR disclosed all documents in its possession in accordance with its obligations under the Civil Procedure Rules, including all material bearing on the issues in respect of which the Judge made findings. (The Panel notes that Mr Hanson did give oral evidence in the High Court proceedings and to some extent challenged the evidence against him. The Judge states, however, that the primary facts regarding the claim against Mr Hanson were not in dispute and are evidenced by banking records.)
11. The Warning Notice further sets out that the Judgment has not been appealed by Mr Hanson, or the other defendants to the High Court proceedings, and that the applicable time limit for filing a notice of appeal expired on 13 February 2018.

The Schemes

12. Further background to the High Court proceedings is set out in the Judgment and the Warning Notice which explains that individuals were induced to transfer their pension pots from primarily occupational pension schemes (the Ceding Schemes) to schemes which were “*established, controlled or operated*” by Mr David Austin and others (the Receiving Schemes). There were 11 Receiving Schemes falling into 3 broad categories.

13. The first 2 categories of schemes, which are not directly relevant to Mr Hanson, had either Mr Alan Barratt or Ms Susan Dalton as trustees, albeit that their activities were controlled by Mr Austin.
14. The third category consisted of a single fund called the Friendly Pensions Retirement Scheme (“FRPF”). The sole trustee of FPRF was a corporate trustee called Friendly Trustees Limited (“FTL”) again until Dalriada’s appointment. Mr Hanson was asked to become a director of FTL by Mr Austin and was the sole director between 15 July 2014 and FTL’s dissolution on 9 June 2015. Mr Austin was the sole shareholder of FTL.
15. Between January 2013 and September 2014, approximately 245 individuals were persuaded to transfer a total of around £13.7m into the Receiving Schemes, being an average of £55,000 per individual. Whilst the individuals generally received some cash (approximately 13% on average) as an inducement to transfer their pension pots to the Receiving Schemes, the rest of the money was transferred out of the Receiving Scheme bank accounts and was largely lost. This has resulted in the individuals losing their pension pots (other than the cash sums paid to them) and they have also been exposed to the possibility of having to pay significant tax penalties because the sums received by them were arguably “*unauthorised payments*” under the relevant tax legislation.
16. The Judgment sets out the losses that have been suffered by the Receiving Schemes. Of these the only one that concerns Mr Hanson is £120,000 transferred by FRPF to Broadbridges Consulting Limited (“*Broadbridges*”), another corporate vehicle owned by Mr Austin. This money was used to fund litigation in which Mr Austin was involved.
17. The Judgment sets out that Mr Hanson procured the transfer of £120,000 (representing 97% of FPRF’s trust assets) from the FRPF account to Broadbridges’ account at the request of Mr Austin. The Judgment explains that the “*investment*” was an unsecured loan, repayable after two years with no interest being paid in the meanwhile but only at term and without any due diligence having been undertaken by FTL or Mr Hanson concerning what was proposed. In cross-examination in the High Court proceedings, Mr Hanson accepted that he knew Broadbridges was Mr Austin’s service company.
18. Mr Hanson was paid £7,000 by Broadbridges on the same day that the £120,000 was transferred from FPRF to Broadbridges. The Judge concluded (although denied by Mr Hanson) that Mr Hanson agreed to Mr Austin’s request for payment on the basis of an assurance that he would be paid that sum if the loan from FPRF to Broadbridges was made and that he either knew, or turned a blind eye to, the probability that any payment to him would come from the sum advanced to Broadbridges.

The Judge’s findings

19. The Case Team submits that the findings in the Judgment in relation to Mr Hanson and his involvement with the Receiving Schemes demonstrates that he lacks the requisite honesty and integrity to be a trustee.

20. In particular the Case Team relies on certain findings by the Judge, including the following:-

- (i) *“It is not credible that Mr Hanson could have thought that this was an appropriate use of funds held by FPRF on trust for the benefit of Members whose pension pots had been transferred to it”;*
- (ii) As regards Mr Hanson’s argument that before agreeing to the loan he had conducted an online search and had discovered that Broadbridges had a cash balance of about £63,000 and thus was trading, the Judge stated *“That would not have been a sufficient attempt at due diligence even if carried out but in any event I am satisfied that it was not carried out until long after the loan had been advanced and that Mr Hanson’s evidence on this issue is untruthful”;*
- (iii) *“In light of conclusions that I have reached concerning what Mr Hanson knew ... I have no hesitation in concluding that in procuring the payment of £120,000 from FPRF to Broadbridges he was dishonestly concerned in the misuse or misappropriation of the assets of an occupational pension scheme. He was dishonest in procuring the payment because his conduct was contrary to ordinary standards of honest behaviour...”*

21. The Case Team seeks the prohibition of Mr Hanson, principally on the following grounds:-

- (i) The matters referred to above all highlight Mr Hanson’s lack of honesty and/or integrity.
- (ii) Prohibition is necessary in the wider regulatory context, and is in the interests of occupational pension schemes and their members generally given that:-
 - (a) Only a prohibition will place Mr Hanson on the register of prohibited trustees, and thereby assist in raising awareness among trustees and members that Mr Hanson is unsuitable to act as a trustee of schemes generally;
 - (b) it is important that trustees who have failed in their duties to the extent demonstrated here should be aware that they will not be permitted to continue acting as a trustee;
 - (c) prohibition should protect and enhance public confidence in the integrity of the pensions industry and TPR’s oversight of it.

22. The Warning Notice argues that Mr Hanson’s failure(s) were so serious that the prohibition should extend to trust schemes in general.

Representations

23. No Representations in response to the Warning Notice were received from Mr Hanson.

The Law

24. Section 3 of PA 95 states as follows:-

“Prohibition orders

(1) The Authority may by order prohibit a person from being a trustee of-
(a) a particular trust scheme,
(b) a particular description of trust schemes, or
(c) trust schemes in general,

if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.

(2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

...

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.”

25. When the Panel refers to the question of whether Mr Hanson is a “*fit and proper person*” it is by way of shorthand for, and reference to, that section 3(1) test.

26. The most recent statement published by TPR in accordance with section 3(6) was published in July 2016 (“*the Prohibition Statement*”). The Prohibition Statement contains the following guidance on the criteria for a “fit and proper person”:

“When considering whether a person ought to be prohibited, we will investigate whether a trustee is a ‘fit and proper person’ to be a trustee of a trust scheme by looking at all the relevant information.

In particular we will consider any information which concerns the trustee’s:

- *honesty*
- *integrity*
- *competence and capability*
- *financial soundness*

When considering the above criteria, we may take account (where relevant) of:

- *any attempt to deceive*
- *any misuse of trust funds*
- *any breaches of trust or pensions law, particularly if these are significant, persistent, deliberate or contrary to legal advice received*
- *whether a trustee’s professional charges constitute a breach of trust or demonstrate a lack of internal controls*

- *criminal convictions, not limited to those involving dishonesty or deception, so including (for example) money laundering, violence or substance abuse*

This is not a comprehensive list of the factors we will look at when considering whether to prohibit, but it is indicative of what may be relevant. One of our statutory objectives under the Pensions Act 2004 (...) is to protect the benefits of members of occupational pension schemes, and we will take such actions as are necessary and proportionate to meet that objective.”

Decision

27. The Panel agreed that an order be made under section 3 PA 95 prohibiting Mr Hanson from acting as trustee of trust schemes in general.
28. The Panel determined that an order be made in the following terms:-

“Julian Hanson (date of birth 26 July 1964) is hereby prohibited from acting as trustee of trust schemes in general.

The order is made under section 3(1)(c) Pensions Act 1995 (PA 95).

By section 6 PA 95, any person who purports to act as a trustee of a trust scheme whilst prohibited in relation to the scheme under section 3 is guilty of an offence and liable

- *on summary conviction to a fine not exceeding the statutory maximum, and*
- *on conviction on indictment to a fine or imprisonment or both.”*

Reasons for Decision

29. In making its decision the Panel had regard to the objectives of TPR as set out in section 5 of PA 04 and to the matters listed in section 100 of PA 04.
30. The Panel also had regard to TPR’s published statement on its policies regarding prohibition and specifically the criteria TPR takes into account when considering whether trustees are “*fit and proper persons*”. The Panel took note of the non-exhaustive list of factors listed in the statement including any misuse of trust funds, any breaches of trust or pensions law, and where a trustee’s professional charges constitute a breach of trust.
31. Whilst noting that the statutory provisions before the Panel are not the same as those before the Judge in the High Court proceedings, the Panel fully considered the Judgment and the conclusions reached. The Panel took account of the detailed and careful analysis made by the Judge which the Panel found to be both highly relevant and compelling. The Panel had no reason to disagree with the Judge’s conclusions. The Panel was satisfied on the evidence before it and agreed that it was unnecessary to conduct any further re-examination of the underlying evidence.

32. In particular, the Panel agreed with the Judge's conclusions that Mr Hanson has been dishonestly involved in the misuse or misappropriation of scheme assets as regards the payment of £120,000 from FRPF to Broadbridges in circumstances where he understood that he would be paid £7,000 if he procured the payment. In doing so, the Panel noted that Mr Hanson has had the opportunity to appeal the Judge's findings, and to make representations in response to the matters set out in the Warning Notice, and has not done so.
33. By reference to TPR's Prohibition Statement, the Panel noted that Mr Hanson's involvement with the Receiving Schemes raised concerns not only in relation to dishonesty but also as regards his failure to act as a trustee should when "investing" almost all of the FPRF Scheme's assets in Broadbridges. The loan appeared to the Panel to be an entirely unsuitable investment for the FPRF Scheme with no proper due diligence having been carried out and a complete lack of diversification. The Panel agreed with the Judge's conclusion that "*It is not credible that Mr Hanson could have thought that this was an appropriate use of funds held by FPRF on trust for the benefit of Members whose pension pots had been transferred to it.*"
34. The Panel recognised that Mr Hanson's conduct, and the money he received, might be considered to be less significant than that of the other defendants in the High Court proceedings. Whilst that may be the case, it is nevertheless clear from the Judgment that Mr Hanson has been dishonestly concerned in the misuse or misappropriation of almost the entire assets (97%) of a pension scheme and in the Panel's view that alone is sufficient to warrant a prohibition. The Panel concluded that Mr Hanson is not a fit and proper person to act as a trustee and that Mr Hanson's failings were so serious as to warrant his prohibition from acting as a trustee of trust schemes in general. The Panel agreed with the Case Team's assertion regarding the wider regulatory context and, in particular, the importance of Mr Hanson's name being added to the register of prohibited persons.
35. Appendix 1 to this Determination Notice contains important information about the Directly Affected Party's rights to refer this decision to the Upper Tribunal.

Signed:

Name: Tony Foster

Dated: 30 August 2018

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”). 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 PA 04 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:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3043