

 <p>The Pensions Regulator</p>	<p>Compulsory Review FINAL NOTICE under Section 99(4) of the Pensions Act 2004 (“PA 04”)</p> <p>Organic Insurance Limited Pension Scheme (“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>C147218076</p>
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A. Introduction

1. By a special procedure request dated 4 December 2019 (the “Request”) the case team of The Pensions Regulator (“the Case Team”) asked the Determinations Panel (“the Panel”) to make an order for the appointment of an independent trustee, namely Dalriada Trustees Limited (“Dalriada”) to the Scheme under section 7(3)(a), 7(3)(c) and/or 7(3)(d) of the Pensions Act 1995 (“PA 95”). The Panel was also asked to make consequential orders under sections 8 and 9 PA 95 including that Dalriada should exercise powers to the exclusion of the existing trustee of the Scheme.
2. The Request further asked the Panel to suspend the trustees of the Scheme, identified as Mr Christopher Ian Knight (“Mr Knight”), Mr Christopher Andrew Ridehalgh (“Mr Ridehalgh”) and Chamberlain Trustees Limited (“Chamberlain Trustees”), collectively referred to as “the Former Trustees”, pending consideration being given to the making of an order under section 3(1) PA 95.
3. The Request was made under the special procedure provided for by section 98 PA 04. The special procedure permits the Panel to make a determination without the issue of a warning notice or representations from the directly affected parties (“DAPs”), albeit that that determination must subsequently be reviewed once the DAPs have had an opportunity to make representations.
4. The special procedure may be used pursuant to section 97(2) PA 04 where the Panel considers that it may be necessary to exercise a regulatory function listed in subsection (5) immediately because there is, or the Panel considers it likely that if a warning notice were to be given there would be, an immediate risk to either the interests of members under an occupational or personal pension scheme, or the assets of such a scheme.

B. The Initial Determination and the Compulsory Review

5. The Panel met on 4 December 2019 to consider the Request. The Panel determined that the use of the special procedure was appropriate and that an independent trustee, Dalriada, should be appointed to the Scheme with exclusive powers, and the consequential orders made (the “Initial Determination”). A Determination Notice was issued to the DAPs on 13

December 2019 giving the Panel's reasons for the Initial Determination (the "DN").

6. The Panel accepted that appointing an independent trustee would ensure that:
 - i. no further Scheme funds were inappropriately paid / transferred into the bank account of Organic Insurance Limited, the Scheme's principal employer (the "Employer Account") from the Scheme's dedicated bank account (the "Scheme Account");
 - ii. any transferring in members would be protected from having their funds transferred inappropriately out of the Scheme Account or directly into the Employer Account;
 - iii. enquiries could be undertaken in relation to the funds already transferred out of the Scheme Account and, if appropriate, steps taken to ensure their protection and/or recovery.
7. The Panel was satisfied that it was reasonable to appoint an independent trustee so as to:
 - i. secure the Scheme trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme in accordance with section 7(3)(a) PA 95;
 - ii. secure the proper use and application of Scheme assets in accordance with section 7(3)(c) PA 95; and
 - iii. otherwise protect the interests of the generality of the members of the Scheme in accordance with section 7(3)(d) PA 95.
8. The Panel accepted the Case Team's recommendation that Dalriada be appointed as the Scheme's independent trustee.
9. As regards the request to suspend the Former Trustees, the Panel was not satisfied that it should use the special procedure to exercise the power to suspend under section 4(1) PA 95 and accordingly declined to exercise that power.

Directly Affected Parties

10. The Panel considered the following persons to be directly affected by the exercise of the reserved regulatory function in question:
 - i. Mr Christopher Ian Knight;
 - ii. Mr Christopher Andrew Ridehalgh;
 - iii. Chamberlain Trustees Limited; and
 - iv. Dalriada Trustees Limited.

Compulsory Review

11. Pursuant to section 99(1) PA 04, in any case where the special procedure applies, the Panel must review the determination to exercise the regulatory function as soon as reasonably practicable by way of a compulsory review. In advance of that review, those who appear to the Panel to be directly affected by the exercise of the regulatory function in question must have an opportunity to make representations in relation to the determination (section 98(2)(c) PA 04).
12. In a letter enclosing the DN dated 13 December 2019, the Panel directed the DAPs to provide representations by midday on 8 January 2020. In particular, the Panel requested a response from Dalriada with an update on their findings and any action undertaken since being appointed as independent trustee. In the same letter the Panel directed the Case Team to serve a response to the representations from the DAPs by midday on 22 January 2020.
13. The Panel received the following written representations (referred to collectively as “the Representations”):
 - i. from Dalriada on 8 January 2020 containing the results of Dalriada’s initial due diligence into the Scheme since appointment, including records of its attempted contact with various persons connected to the Scheme, in particular the Former Trustees. Dalriada, whilst remaining neutral, expressed its support for confirmation of the order made at the Initial Determination.
 - ii. from Celine Mather-Franks (“Ms Mather-Franks”) on 21 January 2020 acting in her capacity as sole director of Chamberlain Trustees. Chamberlain Trustees supported the Initial Determination but made certain clarificatory comments outlined in further detail below.
 - iii. from the Case Team dated 27 January 2020. (Due to Chamberlain Trustees’ representations being submitted late, the Panel extended the Case Team’s deadline to provide a response to midday on 27 January 2020). The Case Team developed the concerns it had initially raised in the Request on the basis of further evidence which had come to light since the Initial Determination. The Case Team’s response asked the Panel to confirm the order made at the Initial Determination.
14. The Panel received no representations from any other DAPs, being the other trustees of the Scheme.
15. The Panel met to conduct the compulsory review on 30 January 2020. No oral hearing was requested by the parties, nor one held. In the course of the review, the Panel carefully considered all the Representations and the Case Team’s Response.
16. Pursuant to section 99(3) PA 04, the Panel’s powers on a compulsory review include power to:

- “(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.”*

17. Pursuant to section 100 PA 04, when determining whether to exercise a regulatory function on a review under section 99 PA 04, the Panel is to have regard to the interests of directly affected parties and of the generality of members of the relevant scheme. The Panel had regard to those matters as well as the main objectives of TPR in exercising its functions, as set out in section 5 PA 04. These include protecting the benefits under occupational pension schemes of, or in respect of, members of those schemes and promoting, and improving the understanding of, the good administration of work-based pension schemes.

Decision on Compulsory Review

18. As a result of its review, the Panel confirmed the decision to appoint Dalriada as an independent trustee of the Scheme. The remainder of this Final Notice sets out:
- i. the factual background, as it appears to the Panel having regard to the Representations as well as the material in the Request, including any material changes in the information before the Panel as a result of the Representations;
 - ii. the applicable law; and
 - iii. the reasons for confirming the Initial Determination.

C. The Scheme and Relevant Factual Background

The Scheme

19. The Scheme is an occupational, defined contribution pension scheme and is open to new members. The Scheme had approximately 5 members as at April 2017. The current membership is uncertain. The most recent information on membership provided by Dalriada indicates the Scheme has approximately 11 members but only 4 members, including Mr Ridehalgh, have been identified.
20. According to the trust deed the Scheme is said to be established for *“the sole purpose of providing pensions and lump benefits under occupational pension arrangements by individuals and individual’s employers...”*
21. Organic Insurance Limited is the Scheme’s principal employer (referred to in this Final Notice as “the Employer”). The Employer is recorded at Companies House as an active company which was incorporated on 21

May 2010 with Mr Knight acting as sole director and company secretary. Mr Knight also owns 75% or more of the company shares / voting rights.

22. At the time of the Initial Determination, the Panel understood that the Scheme Account had a balance of £147,538.43 and the Employer Account a balance of £74.

Background to the Request

23. The Request arises out of what is described by the Case Team as the “*almost wholesale transfer of Scheme funds*” by the Former Trustees to the Employer Account.
24. The Request states that between 2015 and 2019, £799,500 of Scheme funds have been transferred out of the Scheme Account to, or received directly into, the Employer Account. In particular, the Request highlights the following:
- i. On 18 July 2019, a transfer value of £463,992.37 was received from a ceding scheme directly into the Employer Account. There is no evidence that this money has been transferred into the Scheme Account.
 - ii. On 11 November 2019 Mr Knight made a request for £102,000 of Scheme funds to be transferred from the Scheme Account to an account in the name of ‘Pure V2 Limited’ (“the Pure V2 Account”). This account was opened the preceding day, on 10 November 2019 by Mr Andrew James Myers. According to Companies House records, Mr Andrew James Myers (“Mr Myers”) is a director and the sole owner of Pure V2 Limited, a company incorporated on 1 November 2019. Mr Myers is also listed as a director and sole shareholder of Organic Investment Group Limited, along with Mr Knight and Mr Ridehalgh. The payment request was denied as the Scheme Account had been frozen.
 - iii. On the same date Mr Knight also asked for confirmation that an earlier request for the transfer of £40,000 from the Scheme Account to the Employer Account had been made.
25. As at 15 November 2019 the balance of the Employer Account was £74. At the time of the Initial Determination it was not known what had happened to the Scheme funds that were transferred into the Employer Account from the Scheme Account, or to the Scheme funds received directly into the Employer Account.

Case Team’s Concerns at the Time of the Initial Determination

26. At the time of the Initial Determination the Case Team raised a number of concerns primarily relating to:
- i. Breaches of trust;
 - ii. Lack of adequate internal systems and controls maintaining a separate bank account;

iii. Lack of trustee knowledge and understanding; and

iv. Investment breaches.

Breaches of Trust

27. The Request set out the Case Team's concerns that the Former Trustees had acted in breach of trust by failing to ensure that all Scheme funds were protected by being held in the Scheme Account or alternatively being properly invested.
28. Mr Knight appeared to be the sole signatory to the Scheme Account. The Case Team was concerned that there had been no proper challenge from the other trustees to the decisions or instructions from him to deposit Scheme funds into the Employer Account. Given that Mr Knight was both a director and the owner of the Employer, the Case Team was concerned that there appeared to be an acute conflict of interest as regards payments of Scheme funds to the Employer.
29. The Case Team's concern extended to Chamberlain Trustees. Whilst only appointed on 29 August 2019, the Case Team queried why Chamberlain Trustees had not called for an account of the Scheme's assets nor sought to prevent the attempt to transfer a significant amount of Scheme funds to Pure V2 Limited. Given that Mr Knight, Mr Ridehalgh and Mr Myers, the owner of Pure V2 Limited (in so far as they are all directors of Organic Investment Group Limited) this should have given rise to concerns of a possible conflict of interest.
30. Whilst Mr Ridehalgh and Chamberlain Trustees were not signatories to the Scheme Account, this did not, in the Case Team's view, excuse them from the breaches of trust alleged, namely omitting to obtain control over the Scheme Account to ensure that the Scheme assets were protected, or alternatively, properly invested.

Lack of adequate internal systems and controls and maintaining a separate bank account

31. The Request referred to the requirements of section 249A PA 04 which requires trustees to ensure that the Scheme has effective "*internal controls*" including, amongst other things, "*arrangements and procedures to be followed for the safe custody and security of the assets of the Scheme*". Similarly, section 49(1) PA 95 (together with Regulation 11 of the Occupational Pension Scheme (Scheme Administration) Regulations 1996) requires trustees to keep scheme funds in a separate bank account to that of the employer.
32. The Request stated that Mr Knight and Mr Ridehalgh had failed to implement any, or adequate, arrangements and procedures for the safe custody and security of Scheme funds. On the contrary, significant amounts of Scheme funds have been transferred to the Employer Account, whether directly from ceding schemes or from the Scheme Account and have then apparently been dissipated from the Employer Account.

33. The Case Team noted that there was ostensibly no reason why the requirements of section 49(1) PA 95 were not adhered to so that the Scheme's assets were kept in the Scheme Account.
34. As regards Chamberlain Trustees, whilst not appointed at the time of the transfers in July 2019, the Request argued that, once appointed, it should have ensured that the above obligations were complied with.
35. Finally, the Case Team highlighted the fact that the Former Trustees should also have ensured that there were systems in place to identify and appropriately manage conflicts of interest. Given that Mr Knight is both director and owner of the Employer, the Case Team was concerned that the apparent conflicts did not appear to have been managed in so far as payments have been made to the Employer Account by Mr Knight as signatory to the Scheme Account.

Lack of Trustee Knowledge and Understanding

36. Sections 247 and 248 PA 04 require trustees to have appropriate knowledge and understanding of the law relating to pensions and trusts. This includes knowledge of core fiduciary obligations, implementing adequate internal systems and controls for the safe custody and security of scheme assets, keeping scheme funds in a separate account, and not acting contrary to, or placing themselves in a position where trustees' interests (whether actual or potential) are in conflict with that of the scheme.
37. The Case Team was concerned that the Former Trustees had demonstrated a lack of trustee knowledge and understanding by acting in breach of all of these requirements by failing to protect the assets of the Scheme and failing to address or manage the apparent conflicts referred to above.

Investment Breaches

38. The Case Team set out in the Request that the Former Trustees were under a common law duty to act in the best interests of members when making investment decisions. Further, section 36 PA 95 provides that trustees must take proper written investment advice, from a person qualified to do so, when making investment decisions.
39. The Case Team had very little information as to what investments may have been made with Scheme funds. It was, however, apparent from the administrative paperwork associated with the member who transferred into the Scheme from a ceding scheme, Aviva (and whose transfer value was paid directly into the Employer Account) that the transfer value would be used to acquire "*Bonds, Employer Related Investments and Stocks and Shares options.*"
40. Section 40 PA 95 broadly prohibits employer related investments¹. It was therefore of "*extreme concern*" to the Case Team that the transfer value

¹ The Occupational Pension Schemes (Investment) Regulations 2005 ("the Investment Regulations") provide that investments equivalent to 5% of the scheme's assets may be made into employer related investments).

would be used to acquire employer related investments. At the very least the Case Team would have expected the Former Trustees to have taken “*careful investment advice*” prior to making any employer related investments.

41. The Case Team further asserted that Chamberlain should have undertaken an audit of the Scheme’s investments and satisfied itself that sections 36 and 40 PA 95 and the Investment Regulations had been complied with, particularly in light of the reference to “*employer related investments*”.

D. The Law

42. Section 7(3) PA 95 allows TPR to appoint a trustee of a pension scheme. It provides that:

“(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is reasonable to do so in order—

(a) to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme,

(b) to secure that the number of trustees is sufficient for the proper administration of the scheme,

(c) to secure the proper use or application of the assets of the scheme, or;

(d) otherwise to protect the interests of the generality of the members of the scheme.”

43. The power to make an order under section 7(3) (a), (c) and/or (d) PA 95 appointing a trustee is a regulatory function listed in section 97(5) PA 04 (see section 97(5)(m)) and is therefore only exercisable by the Panel.

44. Section 100 PA 04 requires the Panel to have regard to the following matters when determining whether to exercise a regulatory function:

“(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.”

45. The following elements of pensions law referred to by the Case Team are also relevant:

- i. The common law duty to conduct the business of the trust in the same manner that an ordinary prudent man of business would conduct his own business, on behalf of those for whom he felt morally bound to provide (and not merely as if he were acting for himself) (*Speight v Gaunt (1883) 22 ChD 739* and *Re Whiteley (1886) LR 33 Ch D at 355* per Lindley J). Specifically, a trustee should not invest scheme assets in a manner which exposes the scheme to excessive risk.

- ii. The common law duty to manage scheme assets in the best interests of members.
- iii. The duty under regulation 7(2) of the Investment Regulations for trustees in exercising their powers of investment to have regard to the need for diversification of investments in so far as appropriate to the circumstances of the scheme.
- iv. The requirements under section 249A PA 04 which broadly require trustees to ensure that a scheme has effective “internal controls” including, amongst other things, “arrangements and procedures to be followed for the safe custody and security of the assets of the scheme”.
- v. The statutory duty to keep scheme funds in a separate bank account to that of the employer pursuant to section 49(1) PA 95 (together with Regulation 11 of the Occupational Pension Scheme (Scheme Administration) Regulations 1996.
- vi. The duty under sections 247 and 248 PA 04 requiring trustees to have appropriate knowledge and understanding of the law relating to pensions and trusts.
- vii. The statutory duty to obtain and consider “proper advice” in relation to whether a proposed investment is “satisfactory” pursuant to section 36 of PA 95. By section 36(7), trustees shall not be treated as having complied with this duty unless the advice was given or has subsequently been confirmed in writing.
- viii. The requirement under section 40 PA 95 prohibiting certain employer related investments.

E. Summary of Representations

46. The Representations of Dalriada, Chamberlain Trustees and the Case Team were considered at the compulsory review hearing. A summary of each is set out below.

Dalriada's Representations

47. Dalriada's representations contained the following update:

- i. Dalriada has written to the Former Trustees seeking information and Scheme documentation in order to better understand the workings of the Scheme.
- ii. Dalriada attended the offices of the Employer on 16 December 2019 to meet Mr Knight and secure Scheme documentation. Dalriada were advised at that meeting that all members of the Scheme were linked to the Employer and that Mr Knight did not have Scheme documentation that he could immediately provide to Dalriada. This is despite Mr Knight previously advising Dalriada that he would have “*a complete set of scheme documentation*”.
- iii. Dalriada's investigation to date has only uncovered limited Scheme documentation. Dalriada has not been provided with copies of any

signed annual reports or accounts, indeed, Mr Knight confirmed at the meeting on 16 December 2019 that no Scheme accounts had been prepared.

- iv. Dalriada has not been provided with other Scheme documentation that it might normally expect to be available to trustees including risk registers, business plans, formal trustee meeting minutes, administration reports, address data for members, legal advice, investment advice or any documentary evidence to illustrate that the Former Trustees undertook any pensions learning or training.
- v. The limited documentation supplied to Dalriada appears to show the Scheme as holding two principal investments, namely certain fixed income bonds (“the Pardus Bonds”) which appear to have been issued by a company in the name of Pardus Fixed Income Bond Company PLC (“Pardus”) and a shareholding in Organic Insurance Limited. In relation to the Pardus Bonds, Dalriada has been provided with a “Pardus Offering Document” and a brochure together with a bond insurance policy from Willis Towers Watson.
- vi. The total par value of all Pardus Bonds apparently issued to the Scheme is £755,000. According to Dalriada the Pardus Bonds investment is an “*unregulated investment*”.
- vii. In relation to the Scheme investment in the Employer Dalriada were provided with a share certificate from Mr Knight showing a shareholding of 230 ordinary shares with a nominal value of 10p per share. Dalriada has also secured a confirmation statement (in the form of a CS01) from Companies House which states that the Scheme has a shareholding of 23 ordinary shares with a nominal value of £1 in Organic Insurance Limited. Dalriada is unaware why there is a contradiction between the two documents as to the number of shares held by the Scheme, and their nominal value.
- viii. In minutes of the meeting between Dalriada and Mr Knight on 16 December 2019 Mr Knight also suggested that the Scheme had loaned £100,000 to a care home. The identity of the debtor and the terms of the loan are unknown.
- ix. “Pure Pensions Legal” (a law firm regulated by the Solicitors Regulation Authority) was appointed as legal adviser to the Scheme in May 2019. Ms Mather-Franks is a solicitor at Pure Pensions Legal.
- x. Dalriada provided information, in the form of a signed Deed of Appointment dated 1 April 2019, which shows Chamberlain Trustees as the “New Trustee” of the Scheme. Dalriada note that there is “some uncertainty” regarding the appointments held by Chamberlain Trustees, but Ms Mather-Franks believed that Chamberlain Trustees had also replaced Mr Knight as Scheme Administrator.

Chamberlain Trustee’s Representations

48. In summary Chamberlain Trustee's representations support the Initial Determination but dispute various allegations made by the Case Team in the Request. In particular that:
- i. Chamberlain Trustees was unaware of much of the information relied on by the Panel at the Initial Determination including that Mr Knight was the sole signatory to the Scheme Account, that the Employer Account had been used for Scheme funds and that Mr Knight made a transfer request on 11 November 2019 for £102,000 from the Scheme Account. According to Chamberlain Trustees, it had repeatedly requested information concerning Scheme funds, investments and membership from Mr Knight upon becoming a trustee, but this information was not forthcoming.
 - ii. Chamberlain Trustees was not a signatory to the Scheme Account but stated that it had repeatedly asked Mr Knight for signatory authority over the Scheme Account. Notwithstanding assurances from Mr Knight to the contrary, Chamberlain Trustees was never made a signatory to the Scheme Account.
 - iii. Chamberlain Trustees was ignorant of many of the material facts relied on in the Request, including that it had never heard of Pure V2 Limited, and therefore denied any inference that it was complicit in the transfer of Scheme funds out of the Scheme Account to the Employer Account or to Pure V2 Limited.
 - iv. All reasonable attempts to audit the investments of the Scheme following Chamberlain Trustee's appointment as trustee had been made but Chamberlain Trustees was only provided with specific details of the investment in the Pardus Bonds.
 - v. The lack of information about Scheme assets, not being added as a signatory to the Scheme Account and a lack of information about Scheme membership led Chamberlain Trustee to resign as trustee of, and to cease to administer it in November 2019.

The Case Team's Response

49. The Case Team's response to the Directly Affected Parties' representations states that the concerns set out in the Request remained unchanged, and noted the following:
- i. Mr Knight and Mr Ridehalgh had not made any representations despite being given an opportunity to do so. The Panel was invited to infer that the material facts and matters set out in the Case Team's Request against these trustees are not challenged.
 - ii. Chamberlain Trustees, despite its representations indicating that it was unaware of the material facts and matters set out in the Request, had not challenged those material facts and matters. Furthermore, that Chamberlain Trustees expressly supports Dalriada's appointment.

- iii. On the basis of the Representations received, it remained reasonable to appoint Dalriada as independent trustee of the Scheme.
50. The Case Team's Representations went on to address in more detail certain matters arising out of the Representations from Dalriada and Chamberlain Trustees regarding serious concerns that persisted with regard to the Former Trustees' conduct in relation to (i) investment breaches; (ii) governance concerns; and (iii) a lack of trustee knowledge and understanding.

Investment Breaches

51. The Case Team reiterated two concerns namely that (i) the investments made by the Former Trustees were risky and inappropriate and (ii) that no proper, or any, investment advice was taken contrary to section 36 PA 95. If such advice was taken there was no written record of it contrary to section 36(7) PA 95.
52. In relation to the Pardus Bonds the Case Team submitted that:
- i. the bonds represent an uncertain investment and are expressed to be held by Organic Insurance Limited rather than by the Scheme (with no good reason provided for why this is the case);
 - ii. the bonds are an unregulated investment and there is no evidence to suggest that they are secured or that Pardus has assets that may protect the Scheme in the event of its default or insolvency;
 - iii. the bonds are not a suitable investment vehicle for a pension scheme as they are illiquid in nature due to the two-year fixed term and the risk that they cannot be redeemed within this period, and likely to incur an early redemption charge.
53. With regard to the investment in Organic Insurance Limited the Case Team stated that:
- i. It is not clear what dividends, if any, have been paid to the Scheme by Organic Insurance Limited. There is a mismatch between the Share Certificate obtained by Dalriada and information recorded on Companies House about the shares owned in the Employer;
 - ii. there appears to be limited protection for the Scheme in the event of the Employer's insolvency because the Employer only has assets of circa £80,000 (as set out in its accounts for the year ending 31 May 2018) and it was unclear whether the Employer had other secured creditors who would rank higher than the Scheme in such an event;
 - iii. the investment in the share capital of the Employer may constitute an "employer-related investment" ("ERI") pursuant to section 40(2)(a) PA 95, in respect of which there are strict rules and prohibitions governing such investments which, if breached, may constitute a criminal offence under section 40(5) PA 95.
54. The Case Team observed that the loan to a Care Home of £100,000 reportedly mentioned by Mr Knight was also of concern in that Mr Knight

was not very clear regarding the loan and whether it had actually been made, and that it did not appear to the Case Team to be a suitable investment vehicle for the Scheme.

55. The Case Team assert that the Former Trustees have breached their common law duties to invest prudently, their statutory duties to take proper investment advice pursuant to section 36 PA 95 and the need to have regard to the need for diversification of investments pursuant to Regulation 7(2) of the Investment Regulations. The Case Team also assert that there was a clear conflict of interest as regards Mr Knight and Mr Ridehalgh with regard to the investments in the Employer of which they were both directors, and in the case of Mr Knight, the owner.
56. The Case Team submitted that if Chamberlain Trustees was aware of the investments it ought to have obtained "*all relevant information*" in relation to them, ensured that no further investments were made in them, or at least ensured proper investment advice was taken in accordance with section 36 PA 95. If it was being obstructed by Mr Knight and/or Mr Ridehalgh in this regard, then it ought to have made a breach of law report to TPR pursuant to section 70 PA 04.

Governance Concerns

57. The Case Team refers to the governance breaches identified by Dalriada in their representations which are contrary to various statutory requirements to keep records. The Former Trustees have been unable to provide Dalriada with: trustee meeting minutes (Regulation 12(1)(b) of the Occupational Pension Scheme (Scheme Administration) Regulations 1996, "the Administration Regulations"), information about Scheme membership (Regulation 12(1)(b)(vi) of the Administration Regulations) or audited accounts or auditor's statement (Regulation 2 of the Occupational Pension schemes (Requirement to Obtain Audited Accounts and a statement from the Auditor) Regulations 1996).
58. The Case Team reiterated its concern regarding the Former Trustees' general failure to adhere to the requirements of section 249A PA 04 to operate an effective system of governance and internal controls of the Scheme. In particular, the failure to manage conflicts of interest in relation to the investments in the Employer, ensure the safe custody and security of Scheme assets, produce records and the lack of clarity around the status of Chamberlain Trustees as a trustee and/or Scheme Administrator.

Trustee Knowledge and Understanding

59. The Case Team reiterated that all of the above concerns demonstrate a lack of trustee knowledge and understanding of the Former Trustees, Mr Knight and Mr Ridehalgh, and in the case of Chamberlain Trustees, a failure to exercise such trustee knowledge and understanding, contrary to requirements of sections 247 and 248 PA 04.

F. Reasons for Confirming the Decision

60. The Panel considered whether to confirm its decision to appoint Dalriada as trustee of the Scheme by reference to the grounds set out in the Request under section 7(3)(a), (c) and (d) PA 1995.

61. The Panel was satisfied that the case set out in the Request was, and remained, made out on each of the grounds in respect of the appointment of an independent trustee to the Scheme. All of the reasons given for the Initial Determination remain valid. In the Panel's view, the material received in the Representations strengthened and supported the reasonableness of appointing an independent trustee.

62. In particular the Panel noted the following:

Investment breaches

(i) Pardus Bonds

63. In respect of the investment in the Pardus Bonds, the Panel noted that:

- i. There was a concerning lack of detail and audit trail in relation to the investment of £755,000 of Scheme assets in the Pardus Bonds between March and August 2019. The limited information available concerning these bonds appears inconsistent;
- ii. The Pardus Bonds were not held in the Scheme's name, and there is no evidence that the bonds are being held on trust on behalf of the Scheme;
- iii. Dalriada has stated that the Pardus Bonds represent an unregulated financial investment. The Case Team also state that these are riskier investments than "regulated orthodox" investments. This coupled with the absence of any security over the Pardus Bonds in favour of the Scheme and that the bonds are in the Employer's name presented an unacceptable risk to Scheme assets and to the interests of members of the Scheme;
- iv. There is no evidence that any, or proper, investment advice was sought or given in respect of this purported Scheme investment(s);
- v. The investment of a large proportion of the Schemes' assets in the Pardus Bonds appeared to breach the prescriptions of the Investment Regulations and the requirement for diversification set out in the Request.

(ii) Employer investment

64. In respect of the investment in Organic Insurance Limited, the Employer, the Panel confirms its decision that this may amount to an employer-related investment in breach of the Investment Regulations.

65. The Panel also noted the lack of information to evidence that the apparent conflict of interest was recognised and appropriately managed.

(iii) Care Home loan

66. The Panel took note of the possible care home loan to the value of £100,000 of the Scheme's funds, and about which there was insufficient

information to make any finding of fact. The Panel, nevertheless agreed that there was cause for concern given the lack of information concerning the use of Scheme funds for this purpose. The Panel noted the ongoing investigation into it.

Governance concerns

67. The Panel agreed that the failure to keep appropriate Scheme records demonstrating the difficulties in determining the use to which Scheme funds have been put posed a grave risk to the Scheme's assets and therefore, the interests of members of the Scheme.
68. The Panel accepted that Mr Knight was able to deploy Scheme funds without the apparent knowledge or agreement of the other trustees. The Panel also noted the failure of Chamberlain Trustees, whilst in post, to ensure it was fully up to speed and conversant with the Scheme's administration, including having proper oversight of the Scheme's assets. This is especially so as Chamberlain Trustees also served as the Scheme's administrator. If it was being obstructed in its attempts to act appropriately then that had not been reported to TPR. The Panel noted that Chamberlain Trustees purportedly resigned both as trustee and administrator in November 2019.
69. The Panel agreed that in relation to the investment in the Employer, there was a potential conflict of interest, given the ownership of the Employer, which on the evidence, was not recognised or properly managed.

Trustee knowledge and understanding

70. In light of the matters set out above concerning the investment breaches and scheme governance failures the Panel agreed the Former Trustees appeared not to have the required trustee knowledge and understanding or had failed to apply it properly or at all in their roles as trustees of the Scheme.
71. In particular, the Panel relied on the following overarching points:
 - i. The Former Trustees allowed Scheme assets to be deployed in a manner contrary to the statutory requirements set out in the Investment Regulations, in particular, regulation 7.
 - ii. The Former Trustees failed to manage the conflict of interest issue in relation to the apparent employer related investments.
 - iii. The Former Trustees failed to adhere to the requirements of the Scheme Administration Regulations, in particular, regulations 12(1)(b) and 12(1)(b)(vi).
 - iv. The Former Trustees failed to put in place an effective system of scheme governance contrary to sections 247, 248 and 249A PA 04.

G. Conclusion

72. The Panel was satisfied that the appointment of Dalriada in respect of the Scheme was reasonable to:
- i. ensure the Scheme is properly administered by a trustee or trustees with the requisite knowledge, skill and understanding to properly administer the scheme – section 7(3)(a) PA 95;
 - ii. secure the remaining assets of the Scheme and safeguard against any further inappropriate investment of Scheme assets – Section 7(3)(c) PA 95; and
 - iii. protect the interests of the generality of members of the Scheme – Section 7(3)(d) PA 95.
73. In the circumstances, the Panel confirmed the order in its Initial Determination.
74. The Panel also confirmed its decision to make the consequential orders in respect of the Scheme.
75. Sections 7 to 9 PA 95 allow TPR to make various orders and directions which may allow the trustees of a scheme properly to protect members' benefits. These include directions regarding matters such as the payment of fees and expenses, the powers and duties of the appointed trustee, and whether those powers or duties are to be exercised to the exclusion of other trustees.
76. The Panel considered it reasonable to provide for Dalriada's fees and expenses to be paid out of the resources of the Scheme, pursuant to section 8(1)(b) PA 95. The fees and expenses are required to secure the services of a competent professional trustee.
77. The Panel considered the powers exercisable by Dalriada should be exercised to the exclusion of all other trustees, under section 8(4)(b) PA 95. For the reasons given in this Final Notice, it was reasonable to confirm this order. The concerns about the probity and/or competence of the Former Trustees militated in favour of appointing an independent trustee with exclusive powers, to allow that trustee to fully (and independently) investigate the Scheme.
78. The Panel also considered whether the property of the Scheme should vest in Dalriada as trustee of the Scheme under section 9 PA 95. The Panel decided to confirm this order on the grounds that it was reasonably consequential on the appointment of Dalriada and its discharge of its functions as an independent trustee in the factual circumstances set out above.
79. The Panel therefore confirmed the order in full, in the following terms:

- (1) *Dalriada Trustees Limited (the “New Trustee”) is hereby appointed as trustee of the Organic Insurance Ltd Pension Scheme (“the Scheme”) with immediate effect;*
- (2) *The order at (1) above is made because the Pensions Regulator is satisfied that it is reasonable 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, to secure the proper use or application of the assets of the Scheme, and otherwise to protect the interests of the generality of the members of the Scheme pursuant to section 7(3)(a), (c) and (d) of the Pensions Act 1995;*
- (3) *The powers and duties exercisable by the New Trustee shall, until further order, be to the exclusion of all other trustees of the Scheme pursuant to section 8(4)(b) of the Pensions Act 1995;*
- (4) *The New Trustee’s fees and expenses, in respect of the Scheme, shall be paid out of the resources of the Scheme pursuant to section 8(1)(b) of the Pensions Act 1995 and an amount equal to the same is to be treated for all purposes as a debt due from Organic Insurance Limited to the New Trustee of the Scheme pursuant to section 8(2) of the Pensions Act 1995;*
- (5) *To the extent that the New Trustee’s fees and expenses in relation to the Scheme cannot be met out of the Scheme’s resources, under (4) above, the same is to be paid to the New Trustee by Organic Insurance Limited pursuant to section 8(1)(a) of the Pensions Act 1995;*
- (6) *Pursuant to section 9 of the Pensions Act 1995, it is hereby ordered that all property and assets of the Scheme, heritable, moveable, real and personal, of every description and wherever situated and all rights pertaining to that property be vested in, assigned to and transferred to the New Trustee as trustee of the Scheme;*
- (7) *The appointment of the New Trustee may be terminated, or the New Trustee replaced, at the expiration of 28 days’ notice from the Pensions Regulator to the New Trustee, pursuant to section 7(5)(c) of the Pensions Act 1995 and such power to terminate or replace the appointment shall be exercised by the Pensions Regulator in accordance with its delegation policy;*
- (8) *This Order having been made under the Special Procedure, pursuant to sections 97 to 98 of the Pensions Act 2004, shall be reviewed by the*

Pensions Regulator as soon as reasonably practicable in accordance with section 99 of the Pensions Act 2004. Details of the said review shall be provided to directly affected persons pursuant to section 99(4) of the Pensions Act 2004.

80. Finally, the Panel noted that no representations had been received in relation to the Panel's decision to decline to suspend the Former Trustees, and that no further information has been provided in relation to that aspect of the Request. The Panel confirms the decision not to suspend the Former Trustees from trust schemes in general.
81. For the avoidance of doubt, this Final Notice confirms that a Compulsory Review was undertaken as required in accordance with section 99 PA 04.
82. **Appendix 1** to this Final Notice contains important information about the Directly Affected Parties' rights to challenge this decision.

Chair: Tony Foster

Date: 14 February 2020

Referral to the Tax and Chancery Chamber of the Upper Tribunal

You have the right to refer the matter to which this Final 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 Final 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 Final 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 TPR. 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: