

<p>The Pensions Regulator</p>	<p style="text-align: center;">Compulsory Review FINAL DETERMINATION NOTICE under Section 99(4) of the Pensions Act 2004</p> <p style="text-align: center;">Gordon Craig</p>	<p style="text-align: center;">The Pensions Regulator case ref:</p> <p style="text-align: center;">C104020917</p>
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A. Introduction

1. By a Request dated 9 February 2018 the Case Team of the Pensions Regulator (“**the Regulator**”) asked the Determinations Panel (“**the Panel**”) to make an order under section 4(1)(aa) of the Pensions Act 1995 (“**PA 95**”) to suspend Gordon Craig (the “**Respondent**”) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception (“**the Request**”). The Request asked the Panel to order the suspension of the Respondent as trustee of the Optimum Retirement Benefit Plan (the “**Scheme**”) and trust schemes in general.
2. The Request was made under the “Special Procedure” provided for by section 98 of the Pensions Act 2004 (“**PA 04**”). The Panel met on 13 February 2018 to consider the issues in the Request. As required by the Special Procedure, the Panel carried out a compulsory review on 5 April 2018 after giving the Respondent an opportunity to make representations. This is the Panel’s final determination notice following that compulsory review.

B. The Initial Determination and the Compulsory Review

3. On 13 February 2018, the Panel determined that the use of the Special Procedure was appropriate and ordered that the Respondent should be suspended as trustee of all schemes (“**the Determination**”). A Determination Notice was issued on 16 February 2018 giving the Panel’s reasons for the Determination (“**the DN**”).
4. In summary, the Panel determined that the Respondent should be suspended from acting as trustee of all schemes, because the Respondent was being investigated by the police for conspiracy to defraud. The Panel considered this met the threshold requirements of section 4(1)(aa) and that it was in the interests of scheme members and for the protection of scheme assets to make the suspension order.
5. The Panel considered the Special Procedure was appropriate, in summary, for the following reasons:
 - i. The fact of being under investigation for conspiracy to defraud indicated an immediate risk to members and scheme assets. Scheme assets are at risk being managed by someone under such an investigation, and members’ interests are similarly at immediate risk.
 - ii. Further, the nature of the investigation and the Request meant that putting the Respondent on notice by giving him a warning notice would give rise to the same risks to the members and assets.

6. Pursuant to section 99(1) of PA 04, in any case where the Special Procedure applies the Regulator must review the determination to exercise the regulatory function. In advance of that review, those who appear to the Regulator 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) of PA 04).
7. In this case the Panel considered the Respondent to be directly affected by the exercise of the regulatory function in question.
8. The Panel received no representations from the Respondent. On 2 March 2018, the Case Team served a short representation enclosing a letter dated 1 March 2018 from xx xxxxxxxx "Titan", the North West Regional Organised Crime Unit, confirming that the Respondent was under investigation for conspiracy to defraud as part of an ongoing pension fraud investigation.
9. The Regulator was advised on 12 March 2018 that correspondence to Mr Craig's business address was being forwarded to his home but with delays, which fact Mr Craig confirmed the following day. The Panel granted the Respondent an extension to 20 March 2018 to make any representations (and informed the Respondent of this by email). Notwithstanding this extension, no representations were made by the Respondent, whether by 20 March 2018 or at all.
10. The Panel then met to conduct the review on 5 April. No oral hearing was requested by the Parties, or held. In the course of the review, the Panel considered the representations provided to it.
11. Pursuant to section 99(3) of 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, and*
 - (e) make savings and transitional provision."*
12. When determining whether to exercise a regulatory function on a review under section 99 of PA 04, the Panel is to have regard to the interests of directly affected parties and of the generality of members of the relevant schemes (section 100 of PA 04). The Panel had regard to those matters as well as the main objectives of the Regulator in exercising its functions, as set out in section 5 of the 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.
13. As a result of its review, the Panel decided to confirm the Determination to suspend the Respondent from all schemes, pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception. The remainder of this final notice sets out:
 - i. the factual position relating to the Request, 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 Determination.

C. The Scheme and Relevant Facts

- 14. This original request to suspend the Respondent arose out of a police investigation into him for the offence of conspiracy to defraud as part of an ongoing pension fraud investigation.
- 15. The Respondent was at the time of the Request Trustee of the Scheme and has previously been a Trustee of two other schemes. There was no evidence before the Panel that the Respondent has been appointed in respect of other Schemes.
- 16. By letter to the Regulator's criminal investigation team dated 1 February 2018, xx xxxxxxxx "Titan", the North West Regional Organised Crime Unit wrote:

"Operation Titan Economic Crime Team are dealing with an ongoing Pension Fraud investigation under the name of "Operation Atlas".

I can confirm that Mr Gordon Craig is under investigation as part of this investigation for the offence of conspiracy to defraud with others."

- 17. A further letter from xx xxxxxxxx dated 1 March 2018, provided by the Case Team as part of its representations for the compulsory review was in the same terms and, in substance, confirmed that the investigation into the Respondent was ongoing.

D. The Law

- 18. Section 4 of PA 95, sets out the Panel's discretion in the following terms:

"The Authority [ie the Regulator, acting through the Panel] may by order suspend a trustee of a trust scheme... (aa) pending consideration being given to the institution of proceedings against him for an offence involving dishonesty or deception."

- 19. As set out at paragraph 12 above, the Panel also had regard to its regulatory objectives set out in section 5 PA 04 and the interests of members and directly affected persons as required by section 100 PA 04.

E. Reasons for Confirming the Decision

- 20. The Panel considered whether to confirm its decision to suspend the Respondent under section 4 of PA 95. The Panel was satisfied that it should do so.
- 21. A suspension order is a two-stage test: the threshold requirement of section 4(1)(aa) must be met, and, if so (and only if so), the Panel should then go on to consider whether to make a suspension order.
- 22. The threshold requirement of section 4(1)(aa) has two elements:
 - i. "pending consideration of the institution of proceedings"; and
 - ii. those proceedings being for "an offence involving dishonesty or deception".

23. Conspiracy to defraud is an offence involving dishonesty or deception. The Panel considered whether an ongoing police investigation was sufficient to amount to “*pending consideration of the institution of proceedings*”. It concluded it did:
- i. As a matter of ordinary language, if a person is under active police investigation, such a fact is sufficient to establish that there is pending consideration of the institution of proceedings. The Panel considered that such an investigation is sufficient “pending consideration”.
 - ii. “Pending” is a sufficiently broad term to include police investigation. The Panel considered that to limit “pending consideration” to a later time, for example at which a file was passed to a prosecuting authority was not required by PA 95.
 - iii. Further, construing the requirement in its statutory and policy context, this is a threshold requirement for the Regulator to exercise its functions to protect members and scheme assets on a temporary basis. In that context, a rigid construction limiting the exercise of the powers to protect members and assets is inconsistent with the statutory purpose.
24. The Panel accordingly considered the threshold test was met.
25. The Panel proceeded to consider whether it should exercise its discretion to suspend the Respondent. In circumstances where the Respondent is being investigated for conspiracy to defraud as part of an investigation into pension fraud, the Panel considered it overwhelmingly in the interests of scheme members and for the protection of scheme assets to make the suspension order.
26. While the Panel only had evidence that the Respondent is trustee of the Scheme, the Panel considered it was reasonable to suspend the Respondent from being a trustee of schemes generally:
- i. There is no evidence as to which scheme or schemes the Police investigation pertains;
 - ii. The Respondent has previously been trustee of two other schemes such that he has a history of being involved in pension schemes more widely than the Scheme.
 - iii. In circumstances where the Respondent is being investigated for conspiracy to defraud, the risks to members and assets arise from the Respondent’s potentially dishonest character. Those same risks therefore apply to any scheme of which the Respondent is or could become a trustee.
 - iv. In circumstances where there is potential dishonest conduct in relation to pension schemes, the fact that the Respondent has not registered as trustee of any other scheme is no safe basis to conclude that he is not in fact in such a position.

G. Conclusion

27. For those reasons, the Panel considered the suspension order should be confirmed and confirmed the Order in full.

“1. The Pensions Regulator hereby suspends:

Mr Gordon Craig

as Trustee of the Optimum Retirement Benefit Plan and of trust schemes in general pursuant to Section 4(1)(aa) of the Pensions Act 1995 with effect on and from 13 February 2018 until 12 February 2019.

2. *Pursuant to section 4(3) of the Pensions Act 1995, this order has the effect of prohibiting Gordon Craig, during the period of the suspension, from exercising any functions as a Trustee of the above scheme and trust schemes in general.*
3. *During the duration of Gordon Craig's suspension as trustee he is authorised and entitled to execute any instrument the sole purpose of which is to effect his removal or resignation as trustees of any trust scheme pursuant to Section 4(6) of the Pensions Act 1995. This will take immediate effect on the date of this order."*

28. **Appendix 1** to this Determination Notice contains important information about the Respondent's right as a Directly Affected Party to challenge this decision.

Signed:

Chair:

Date: 20 April 2018

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 PA 04 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 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