

	<p>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>Quarters Trustees Limited (“QTL”)</p>	<p>The Pensions Regulator case ref:</p> <p>TM4162</p>
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1. The Determinations Panel, on behalf of the Pensions Regulator, met on 5 February 2009 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice issued on 9 December 2008. The Pensions Regulator considered under section 10(2) of the Act that the exercise of a reserved regulatory function was appropriate.

At the start of the hearing it was recorded that:

- (a) Michael Maunsell had met John Quarrell (Mr Quarrell) in a social capacity in the past and had worked on a transaction where he and Mr Quarrell were both involved as partners of their respective firms;
- (b) James Rickards (legal support) had been instructed by Graham Ness who is mentioned in the Warning Notice.

The Panel agreed that neither situation gave rise to a conflict of interest.

- (c) On 17 December 2008 the Solicitors’ Regulatory Authority intervened in the affairs of both Quarters Solicitors and Quarters Trustees Limited.

2. Matter to be determined:

The function the Panel was asked to exercise was the application made by the Regulator for an order to be issued under Regulation 6(2) of the Occupational Pension Schemes (Independent Trustee) Regulations 2005 (SI no. 703) to remove Quarters Trustees Limited from the Trustee Register compiled and maintained by the Regulator pursuant to section 23(4) of the Pensions Act 1995.

3. Parties

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

- (a) Quarters Trustees Limited (QTL).

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XX
XXX.

- vi. The Regulator understands that the SRA has been investigating concerns over QTL and Quarters since February 2008, culminating in a number of interviews with them in July 2008. A Forensic Investigation Report dated 14th August 2008 was produced. As a result of its investigations, on 3 September 2008, the SRA advised QTL and Quarters of their intention to possibly intervene under the Solicitors Act 1974. As noted above the SRA intervened in Quarters and QTL.

Blagden Industries Pension Scheme (Blagden)

- ix. QTL received a VAT repayment of £47,406.00 from HMRC in respect of Blagden between 22 and 30 August 2005. The money was deposited on 14 October 2005 into QTL's office account, rather than QTL's client account, (which is being investigated by the SRA) and was never paid to Blagden. Mr Quarrell, in response to a query raised sometime before 27 October 2006 by DTE, the then chartered accountants to Quarters, stated, in his letter dated 27 October 2006, that he was entitled to debit Quarters' fees against that VAT repayment.
- x. In a statement to the Regulator at the inspection of 25 February 2008 referred to above, Mr Quarrell advised that the £47,406.00 was paid into Quarters' office account in error. The Regulator understands from his explanation that, to rectify the problem, Quarters offset the £47,406.00 against an invoice raised on 31 July 2007 addressed to "The Blagden Pension Scheme Trustees, c/o Quarters Trustees Limited" for the work QTL had carried out on behalf of Blagden, which was specified in a narrative attached to the invoice.

Sunley Turriff Pension Scheme (Sunley)

- xi. QTL received a VAT repayment of £46,057.00 from HMRC in respect of Sunley on 6 October 2006 and that there is no evidence that this money has ever been paid to Sunley or that credit has been given for it.
- xii. Since 25 February 2008, on several occasions, the Regulator has asked for information in relation to the whereabouts of the money and has requested that this information be provided in response to a statutory request. QTL have sought to clarify the whereabouts of the money from a variety of sources but have been unable to locate the money. On 28 April 2008 and 11 July 2008, QTL told the Regulator and SRA that proposals would be put forward to repay the money to Sunley, as it could not be located. To date, no such proposals have

been received from QTL. This is nearly 2 years after the money was received into QTL's office account.

7. **Statutory issues**

In making their decision the Panel had regard to the objectives of the Regulator as set out in section 5 of the Pensions Act 2004 and to the matters mentioned in Section 100, as set out in **Appendix 1**.

8. **Conclusions and Reasons for decision**

With regard to Blagden, the facts which have not been contested, and which the Panel relied on, were as follows:

- i. in August 2005 a VAT refund of £47,406 was received by QTL;
- ii. this refund was paid into the office account rather than a client account. Why this happened is unclear. Mr Quarrell, as principal, knew about this at least by January 2006;
- iii. the money was never paid over to Blagden;
- iv. on 31 July 2007, two years after the money had been received, a bill (QTL87) was rendered by QTL to 'the Trustees', that is to itself. This charged a total of £67,500 in costs and expenses and showed that a sum of £4,890 was allowed by way of interest, presumably against the sums which had been paid into the QTL office account. It netted off VAT receipts, including the £47,406;
- v. the Panel was concerned, on the evidence before it, that the invoice failed to break down how the figure for professional charges had been arrived at and provided no particulars as to what work had been carried out, by whom and when. Further there was no evidence that Blagden's administrators had seen the invoice or that it had been correctly assessed. The Panel considered that there remained significant concerns as to whether the invoice could properly give credit against the money owing to Blagden. The Panel was also concerned as to whether QTL were entitled to offset legal fees against the money owing to Blagden.

With regard to Sunley, the facts which have not been contested, and which the Panel relied on, were as follows:

- i. a VAT refund of £46,057 was received by QTL on 6 October 2006;
- ii. it was paid into the QTL office account, although it was payable to a specific client and QTL had a client account. Again the reasons why this happened are not clear;
- iii. the money was never paid over to Sunley;
- iv. the papers show evidence that QTL had been raising queries with all the others involved to help try and identify where this money actually

was. Mr Quarrell, as principal, did not have the answers to these queries.

In conclusion:

The Panel's concerns were whether there was such a failure that demonstrated that QTL no longer satisfied the requirement that it operated sound administrative and accounting procedures.

In this context there was evidence that:

- i. money was credited to the incorrect accounts;
- ii. even when this fact was drawn to the attention of the principal he did not take immediate steps to rectify the situation;
- iii. when queries were raised with the principal about these issues attempts were made to blame other staff in a way that, at best is unattractive, and in ways which were not consistent;
- iv. the principal sought to call in aid from a variety of advisers on something that should have been easily identifiable from QTL's own records and information;
- v. the raising of a bill on the Blagden account was questionable in the context of the rules about solicitors' billing. The lack of any apparent audit trail, and the delay, certainly raised issues about how appropriate it might be;
- vi. the suggestions that staff were doing things which the principal did not know about and that he sought to use as an excuse for QTL's conduct implied that there was little supervision or that the supervisor did not care. This in itself was evidence of unsound administrative and accounting procedures in the context of a legal practice bound by the Solicitors' rules.

As the SRA took the decision to intervene in QTL (on 17 December 2008), and thus QTL was effectively closed, it seemed to suggest that there was no way QTL could now operate appropriate procedures

Accordingly the Panel determined that for these reasons it was not satisfied that QTL operates sound administrative and accounting procedures and that the case for removal from the Trustee Register had been made out.

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

Signed: *M B Maunsell*

Chairman: **Michael Maunsell**.....

Dated: 10 February 2009

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 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