

	<p><b>DETERMINATION NOTICE</b>  <b>under section 96(2)(d) of the</b>  <b>Pensions Act 2004 (“the Act”)</b></p> <p><b>Refuge Pension Scheme</b>  <b>(“the Scheme”)</b></p>	<p>The Pensions  Regulator  case ref:</p> <p><b>TM7085</b></p>
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1. The Determinations Panel, on behalf of the Pensions Regulator, met on 13 August 2009 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice issued on 19 June 2009. The Pensions Regulator considered under section 10(2) of the Pensions Act 2004 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 Refuge Nominees Limited and Gladstone Nominees Limited (the Trustees) for a decision to be made under section 99(4) of the Pensions Schemes Act 1993 (the “PSA”) and regulation 13(a)(iii) of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (SI 1996/1847) (“regulation 13(a)(iii)”) to extend the time limit for the payment of cash equivalent transfer values (CETV’s).

3. **Parties**

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

- (a) Refuge Nominees Limited
- (b) Gladstone Nominees Limited
- (c) XXXXX
- (d) XXXXX
- (e) XXXXX
- (f) XXXXX
- (g) XXXXX
- (h) XXXXX

4. **Decision**

The Panel determined that the application for an extension of time limit for payment of a cash equivalent transfer value in respect of XXXXX, XXXXX, XXXXX, XXXXX, XXXXX and XXXXX be granted until 1 December 2009.

## 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 responses and submissions to the Warning Notice sent by:

(a) XXXXX

A response to XXXXX's representation, from the Pensions Regulator, was also considered.

There were no other submissions or evidence placed before the Panel. There was no evidence in dispute by the parties.

## 6. Details of scheme and employer

The application was in relation to an open defined contribution scheme, with 18 active members and 7 deferred. As at 31 January 2009 the size of the fund was £XXXX. The current trustees are Gladstone Nominees Limited and Refuge Nominees Limited. Mason Owen & Partners Limited, based in Liverpool, is the principal employer of the scheme and is involved in development and real estate.

## 7. Background to application

- a. The Trustees have received six applications for payment of CETVs with the first one being received on 26 November 2008.
- b. A written statement of the CETVs has not as yet been sent to scheme members due to the need for the Trustees to sell some of the properties owned by the Scheme in order for there to be sufficient cash to make the transfer payments.
- c. According to information supplied by the Trustees, the scheme investments are made up as follows: X% in property, X% in cash, X% in quoted investments and X% in works of art. These figures are from the latest unaudited management accounts of the Scheme as at 31 January 2009.
- d. According to the information supplied by the Trustees, many of the property investments of the Scheme have attaching mortgages. As at 31 January 2009, it was estimated that the loans amounted to some 58% of the fund value, which prevents the Trustees from raising further cash due to the 50% borrowing limit under the Finance Act 2004, coupled with the fact that the current economic climate makes this a difficult time for raising or re-negotiating commercial mortgages.

- e. The Trustees met on 17 February 2009 to discuss the transfer value requests.
- f. The Trustees have confirmed that they have written to each Member informing them of the likely delays in paying their transfer values.
- g. The Trustees wrote to the Pensions Regulator on 2 April 2009 requesting an extension to the time limit during which the CETVs for Messrs XXXXX, XXXXX, XXXXX, XXXXX, XXXXX and XXXXX are to be paid. This letter also informed the regulator that another member (XXXXX) had recently died and that the Trustees intended to pay his fund share at the same time as paying the transfers. XXXXX's family and executors are aware of the potential delay with this.

## 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 Pensions Act 2004 and to the matters mentioned in Section 100, as set out in **Appendix 1**.

## 9. **Reasons for decision**

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

- a. The Determinations Panel was satisfied that the current payment period for Messrs XXXXX, XXXXX, XXXXX, XXXXX, XXXXX and XXXXX had not expired before the application was made on 2 April 2009 and therefore the application was validly made.
- b. The Determinations Panel was satisfied that the following grounds, in accordance with regulation 13 of the Occupational Pension Schemes (Transfer Values) Regulations 1996, were satisfied:
  - (a)(iii) "the interests of the members of the scheme generally will be prejudiced if the trustees do what is needed to carry out what is required within that period".

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

Signed: *Suzanne McCarthy*

Chairman: Suzanne McCarthy

Dated: 18 August 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