The Pensions Regulator	**DETERMINATION NOTICE** **Pursuant to Section 96 of the Pensions Act 2004 (the "Act")** **The Hugh Mackay Retirement Benefits Scheme** **(the "Scheme")**	**The Pensions Regulator case ref:** **TM8515**

1. Introduction

1.1 On 14 October 2011 the Determinations Panel (the "**Panel**") held an oral hearing in order to determine whether to prohibit Mr Robert Hill, Mr Simon Ragg and Mr Nicholas Halton (collectively the "**Original Trustees**") from being trustees of the Scheme and trust schemes in general pursuant to section 3 of the Pensions Act 1995 ("**PA95**").

1.2 Aside from the Original Trustees the following parties were identified in the Warning Notice (the "**WN**"), issued on 13 July 2010, as being directly affected:

1.2.1 Chartpoint Limited ("**Chartpoint**") which was the Scheme's principal employer until it was wound up on 18 April 2011;

1.2.2 PI Consulting Services (Trustee Services) Limited ("**PTS**") which is an independent professional trustee appointed to the Scheme by the Panel on 7 December 2009.

1.3 At the oral hearing the Pensions Regulator ("**tPR**") was represented by Mr Keith Rowley Q.C. and Ms Frances Radcliffe. Mr Jonathan Evans represented PTS and Mr Alan Steinfeld Q.C. and Mr Nigel Burroughs represented the Original Trustees.

1.4 On 7 December 2009 the Panel acting under its Special Procedure acceded to a request from tPR to appoint PTS to the Scheme with

exclusive powers. The Panel confirmed PTS's appointment, at a compulsory review hearing (the "**Review"),** on 22 February 2010 (we return to the terms of the Review in more detail below).

1.5 The Original Trustees, having given the requisite notice, resigned from the Scheme on 14 October 2011 (the day of the oral hearing). Accordingly the issue as to whether the Original Trustees ought to be prohibited from the Scheme fell away. As a result the key issue that we have to consider is whether the Original Trustees ought to be prohibited from being a trustee of trust schemes in general. That issue has to be determined by reference to the relevant statutory framework and guidance that we set out below.

2 Prohibition – the statutory framework

2.1 Section 3 of PA95 provides where material that:

"(1) The Authority may by order prohibit a person from being a trustee of -

(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."* (emphasis added)

2.2 Section 3 of PA95 does not define what is meant by "fit and proper". However, tPR has published relevant guidance on this topic which provides where material that tPR will consider prohibition if concerns are raised as to a trustee's:

(a) honesty and integrity; or

(b) competence and capability.

2.3 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX tPR's case for prohibition was based solely on (b) above i.e. competence and capability.

2.4 Although tPR's guidance is expressed to be non-exhaustive it provides, in so far as is material, that in assessing a trustee's competence and capability the following may be relevant namely:

(a) persistent or serious breaches of pensions legislation or associated regulations; and

(b) any breaches of trust law if these are significant, persistent or deliberate.

2.5 At the outset of the oral hearing, Mr Steinfeld, told us that he accepted, on behalf of the Original Trustees, that (a) was met and that the Original Trustees accepted that they were not fit and proper persons to be a trustee and a prohibition order was appropriate. He also submitted that as a result the Panel should not go on to consider (b) above because this exercise would not be in the public interest and would not serve tPR's objectives which the Panel was bound to consider in exercising its power to prohibit.

2.6 Mr Steinfeld invited us to deal with this point as a preliminary issue because if we agreed with his approach then (b) above (the allegations about breaches of trust law) would fall away and our task would be simplified. Although we heard full argument on all aspects of the case we agree that this point falls naturally to be considered first and for that reason we deal with it immediately below.

3 Preliminary issue – the Panel's approach

3.1 The WN alleged, amongst other things, that the Original Trustees have breached pensions legislation in three respects namely:

(a) regulation 4 (5) of The Occupational Pensions Schemes (Investment Regulations 2005) (the "**Investment Regulations**") that provides that the Scheme's assets must consist predominantly of investments admitted to trading on regulated markets. As we explain in further detail below the assets of the Scheme consisted almost entirely of real property;

(b) regulation 5 of the Investment Regulations that provides that the Original Trustees should not borrow save for reasons of temporary liquidity. The real property owned by the Scheme was, as we explain in further detail below, financed by very significant borrowings.

(c) section 247 of the Act which provides that the Original Trustees should have sufficient knowledge and understanding of the law relating to pension schemes, and investment principles, so as to enable them to adequately discharge their obligations as trustees of the scheme.

((a), (b) and (c) above being together referred to as the "**Legislative Requirements**")

3.2 The Original Trustees' case on whether they had breached the Legislative Requirements can, at best, be described as variable. In summary their case has over time developed in the following ways:

(a) at the Review on 22 February 2010 the Original Trustees conceded that they had breached the Legislative Requirements having in representations denied they were in breach;

(b) in the Original Trustees' first response to the WN dated 17 September 2010 they had offered to accept that they had breached the Legislative Requirements but only on the condition that tPR no longer pursued allegations about overcharging the Scheme or acting in breach of trust;

(c) in the Original Trustees' second response dated 13 May 2011 they purported to withdraw the concessions and submitted that they were not in breach of the Legislative Requirements;

(d) on 9 September 2011 the Original Trustees, in an open letter to the Panel, offered to consent to a prohibition order on the basis that they had breached the Legislative Requirements but on the condition that tPR abandoned all other allegations. It was a further condition of their offer that tPR was not to publish any details other than those relating to the Legislative Requirements. The Original Trustees' offer was rejected by tPR;

(e) on 5 October 2011 the Original Trustees revived their offer which again was not accepted by tPR.

3.3 In their skeleton argument the Original Trustees repeated their revived offer of submitting to a prohibition order on the basis of admitted breaches of the Legislative Requirements. However, in the event that the Panel chose to go further than these admitted breaches the Original Trustees' submitted that they would withdraw their offer and resile from the concessions made at the Review. To this end the Original Trustees' skeleton argument developed a number of reasons why they were not in breach of the Legislative Requirements as well as developing reasons why they had not acted in breach of trust.

3.4 Mr Steinfeld, at the outset of the oral hearing, conceded that the Original Trustees had breached the Legislative Requirements (the "**Concessions**") and abandoned any arguments to the contrary. He also accepted that the Concessions were sufficient to justify the Panel in

making a prohibition order. However, he then went on to submit that the Panel should not go on to consider any other allegations in the WN relating to the competence and capability of the Original Trustees. He justified this approach by reference to the following, but did not cite any specific authority:

(a) the fact that tPR's objectives would be met if his approach was adopted and that tPR's objectives would not be served by going any further;

(b) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXX

(c) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

3.5 Mr Steinfeld did accept that were the Panel to consider that the breaches of the Legislative Requirements were insufficient on their own to justify a prohibition order then the Panel ought to consider the remainder of the issues put forward by tPR.

3.6 Having carefully considered this issue we are of the opinion that it is appropriate for us to consider aspects of this case other than those that are pertinent to the Concessions for the following reasons.

3.7 Firstly we were not satisfied that the Concessions were, on their own, automatically sufficient to justify the making of a prohibition order. Although the breaches of the Investment Regulations and section 247 of the Act are serious it is not axiomatic that this should lead to prohibition. This is particularly true of situations where, as is the case here, trustees claim to have acted on the basis of professional advice. The Panel noted that in all previous cases of prohibition of individuals there had been a

finding of either obtaining some personal benefit or a serious conflict of interest.

3.8 Secondly when considering whether or not to exercise the power to prohibit we must do so by reference to tPR's statutory objectives as set out in section 5 of PA04. We do not agree with the Original Trustees that considering the factual history in the WN (save for those issues expressly withdrawn by tPR) would not further tPR's objectives. Rather we are of the view that it would promote them.

3.9 In this case we regarded the relevant objectives, as set out in section 5 of the Act, as:

(a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes;

(c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund;

(d) to promote, and to improve understanding of, the good administration of work-based pension schemes.

3.10 The allegations contained in the WN that do not relate to the Concessions are serious and raise important issues about the administration of the Scheme and the principles surrounding appropriate trusteeship. As such a determination based on a fuller consideration of the facts (on the hypothesis that those facts were proved) would:

(a) serve to protect the members of other occupational pension schemes because trustees would potentially be deterred from engaging in behaviour similar to that exhibited by the Original Trustees;

(b) by reason of (a) above reduce risk to the Pension Protection Fund because other trustees might consider the principles set out in, and the deterrent posed by, a determination;

(c) by reason of the deterrent effect promote the good administration and understanding of occupational pension schemes.

3.11 We are also of the opinion that the members of the Scheme, in a case where they are unlikely to receive the full level of their benefits (as to which see the Factual Background section below), should be fully aware of the range of reasons why this is the case. XXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXX

3.12 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXX

3.13 Before turning to consider the full range of tPR's allegations about the behaviour of the Original Trustees we first set out the background facts

since this is relevant to understanding the context to the Concessions and the remainder of tPR's allegations.

4 The factual background

4.1 The Scheme is a registered occupational pension scheme that provides final salary benefits. It was established in 1977 and closed to new members circa 1990 and to future accrual in 2002 (although the precise date is not clear). The Scheme's current funding position is parlous and it seems bound to enter the Pension Protection Fund in the future and consequently members will not receive the full level of their promised benefits.

4.2 The precise value of the Scheme's assets is uncertain. What is clear, and not disputed, is that while the Original Trustees were in control, that is until December 2009, the Scheme's assets were almost exclusively invested in property related investments. At the time that PTS assumed control of the Scheme its assets, as set out in the Scheme accounts, were comprised of the following:

(a) commercial properties stated to be worth approximately £35.9 million (although there was considerable debate about this valuation);

(b) unlisted property unit trusts valued in the accounts at approximately £5.5 million;

(c) cash and other assets of some £7.1 million consisting principally of bank loans that were drawn but not spent. The total amount borrowed by the Scheme is approximately £21 million.

4.3 Mr Hill was appointed as a trustee in May 2003 and as mentioned above specialises in property development. Mr Ragg was appointed as a trustee on 17 January 2005 and is a chartered accountant. Mr Halton was appointed as a trustee in 1987 XXXXXXXXXXXXXXXX

4.4 Chartpoint became the Scheme's Principal Employer on 24 February 2003 following a reconstruction exercise. Prior to being dissolved Chartpoint was owned, according to its accounts, by Mr Hill and his two daughters namely Ms Emma Hill and Ms Andrea Cassidy. Mr Hill and Ms Hill were directors of Chartpoint while Ms Cassidy was the company secretary.

4.5 Chartpoint's business is described in its accounts as "property project management and advice". This activity is consistent with Mr Hill's expertise as a property developer but contrasts with the activity of the Scheme's former principal employers that were engaged in the manufacture of carpets and rugs.

4.6 According to the evidence Chartpoint's exclusive activity was the provision of services to the Scheme. These services consisted of three elements namely (a) the introduction of investment opportunities (that are exclusively property related), (b) raising finance to exploit those opportunities and (c) the provision of administrative services. In consideration for providing these services Chartpoint received a total of approximately £1.2 million from the Scheme between 2006 and 2009.

4.7 Mr Hill and his daughters received dividends from Chartpoint from time to time. For example in the year end 31 March 2007 dividends of £190,000 were paid from Chartpoint to its shareholders i.e. Mr Hill and his daughters. This figure represented an increase from the previous year's dividend of £120,000.

4.8 In addition the Original Trustees all received salaries and, in some cases, bonuses. For example in 2003 Mr Hill and Mr Halton received salaries of £15,000. Mr Ragg joined the payroll in 2005. The salaries rose to £18,000 in 2009 and were said by the Original Trustees to be justified on the basis of their work in connection to the administration of the Scheme. These amounts would be charged to the Scheme. In addition bonuses were also

paid to the Original Trustees. For example bonuses of £15,000 were paid in December 2007 to all of Chartpoint's employees.

4.9 The amounts charged by Chartpoint to the Scheme in respect of the Original Trustees' efforts in relation to administering the Scheme was in addition to the fees paid to the numerous professional advisers engaged by the Original Trustees. For example the Original Trustees engaged Mr Best (who latterly acted through a company called Corpad) to administer the Scheme. Lampott Limited provided investment advice to the Original Trustees and Leathers LLP acted as the Scheme's book-keepers.

4.10 In addition to the salaries and bonuses mentioned above Chartpoint also received commission fees for successful investments and the sourcing of finance.

4.11 The success fees were set at 10% of the profit realised on the sale of an investment. The Original Trustees obtained advice from Lampott Ltd that 10% was an appropriate rate for such services from independent providers. Lampott Ltd also advised that the success fee should be subject to a written agreement for each investment. No evidence was produced to show this approach was adopted and it appeared that Chartpoint invoiced the Scheme for a success fee of 10% each time a profit was realised on the sale of an investment.

4.12 Examples of success fees that were charged at a rate of 10% on the profits realised were those from a number of aAim investment funds (the "**aAim Investments**"). The amount paid by the Scheme to the Original Trustees in respect of these success fees was considerable. For example in relation to the JVC Staples Corner fund Chartpoint received £145,090 and in relation to the AMS Finley fund Chartpoint received £131,508. The point made about these success fees by tPR is that they represented a one-way bet for Chartpoint. If the aAim Investments realised a profit then so would Chartpoint. However, if the aAim Investments realised a loss then only the Scheme would suffer.

4.13 Finally Chartpoint received fees in respect of successfully sourcing finance for the Scheme when it required leverage for property purchases. Although we return to this topic in further detail below Chartpoint received a fee of £106,250 in return for raising finance totalling £21,734,000 from the Allied Irish Bank ("**AIB**"). The Original Trustees obtained advice from Lampott Ltd that the rate, 0.5%, was justified as being in line with what other independent corporate finance providers would charge.

4.14 As is clear from the preceding paragraphs the relationship between Chartpoint and the Scheme was, to say the least, unconventional. Typically it is the business of the Principal Employer that provides support to the pension scheme. However, in this case it was the other way around i.e. the Scheme supported Chartpoint and almost exclusively provided its income.

4.15 This unusual relationship between Chartpoint and the Scheme, and the fact of Mr Hill's personal interest in a number of the investments, raises serious concerns about conflicts of interest and how they were managed.

5 Conflicts of interest – general principles

5.1 In *Bristol & West Building Society v Mothew*[1] Millet LJ stated:

> *"A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third party without the informed consent of his principal".*

5.2 tPR's skeleton argument contained the following three principles, that are derived from the above passage, and that were not in dispute. These were:

[1] [1998] Ch 1 at 18

(a) the Original Trustees owed fiduciary duties to the members of the Scheme;

(b) among those duties was the obligation of single-minded loyalty to the members. As part of the obligation the Original Trustees should not have acted:

a. where there was the potential for conflict (not just where there actually is conflict);

b. where they stood to make a profit from their position as trustees.

5.3 tPR's code of guidance on conflict of interest provides that:

"A well-run scheme will be underpinned by a robust governance framework. It is vital that decisions are not affected or tainted by conflicts of interest so that valid decisions are made, and are perceived to be made, in the beneficiaries' best interests. It is trust law which imposes on trustees a duty to exercise their powers in the best interests of the beneficiaries. While it may be inevitable that conflicts of interest sometimes emerge, the important point is that they should be properly identified, monitored and managed. The failure to deal properly with a conflict of interest could result in a trustee's actions being set aside and/or personal liability for the trustees."

5.4 Acting contrary to the principles that we have set out above is potentially to act in breach of trust. Significant and persistent breaches of trust are relevant matters for determining a trustee's competence and capability and are therefore factors relevant to prohibition.

5.5 With the principles mentioned above in mind, and tPR's guidance, we now turn to examine two instances in which the Original Trustees were faced with clear and pressing conflicts of interest namely the purchase of

Clavering Place and the Copenhagen Building. We start with Clavering Place.

6 Clavering Place

6.1 Clavering Place was purchased by the Original Trustees on behalf of the Scheme in 2006 for £1.55 million. It has been described (in a valuation obtained by PTS) as a "former car park site in a semi-derelict condition".

6.2 The vendor of Clavering Place was Leftbank Developments (Hanover Square) Limited ("**Leftbank**"). Mr Hill owned 50% of the shares of Leftbank (but he said he was only entitled to 25% of the profits) and was therefore plainly in a position of actual conflict (although we return to how this was managed in further detail below). Mr Ragg, in his second witness statement, described the circumstances of the Original Trustees' introduction to the site in the following terms:

> *"Leftbank was selling the site and Rob Hill thought that the Scheme may want to consider the opportunity as it had very significant potential that fitted in with the Scheme's investment criteria."*

6.3 Having been introduced to Clavering Place the Original Trustees decided to enter into a conditional contract (the "**Contract**") with Leftbank for circa £20,000 in 2004. During the term of the Contract the Original Trustees agreed to purchase Clavering Place in the event that planning permission was granted and leases of not less than 8% were agreed on institutionally acceptable terms to tenants of good covenant before the anniversary of the Contract being executed for a price of £1.55 million. A draft of the Contract was sent to Mr Hill in his capacity as a trustee in September 2004.

6.4 The Original Trustees obtained what was described as a development appraisal prior to purchasing Clavering Place. This was produced by GVA Lamb & Edge who did not inspect the site prior to opining nor did they

provide any estimate of the value of the site (whether developed or not). GVA's report stated:

> *"This desktop has been based on information provided to us. No inspection or any form of due diligence confirming these figures has been undertaken. Our desktop advice can only be confirmed following a full inspection of the site and a review of all legal documents, comparables ect. This desktop is provided solely as a guide to the possible value of the property.* ***Accordingly this desktop cannot be relied on for any purposes****."* (emphasis added)

6.5 While there is some evidence that planning permission was obtained there was no evidence before us that acceptable leases, as defined by the Contract, had been put in place. Notwithstanding this and in the absence of a suitable valuation the Original Trustees purchased the site in March 2006 for £1.55 million. There is no evidence before us as to how the Original Trustees reached an agreement on this price, or the other terms, with Leftbank or that there was any form of arms length and independent negotiation. Mr Ragg's handwritten notes of the Original Trustees' meeting on 30 January 2006, during which they agreed to proceed with the purchase, states that Mr Hill was not involved in the decision.

6.6 However, what is clear is that prior to this stage, and right up to the decision to purchase, Mr Hill had been actively involved in all aspects of the decisions involving the site. For example it was Mr Hill who was sent the Contract by Leftbank. In addition there was no evidence that either Mr Ragg or Mr Halton were qualified to understand and appreciate property transactions of the character of Clavering Place. Naturally they looked to Mr Hill who was plainly in a position of acute conflict.

6.7 The conflict of interest in this situation was particularly acute because Mr Hill had a direct personal interest in the transaction because, as a major shareholder in the vendor company, he stood to gain from the sale by reason of his interest in Leftbank. In this respect he was, in effect,

negotiating with himself because he was also acting, as a trustee, on the other side of the transaction. As mentioned above it was Mr Hill who was sent the Contract for comments (from Leftbank's solicitors who were indirectly representing his personal interests) and it was to Mr Hill that Mr Ragg and Mr Halton would have looked. There was no independent oversight and to make matters worse both Mr Ragg and Mr Halton worked for Chartpoint and as such were paid salaries and bonuses by a company controlled by Mr Hill.

6.8 The conflict was an ongoing one because it persisted from the introduction of Clavering Place to the Original Trustees right through to the decision to purchase it. In our opinion there was a complete and comprehensive failure to identify and manage Mr Hill's conflict of interest throughout this time.

6.9 Simply leaving the room or being excluded from the decision to purchase Clavering Place at the culmination of a lengthy process in which Mr Hill yielded considerable influence was nowhere near sufficient. We agree with tPR that the Original Trustees should probably not have proceeded with the transaction and at the very least should have handed complete control of the process to someone independent. Had a proper valuation been obtained or external advice taken as to the overall terms of the Contract, which would be routine for prudent trustees even when there is no conflict, that might have indicated there was some recognition of the problem. However even this basic step was not taken.

7 Copenhagen Building

7.1 The Copenhagen Building was purchased by the Scheme in 2007 for the sum of £8.625 million. The purchase was financed by way of a loan for £13 million from AIB. The vendor of the Copenhagen Building was Buffalo Joe Company Limited ("**Buffalo Joe**"). As with Clavering Place Mr Hill had an interest in the vendor. In this case he was the majority shareholder of Buffalo Joe. As such he was once again in a position of acute conflict

because he was on both sides of the same transaction and therefore was, to an extent, negotiating with himself.

7.2 The perception of conflict was not assisted in this instance because the Original Trustees failed, as with Clavering Place, to obtain their own independent and reliable valuation. Instead the Original Trustees relied upon a valuation produced by Donaldsons for AIB that valued the building (excluding the ground and first floors) in the region of £7.16 million. Mr Ragg produced some of his own calculations (Mr Ragg is an accountant not a commercial property expert) which purported to value the ground and first floors. We were told that the Original Trustees were comfortable that the price they agreed to pay was less than the sum total of the Donaldsons' valuation and Mr Ragg's estimate of the value of the ground and first floor. However this does not seem to be a satisfactory and prudent way for trustees to behave particularly when they know that one of their number is also effectively the vendor.

7.3 The finance for purchasing the Copenhagen Building was arranged by Mr Hill on behalf of the Original Trustees. This is clear, for example, from the action plan of the Original Trustees produced following their trustee meeting on 6 November 2006. In addition Mr Hill received an offer of finance on 14 February 2007 from AIB. As mentioned above, in due course and once the property was purchased, Chartpoint received a finance fee from the Scheme of £106,250. This was plainly of benefit to Mr Hill in his capacity as a shareholder of Chartpoint and to the Original Trustees who stood to gain from Chartpoint's financial success. We saw no evidence that the Original Trustees received any independent advice, or otherwise, that the terms of the finance arranged by Mr Hill were reasonable.

7.4 We understand that on the sale of the Copenhagen Building Mr Hill received a considerable benefit by reason of his interest in Buffalo Joe. This coupled with the finance fee paid to Chartpoint demonstrates the acute position of conflict that he was in.

7.5 The Original Trustees submitted that they dealt with this conflict by excluding Mr Hill from the decision to purchase the Copenhagen Building. However, as tPR demonstrated by reference to the various action plans produced by the Original Trustees (as a substitute for trustee minutes) Mr Hill was actively involved in several aspects of the process leading to the completion of the purchase and its financing. Further, as with Clavering Place it was Mr Hill who was the property expert and it was to him who Mr Ragg and Mr Halton would have looked. For these reasons even though Mr Hill left the room before the final decision to proceed was made his involvement throughout was significant and the conflict, of which there are several facets, was neither recognised as serious or managed in any real sense.

7.6 For all of these reasons we are of the opinion that the Original Trustees comprehensively failed to identify and manage what was an acute conflict of interest. Their failure to do represents a breach of trust.

8 The relationship between Chartpoint and the Original Trustees

8.1 The acute conflicts, and the comprehensive failure to manage them, demonstrated by Clavering Place and the Copenhagen Building are examples of a wider problem caused by the structure of the relationship between the Original Trustees and Chartpoint.

8.2 In summary:

8.2.1 Chartpoint, the principal employer of the Scheme, which was owned by Mr Hill and his family, received £1.2 million from the Scheme by way of success fees, arrangement fees and payments for services;

8.2.2 The most significant sums received by Chartpoint were the success fees and the finance fees. Whilst advice was obtained from Lampott Ltd that the fee rates were at or below what others would charge in the market, it was not even claimed that legal advice was sought on their propriety. Mr Steinfeld argued that the fees were openly disclosed in Chartpoint's

accounts, which we accept, and that none of the advisers raised any concerns. However, there is no evidence that the Original Trustees ever sought legal advice as to the appropriateness of the fees Chartpoint received or, more generally, on the position of conflict that they were in.

8.2.3 Whilst Mr Hill, as the principal shareholder of Chartpoint, was the major beneficiary of the relationship between Chartpoint and the Scheme both Mr Ragg and Mr Halton also enjoyed considerable benefits. The total amounts paid from the Scheme to Chartpoint helped to pay salaries that the Original Trustees awarded themselves. The amount of these salaries and bonuses was set by the very people who enjoyed them i.e. the Original Trustees. Further, neither Mr Ragg nor Mr Halton once raised any objection or concern about the fees paid to Chartpoint.

8.2.4 After the Scheme valuation as at April 2007 a schedule of contributions was drawn up in accordance with the advice of the Scheme Actuary and was signed by the Original Trustees on behalf of the Scheme. However in accordance with the policy which had been in place since Chartpoint became principal employer Chartpoint had no intention to pay the agreed contributions and there was no intention on the part of the Original Trustees to enforce payment. As a result the Original Trustees conferred a benefit to Chartpoint contrary to the interests of the Scheme. No evidence was put before us that the Original Trustees had sought any advice as to whether this was a legitimate arrangement.

8.3 By reason of what we have discussed above, and applying the principles set out at paragraph 5.3 above, we are of the opinion that the relationship between Chartpoint and the Original Trustees brought about fundamental and serious conflicts of interest that were not capable of management. In any event there is no evidence before us that the Original Trustees either appreciated the acute conflicts or took sensible steps to manage them. As such the Original Trustees acted in breach of trust.

9 Conclusion

9.1 Having considered all of the matters that were put before us we are of the opinion that the Original Trustees, Robert Angus Hill, Nicholas John Halton and Simon Christopher Ragg, are not fit and proper persons to be trustees of trust schemes because they are not competent and capable and therefore determine that they be prohibited from acting as trustees of trust schemes in general.

9.2 We base this conclusion as a consequence of the Concessions made by the Original Trustees and the findings that we have made about the Original Trustees' conflicts of interest and the structure of the relationship between themselves and Chartpoint.

9.3 In summary our conclusions are:

9.3.1 the Original Trustees styled their breaches of the Investment Regulations as "technical". We do not agree with this description and are of the opinion that the breaches are far more serious than that. The Investment Regulations are there to ensure that the Scheme's assets are invested appropriately and that risk is managed. The failure of the Original Trustees to comply with the Investment Regulations has left the Scheme with an asset portfolio heavily concentrated in property and highly leveraged which is inherently risky. In addition no evidence was put before us that the Original Trustees managed this investment risk.

9.3.2 The admitted breach of regulation 5 of the Investment Regulations, concerning borrowing, is also in itself very serious. This failure coupled with other hazards affecting the Copenhagen building, has contributed towards the current condition of the Scheme;

9.3.3 Some of the other admitted breaches concerning knowledge and understanding of the law, such as the failure to keep proper minutes, could be said to be more technical but regrettably this is an element of a

failure to understand the obligations of trustees that is wider and rather more serious.

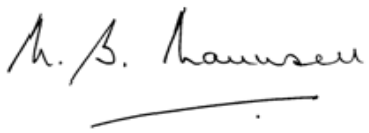
9.4 In the sections 6 to 8 above we have analysed various aspects of the Original Trustees' conduct in which we found that they did not recognise and manage conflicts of interest. In particular we have found that they inappropriately profited from their position as trustees and in a number of ways allowed their personal interests and obligations as trustees to conflict.

9.5 Although some of these conflicts might have been appropriately managed there was no evidence before us that the Original Trustees appreciated the seriousness of the conflict or took appropriate steps to manage the conflict. In any event the structural relationship between Chartpoint and the Original Trustees, as set out in section 8 above, seem to be so fraught with conflict that we could not see how it could be managed. There was no evidence before us that any proper advice was sought on this fundamental issue.

9.6 By reason of the above we are of the opinion that the Original Trustees do not have the adequate competence and capability to act as trustees as we have found that they have been responsible for serious and persistent breaches of pension legislation and associated regulations and breaches of trust law.

9.7 XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX. In our opinion the findings that we have made above more than justify our conclusion that the Original Trustees lack the competence and capability to be expected of trustees and therefore are not fit and proper persons. Accordingly they ought to be prohibited from acting as trustees of trust schemes in general.

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

Signed: 

Chairman: Michael Maunsell

Dated: 27 October 2011.

Appendix 1

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
(ii) 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

Appendix 2

Referral to the Tax and Chancery Chamber of the Upper Tribunal ("the Tribunal")

You have the right to refer the matter to which this Determination Notice relates to the Tribunal. Under Section 103 of the Pensions Act 2004 ("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 Tax and Chancery Chamber of the Upper Tribunal
45 Bedford Square
London
WC1B 3DN

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 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