

<p>The Pensions Regulator</p>	<p>Special Procedure DETERMINATION NOTICE under Section 98(2)(a) of the Pensions Act 2004 (the “Act”)</p> <p>Pennines RBS; Mendip RBS; and Malvern RBS (“the Schemes”)</p>	<p>The Pensions Regulator case ref:</p> <p>C9074071</p>
-----------------------------------	--	--

1. The Determinations Panel (the “Panel”), on behalf of the Pensions Regulator (the “Regulator”), met on 28 March 2012 to consider the issues in the Request to exercise a Regulatory Function in respect of the Schemes (“the Request”) dated 28 March 2012. The Regulator considered under Section 10(2) of the Act that the exercise of a reserved regulatory function was appropriate.

2. **Matters to be determined:**

Pursuant to Section 97(2) of the Act the Panel was asked to use the Special Procedure, and therefore dispense with the giving of a Warning Notice to the parties, because there is, or the Regulator considers it likely that, if a warning notice were to be given, there would be, an immediate risk to:

- i the interest of the members of the Schemes; or
- ii the assets of the Schemes.

The Panel was asked to issue an order under Section 7(3)(a), (c) and/or (d) of the Pensions Act 1995 (the “1995 Act”) to appoint a trustee to the Schemes if it was satisfied that it was reasonable to do so in order:

- i. to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Schemes pursuant to Section 7(3)(a);
- ii. to secure the proper use or application of the assets of the Schemes pursuant to Section 7(3)(c); or
- iii. otherwise to protect the interests of the generality of the members of the Schemes pursuant to Section 7(3)(d);

and, in addition, if an independent trustee was appointed to the Schemes for the following provisions to be included in the order:

- iv. for any fees or expenses of the trustee appointed to be paid by the sponsoring employer of the particular scheme, or out of the

- resources of the scheme, or partly by the employer and partly out of those resources pursuant to Section 8(1) of the 1995 Act;
- v. for an amount equal to any fees or expenses of the trustee appointed which are paid out of the resources of the scheme, to be treated for all purposes as a debt due from the employer to the trustees of the scheme pursuant to Section 8(2) of the 1995 Act;
 - vi. for the powers or duties to be exercisable by a trustee so appointed to the exclusion of other trustees pursuant to Section 8(4)(b); and
 - vii. for any assets or property of the Schemes to be vested in the appointed independent trustee under Section 9 of the 1995 Act.

3. Directly Affected Parties

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

- i. John Laurence Woodward and Jennifer Doris Ilett (together the “Trustees”)
- ii. Dalriada Trustees Limited (the “New Trustee”)
- iii. Clarendon Hill Investments Limited – (the “Provider” or “Sponsoring Employer”)

and the Panel determined that:

- i. T12 Administration Limited (“T12”) should be added as a directly affected party as the Panel were of the view that it would be directly affected by the appointment of an independent trustee.

4. Details of the Schemes

The Pennines Scheme

1. The Pennines Scheme was registered with HMRC on 22 August 2011 as an occupational pension scheme governed by a trust deed dated 23 August 2011.
2. The Pennines Trust Deed was executed between Clarendon Hill Investments Limited (“Clarendon Hill”) which is referred to as “the Provider” and the Trustees of the Scheme, John Laurence Woodward and Jennifer Doris Ilett.
3. The Pennines Scheme was registered with the Regulator on 31 August 2011 as a 9 member defined contribution scheme by T12. However, the Regulator notes that on the HMRC registration application, the membership of the Scheme in the first 12 months was expected to be 51 to 10,000 members. It is difficult to assess the membership of the Pennines Scheme, but it must be noted that over the period of time set out above, there have been approximately 65 transfers into the Scheme from other pension schemes, which may

indicate that the membership of the Scheme is far in excess of 9 members.

4. The Pennines Scheme seems to operate through unspecified "Arrangements" with individual members. Under clause 13 of the Pennines Trust Deed, the Trustees are required to ensure that "*in relation to each Arrangement of a Member, all contributions and other amounts paid by or in respect of the Member to the Scheme as permitted by the Rules are applied in accordance with the Arrangement*". It is also a requirement in clause 13 that "*in the case of each and every Arrangement, a separate and clearly designated account is maintained in respect of each Member's Fund under the Scheme*". It is not known what these "Arrangements" are or how they relate to the Rules of the Pennines Scheme.
5. The movements in the accounts that the Regulator has obtained for the Pennines Scheme show that during the period from 16 September 2011 until 11 November 2011 (a period of approximately two months), the Scheme received payments in of £3,950,193.78, made up of almost entirely what appear to be transfers in from other pension schemes, of which £3,825,346 (almost 97%) has been transferred out to an entity called "Hedge Capital Investments Limited".

The Mendip Scheme

1. The Mendip Scheme was registered with HMRC on 9 September 2011 as an occupational pension scheme governed by a trust deed dated 9 September 2011. The Regulator only has the first page of the Mendip Trust Deed but can confirm that the recital details for the Mendip Scheme are identical in form to those of the Pennines Scheme. Although the Regulator does not have a copy of the remainder of the Mendip Trust Deed, given the similarities between the first page of the trust deeds and in the treatment between the Pennines and the Mendip Scheme, the Regulator submits that it is highly likely that the Mendip Scheme also seeks to operate through unspecified "Arrangements" with individual members.
2. The Mendip Scheme was registered with the Regulator on 28 September 2011 by T12 as a 7 member defined contribution scheme. However, the Regulator notes that on the HMRC registration application, the membership of the Scheme in the first 12 months was expected to be 51 to 10,000 members. Again, it is difficult to assess the membership of the Mendip Scheme, but it must be noted that over the period of time set out above there have been approximately 77 transfers into the Scheme from other pension schemes, which may indicate that the membership of the Scheme is far in excess of 7 members.

3. The movements in the accounts that the Regulator has obtained for the Mendip Scheme show that during the period from 1 November 2011 until 5 January 2012 (a period of approximately two months), the Scheme received payments in of £3,280,325.27, made up of almost entirely what appear to be transfers in from other pension schemes, of which £2,965,701.82 (90%) has been transferred to an entity or entities that are referenced in the accounts as “H Capital I” and “Hedge Capital”.

The Malvern Scheme

1. The Malvern Scheme was registered with HMRC on 13 December 2011 as an occupational pension scheme.
2. The Scheme was registered with HMRC by T12 and is listed as having being established by Clarendon Hill as “Provider”. The expected membership of the Scheme was stated to be 1 to 10. The Scheme has not been registered with the Regulator and the Regulator has no details regarding the membership of the Scheme, the assets of the Scheme or identity of the trustees.
3. In light of the facts related to the Pennines Scheme and the Mendip Scheme, and the relatedness of T12 Administration and Clarendon Hill as administrator and “Provider”/sponsoring employer respectively to the Malvern Scheme, the Regulator submits that there is good reason to consider that the concerns and risks identified in relation to the Pennines and Mendip Schemes may be equally applicable to the Malvern Scheme, and on this basis, it is appropriate to appoint an independent trustee to all Schemes.

5. Background to Application

1. The Regulator was contacted on two separate occasions by a third party administrator and a member who had concerns with the Pennines Scheme. In particular:
 - i. the Regulator was contacted by a third party administrator, JLT Benefit Solutions Ltd (“JLT”) in November 2011 who reported concerns about a member’s request to transfer to the Pennines Scheme; and
 - ii. during the course of its investigations, the Regulator has also been contacted by an individual member who has transferred into the Pennines Scheme, in respect of his concerns about the Scheme.
2. Following the whistleblower report from JLT, the Regulator commenced an investigation into the Schemes. In addition to the apparent breaches of duty by the trustees of the Pennine and

Mendip Schemes that are described below, there are serious concerns that the following may be occurring:

- i. The Regulator has serious grounds to believe that the Schemes are being used as vehicles for pension liberation.
 - ii. The Pennines and Mendip Schemes have the same sponsoring employer, which is registered as a dormant, non-trading company. The trust deeds for each Scheme state that individuals with a right to membership of the Schemes include "*past, present or future officers and employees of the Provider and their immediate families*". Despite this, between September 2011 and January 2012, the Pennines and Mendip Schemes received approximately 140 transfers into the Schemes to the value of over £7,000,000.00.
 - iii. It appears that some members may be transferring into the Pennines and Mendip Schemes, and possibly the Malvern Scheme, with a view to receiving a lump sum payment or "loan", calculated as a percentage of the transfer value of their pension "pot". It also appears that some members who are receiving a "loan" are also paying interest on that loan back to the loan company.
 - iv. The Pennines and Mendip Scheme funds appear to have been transferred or "invested" into small, private companies controlled by either the Trustees, or parties related or "connected" to the Trustees, and there is an inference that the movement of funds between these companies may be for the purpose of disguising the true nature of the transactions.
 - v. The majority of the Pennines and Mendip Scheme funds end up in a company under the control of one of the Trustees and/or parties related to the Trustees. From that company account, it appears payments or "loans" are being made to members of the Schemes, and in some cases it appears that interest payments on these amounts are being made back to the company's bank account at monthly intervals.
 - vi. There is a suggestion that the remainder of scheme funds may also be being used for other purposes, such as providing short term or "bridging" finance for property investors (for the benefit of a separate company in which the parties related to the Trustees are directors and shareholders) and not for the benefit of the members of the Schemes.
3. The Regulator's concerns are such that it considers that an independent trustee is required immediately for the Schemes in order to protect members' benefits and so that further investigations can be carried out with an independent trustee in place.

6. Decision

The Panel considered the Request and the Exhibits and had regard to the matters mentioned in Section 100 of the Pensions Act 2004 and to the objectives of the Regulator as set out in Section 5 of the Act and determined that it was appropriate to apply the Special Procedure and to make the following order for each of the Schemes:

1. Dalriada Trustees Limited of Chamber of Commerce House, 22 Great Victoria Street, Belfast, BT2 7BA is hereby appointed as trustee of the Scheme with immediate effect from 28 March 2012.
2. This order is made because the Pensions Regulator is satisfied that it is reasonable to do so, pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order:
 - i. to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme pursuant to Section 7(3)(a);
 - ii. to secure the proper use or application of the assets of the Scheme pursuant to Section 7(3)(c);
 - iii. otherwise to protect the interests of the generality of the members of the Scheme pursuant to Section 7(3)(d).
3. The powers and duties exercisable by Dalriada Trustees Limited shall be to the exclusion of all other trustees of the Scheme pursuant to Section 8(4)(b) of the Pensions Act 1995.
4. Pursuant to Section 8(1)(b) of the Pensions Act 1995, the fees and expenses of Dalriada Trustees Limited shall be paid out of the resources of the Scheme.
5. Pursuant to Section 8(2) of the Pensions Act 1995, it is ordered that an amount equal to the amount paid out of the resources of the Scheme by virtue of Section 8(1)(b) is to be treated for all purposes as a debt due from the employer to the trustees of the Scheme.
6. Pursuant to Section 9 of the Pensions Act 1995, it is ordered that all property and assets of the Scheme, heritable, moveable, real and personal, of every description and wherever situated be vested in, assigned to and transferred to Dalriada Trustees Limited as trustee of the Scheme.
7. This order may be terminated, or the appointed trustee replaced, at the expiration of 28 days notice from the Pensions Regulator to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995.

7. Reasons for decision

The Panel took into account and endorsed the concerns set out by the Regulator at paragraph 87 to 99 of the Request. It made its decision with particular emphasis on the following:

1. Clarendon Hill as provider was held out by the Trustees to be an employer setting up an occupational pension scheme with membership restricted to the present, former and future employees of the company. This was clearly not the case given that deposits had been made by members who are not to be associated with the company and the scheme administrator has expressly stated that there was no such restriction. The Panel was satisfied on the evidence presented that this was not a bona fide occupational pension scheme in which funds are held under a trust to provide pension benefits on retirement. The Panel considered on the evidence provided that it was more likely that the Scheme was represented to depositors as a vehicle for the release of pension capital in a manner to circumvent legally enforceable limitations on its use.
2. There was a clear conflict of interest in the Trustee John Woodward holding the position of sole director and shareholder of Hedge Capital Limited ("HCL"), the company that ultimately received the capital invested by the members, which in the Pennine and Mendip Schemes amounted to a sum in excess of £7 million. The loan making objectives of the company – both those expressly stated of short term property bridging advances and the loans made in practice of advances to individual members - were not consistent with and in conflict with the duties of a trustee in securing the proper long term growth and security of the pension funds entrusted to Mr Woodward as Trustee.
3. The evidence in the bank statements for the Pennines Scheme exhibited by the Regulator demonstrated that funds received from members were quickly and systematically being paid out to HCL. The evidence in the bank statements for HCL included a substantial payment out described as 'cash from pensions'. The bank statements appeared to provide prima facie evidence that the main purpose of the arrangements was the release of cash from pensions in the form of loans and not the proper trusteeship of pension assets.
4. There was an obvious breach of appropriate investment principles and consequently a breach of the fiduciary duties owed by trustees. Loans to individual members whose particular circumstances were apparently unexamined by either the Provider - Clarendon Hill - or by the Trustees were inherently risky and not in the longer term interest of making best use of scheme funds. Moreover, placing of substantial funds in this way by making a series of loans to members

constituted a clear failure to diversify the investment in breach of the Occupational Pension Investment Rules 2005.

5. There was lack of clarity about the use and whereabouts of that part of the total funds invested in the Pennine and Mendip Schemes and transferred to HCL and which had not been advanced by way of loan to individual members. The Panel could not be satisfied that the monies either were secure or had not been invested in a further inappropriate purpose.

For these reasons the Panel concluded that all three grounds for the decision under section 7 of the 1995 Act were made out in respect of each of the three Schemes. Whilst the evidence in respect of the Malvern Scheme was not as direct as that in relation to the Pennine and Mendip Schemes, the Panel was satisfied, given the involvement of one of the trustees Mr Woodward as sole director of Clarendon Hill the provider of the Malvern Scheme, that there were reasonable grounds for concern in that the arrangements for that Scheme were similarly likely to put scheme assets at immediate risk.

The Panel concluded that it was appropriate to use the Special Procedure because there was an immediate risk to the assets of the Schemes by reason of both the likelihood of further advances to members being made and the uncertainty surrounding the investment and use of residual funds. The risks were greater in respect of the Pennine and Mendip Schemes but, even as regards the Malvern Scheme, on the balance of probabilities the arrangements surrounding that Scheme were likely to be similar. Furthermore the allegations in respect of the other two schemes were so serious as to conclude that there was an immediate risk to the Malvern Scheme. Given the risks to the Schemes, the Panel determined to appoint Dalriada Trustees Limited as independent trustee with exclusive powers and to make vesting orders in favour of the independent trustee.

8. Important Notices

This Determination Notice is given to you under Sections 98(2)(a) of the Act. The following statutory rights are important.

9. Representations to the Pensions Regulator

Take notice that you have the opportunity to make representations to the Regulator which will make up your defence to the allegations in the Application Request Notice and its exhibits which accompany this Determination Notice.

In your reply to this notice, please say whether you accept that the Determination Notice is accurate and if you intend to oppose it. You may believe that:

- i. the determination is wrong in some particular detail; or

- ii. the Regulator should not have used its power in this case.

In any of these circumstances you will need to provide evidence to support your argument.

10. **Compulsory review**

This determination is subject to a compulsory review by the Regulator under Section 99 of the Act. Any representations received will be considered by the Regulator before a determination is made on review. This review must be determined as soon as reasonably possible.


The Regulator's powers on a review under this Section include power to:

- i. confirm, vary or revoke the determination;
- ii. confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination;
- iii. substitute a different determination, order, notice or direction;
- iv. deal with the matters arising on the review as if they had arisen on the original determination, and
- v. make savings and transitional provision.

You will be informed of the outcome of the review by way of a "Final Notice".

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

After the compulsory review, you will have the right to refer the matter, to which this Determination Notice relates, to the Tax and Chancery Chamber of the Upper Tribunal ("The Tribunal") under Section 99(7) of the Act. The Final Notice will give more details regarding referrals to the Tribunal.



Signed:

Chairman: **John Scampion**

Dated: 3 April 2012

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.