

<p>The Pensions Regulator</p>	<p><b>DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)</b></p> <p><b>Tudor Capital Management Ltd</b></p>	<p>The Pensions Regulator case ref:</p> <p><b>TM8648</b></p>
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1. The Determinations Panel (“the Panel”), on behalf of the Pensions Regulator (“the Regulator”), met on 5 April 2011 to decide whether to exercise a number of reserved regulatory functions in response to the Warning Notice dated 14 March 2011. The Regulator considered, pursuant to Section 10(2) of the Act, that the exercise of reserved regulatory functions was appropriate.

**Matters to be determined**

2. The functions the Panel were asked to exercise on the applications of the Regulator, were to extend the period for which Tudor Capital Management Limited (“TCML”) had been suspended from acting as a trustee of trust schemes in general, pursuant to Section 4(2) of the Pensions Act 1995 (the “1995 Act”) until 8 April 2012.
3. The Regulator also requested that a further order be made under Section 4(6) of the 1995 Act for matters arising out of the trustee’s suspension.

**Parties**

4. The Panel considered the following parties as being directly affected by the regulatory action as set out in the Warning Notices:
  - a. TCML – (Corporate Trustee)
  - b. The schemes as detailed in the attached appendix A



11. Cheating the public revenue, contrary to common law is an offence which includes any form of fraudulent conduct which results in diverting money from HMRC and depriving HMRC of money to which it is entitled. Fraudulent conduct includes dishonesty.
12. Therefore, by virtue of the ongoing investigation undertaken by HMRC into TCML, its directors and associated persons for offences involving dishonesty, the requirements of section 4(1)(aa) of the 1995 Act have been met, and there is pending consideration being given to the institution of proceedings involving dishonesty against the trustee, TCML.
13. The Regulator also relied on paragraphs 7.6 to 7.9 of the initial application concerning the arrest and the obtaining of search warrants in relation to directors of TCML.
14. The Regulator submitted a letter dated 3 March 2011, from CPS confirming the restraint order against Peter Bradley remains in place. The letter also confirmed that the investigators hope to have completed their work by mid summer 2011 and the CPS will then consider what charges are appropriate in the institution of any proceedings.
15. By letter dated 2 March 2011, the Financial Services Authority (FSA) has also confirmed that their investigations pursuant to Sections 19 and 21 of the Financial Services and Markets Act 2000 are ongoing.
16. The Regulator referred to the Panels responsibility to have regard to the interest to the members of the scheme as well as those of the Directly Affected Parties. In paragraph 7.4 of the initial warning notice dated 8 April 2010, The Regulator made the submission that the members interest was of paramount importance in this case. Those submissions were expressly repeated by the Regulator in the warning notice for the current application.
17. The allegations for which TCML are being investigated are specific to their office as trustee. In this context, the Regulator is of the view that protecting the interests of scheme members and their benefits outweigh any potential impact on TCML.

18. The Regulator also notes that the HMRC investigation has progressed since the last time this matter was before the Panel. Others have been arrested in relation to the allegations. The CPS have also indicated in their recent letter to the Regulator that HMRC hope to have largely completed their investigative work by mid summer this year and that thereafter the CPS will consider what charges are appropriate.
19. These developments clearly indicate that consideration is still being given to the institution of proceedings for dishonesty, and moreover that the CPS hopes to be in a position to decide what charges should be proceeded with if proceedings are instituted.
20. Should proceedings be instituted against TCML or any of the directors of TCML for dishonesty, the Regulator intends to consider whether it will be appropriate to seek suspension on a different basis, pursuant to section 4(1)(b) of the 1995 Act.
21. No representations were received in response the warning notice and no challenges were made by the directly affected parties to any of the facts and submissions of The Regulator.

## **Other Matters**

### *Directly Affected Parties*

22. As set out above, there was some uncertainty when the Initial Application was made as to which schemes TCML acted as trustee.
23. Since April 2010, the Regulator has sought to clarify for which schemes TCML remains as trustee. Having considered the position, the Regulator is of the view that TCML remain trustee to the schemes identified in **Appendix A** and to this extent these schemes are directly affected by the regulatory action.

### *Timescales of Extension*

24. Section 4(2) of the 1995 Act provides that an extension may be sought for a period of 12 months. The Regulator seeks this additional 12 month period to the suspension order in view of the seriousness of the allegations still under investigation.

*Order under section 4(6) of the 1995 Act*

25. Section 4(6) of the 1995 Act provides that the Panel may make provision for matters arising out of the period of a trustee's suspension.
26. In the Initial Suspension, the Panel made an order enabling TCML to execute any instrument, if its sole purpose was to remove or resign as a trustee of any trust scheme.
27. If the Panel is minded to grant extension to the suspension period as requested in this Application, the Regulator would also request that a further order is made with respect to section 4(6) of the 1995 Act.

**Statutory issues**

28. In making its decision the Panel had regard to the objectives of the Regulator, pursuant to Section 5 of the Act, and the matters set out in Section 100 of the Act. The latter provides that the Regulator must have regard when determining whether to exercise a regulatory function under the standard or special procedure, the interests of the generality of the members of the scheme to which the exercise of the function relates, and the interests of such persons as appear to be directly relevant to the Regulator to be directly affected by the exercise.

**Decisions**

*Order under Section 4(2)*

29. With effect on and from 8 April 2011 until 7 April 2012 and pursuant to Section 4(2) of the Pensions Act 1995 The Pensions Regulator hereby extends the suspension of Tudor Capital Management Limited, pending consideration being given to the institution of proceedings against it for offences involving dishonesty

or deception, pursuant to Section 4(1)(aa) of the Pensions Act 1995 as amended by Section 34 of the Pensions Act 2004.

30. This order has the effect of prohibiting Tudor Capital Management Limited, during the period of the suspension, from exercising any functions as a trustee of any trust scheme in general, pursuant to Section 4(3) of the Pensions Act 1995.

#### **Order under Section 4(6)**

31. That during Tudor Capital Management Limited's suspension as trustee it is authorised and entitled to execute any instrument the sole purpose of which is to effect its removal or resignation as a trustee of any trust scheme.
32. This order will take immediate effect on the date of this order.

#### **Reasons**

33. In making its 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**.
34. The reasons for the Panel's decision were:
  - i. The Panel accepted the evidence put forward by The Regulator and they considered in particular the letters of 28 February 2011 from HMRC and of 3 March 2011 from CPS. They were satisfied that this evidence showed that a criminal investigation was being undertaken and indicated that consideration was being given to the institution of proceedings against the Trustee and its directors for offences that would involve deception or dishonesty. This, in the Panel's view, satisfied the provisions of section 4(1)(aa) of the Pensions Act 1995. They did not take the same view of the FSA letter of 2 March 2011 because they could not be satisfied that the offences being investigated involved deception or dishonesty.

- ii. In deciding whether to suspend the Trustee pending consideration of the institution of proceedings the Panel had regard to the interests of the members of the schemes in Appendix A of the notice of intention as well as the interests of the Company and its directors. They took into account the seriousness of the investigation and the charges that might be brought arising from it, and considered that trustees continuing to act for schemes whilst investigating authorities were of the view that there were grounds for suspicion and possible action following the investigation would unnecessarily put those schemes' funds at risk.
  
- iii. The Panel granted the order pursuant to Section 4(6) of the Pensions Act 1995 that during the duration of Tudor Capital Management Limited's suspension as trustee from trust schemes in general it is authorised and entitled to execute any instrument the sole purpose of which is to effect its removal or resignation as a trustee of any trust scheme.

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

Signed: **John Scampion**

Chairman: John Scampion

Dated: 11 April 2011

## Appendix A

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## **Appendix B**

### **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.

**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