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| <p>The Pensions<br/>Regulator</p> | <p><b>Standard Procedure</b></p> <p><b>DETERMINATION NOTICE</b><br/>under Section 96(2)(d) of the<br/>Pensions Act 2004 (“the Act”)</p> <p><b>Bovey Cranbrook Retirement Benefit Scheme</b><br/><b>Cotswold Ash Retirement Benefit Scheme</b><br/><b>Dunoon Glen Retirement Benefit Scheme</b><br/><b>Lulworth Trent Retirement Benefit Scheme</b><br/><b>Mendip Beech Retirement Benefit Scheme</b><br/><b>Morton Glen Retirement Benefit Scheme</b><br/><b>Pennine Elm Retirement Benefit Scheme</b><br/><b>Powderhan Exe Retirement Benefit Scheme</b><br/><b>Rait Fell Retirement Benefit Scheme</b></p> <p><b>(The “Schemes”)</b></p> | <p>The<br/>Pensions<br/>Regulator<br/>case ref:</p> <p><b>C15903889</b></p> |
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1. The Determinations Panel (“the Panel”), on behalf of the Pensions Regulator (“the Regulator”), met by telephone on 1 April 2014 to decide whether to exercise reserved regulatory functions in relation to the issues in the “Warning Notice” dated 21 November 2013. The Regulator considered under Section 10(2) of the Act that the exercise of a reserved regulatory function may be appropriate.

**Matters to be determined:**

2. In the Warning Notice the Panel were asked to consider the following:-
  - i. Whether to appoint Dalriada Trustees Limited (“Dalriada”) as a new trustee under Section 7(3)(a), (b), (c) and/or (d) of the Pensions Act 1995 (“the 1995 Act”);
  - ii. Whether David Fellowes, Francine Becker and Avalon Pension Trustees Limited (“Avalon”) should be prohibited from being trustees of trust schemes in general under section 3(1)(c) of the 1995 Act, alternatively the Schemes under Section 3(1)(a) of the 1995 Act or alternatively suspended as trustees of the Schemes under s.4(1)(a) pending consideration being given to whether they should be prohibited;
  - iii. Whether, if appointed, Dalriada should exercise its powers and duties to the exclusion of the Trustees pursuant to Section 8(4)(b) of the 1995 Act;
  - iv. Whether Dalriada’s fees and expenses should be paid out of the Scheme’s resources and / or by the employer under Section 8(1) of the 1995 Act;
  - v. Whether an amount equal to the amount (if any) paid out of the resources of the scheme should be treated for all purposes as a

- debt due from the employer to the trustees of the scheme under Section 8(2);
- vi. Whether under Section 9 of the 1995 Act the Schemes' property should be vested in and/or transferred to Dalriada on its appointment.

**Directly Affected Parties**

- 3. The Warning Notice specified the following parties as being directly affected by the regulatory action outlined therein and the Panel considers such parties to be directly affected by this determination:-

David Fellowes ("the Trustee")  
 Francine Becker ("the Trustee")  
 Avalon Pension Trustees Limited ("the Trustee")  
 hereafter "the Trustees"

Dalriada Trustees Limited (Court appointed IT)

Bovey Cranbrook Limited  
 Cotswold Ash Limited  
 Dunoon Glen Limited  
 Lulworth Trent Limited  
 Mendip Beech Limited  
 Morton Glen Limited  
 Pennine Elm Limited  
 Powderhan Limited  
 Rait Fell Limited  
 (the Schemes' sponsoring employers)

Aldermaston Pensions Administrators Limited

- 4. The formulation "the Trustees" is used in the Warning Notice to refer to all of Mr Fellowes, Ms Becker and Avalon. It is to be noted that there is considerable confusion as to whether Mr Fellowes and Ms Becker are trustees of the Schemes or whether Avalon is the trustee. In a letter to the Regulator of 15 October 2013, the Trustees stated that Avalon had been appointed as trustee of the Schemes in place of Mr Fellowes and Ms Becker. However, no date or supporting documentation was provided for this appointment. In the absence of such evidence, the Regulator considers that Mr Fellowes and Ms Becker are the trustees and Avalon is not. Avalon is owned and controlled by Mr Fellowes and Ms Becker and they are its directors.
- 5. XXX XXXXXXXX XXXXXXXX XXXX XXXXXX XX XXXXXXXX XXXXXXXXXXXXXXXX  
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## **Background**

6. In September 2013, as a result of some uncertainty over the precise nature of the Schemes and in light of related proceedings in the High Court of Justice, the case team of the Regulator applied to the High Court to have Dalriada appointed as trustee of the Schemes with exclusive powers. An Order to this effect was made by Mr Justice Hildyard on an ex parte basis on 19 September 2013 and continued by Birss J after hearing the parties on 7 October 2013. The parties have since appeared before the High Court on related issues. In an order of Mr Justice Nugee dated 2 December 2013 the High Court concluded that it had power to “regulate the exercise of trust powers and dealings with trust assets...pending the determination of the DP proceedings”. The High Court is, therefore, fully aware that these proceedings would be brought before the Panel and has ordered a stay of the High Court proceedings pending the Panel’s determination.
7. In addition to the question of the appointment of an independent trustee, the Panel is asked to consider whether to prohibit the Trustees from acting as trustees of trust schemes in general (including thereby the Schemes) or, alternatively, the schemes listed in the Warning Notice.
8. By letter dated 24 January 2014 from XXXX X XX acting on behalf of Mr David Fellowes, Ms Francine Becker and Avalon Pension Trustees Limited, it is stated that the Trustees agree to resign as trustees from the Schemes and agree not to act as trustees of any other pension schemes in the future. Furthermore, XXXX X XX confirmed that their clients (including the employers) do not oppose the appointment of Dalriada Trustees as trustees of the Schemes, although they do oppose Dalriada’s fees being paid by the employers.

## **Overview of the Schemes**

9. The Schemes share a significant number of common features:
  - i. The Trustees are the trustees of all of the Schemes;
  - ii. The Trustees are the directors of all of the sponsoring employers;
  - iii. Each of the Schemes has a single sponsoring employer;
  - iv. The name of the sponsoring employer of each of the Schemes has the same name as each of the Schemes;
  - v. The Scheme address in each case is XXX XXXX XXX XXXXX;
  - vi. In each case the sponsoring employer’s address is also XXX XXXX XXXX;
  - vii. In each case, the administrator of the Schemes was XXXX which had a registered address of XXX XXXXX XXXX;

- viii. Each of the Schemes registered as an occupational pension scheme with HMRC between August and November 2012 (with a number of the schemes being registered on the same day);
- ix. The sponsoring employers were all incorporated in a short space of time, in approximately 2 months from August to October 2012;
- x. Trust Deeds have been obtained for all the Schemes. Each of the Trust Deeds is in materially the same form.

### **Summary of the Regulator's Concerns**

10. In its Warning Notice, the Regulator identified a number of concerns in relation to the activities of the Schemes, namely (a) the Trustee Failures, (b) the Investment Failures, (c) the Liberation Failures and (d) the Fees Failures.

a. The Trustee Failures

11. The Regulator argues that the Trustees do not have sufficient skill or understanding, or indeed sufficient interest, in the management of the Schemes, to enable them to protect the Schemes' assets and act in the members' best interests. Moreover, the Regulator contends that the Trustees have failed to act in accordance with their common law and statutory duties as trustees (and are therefore likely to continue to do so in the future). These alleged failures include the following:-

- i. The trust deeds are fundamentally contradictory. By way of example, they state that the Schemes are both occupational and personal pension schemes, which is not possible. Moreover, although each Trust Deed is said to be a deed, it does not appear to be validly executed as the signatures are not witnessed;
- ii. Four of the nine Schemes have not been registered with the Regulator in breach of the registration requirements of s.62 of the Act;
- iii. The Trustees appear to be in breach of their duty as regards member nominated trustees i.e. s.241(1) of the Act, which provides that the trustees of an occupational trust scheme (other than those schemes that are exempted) must secure compliance with the requirement for at least one third of the trustees to be member-nominated trustees;
- iv. On the basis of the evidence that the Schemes are being used as pension liberation vehicles, there appears to have been a breach of S.255(1) of the Act which requires trustees of an occupational pension scheme to limit their activities to those relating to providing retirement benefits;
- v. The Trustees have made a number of misrepresentations to members both in stating that "*the funds will be included in appropriate arrangements*" and/or that members would be joining a personal pension scheme and / or investing in a SIPP;

- vi. Section 47 of the 1995 Act states that an auditor shall be appointed by the trustees of an occupational pension scheme. The Regulator has seen no evidence that an auditor was appointed;
- vii. The Regulator has seen no evidence that the Trustees have complied with Regulation 5 of the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 which requires the trustees of an occupational pension scheme to provide in writing certain information including an illustration of the benefits when requested by a member, where a member has died or where benefits are due. It appears that no such illustration has been prepared.

b. The Investment Failures

12. The Regulator submits that the Trustees are in breach of their duties to the Schemes' members relating to the investment of the Schemes' assets. In particular, the Regulator relies on the following:-

- i. The only investment of the assets of the Schemes that has not been paid as fees (or to Avalon) appears to be an investment in an offshore bond through XXXXXXXX in Liechtenstein. This concentration of assets in one source is a contravention of the Trustees' investment duties both at common law and under the Occupational Pension Schemes (Investment) Regulation 2005 due to a lack of diversification;
- ii. The investment advice received indicates that XXXXXXXX is a very high risk investment;
- iii. There is no evidence of any meaningful due diligence that has been applied to the investments. The only advice appears to have been received from a company called XXXXXXXXXXXXXXXXXXXX Limited ("XXXXXXXXXX") which the Regulator considers to be inappropriate;
- iv. There is strong evidence that XXXXXXXX is being used as a vehicle for pensions liberation.

c. The Liberation Failures

13. In its Warning Notice, the Regulator states its belief that the Schemes have been used as vehicles for pension liberation and provides evidence from a financial advisor together with a statement from a member of one the Schemes. The Regulator relies on this evidence as an indication that pensions liberation is taking place with the Schemes' assets and that the overall investment in XXXXXXXX is being diminished, because much of it is being transferred to members by way of liberation loans which do not have to be repaid.

14. In its Warning Notice, the Regulator identifies features of the Schemes that it says demonstrate that pensions liberation activity is taking place. These "typical indicators" are listed as follows:-

- i. New sponsoring employers are established, seemingly without any real business interest and at the same address;
  - ii. The scheme in question is usually established a short time afterwards (or at the same time);
  - iii. All or almost all of the members who join the scheme have no employment link with the sponsoring employer;
  - iv. Assets are invested in risky investments, often overseas;
  - v. Multiple entities are often used, so that when one is shut down another one can be used.
15. Further evidence that the Regulator relies on in demonstrating that the Schemes are involved in pension liberation includes the fact that:-
- i. XXX XXXX XXXXXXXXXXXX XX XXX XXXXXXXX XXXXXXXX  
XXXXXXXXXXXXXXXX XXX XXXX XXXXXXXXXXXX XX XXXXXXXXXXXX XX  
XXXXXX XX XXXXXXXXXXXX;
  - ii. A number of independent pension professionals have had independent concerns that the Schemes are being used for pension liberation and have reported those concerns to the Regulator;
  - iii. There is evidence that members have been cold-called and offered cash incentives to transfer their pensions into the Schemes, sponsored by employers with whom they have no relationship.
16. In light of the evidence relating to pensions liberation, the Regulator argues that the Trustees must have known about such matters. According to the Trustees, over £11 million of funds were paid into the Schemes within 7 months of the first sponsoring employer being set up. The Regulator submits that any Trustee would have known, or ought to have known, that liberation activity was the only reasonable explanation, alternatively one very possible explanation. Alternatively, if the Trustees failed to recognise the potential for the Schemes to be used for pensions liberation, then they failed in their duties as trustees and failed to have the requisite knowledge and understanding.
17. It is also argued by the Regulator that misrepresentations were made to members i.e. that they would not suffer any adverse tax consequences and/or that it was permissible under the legislation to receive a loan and/or that such sums would be made up by increased investment returns. The Regulator states that these statements were deliberately designed to induce, or were reckless or alternatively negligent in inducing, the transfer of assets to the Schemes. Further, that the Trustees are in breach of Rule 13.3 (XXXX Model Rules), which prohibits loans to members and are therefore in breach of trust.
- d. The Fees Failures
18. In relation to fees failures, the Regulator relies on the following:-
- i. Payments to the Trustees

For each Scheme, it appears that £12,000 (£6,000 to each of Ms Becker and Mr Fellowes) has been paid out of Scheme assets to the Trustees. Given that the majority of the assets of the Schemes have been invested in XXXXXXXX, the Regulator argues that a significant sum of money has been paid from each Scheme for relatively simple administrative tasks and regardless of the number of members who have joined the Schemes.

ii. Money Paid to and through Avalon

It appears that large sums have been paid to Avalon, which is owned and controlled by the Trustees. In correspondence, the Trustees have suggested that Avalon was appointed as the trustee of the Schemes and that fees of £200,000 plus VAT have been paid in advance for the next two years. It is not, however, clear that Avalon was properly appointed as trustee but, even if it was, the Regulator points out that Avalon has not been registered as a trustee pursuant to s.62(4) of the Act. This would constitute a further breach of duty demonstrating the Trustees' lack of knowledge and understanding. In any event it is said that the sums paid, and the way in which they have been applied, makes it clear that the payments were not properly made. The Regulator states that the fees are manifestly excessive and have been paid in advance, contrary to normal practice, only a few months after payments to Ms Fellowes and Mr Becker and significantly before one would expect if the fees had been properly incurred.

iii. Use of the Monies Paid to Avalon

The Avalon bank account had a zero balance prior to receiving payments from the Schemes. Within a few days of the first payment to Avalon, a total of £30,000 was paid to Mr Fellowes and Ms Becker. In these circumstances, the Regulator suggests that Avalon was being used as a means to pay funds from the Schemes directly to the Trustees. The Regulator further points out that, of the £240,000 or so paid to Avalon, around £130,000 was paid directly to Mr Fellowes and Ms Becker personally in less than 4 months and that Avalon had used up three quarters of the sums paid to it (as fees for 2 years) within 4 months. Moreover, of the £60,000 left in the account in early July 2013, £40,000 of VAT was due to HMRC. In the Regulator's view, this indicates that there was no intention to run Avalon as a company for two years. The Regulator considers that the payments to Avalon were unjustified, excessive and in breach of trust. All the indications are that Avalon was being used as a means to pay funds from the Schemes directly to Mr Fellowes and Ms Becker.

iv. Payments to Others

The Regulator submits that certain payments made to a criminal barrister's chambers, to XXXXXXXXXXXXXXXXXXXX Limited (over £250,000), and to XXXX (£500 per member) are higher than the Regulator would expect them to be and appear to be in breach of trust.

## **Representations**

19. Representations were received from XXXXX XXXX XXX acting on behalf of Dalriada and XXXXXXXX on behalf of David Fellowes, Francine Becker, Avalon Pension Trustees Limited, Aldermaston Pensions Administrators Limited and the Schemes' sponsoring employers. In its representations, Dalriada indicated that it supported the Regulator's request for its appointment and set out the steps it had taken in relation to the Schemes. In its representations XXXXXXXX confirmed that:

*"Mr David Fellowes, Ms Francine Becker and Avalon Pension Trustees Limited agree to resign as Trustees of the above named Pension Schemes and all other Pension Schemes that are not listed above, and agree to not act as Trustees of any other Pension Schemes in the future... Our clients do not intend to oppose the Determinations Panel proceedings, particularly the appointment of Dalriada Trustees Limited as Trustees of the above schemes. However, our clients cannot agree to Dalriada's fees for acting as Trustee to be paid by the employers. This is because the employer companies do not have any assets, so would not be able to meet the liability."*

## **Decision(s)**

20. The Panel agreed that orders be issued under Section 3 of the Pensions Act 1995 prohibiting the Trustees of trust schemes in general and under sections 7-9 appointing Dalriada as independent trustee. The Panel determined that orders be issued in the following terms:-

### *Prohibition of trustees*

1. *The Pensions Regulator hereby prohibits David Fellowes, Francine Becker and Avalon Pension Trustees Limited from acting as trustees of trust schemes in general with effect from the date of this order, pursuant to section 3(1)(c) of the Pensions Act 1995.*
2. *This Order prohibits David Fellowes, Francine Becker and Avalon Pension Trustees Limited from exercising any functions as trustees of trust schemes in general.*
3. *This Order remains in effect unless and until revoked pursuant to section 3(3) of the Pensions Act 1995.*



Appointment of an independent trustee

*“The Pensions Regulator hereby orders as follows:*

1. *Dalriada Trustees Limited of Chamber of Commerce House, 22 Great Victoria Street, Belfast, BT2 7BA is hereby appointed as trustee of the following schemes (the “Schemes”) with immediate effect:-*

*Bovey Cranbrook Retirement Benefit Scheme  
Cotswold Ash Retirement Benefit Scheme  
Dunoon Glen Retirement Benefit Scheme  
Lulworth Trent Retirement Benefit Scheme  
Mendip Beech Retirement Benefit Scheme  
Morton Glen Retirement Benefit Scheme  
Pennine Elm Retirement Benefit Scheme  
Powderhan Exe Retirement Benefit Scheme  
Rait Fell Retirement Benefit Scheme*

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 Schemes pursuant to Section 7(3)(a);*
  - ii. *to secure that the number of trustees is sufficient for the proper administration of the Schemes pursuant to Section 7(3)(b);*
  - iii. *to secure the proper use or application of the assets of the Schemes pursuant to Section 7(3)(c);*
  - iv. *otherwise to protect the interests of the generality of the members of the Schemes 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 Schemes pursuant to Section 8(4)(b) of the Pensions Act 1995.*
4. *Dalriada Trustees Limited fees and expenses shall be paid out of the resources of the Schemes pursuant to Section 8(1)(b) of the Pensions Act 1995 (as substituted by section 35(2) of the Pensions Act 2004) and an amount equal to the amount paid out of the resources of each Scheme is 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 Pensions Act 1995 (as amended by Section 35 of the Pensions Act 2004).*
5. *To the extent that Dalriada’s fees and expenses in relation to a particular Scheme are not met out of the Scheme’s resources*

*under (4) above, the shortfall is to be paid to Dalriada by the employer of that Scheme pursuant to section 8(1)(a) and (c) of the Pensions Act 1995.*

6. *Pursuant to Section 9 of the Pensions Act 1995, it is ordered that all property and assets of the Schemes, 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 Schemes.*
7. *This appointment 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.”*

### **Reasons for Decision**

21. In making its decision the Panel had regard to the objectives of the Regulator as set out in Section 5 of the Act and to the matters listed in Section 100.
22. The Panel also had regard to all the representations submitted including the representations on behalf of the Trustees and specifically their confirmation that they did not oppose the Determination Panel proceedings and to the fact that the issues raised in the Warning Notice had not been challenged by the Trustees.
23. The Panel further had regard to the Pensions Regulator’s published statement on the policies it intends to adopt in relation to its prohibition powers and specifically the criteria the Regulator will take into account when considering whether trustees are “fit and proper persons”. This statement provides that the Regulator will consider any information which concerns the trustee’s honesty and integrity, competence and capability and/or financial soundness. The Panel took note of the non-exhaustive list of factors listed in the statement including any misuse of trust funds, any breaches of trust or pensions law, and if a trustee’s professional charges constitute a breach of trust or demonstrate a lack of internal controls.
24. The Panel considered that there had been a number of breaches of duty / failures by the Trustees and, particularly, the following:-
  - i. The Trustees’ Lack of Knowledge and Understanding

In this regard, the Panel considered that the confusion in the trust deeds as to whether the Schemes are occupational or personal pension schemes, the incorrect statement in the XXXX Model Rules (that appear to relate to the Schemes) regarding the permissions of the provider under the Finance Act 2004, the failure to register four of

the Schemes with the Regulator, the breach of duty with regard to the appointment of member nominated trustees, the failure to appoint an auditor and the fact that the Trustees do not appear to be limiting their activities to providing retirement benefits, all demonstrate a lack of trustee knowledge and understanding. This lack of knowledge and understanding led to a number of breaches of pensions legislation.

ii. Investment Failures

The Panel noted the Trustees' decision to invest a substantial proportion of the Schemes' assets in bonds through XXXXXXXX, an offshore bond which Dalriada confirms is a high risk, illiquid investment. The Panel concluded that this concentration of assets in one source was a contravention of the Trustees' investment duties both at common law and under the investment regulations due to a lack of diversification. Furthermore, the Panel concluded that inadequate investment advice was obtained from XXXXXXXX, a dormant company, regarding the adequacy of the investment.

iii. Fees Failures

The Panel considered that the fees charged by Mr Fellowes, Ms Becker and Avalon (owned and controlled by Mr Fellowes and Ms Becker) were inappropriate, excessive and in breach of trust. The Panel agreed that Avalon appeared to be used as a vehicle for payments to be made to Mr Fellowes and Ms Becker. Together with other payments made to a criminal barristers' chambers, these payments demonstrated that the Trustees put their own interests ahead of the members' interests.

iv. Liberation Failures

The Panel noted the Regulator's evidence in relation to pensions liberation. The Panel concluded that payment of over £11 million of funds within 7 months of the first sponsoring employer being set up suggested pension liberation activity and considered that any trustee would have known that this was a very likely explanation. Indeed, it is hard to conceive of any other reason why so many individuals would have transferred their pensions to these Schemes with sponsoring employers with which they have no connection. Moreover, if the Trustees failed to recognise the potential for the Schemes to be used for pensions liberation, they failed in their duties as trustees. The Panel further accepted that the Trustees appeared to be in breach of Rule 13.3 XXXX Model Rules which prohibits loans to members.

25. In the Panel's view these failures demonstrate that the Trustees are not fit and proper persons to act as trustees as they do not have the necessary competence or capability.

26. Moreover, the conduct of the Trustees demonstrates a lack of integrity. The Trustees have been responsible for serious and persistent breaches of pensions legislation and associated regulations and for breaches of trust law. Furthermore, the charges incurred by the Schemes for the Trustees' services constitute a breach of trust. Trustees must act in a way that an ordinary prudent person of business would act in managing their own affairs and their first duty must be to the scheme beneficiaries. The Trustees have shown a reckless disregard for the assets of the members of the Schemes and the security of the investments, demonstrated by their failure to take adequate investment advice whilst putting almost all of the Schemes' assets into a high risk offshore vehicle.
27. The Panel noted that the Trustees have been given the opportunity to comment on the Regulator's evidence and to offer alternative explanations in rebuttal of the conclusions drawn but have not done so.
28. In the circumstances the Panel determined to prohibit the Trustees. In light of the seriousness of the concerns raised, the Panel considered it appropriate to prohibit the Trustees from acting as trustees of trust schemes in general. In the Panel's view, this would prevent the Trustees acting in a similar manner in relation to new schemes.
29. The Panel also considered it appropriate that an independent trustee be appointed to the Schemes. Given that Dalriada had already been appointed by the High Court and had been acting as trustee of the Schemes since September 2013 it is, in the Panel's view, appropriate that they should remain as the independent trustee.
30. As regards the question of who should bear the cost of the appointment of Dalriada, the Panel considered the arguments raised by XXXXXXXX in its representations on behalf of the Trustee. The Panel agreed with the Regulator's comments that the solvency of the employers is not a reason to depart from the principle that the sponsoring employers should be liable to contribute to the schemes that they sponsor and noted the provisions of s.212 of the Insolvency Act 1986 under which Mr Fellowes and Ms Becker may be liable for the sums owed by the sponsoring employers. In the Panel's view it is appropriate that the sponsoring employers should be liable and the financial burden on the members of the Schemes minimised. There was nothing to persuade the Panel that a different order should be made.

**Appendix 1** to this Determination Notice contains important information about the Directly Affected Parties' rights of appeal against this decision.

Chairman: Elizabeth Neville

Dated: 17 April 2014

**Referral to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”)**

Any person who receives this Determination Notice as a directly affected person (pursuant to Section 96(2) (d) of the Act), or any person who appears to the Tribunal to be directly affected by this Determination, may refer this Determination to the Tribunal.

Under paragraph 2(2) to Schedule 3 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (S.I. 2008/2698) (the “Tribunal Rules”) a reference notice must be received by the Tribunal no later than 28 days after the date this Determination Notice is given. The Tribunal may extend this period under Tribunal Rule 5(3)(b). 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

A copy of the form for making a reference FTC3 ‘Reference Notice (Financial Services)’ can be found at:

<http://www.tribunals.gov.uk/financeandtax/Documents/forms/FTC31.doc>