

<p>The Pensions Regulator</p>	<p>COMPULSORY REVIEW</p> <p>FINAL NOTICE</p> <p>pursuant to Section 99(4) of the Pensions Act 2004</p> <p>(“the Act”)</p> <p>Abbot Blake Pension Scheme Callahan Consulting Pension Scheme Daley & Kyle Pension Scheme Daycroft Pension Scheme Fort Bruce Pension Scheme Gresham Investment Pension Scheme Gresham (2012) Pension Scheme Itchy Feet Pension Scheme Western Cross Pension Scheme</p> <p>(together the “Barratt Schemes”)</p> <p>Abbey Mage Pension Scheme Dellaney Gibbons Pension Scheme Llewellyn and Jones Pension Scheme Palace Houghton Pension Scheme Probert and Joel Pension Scheme Regency Pension Investments Pension Scheme Williams Bell Pension Scheme</p> <p>(together the “Dalton Schemes”)</p> <p>(the “Barratt Schemes” and the “Dalton Schemes” together the “Barratt and Dalton Schemes”)</p> <p>Friendly Pensions Retirement Fund</p> <p>(the “FPRF”)</p> <p>(the “Barratt and Dalton Schemes” and the “FPRF” together the “Schemes”)</p>	<p>The Pensions Regulator case ref: C38699667</p>
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1. The Determinations Panel (“the Panel”) of the Pensions Regulator (“the Regulator”) met on 10 April 2015 and reviewed its determination made following a Special Procedure hearing on 16 December 2014 when an independent trustee, Dalriada Trustees Limited (“Dalriada”), was

appointed to the Schemes with a vesting order. The terms of the Order were as follows:

Appointment of an Independent Trustee

“Dalriada Trustees Limited of Chamber of Commerce House, 22 Great Victoria Street, Belfast, BT2 7BA is hereby appointed as trustee of:

*Gresham Investment Pension Scheme
Abbot Blake Pension Scheme
Callahan Consulting Pension Scheme
Western Cross Pension Scheme
Gresham (2012) Pension Scheme
Daycroft Pension Scheme
Daley & Kyle Pension Scheme
Itchy Feet Pension Scheme
Fort Bruce Pension Scheme
Abbey Mage Pension Scheme
Dellaney Gibbons Pension Scheme
Llewellyn and Jones Pension Scheme
Palace Houghton Pension Scheme
Probert and Joel Pension Scheme
Regency Pension Investments Pension Scheme
Williams Bell Pension Scheme
Friendly Pensions Retirement Fund*

(together the “Schemes”) with immediate effect from 16 December 2014.

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 the proper use or application of the assets of the Schemes pursuant to Section 7(3)(c);*
- iii. otherwise to protect the interests of the generality of the members of the Schemes pursuant to Section 7(3)(d).*

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.

Pursuant to Section 8(1)(b) of the 1995 Act, the fees and expenses of Dalriada Trustees Limited shall be paid out of the resources of the Schemes.

Pursuant to Section 8(2) of the 1995 Act, it is ordered that an amount equal to the amount paid out of the resources of the Schemes by virtue of Section 8(1)(b) is to be treated for all purposes as a debt due from the Employers to the trustees of the Schemes.

Pursuant to Section 9 of the Pensions Act 1995, it is ordered that, with immediate effect, 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.

This order may be terminated, or the appointed trustee replaced, at the expiry of 28 days notice from the Pensions Regulator's Case Team to the appointed trustee, pursuant to Section 7(5)(c) of the Pensions Act 1995."

2. A determination notice ("DN") setting out the reasons for the decision was issued on 7 January 2015.

A. Matters to be determined

3. Pursuant to section 99 of the Pensions Act 2004, the Panel met to review its determination and decide whether to exercise any of its powers under that section, which are:

*"(a) confirm, vary or revoke the determination,
(b) confirm, vary or revoke any order, notice or direction made, issued or given as a result of the determination,
(c) substitute a different determination, order, notice or direction,
(d) deal with the matters arising on the review as if they had arisen on the original determination, and
(e) make savings and transitional provision."*

B. Background

The Barratt and Dalton Schemes

4. Mr Alan Barratt is a trustee of the following nine occupational pension schemes:
 - i. Abbot Blake Pension Scheme, the principal employer being Abbott Blake Limited;
 - ii. Callahan Consulting Pension Scheme, the principal employer being Callahan Consulting Limited;
 - iii. Daley & Kyle Pension Scheme, the principal employer being Daley & Kyle Limited (now dissolved);

- iv. Daycroft Pension Scheme, the principal employer being Daycroft Management Services Limited (now dissolved);
 - v. Fort Bruce Pension Scheme, principal employer being Fort Bruce Recruitment Limited;
 - vi. Gresham Investment Pension Scheme, the principal employer being Gresham Pension Investments Limited;
 - vii. Gresham (2012) Pension Scheme the principal employer being Gresham Pension Investments Limited;
 - viii. Itchy Feet Pension Scheme, the principal employer being Itchy Feet Travel Limited (now dissolved);
 - ix. Western Cross Pension Scheme, the principal employer being Western Cross Services Limited.
5. Ms Sue Dalton is a trustee of the following seven occupational pension schemes:
- i. Abbey Mage Pension Scheme, the principal employer being Abbey Mage I.T. Services Limited (now dissolved);
 - ii. Dellaney Gibbons Pension Scheme, the principal employer being Dellaney Gibbons Design Limited (now dissolved);
 - iii. Llewellyn and Jones Pension Scheme, the principal employer being Llewellyn and Jones Limited (now dissolved);
 - iv. Palace Houghton Pension Scheme, the principal employer being Palace Houghton Engineers Limited (now dissolved);
 - v. Probert and Joel Pension Scheme, the principal employer being Probert and Joel Services Limited;
 - vi. Regency Pension Investments Pension Scheme, the principal employer being Regency Pension Investments Limited;
 - vii. Williams Bell Pension Scheme, the principal employer being Williams Bell Limited (now dissolved).
6. Mr Barratt is a director of Regency Pension Investments Limited (“Regency”) and a former director of Gresham Pension Investments Limited (“Gresham”). Ms Dalton is the director of Gresham and a former director of Regency. Mr Barratt is the director or former director of five of the other principal employers for the Dalton Schemes. Ms Dalton is the director or former director of six of the other principal employers for the Barratt Schemes.

FPRF

7. The Friendly Pensions Retirement Fund was registered as a master trust (a multi-employer occupational pension scheme) with HMRC by Friendly Trustees Limited (“FTL”) in July 2014. XXXXXXXX XXXX XXXXX (“XXX **Company X**”) XXXXXXXX Limited (“XXX”) is the sole corporate trustee. Mr Julian Hanson (also known as Carl Hanson) is the director of FTL. Mr Hanson was appointed as director on 15 July 2014. FTL was incorporated on 24 June 2014. Its registered office is XXXXXX XXXXX, XXXX XX, XX XXXXX XXXXX, XXXXXX XXX XXX. Mr David Austin is listed as the 100% shareholder of FTL.

XXX Company X

8. According to its website and the Regulator's correspondence with its directors, **XXX Company X** provides automatic enrolment and pension scheme administration services. XX XXXXX XXXXXX XXX XX XXXXXX XXXX XXX XXX XXXXXX XXXXXX XX XXX. XX XXXXX XXXXXX XX XX XXX XXXX XXXXXXXXX XX XXX, XX XXXXX XXXXXXXXX XX XXX XXXXXXX XXXXXX, XXXXXXX XXXXX XX X XXXXXX XXXXX XXX XXXXXXXXXXXX XX XXX XXXXX XX XXXXX XXX XX XXXXXX. XX XXXXX XXXXXX XXXXXXXXXXXX XX XXX XXX XXXXX XX XX XXXXXX XXXX.
9. On 17 November 2014 the Regulator was notified by the directors of **Company X** XXX of their concerns that monies held in the **Company X** XXX bank accounts from the Barratt and Dalton Schemes were being used for payments to Mr Austin and his associates. They also raised concerns that Mr Austin controlled the funds of the Barratt and Dalton Schemes and was controlling the trustees of those schemes. Mr Austin is the former director and former sole shareholder of **Company X** XXX (XXXXXXXX XX XXXXXXXX XXXX XX XX XXXX XXX XXXXX XX XXX).
10. The Regulator obtained further information from **Company X** XXX and relevant third parties in response to notices sent pursuant to s.72 of the Act, information which was said by the Regulator to support these concerns.
11. The Regulator sought the appointment of an independent trustee. The Panel acceded to that Request on 16 December 2014.

C. The Regulator's concerns

12. The Regulator's concerns can be summarised as follows:-
 - (i) Abdication of trustee responsibility
 - (ii) Misappropriation of Barratt and Dalton Scheme funds
 - (iii) Receipt of commission/conflict of interest
 - (iv) Pension liberation
 - (v) Lack of knowledge and understanding
 - (vi) Internal controls
- (i) Abdication of trustee responsibility
13. The Regulator submitted that Mr Barratt and Ms Dalton were operating under the direction of Mr Austin, who was acting as a shadow trustee and that in fact, Mr Austin had control of the Barratt and Dalton Schemes overall and the funds in those schemes. It was submitted that Mr Barratt and Ms Dalton had acted under Mr Austin's instructions or abdicated

their responsibilities as trustees and allowed Mr Austin to act in their place.

14. The Regulator submitted that Mr Austin was the controlling mind behind FTL, including controlling the activities of Mr Hanson. It was submitted that the control exercised by Mr Austin over the Barratt and Dalton Schemes was likely to be replicated in relation to FPRF.

(ii) Misappropriation of Barratt and Dalton Scheme funds

15. The Regulator submitted that Mr Barratt and Ms Dalton had been acting in breach of trust in accepting and/or directly arranging payments from the bank accounts of the Barratt and Dalton Schemes into their own personal bank accounts.

(iii) Receipt of commission/conflict of interest

16. The Regulator submitted that Mr Barratt and Ms Dalton had acted in breach of trust in accepting commissions in respect of monies that had been transferred into the Barratt and Dalton Schemes. The receipt of commissions by trustees in respect of funds held under their trust and which had been transferred in by members represents a clear conflict of interest and is in breach of the trustees' fiduciary duty not to profit from a trust.

(iv) Pension liberation

17. The Regulator submitted that Mr Barratt and Ms Dalton had acted in breach of trust in allowing the misappropriation and/or misuse of the assets of the Barratt and Dalton Schemes by arranging or colluding on payments made to members of those Schemes as an inducement for Barratt and Dalton Scheme members to transfer cash equivalent transfers from other pension arrangements into the Barratt and Dalton Schemes.

(v) Lack of knowledge and understanding

18. The Regulator submitted that, in allowing Mr Austin to act as shadow trustee, Mr Barratt and Ms Dalton had failed to demonstrate the level of knowledge and understanding expected by the Regulator, in breach of s.247 of the 2004 Act.

(vi) Internal controls

19. The Regulator submitted that Mr Barratt and Ms Dalton had failed to exercise internal controls adequate to secure that the Barratt and Dalton Schemes are administered and managed in accordance with the requirements of the law, contrary to s.249A of the 2004 Act.

D. Representations received since the decision

20. Since the original decision, formal representations were received from Dalriada Trustees Limited, the Pensions Regulator's Case Team and **Company X** XXX. Correspondence was received from Ms Dalton, Mr Barratt and Mr Austin which it was advised would be treated as representations.
21. The DN was issued on 7 January 2015. The deadline for submission of representations was set at 21 January 2015. By that deadline, Dalriada had submitted its representations (dated 21 January 2015) as had the case team (dated 21 January 2015), both with a bundle of supporting evidence. Ms Dalton and Mr Barratt had also submitted their representations (dated 5 January 2015) by the deadline, albeit in advance of receiving the DN.
22. On 21 January 2015 Mr Austin said that he wanted to make representations and asked for two months to make further representations. The Panel agreed to extend the deadline by a month. The representations of the case team were served on all Directly Affected Parties who were invited to make any further representations on the basis of their content by the new deadline of 20 February 2015. **Company X** XXX (by its directors XX XXXXXX XXX XX XXXXX) served representations on that date.
23. No other formal representations were received by the extended deadline and, in the case of Mr Austin, despite him asking for the extension in the first place.
24. No party requested an oral hearing.
25. The case team responded to the various representations and these responses were circulated to all Directly Affected Parties.

E. Directly affected parties

26. The following parties are directly affected by this determination:
 - i. Alan Barratt;
 - ii. Susan Dalton;
 - iii. FTL;
 - iv. XXX **Company X**;
 - v. David Austin;
 - vi. Dalriada.

27. It is not clear from the Request whether or not the Regulator also identified the principal employers of the Barratt and Dalton Schemes to be directly affected parties. However for the avoidance of doubt the Panel considers that the additional principal employers, namely:

- i. Abbott Blake Limited;
- ii. Callahan Consulting Limited;
- iii. Fort Bruce Recruitment Limited;
- iv. Gresham Pension Investments Limited;
- v. Western Cross Services Limited;
- vi. Probert and Joel Services Limited;
- vii. Regency Pension Investments Limited;

are directly affected parties.

28. The Panel considered that any principal employers which are dissolved companies cannot properly be said to be directly affected parties. At the present date, according to the Regulator, the dissolved principal employers are:

- i. Abbey Mage IT Services Limited – dissolved 30.12.14
- ii. Llewellyn and Jones Limited – dissolved 30.12.14
- iii. Dellaney Gibbons Design Limited – dissolved 23.12.14
- iv. Itchy Feet Travel Limited – dissolved 23.12.14
- v. Palace Houghton Engineers Limited – dissolved 24.06.14
- vi. Daycroft Management Services Limited - dissolved 25.11.14
- vii. Williams Bell Limited – dissolved 25.11.14
- viii. Daley & Kyle Limited – dissolved 20.05.14

29. At the Special Procedure hearing the Panel made a preliminary determination that Julian Hanson, XXXXX XXXXX XX XXXXX XXXXXX were not directly affected parties, but noted that it would reconsider its decision at the Compulsory Review. Having reconsidered it, there is no reason to change the preliminary view taken at the original hearing. These individuals are already effectively represented by reason of their directorships of FTL and **Company X** XXX and have not sought to be named as directly affected parties.

30. The Panel also did not consider it necessary to state that Regency Pension Investments Limited and Gresham Pension Investments Limited were directly affected parties by virtue of their potential status as co-trustees of some of the pension schemes, since they were already named as directly affected parties.

F. Compulsory Review Determination

31. Having completed its review the Panel determined to confirm the Orders made on 16 December 2014. Dalriada remains appointed as the

independent trustee with exclusive powers pursuant to the terms of that order.

G. Reasons for Decision

32. 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.
33. Having considered the representations made, the Panel reconsidered its reasons in the Determination Notice which, for ease of reference, are set out below.

The Barratt & Dalton Schemes

Abdication of trustee responsibility

34. There was ample evidence of Mr Barratt and Ms Dalton abdicating their responsibility as trustees and allowing Mr Austin to act in their place, including:
 - i. An email sent on 17 September 2013 from Mr Austin to Mr XXXXXX (the pensions manager at **Company X XXX**) instructing him to make out a cheque for £120,000 from the Fort Bruce Pension Scheme to **Company X XXX**. The email further states that all cheque books should be in "XXXXXX's drawer", which is apparently a reference to XXXXXX XXXXX, **Company X XXX**'s bookkeeper. £120,000 was deposited that day into the **Company X XXX** bank account.
 - ii. An email sent on 14 October 2013 from Mr Austin to Mr XXXXXXXX (of **Company X XXX**), instructing him to make deposits from five Barratt Schemes to **Company X XXX**. Deposits for the specified amounts for four of the schemes were made that day to the **Company X XXX** bank account.
 - iii. An email sent on Saturday 19 October 2013 from Mr Austin instructing 'Karen' to draw cheques totalling £200,000 in favour of **Company X XXX** from the Callahan Consultancy, Regency, Abbey Mage, Williams Bell and Daycroft Pension Schemes. While it is not clear whether the email is copied to Mr Barratt or Ms Dalton, it refers to them as if it were. A deposit of that sum was made into the **Company X XXX** account on Monday 21 October 2013.

- iv. An email sent on 24 September 2014 from Mr XXXXXX to Mr Austin, asking him whether he managed to get some cheques signed. This is followed by an email from Mr Austin to Mr XXXXXX, apparently asking him to make a payment to Mr Barratt of £10,000. The same email suggests that Mr Austin has “done cheque” for £80,000 for the Callahan Scheme. £10,000 is then paid into Mr Barratt’s account on 24 September 2014. £80,000 is then paid into **Company X XXX**’s account.
 - v. An email sent on 28 April 2013 from Mr Austin to Mr XXXXXX, attaching a new member application for the Regency Investment Pension Scheme.
 - vi. An email sent on 30 April 2013 from Mr Austin to Mr XXXXXX, asking him to add “Gresham 2012” account details to the table of pension information. The email states that XXXXX XXXXXX (of **Company X XXX**, and copied in) should have the deposit books and says that “*we could start sending some transfer towards 2012 scheme. Please direct as appropriate*”.
 - vii. An email sent on 23 July 2014 from Mr Austin to XXXX XXXXX (of **Company X XXX**) instructing her to “*top and tail*” an email on a Regency letterhead. The email is purportedly written by a trustee to HSBC, asking it to unfreeze Regency’s bank account.
 - viii. An email sent on 16 August 2013 from Mr Austin to Ms XXXXX, instructing her to release a 25% tax free sum to a member of the Callahan Consulting Pension Scheme.
 - ix. An email sent on 16 August 2013 from Mr Austin to Mr XXXXXX regarding changes to the Gresham website.
 - x. An email sent on 29 October 2013 from Mr Austin to Mr XXXXXX stating that “*XXXX will be drafting XXXXXX letters to companies that refuse to transfer to Gresham/Regency*”.
 - xi. An email sent on 22 February 2014 from Mr Barratt to Mr Austin asking him to stop posing as him using an old email address. The email makes it apparent that Mr Austin has sent an email to the bank purporting to be from Mr Barratt. Mr Barratt does not appear to be surprised by Mr Austin posing as Mr Barratt in correspondence and appears to take issue mainly with the use of the old email address.
 - xii. Evidence that Mr Barratt and Ms Dalton may have provided electronic copies of their signatures to **Company X XXX**.
35. There is nothing in the further evidence which contradicts the evidence summarised above. Indeed, the Case Team’s further evidence has tended to confirm the original inferences drawn in relation to the various

payments set out above. For example, the case team has now produced copies of the cheques referred to above.

36. It is apparent from the above evidence that Mr Austin has instructed **Company X XXX** employees to transfer money or pay cheques from the Barratt and Dalton Schemes to **Company X XXX**. It is apparent that **Company X XXX** holds or held Barratt and Dalton Scheme documents (including cheque books and membership application forms) which ought to be held by Mr Barratt and Ms Dalton. It is apparent that correspondence with third parties (including banks) which purports to come from the trustees in fact comes from Mr Austin. It is apparent that Mr Austin issued instructions to **Company X XXX** employees to make payments to Barratt and Dalton Scheme members and possibly to make changes to scheme websites.
37. In several of the above instances (see 34 iii, iv, xi, xii) it is apparent that Mr Barratt and Ms Dalton knew or ought reasonably to have known of Mr Austin's actions and took no steps to prevent it. It would be surprising if they were unaware of the large sums of money flowing out from Barratt and Dalton Scheme bank accounts to **Company X XXX**. In their representations, they refer to £4.3 million having been invested in **Company X XXX** bonds.
38. It is recognised that it is possible for trustees to delegate certain of their duties in certain circumstances. However it is unlikely that this was a proper case of delegation. No trustee, acting reasonably and responsibly, could have acted in the way that Mr Barratt and Ms Dalton appear to have acted.

Misappropriation of Barratt and Dalton Scheme funds

39. There was clear prima facie evidence that, in breach of trust, Mr Barratt and Ms Dalton may have misappropriated scheme assets or allowed them to be misappropriated. Both Mr Barratt and Ms Dalton appear to have received large sums of money directly from Barratt and Dalton Scheme bank accounts into their personal accounts.
40. There was evidence of cheque payments to Ms Dalton from the Regency Pension Investments Pension Scheme on 30 April 2013 (£3,000), 29 May 2013 (£20,000) and 25 June 2013 (£37,000). The copies of the cheques now obtained by Dalriada confirm these payments.
41. There was evidence of cheque payments to Mr Barratt from the Callahan Consulting Pension Scheme on 17 January 2014 (£10,000). The copies of the cheques now obtained by Dalriada confirm these payments.
42. The Panel considered the possibility that these payments were legitimate trustee remuneration. However the size of the payments appeared to be excessive for legitimate remuneration. In any event, the

payments were apparently calculated as commission, which would make any such remuneration inappropriate for the reasons set out below at paragraphs 44 to 45.

43. There have also been indirect payments from the Barratt and Dalton Schemes to Mr Barratt through a company called Praecido, although at the time of the Special Procedure hearing no firm conclusions could be drawn from the limited information available. There is now better evidence available, which is dealt with below at paragraph 66.

Receipt of commission/conflict of interest

44. There was clear prima facie evidence of Mr Barratt and Ms Dalton receiving or being entitled to receive a commission on payments into the Barratt and Dalton Schemes, in breach of their fiduciary duty not to profit from the trust.
45. There were Commission/Profit Schedules for both trustees, showing what appears to be an entitlement to a 20% commission of the profit made by "Select Pension Investment", profit which ultimately derived from the amounts invested by scheme members. For Mr Barratt, the schedule shows that he was entitled to commission of £37,700.71. For Ms Dalton, the schedule shows that she was entitled to commission in the sum of £22,386.42. It appears that Mr Barratt and Ms Dalton were investing (or permitting to be invested) Barratt and Dalton Scheme money into Select Pension Investments and are personally receiving a commission, either for introducing new members or for the investments in Select Pension Investments.

Pension liberation

46. There was evidence of pension liberation payments to scheme members, contrary to s.95(2)(a) of the Pension Schemes Act 1993 and s.18 of the Act.
 - i. Member "NH" signed terms and conditions stating that the payment of his share of "*commission is a private commercial arrangement between [Select Pension Investments] and myself and I undertake to keep all details strictly confidential.*" The member then undertakes "*under no circumstances will I disclose any details or information relating to the commission sharing arrangement to any Independent Financial Advisor, Pension Scheme Provider / company or Trustee who will be involved with managing my Pension.*" It is difficult to see why these terms would be necessary unless it was to avoid detection of pension liberation. A corresponding entry in the Commission Profit Schedule for Ms Dalton showed a 'rebated amount' of £5,384 to NH. NH appears to have been one the members in respect of whom Ms Dalton was entitled to receive a commission.

- ii. Member “DP” signed similar terms and conditions. DP sent an email on 22 April 2014 to info@greshampensions.com requesting a cheque in the sum of £7,324 and received a reply stating that the cheque would be sent to him that day. Mr Barratt is the trustee of both Gresham pension schemes.
47. It is reasonable to infer that unlawful pension liberation may have taken place and that Mr Barratt and Ms Dalton were aware of the same or ought reasonably to have been aware of it.

Lack of knowledge and understanding

48. On the available evidence it appeared that Mr Barratt and Ms Dalton were committing the above breaches deliberately or doing so as a result of their abdication of control to Mr Austin. On the available evidence either Mr Barratt and Ms Dalton did not have the necessary knowledge or understanding of their duties and responsibilities or they were not exercising their knowledge and skills for the proper administration of the Barratt and Dalton Schemes. Both alternatives were a breach of s.247 and/or s.249A of the Act.

Internal controls

49. It followed from the above reasoning and in particular the evidence of misappropriation and the abdication of responsibility that Mr Barratt and Ms Dalton had failed to exercise internal controls adequate to secure that the Barratt and Dalton Schemes were administered and managed in accordance with the requirements of the law, contrary to s.249A of the Act.

Other concerns

50. Some significant proportion of the Barratt and Dalton Schemes’ funds has been invested in bonds issued by **Company X** XXX (although the bond documentation was not available). At the Special Procedure hearing it was considered that a responsible trustee acting properly would not invest the Barratt and Dalton Scheme funds in this way. However at that time there was only limited information available in relation to the Barratt and Dalton Schemes’ investments and the Panel therefore did not rely on this matter. There is now further evidence available and this is dealt with below at paragraphs 65 and 73.

FPRF

51. The directors of **Company X** XXX had in their letter dated 17 November 2014 notified the Regulator of various concerns in respect of FPRF. For example, these concerns include that they (the directors) were aware that **Company X** XXX is the sponsoring employer of FPRF but they had

not seen the relevant deed or paperwork and they were aware that FPRF has three scheme members who are unknown to **Company X XXX**.

52. At the time of the Special Procedure hearing, no corroborated evidence was available that FTL or Mr Hanson had done anything wrong in respect of FPRF. However the evidence showed that Mr Austin controlled or may control Mr Hanson and, through him, FTL and FPRF. Mr Hanson was appointed at Mr Austin's instruction, after Mr Austin expressed dissatisfaction with Mr XXXXX (in an email sent by Mr Austin to Mr XXXX on 10 July 2014). Mr Austin is the sole shareholder of FTL and can replace Mr Hanson as director if Mr Hanson fails to comply with Mr Austin's instructions. There was a risk that Mr Austin would act as shadow trustee of the FPRF as he does in respect of the Barratt and Dalton Schemes. It was noted that Mr Hanson's track record is not good, insofar as he was connected with other schemes to which companies of which he was a director had been acting as trustee, and in which the Regulator had in another case seen fit to intervene. However this in itself was insufficient to appoint an independent trustee. The primary reason at the time of the Special Procedure hearing for appointing an independent trustee of the FPRF was that it is likely that Mr Austin would seek to act as shadow trustee of the FPRF and that FTL would be unwilling or unable to prevent him.
53. There is now further evidence in relation to FTL and FPRF and this is dealt with below at paragraphs 54 to 60.

Further evidence: FPRF / FTL

54. FTL did not make any representations in respect of the Order or otherwise seek to challenge the DN issued.
55. The Case Team has however produced further evidence in relation to FPRF, in particular, further evidence of Mr Austin's practical control over FTL's conduct in relation to FPRF. It also raises very serious concerns over whether FTL has been investing FPRF money in a responsible way.
56. On 12 December 2014, £120,000 was paid from FPRF's bank account to a bank account of a company called Broadbridges Consulting Limited ("Broadbridges"). Mr Austin is a director of Broadbridges. XXX XXXX XXXXXXXX, XXXXX XXXXXX, XX XXXXXXXX XX XX XXXXXXX XXXXXX. There is accordingly evidence of £120,000 in FPRF funds being paid to an entity which is under Mr Austin's direct control. The Case Team submits it is to be inferred that the payment was made at Mr Austin's instigation and is demonstrative of Mr Austin's control over FTL. Neither Mr Austin nor FTL have sought to deny this.
57. Mr Hanson also appears to have benefitted from the Broadbridges account, since he received a payment of £7,000 on the same day. If this

was a case of Mr Hanson paying himself legitimate remuneration, it is unclear why it would need to be routed through Broadbridges.

58. The payment of £120,000 to Broadbridges is purportedly authorised by a “Loan Agreement” between FPRF and Broadbridges, signed by Mr Hanson and Mr Austin respectively. That Loan Agreement is itself an odd document, which was apparently drafted with little care. The parties are not properly identified. The loan is unsecured but it appears to be adapted from a secured loan agreement. There are numerous redundant clauses.
59. The Loan Agreement purports to be for “working capital” for Broadbridges (Clause 4). Broadbridges is a company which, according to the FAME database, makes no profit and has net liabilities of £6,286. This is a highly unsuitable investment for a pension fund. There is no evidence that any advice was taken by FTL as to the appropriateness of this investment. There is no evidence that any due diligence was carried out by FTL. It is unclear why FTL as trustee would want to participate in such an investment where underperformance exposes the FPRF to non-recovery and outperformance benefits only the shareholders of Broadbridges.
60. There are other substantial payments made out of the Broadbridges account from monies derived from FPRF, including £25,000 to “Upsilon Hooi Policy One” on 12 December 2014 and £18,000 to “Gordon Dadds Project Bermuda” on 22 December 2014. At the time the loan was made, the balance in the Broadbridges account was about £3000. A month later, all the money received had been spent and the balance had dropped back to its former level.

Further evidence: The Barratt and Dalton Schemes

61. Mr Barratt and Ms Dalton sought to challenge the Order in nearly identical representations backed by the same or mirroring documentation. The principal ground on which they did so was in relation to pension liberation. They also submitted that, due to the dispute between Mr XXXXXX and Mr Austin, evidence from Mr XXXXXX or the employees of **Company X** XXX should be treated with caution. In its DN the Panel did not rely on **Company X** XXX’s evidence unless it was independently corroborated by documents or by other sources and does not rely on it now.
62. Although Mr Barratt and Ms Dalton did not have the DN at the time they submitted their representations, they have not submitted any subsequent representations after having received it. None of the other matters referred to in the DN were dealt with, including the evidence of their abdication of responsibility and the payments made to them. The Case Team and Dalriada have produced evidence which confirms and heightens these concerns. **Company X** XXX’s representations are also

noted and in particular it is noted that the evidence supplied was consistent with the other evidence supplied and with the Panel's conclusions.

Abdication of trustee responsibility / lack of internal controls

63. There is further evidence to confirm the concerns expressed regarding the abdication of trustee responsibility and lack of internal controls. In particular:
- i. Ms Dalton stated to Dalriada that the Dalton Schemes were being looked after by someone in the UK who she did not identify when asked. She then said in an email that all documentation was held by Mr Barratt in Spain.
 - ii. Ms Dalton and Mr Barratt stated in their letters that they relied on "*information provided to me by Mr David Austin*". Each said that "*Mr Austin... was the original person who offered me the opportunity to invest in [Company X XXX] and I believed the company had great potential.*" They said that £4.3 million had been invested in **Company X XXX** bonds across all Barratt and Dalton Schemes. As is discussed in further detail below at paragraph 73, no real thought appears to have been given as to the appropriateness of investing such a significant proportion of the Barratt and Dalton Schemes' assets in a single company.
 - iii. Various cheques in respect of the various Barratt and Dalton Schemes appear to be in different handwriting, which is consistent with the conclusion that Mr Barratt and Ms Dalton would pre-sign cheques and allow them to be filled in by others.

Misappropriation / Misuse of funds

64. The Case Team and Dalriada have identified the following highly suspicious payments, payments which have not been denied:
- i. Between February 2013 and November 2014 Mr Barratt has received £211,000 directly from Barratt and Dalton Scheme accounts by way of cheques. This has been confirmed by Dalriada's investigations, who say payments to Mr Barratt were in fact £245,500.
 - ii. Dalriada has also confirmed that Ms Dalton has received payments from Barratt and Dalton Scheme accounts, totalling £64,986.49.
 - iii. The Regency Scheme and the Gresham Scheme made numerous payments to the Friendly Investment Company ("FIC"), totalling £4,001,000. Mr Austin is or was a director of FIC. Mr Austin has referred in an email dated 13 January 2015

to an alleged bond issue by FIC but has not produced documentation in respect of the same.

65. The Barratt and Dalton Schemes have made numerous payments to **Company X XXX**, totalling £4,595,000. At present only a proportion of this can be accounted for by the issue of **Company X XXX** bonds (which Dalriada does not have a full set of documentation for). Dalriada understands from its discussions with **Company X XXX** that at least £2 million was placed with **Company X XXX** through the issue of bonds, of which £800,000 remains and is being used as working capital to maintain the viability of the business which requires between £100,000 and £150,000 per month to continue trading.
66. There are noteworthy payments by **Company XXXX** for which no explanation has been provided. These include:
 - i. Praecido Limited has received £917,710 from **Company X XXX**. Praecido is a Cypriot company. Its director is XXXX XXXXXX, who is said to be Mr Austin's XXXXX. Its shareholder(s) is unknown. Between September 2012 and March 2014 Mr Barratt has received a further £150,344.16 from Praecido and Select Pensions Investments.
 - ii. Liebco Limited has received £364,600 from **Company X XXX**. Liebco is a West Indian company. Ms XXXXXX is also the director of Liebco. It banks with the same bank as Praecido in Cyprus. Its shareholder(s) is also unknown.
 - iii. Intelligent Optical Industries Limited has received £500,000 from **Company X XXX**. FIC owns 9.3% of Intelligent Optical Industries Limited. Mr XXXX XXXXX, the director of this company, was a co-director of Mr Austin at FIC.

Pension liberation

67. Mr Barratt and Ms Dalton had attempted to address the issue of pension liberation concerns, in particular by producing a legal opinion from a barrister, Mr XXXXX XXXX, dated 8 July 2014 and various letters from XXXXXXX XXX (dated between 30 July 2013 and 8 November 2013). This evidence was directed towards showing that the Barratt and Dalton Schemes are not pension liberation schemes.
68. It is clear that neither Mr XXXX nor XXXXXX were shown the material that was relied on in the DN, not least because their advice pre-dated the DN.
69. Mr XXXX made it clear in paragraph 10 of his opinion that it was based on his instructions, namely, that he was instructed by Ms Dalton that there had been no attempt to provide the members with benefits before

the Normal Minimum Pension Age of 55 or unauthorised payments as defined by s.160(2) of the FA04.

70. XXXXXXXX similarly made it clear that its conclusion was based on the paperwork it was supplied with by Mr Barratt and Ms Dalton.
71. XXXXXXXX letters, if anything, heightened the concerns regarding the Barratt and Dalton Schemes. In particular, XXXXXXXX set out the various ways in which liberation could occur, some of which appeared to resemble the ways in which the Barratt and Dalton Schemes actually appear to have operated, and then stated that it was essential that the trustees were satisfied that these had neither taken place nor could take place in the future. There was no evidence that the trustees acted on XXXXXXXX advice. Further, XXXXXXXX does not appear to have been shown the terms and conditions for members NH and DP (referred to above at paragraph 46) or any of the other material relied on in the Request.
72. In light of the above, the Panel did not consider that this evidence disturbed its conclusion that there was evidence that pension liberation may have taken place.

Other concerns

73. The fact that that the Barratt and Dalton Schemes have invested such a large proportion of their assets in **Company X** XXX bonds is concerning. It is unclear why any prudent trustee would invest such a high proportion of its funds in an unsecured investment with a single company. The available accounts of **Company X** XXX did not support the investment of such significant amounts by a pension fund. There is no evidence of any due diligence being carried out by Mr Barratt or Ms Dalton. What is more, Ms Dalton and Mr Barratt were specifically advised by XXXXXXXX in letters dated 30 July 2013 and 9 August 2013 regarding the need for prudent investments and its concerns regarding unsecured loans. This advice was ignored. It is apparent from paragraph 18 of Mr XXXX's opinion that between January 2014 and March 2014 Regency loaned a further £390,000 to **Company X** XXX.
74. XXXXXXXX letters also reveal that:
 - i. They had concerns over the other investments made by the trustees. XXXXXXXX queried the appropriateness of the unsecured loans from the Regency Scheme and the Gresham Scheme to Liebco. It reminded Mr Barratt and Ms Dalton of the general duty to diversify when investing and to "take such care as an ordinary prudent man would take".
 - ii. XXXXXXXX advised the trustees that trust documents were not properly drafted or executed in respect of the Abbey Mage Pension Scheme, the Williams Bell Pension Scheme, the

Dellaney Gibbons Pension Scheme, the Fort Bruce Pension Scheme, and the Daycroft Pension Scheme, the Western Cross Pension Scheme and the Gresham Investment Pension Scheme. It “urgently” recommended drafting and executing a new set of rules.

- iii. Where schemes had only one trustee, XXXXXX recommended that a second trustee be appointed (namely for the Regency Investment Pension Scheme, the Gresham (2012) Pension Scheme, the Gresham Investment Pension Scheme, and the Callahan Consulting Pension Scheme).
 - iv. XXXXXX queried whether Ms Dalton or Mr Barratt had been given trustee training in accordance with Pension Regulator guidelines (i.e. for the Regency Investment Pension Scheme, the Abbey Mage Pension Scheme, the Williams Bell Pension Scheme, the Dellaney Gibbons Pension Scheme, the Gresham (2012) Pension Scheme, the Fort Bruce Pension Scheme, the Daycroft Pension Scheme, the Western Cross Pension Scheme, the Gresham Investment Pension Scheme, the Callahan Consulting Pension Scheme).
75. There was no evidence that the trustees acted on XXXXXX concerns expressed above and, in at least one instance (see in paragraph 73), there was evidence that Ms Dalton acted contrary to it.
76. It is noted that Mr Barratt, Ms Dalton, FTL and Mr Austin have not co-operated with Dalriada’s proper requests for information and documents.

Selection of the appointed independent trustee

77. Three companies, namely Dalriada, XXXXXXXX XXXXXX XXXXXX XXXXXXXX and XXX XXXXXX XXXX XXXXXX, submitted tenders for the IT appointment. At the Special Procedure hearing the Panel considered that Dalriada was the most appropriate choice of independent trustee. The representations served by Dalriada have confirmed that it has very quickly attempted to get to grips with the issues, despite receiving little or no cooperation from the trustees and the Panel is satisfied that Dalriada ought to remain as trustee.

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

Signed

Chair Elizabeth Neville

Date 28 April 2015

Referral to the Tax and Chancery Chamber of the Upper Tribunal

You have the right to refer the matter to which this Final Notice relates to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”). Under Section 99(7) of the Act you have 28 days from the date this Final Notice is sent to you 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 (FTC3 form) signed by you and filed with a copy of this Final Notice. The Tribunal’s address is:

Upper Tribunal
(Tax and Chancery Chamber)
Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL
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 (FTC3 form) 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://hmctsformfinder.justice.gov.uk/HMCTS/GetForms.do?court_forms_category=Tax&Chancery%20Chamber%20-%20Upper%20Tribunal