

	DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)	The Pensions Regulator case ref:
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Scheme: Main Top Hotel and Leisure Limited Retirement Benefit Scheme	
To:	Mr Brian Holden MBE
Of:	XXXXXXXXXX XXXXXXXXXX XXXXX XXXXXXXXXXXXXX
Date:	19 th December 2005

TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 13 December 2005

1.	Determination
1.1	<p>The Regulator requests the Determinations Panel to determine whether an Order should be made to remove Brian Holden as Independent Trustee to the above named scheme.</p> <p>The need for the removal stems solely from the complexities, both legal and otherwise, of administering pension liberation vehicles, and for no reason of concern about Brian Holden’s activities as trustee to date.</p>
1.2	The Regulator’s request to make an order was granted.

2.	Procedure Followed: Standard
2.1	By its Warning Notice dated 29 September 2005 (“the Warning Notice”) the Pensions Regulator gave notice that it proposed to take the above action pursuant to the application of the Regulator.
2.2	<p>The Regulator determined that the following party is directly affected by this determination:</p> <ol style="list-style-type: none"> 1. Mr Brian Holden in his role as Independent Trustee. <p>(referred to as “the directly affected party”)</p>

	The directly affected party was entitled to make representations to the Pensions Regulator about the determination.
2.3	Following the issue of the Warning Notice Mr Holden did exercise his right to make representations to the Pensions Regulator.
2.4	The Pensions Regulator has taken those representations into account and has determined to take the action as detailed in 7 below for the reasons set out below:

3	Relevant Statutory Provisions/Legislation
	<p>Pensions Act 1995: Section 7(5)(c)</p> <p>Under section 7(5)(c) of the Pensions Act 1995 a power can be reserved in an appointment order under section 7 to provide for the removal or replacement of such a trustee. Such a power was reserved in the Order of appointment dated 19 March 2003 in the following terms: <i>“Should a further decision of the Authority be made to terminate this appointment, this order may be terminated at the expiration of 28 days’ notice from Opra to Mr Holden pursuant to section 7(5)(c) of the Pensions Act 1995.”</i></p>

4.	Background to the Application
	<ol style="list-style-type: none"> 1. An application was submitted to the Board of Opra on 31 January 2003 for the appointment of a trustee with exclusive powers to the Main Top Hotel and Leisure Limited Retirement Benefit Scheme. The grounds for the application were that the Main Top Hotel and Leisure Limited Retirement Benefit Scheme was being used for pension liberation and an Independent Trustee was required in order to secure the proper use of the scheme assets. On 31 January 2003 Moat Pensions Limited was appointed with exclusive powers by the Board of Opra. 2. On 19 March 2003 an application was submitted to the Board of Opra applying for the appointment of a lay trustee with exclusive powers to the Main Top Hotel and Leisure Limited Retirement Benefit Scheme. The grounds for the application were that a bank account in the name of ‘Main Top Hotel & Leisure RBS Limited’ was a limited company account, not a pension scheme account, and therefore the appointed trustee, Moat Pensions Limited, had no authority to use this account. It was therefore submitted that a lay trustee should be appointed to ensure that the trustees had the necessary knowledge and skill for the proper administration of the scheme. On March 19 2003 Brian Holden was appointed by the Board of Opra, to the exclusion of all other trustees, including Moat Pensions Limited. 3. On 14 July 2004 an application was presented to the Board of Opra submitting that the Board considered exercising its powers of prohibition against the scheme trustees, Andrew Bond and Stephen Eric Bond. The ground for the submission was that as trustees of the Main Top Hotel & Leisure Limited Retirement Benefit Scheme, the trustees had failed to take all reasonable

	<p>steps to appoint a scheme auditor between 10 October 2002 and 31 January 2003. On 14 July 2004 Andrew Bond and Stephen Eric Bond were prohibited and disqualified from acting as trustees on the grounds that 'in light of the evidence before them the determination committee did not feel that these two people were suitable to act as trustees of any occupational pension scheme'.</p> <p>4. Brian Holden was appointed in order to secure that the trustees as a whole have, or exercise the necessary knowledge and skill for the proper administration of this scheme. The outstanding scheme issues have now been resolved and the scheme insurer has issued form PS199 (discontinuance) to The Inland Revenue. This form gives notice that the scheme has ceased to exist and is being wound up and the assets being applied to meet liabilities in accordance with the winding up rules.</p> <p>5. On 16 October 2005 Mr Holden replied to the Warning Notice stating: <i>"In the circumstances of the above scheme, I do not object to the Pensions Regulator's power being used. I am, however, in the process of concluding the winding up arrangements, including the repayment of any remaining assets to the two members of the scheme. I would, therefore, suggest that the Determination take effect 28 days after the date of the Determination, so that I can complete any remaining procedures."</i></p> <p>6. In the Warning Notice the regulatory arm of the Regulator expressed its thanks and gratitude to Brian Holden for his hard work and professional conduct throughout his appointment as trustee to the Main Top Hotel and Leisure Limited Retirement Benefit Scheme.</p>
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5.	Facts and Matters Relied Upon
	<ol style="list-style-type: none"> 1. The outstanding scheme issues have been resolved 2. Form PS199 has been issued, giving notice that the scheme has ceased to exist 3. The winding up arrangements are being concluded 4. Mr. Holden has informed the Pensions Regulator that he has no objection to the Pensions Regulator using its power to remove him from the scheme, but has asked that the Determination take effect 28 days after the date of the Determination, so that he can carry out any remaining procedures needed to complete the winding up arrangements.

6.	Conclusion: Details of Determination
	<p>The Pensions Regulator hereby gives notice as follows:</p> <p>that as from 28 days of the date of receipt of this order that the appointment of Brian Holden of 11 Tyersall Close, Ellesmere Park, Eccles, Manchester M30 9FS as trustee of The Main Top Hotel and Leisure Limited Retirement Benefits Scheme will be terminated pursuant to section 7(5)(c) of the Pensions Act 1995.</p>

7.	Decision Maker
	The determination which gave rise to the obligation to give this Determination Notice was made by the Determinations Panel.

8.	Scheme details	
	Type of scheme	Defined contribution
	Status of scheme	Open
	Membership	2
	Size of fund	Nil
	Contracted in/out	Unknown

9.	Scheme trustees		
	Name	Period of office	Status of trustee
1.	Andrew Bond	From 10 October to 14 July 2004	Individual
2.	Stephen Eric Bond	From 10 October to 14 July 2004	Individual
3.	Moat Trustees Limited	From 31 January 2003 to 19 March 2003	Independent Trustee, Opra appointed with exclusive powers
4.	Brian Holden	From 19 March 2003 to present date	Independent Trustee, Opra appointed with exclusive powers.

10.	Scheme advisers			
	Type	Name	Period of office	Company
1.	Insurer	Scottish Equitable plc	Unknown	Scottish Equitable plc

11.	Employer	
	Name	The Main Top Hotel & Leisure Limited
	Address	15 Mersey Road Widnes Cheshire WA8 ODG
	Nature of business	Hotel, Public House and Leisure
	Number of employees	Unknown

12.	Important Notices
	This Determination Notice is given to you under sections 96(2)(d) of the Act. The following statutory rights are important.

13.	Referral to the Pensions Regulator Tribunal
13.1	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 sent to you to

<p>13.2</p>	<p>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: 15-19 Bedford Avenue, London WC1B 3AS (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.</p> <p>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 at The Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW.</p>
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Signed: **Geoffrey Fitchew**.....

Chairman: **Geoffrey Fitchew**.....

Date: 19th December 2005