

	DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)	The Pensions Regulator case ref: 1316/05
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Ericsson Employee Benefits Scheme	
To:	Mr David John Foster
To:	Ericsson Employee Benefits Scheme Limited
Of:	c/o Rodney Jagelman Law Debenture Pension Trust Corporation plc Fifth Floor 100 Wood Street London EC2V 7EX
To:	Ericsson Limited
Of:	Midleton Gate Guildford Business Park Guildford Surrey GU2 8SG
To:	Telefonaktiebolaget LM Ericsson
Of:	Group Function Human Resources & Organisation Torshamnsgatan 23, Kista SE-164 83 Stockholm Sweden
Date:	20 November 2006

TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 15 November 2006.

1.	Determination
1.1	<p>An application by the Regulator for the prohibition of David John Foster from being a trustee of trust schemes in general. The Regulator submits that David Foster’s conduct as a director and chairman of Ericsson Employee Benefits Scheme Limited, a corporate trustee, indicates that he is not a fit and proper person to be a trustee of trust schemes in general.</p> <p>In the event of such a prohibition order being made, the Regulator intends to publish a report, under the terms of Section 89 of the Pensions Act 2004, of the consideration given by it to the exercise of its functions in relation to this case and the results of that consideration.</p>
1.2	The application was granted.

2.	Procedure Followed: Standard								
2.1	By its Warning Notice dated 26 October 2006 (“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 parties are directly affected by this determination:</p> <table border="0"> <tr> <td>1. Mr David John Foster</td> <td>In his role as former director of the corporate trustee – Ericsson Employee Benefits Scheme Limited</td> </tr> <tr> <td>2. Ericsson Employee Benefits Scheme Limited</td> <td>In its role as corporate trustee</td> </tr> <tr> <td>3. Ericsson Limited</td> <td>In its role as sponsoring employer of the scheme</td> </tr> <tr> <td>4. Telefonaktiebolaget LM Ericsson</td> <td>In its role as Swedish parent company</td> </tr> </table> <p>(collectively referred to as “the directly affected parties”)</p> <p>These directly affected parties were entitled to make representations to the Pensions Regulator about the determination.</p>	1. Mr David John Foster	In his role as former director of the corporate trustee – Ericsson Employee Benefits Scheme Limited	2. Ericsson Employee Benefits Scheme Limited	In its role as corporate trustee	3. Ericsson Limited	In its role as sponsoring employer of the scheme	4. Telefonaktiebolaget LM Ericsson	In its role as Swedish parent company
1. Mr David John Foster	In his role as former director of the corporate trustee – Ericsson Employee Benefits Scheme Limited								
2. Ericsson Employee Benefits Scheme Limited	In its role as corporate trustee								
3. Ericsson Limited	In its role as sponsoring employer of the scheme								
4. Telefonaktiebolaget LM Ericsson	In its role as Swedish parent company								
2.3	Following the issue of the Warning Notice Mr David John Foster and Rodney Jagelman of Law Debenture exercised their right to make representations to the Pensions Regulator.								
2.4	The Pensions Regulator has taken those representations into account and has considered those materials carefully but has nevertheless determined to take the action as detailed in 7 below for the reasons set out in 6 below.								

3.	Relevant Statutory Provisions/Legislation
	<p>Section 3 of the Pensions Act 1995 (as amended by Section 33 of the Pensions Act 2004) – ‘Prohibition Orders’ states:</p> <p>(1) The Authority may by order prohibit a person from being a trustee of:</p> <ol style="list-style-type: none"> a particular trust scheme a particular description of trust schemes, or trust schemes in general, <p>if they are satisfied that he is not a fit and proper person to be a trustee of the scheme or schemes to which the order relates.</p> <p>Section 89 of the Pensions Act 2004 – ‘Publishing report etc’ states:</p>

	<p>(1) The Regulator may, if it considers it appropriate to do so in any particular case, publish a report of the consideration given by it to the exercise of its functions in relation to that case and the results of that consideration.</p> <p>(2) The publication of a report under subsection (1) may be in such form and manner as the Regulator considers appropriate.</p> <p>(3) For the purposes of the law of defamation, the publication of any matter by the Regulator is privileged unless the publication is shown to be made with malice.</p> <p>A Prohibition Order may take effect immediately after the determination.</p> <p>Section 5(1) – Regulator’s objectives The main objectives of the Regulator in exercising its functions are –</p> <ul style="list-style-type: none"> (a) to protect the benefits under occupational pension schemes of, or in respect of, members of such scheme (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. <p>Section 100 of the Pensions Act 2004 - Duty to have regard to the interests of members etc</p> <p>(1)The Regulator must have regard to the matters mentioned in subsection (2)-</p> <ul style="list-style-type: none"> (a)when determining whether to exercise a regulatory function- <ul style="list-style-type: none"> (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. <p>(2)Those matters are-</p> <ul style="list-style-type: none"> (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.
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4.	Relevant Guidance
	The Pensions Regulator has published guidance on the power to prohibit a trustee. This guidance was attached to the Warning Notice as Appendix A.
4.1	Legal Advice: The legal advisor informed the Determinations Panel that the standard of proof required in this case was ‘on the balance of probabilities.’ The legal advisor further quoted from Street & Maxwell’s Law of Pension Schemes in relation to the duty of trustees and conflicts of interest as follows:

	<p>“Some employers, particularly the management of overseas holding companies, are not above expecting their employees or directors, who are trustees of pension schemes in which the employer is concerned, virtually to act as the agent of the employer when exercising a discretion under the scheme. This requirement is of course wholly wrong. Any such pressure should ideally be disclosed to co-trustees at the outset at the acceptance of the trust, or, whenever it occurs, the trustee should ignore his employer’s requirements. If circumstances make him unable to ignore them, he should not accept the trusteeship, or should resign as appropriate. The same principles apply to the appointment and conduct of directors of corporate trustees.”</p>
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<p>5.</p>	<p>Background to the Application</p>
	<p>1. Background</p> <p>(a) The Ericsson Employee Benefits Scheme (‘the scheme’) is a defined benefit, contracted out pension scheme with 4,908 members (mostly deferred) having assets of approximately £186 million and an ongoing funding deficit in the region of £48 million as at 31 March 2005.</p> <p>(b) The principal sponsoring employer of the scheme is Ericsson Limited (‘Ericsson UK’), the British subsidiary of the Swedish parent company, Telefonaktiebolaget LM Ericsson (‘Ericsson Sweden’), a leading telecommunications company. The scheme has a corporate trustee, Ericsson Employee Benefits Scheme Limited (‘EEBS Ltd’).</p> <p>(c) EEBS Ltd is a subsidiary of Ericsson Sweden and has two shareholders being Ericsson UK and Ericsson (Holdings) Limited, each holding one £1 share. As principal employer, Ericsson UK may appoint or remove trustees by deed.</p> <p>(d) On 22nd November 2002 David Foster was appointed one of five directors of EEBS Ltd. By letter dated 13th July 2004 the appointment of David Foster as Chairman of the Board of EEBS Ltd (‘Chairman of Trustees’) was confirmed by Philip Hooper, Director HR and Organisation (Market Unit North West Europe) of Ericsson UK.</p> <p>(e) During the period from October 2004 to May 2005 a proposal was presented to Ericsson Sweden, inviting the latter to approve additional specific funding for the temporary enhancement of scheme transfer values, with a view to encouraging deferred scheme members to voluntarily transfer their benefits out of the scheme. It was proposed that scheme transfer values should be increased from 76% to 110% of the normal CETV for deferred members transferring out of the scheme. The objective of the proposal was to reduce long term scheme liabilities.</p>

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- (m) On 11th April 2006, at a time when the Regulator considered that there was no longer any risk to scheme assets, the appointment of Law Debenture as independent trustee of the scheme was terminated by the Determinations Panel, following agreement between the Regulator, Ericsson UK and Ericsson Sweden to seek a reversion to the normal running of the scheme by EEBS Ltd. The termination took effect 28 days after receipt by directly affected parties of the termination order dated 12th April 2006.
- (n) On 2 June 2006 Law Debenture were appointed by Ericsson UK as a director of the corporate trustee, with a representative from Law Debenture acting as Chairman of the Board of Trustees.

2. Submission in relation to David Foster

- (a) The Regulator submitted that David Foster's actions as Director of EEBS Ltd and Chairman of the Trustees were improper on three counts.
- (b) Firstly, the Regulator submitted that between April 2004 and December 2005 David Foster knowingly provided false information to Ericsson Sweden about the executive pension members' contractual entitlement.

This involved David Foster telling Ericsson Sweden that executive members had an existing benefit entitlement of 1/30th accrual for each year of scheme service and unreduced benefits from the age of 50, when they were in fact entitled to less favourable existing benefits. The combined value of this false representation of the executives' entitlement was to artificially increase the total executives' transfer values by as much as £13.4 million from the statutory transfer values.

The Regulator submitted that David Foster provided this information in full knowledge that the genuine executive entitlement was less favourable and that it would have a detrimental effect on the funds that were available to deferred members of the scheme. When challenged by scheme advisers about the damaging effect on the wider scheme membership, David Foster also misled scheme advisers about what he had told Ericsson Sweden.

Two of the Executive members subsequently transferred out of the scheme on enhanced terms before the Regulator's appointment of an Independent Trustee. These improper transfers have since been returned to scheme funds.

- (c) Secondly, the Regulator submitted that David Foster acted improperly in failing in his duty to other directors of EEBS Ltd ('the trustee directors') by excluding two of them from involvement in decisions

	<p>about the offer to executive members of the pension scheme and the proposal to enhance executive members' pensions.</p> <p>It is also alleged by the Regulator that in order to facilitate his efforts to disguise the executive section of the scheme, David Foster deliberately misled the trustee directors. David Foster told them that the company contribution was entirely for deferred members, when he knew that the cost of the executive offer would encroach considerably on the funds available to deferred scheme members.</p> <p>(d) Thirdly, it is submitted by the Regulator that David Foster failed to exercise proper discretion and consideration of the wider scheme membership when, in March 2005, he accepted a second deferred pension despite having transferred all of his benefits out of the scheme in 2003.</p> <p>David Foster's second pension represented the reinstatement of his full service at a 1/30th accrual rate. The Regulator submitted that David Foster's acceptance of this pension, given that he had already transferred out his full benefits previously, was inappropriate and to the detriment of the majority non-executive scheme members.</p> <p>The Regulator submitted that David Foster's intervention in the augmentation process, whereby he attempted to ensure that he received the most beneficial augmentation terms available, was ill-befitting the responsibilities of the Chairman of the Trustees.</p> <p>The Regulator further stated that David Foster failed to inform the other trustee directors that his pension had been augmented thus demonstrating again his concealing of information from his fellow trustee directors.</p> <p>As a result of the above the Regulator had felt it appropriate to apply for Mr David Foster to be prohibited as a trustee of all trust schemes.</p>
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6.	Facts and Matters Relied Upon
	<ol style="list-style-type: none"> 1. David Foster misrepresented the current executives' benefit entitlement to Ericsson Sweden knowing that it was excessively favourable to executive scheme members. He presented the executive terms of benefit as assertions of existing entitlements rather than as proposals requiring approval from Ericsson Sweden. These actions call into question his honesty and integrity. The above circumstances also give rise to concern about his competence and capability to properly understand and fulfil his responsibilities as a trustee director. 2. In providing this incorrect information to Ericsson Sweden, David Foster knew that implementing the enhanced benefits for the executive scheme members would have a detrimental effect on the funds that were

	<p>available to the non-executive members of the scheme.</p> <ol style="list-style-type: none"> 3. David Foster failed to identify and handle the conflict of interests arising from his roles as Chairman of the corporate trustee and as Human Resources Manager. In his dealings with his fellow trustee directors and with Ericsson Sweden he did not distinguish his dual roles and did not take appropriate action to avoid the conflicts of interest. 4. David Foster excluded his co-trustee directors from significant decisions about the scheme. He failed to communicate and involve the other trustee directors in relation to the executive section of the scheme with the result that they were not aware of the existence of the executive scheme, nor aware of the financial impact on the deferred members of the scheme. This gives cause for concern about his honesty and integrity. His actions also cause concern about his competence and willingness to understand the responsibilities of his role as trustee director and Chairman of the corporate trustee. 5. As Chairman of the corporate trustee, David Foster accepted an exceptionally favourable second deferred pension which potentially affected the financial interests of other scheme members. In doing so he failed to inform other trustee directors and seek their approval for the amount and impact of this substantial enhancement to his own pension entitlement. 6. David Foster failed, as Chairman of the trustees, to comply with the proper standards of governance, particularly in relation to clause 12 of the Definitive Trust Deed and rules of the scheme which states: "The Trustees' duties, powers and discretions are exercisable by resolutions of the directors of the Trustees, or where appropriate, of any committee (which may include non-directors) which the directors have appointed either generally or for any particular purpose, or by any duly authorised officer appointed for any general or particular purpose by the directors." 7. David Foster's actions and omissions as a Director and Chairman of the Ericsson Employee Benefits Scheme Limited were to the detriment of the majority non-executive scheme membership and did not comply with the required standards of governance of a trust based scheme. Accordingly it is determined that he is not a fit and proper person to be a trustee of trust schemes in general.
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7.	Conclusion: Details of Determination
	1. The Pensions Regulator hereby prohibits David John Foster from acting as a trustee of trust schemes in general with effect from 15 November 2006, pursuant to section 3 of the Pensions Act 1995 as amended by section 33 of the Pensions Act 2004.
	2. This Order prohibits David John Foster from exercising any functions as a trustee of trust schemes in general.

	3. This Order remains in effect unless and until revoked pursuant to section 33(3) of the Pensions Act 2004.
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8.	Decision Maker
	The determination which gave rise to the obligation to give this Determination Notice was made by the Determinations Panel.

9.	Scheme details	
	Type of scheme	Defined Benefit
	Status of scheme	Open
	Membership	4908 (at 31 March 2005)
	Size of fund	£186 million (at year ending 31 March 2005)
	Contracted in/out	Contracted out

10.	Scheme trustees	
	Name	Status of trustee
1.	Ericsson Employee Benefits Scheme Limited	Corporate Trustee
2.	The Law Debenture Pension Trust Corporation plc	Professional Trustee

11.	Scheme advisers	
	Type	Company Name
1.	Scheme actuary	Robert Sweet FIA, Cartwright Consulting Limited
2.	Investment Managers	Schroder Investment Management (UK) Limited
3.	Custodian	Schroder Investment Management (UK) Limited; Psolve Investments Limited
4.	Investment Advisers	Psolve Asset Solutions
5.	Administrator	UBSi Group
6.	Independent Auditor	MacIntyre Hudson

11.	Scheme advisers	
7.	Legal Adviser	Taylor Wessing

12.	Employer details	
	Name	Ericsson Limited
	Address	Midleton Gate, Guildford Business Park Guildford, Surrey GU2 8SG
	Nature of business	Telecommunications

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

14.	Referral to the Pensions Regulator Tribunal
14.1	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 given 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 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 9649). The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and The Pensions Regulator Tribunal Rules 2005 (SI 2005/690).
14.2	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.

Signed:	<i>Duncan Campbell</i>
Chairman:	Duncan Campbell.....
Date:	20 November 2006.....