



# Regulatory intervention report

Issued under section 89 of the Pensions Act 2004 in relation to Marcus Johnson, Lynda Turner and Andrew Stowers.

## Summary

Three professional trustees have agreed to never again act as trustees of occupational pension schemes thanks to action by The Pensions Regulator (TPR).

We formally started enforcement proceedings against them for attempting to make employer-related investments without the necessary legal and investment advice, and which evidenced insufficient trustee knowledge and understanding. We engaged with the parties and agreed a settlement that we felt achieved an excellent result without having to refer the case to the Determinations Panel to issue a Prohibition Order.

## Background

N W Brown Trustees Limited acted as a professional independent trustee for 23 schemes. On 15 November 2016 we were contacted by a diligent scheme administrator for one of those schemes, who had concerns about a transaction which appeared to be a prohibited employer-related investment of over £500,000 from that scheme to its employer. Although the trustees had signed a letter of comfort that stated they had obtained the necessary legal and investment advice, the administrator was not convinced that appropriate advice had been obtained as the trustees had attempted to make an investment in the employer only days earlier, which had also been denied. The individuals acting on behalf of N W Brown Trustees Limited were Marcus Johnson, Lynda Turner and Andrew Stowers.

### Illustrated summary



## Regulatory action

After the initial communication from the scheme administrator we engaged with N W Brown Trustees to discuss the proposed transaction with Mr Johnson, asking him to provide us with copies of any legal and investment advice that the trustees had obtained. While he initially agreed to this, the limited documents we received did not contain any legal advice and the sole piece of investment advice supported the conclusion that the proposed transaction was an employer-related investment.

We informed the trustees that we were considering using our injunction powers under s15 of the 2004 Pensions Act – powers that we had previously only used in relation to scams cases. We obtained an undertaking that they would not proceed with the transaction until they had provided us with evidence that they had obtained proper advice and, once this immediate risk to the scheme had been addressed, we opened a formal investigation into using our powers.

As part of this investigation, we concluded that the trustees not only lacked sufficient knowledge and understanding about whether the investment was even legal but also failed to get appropriate advice. We therefore concluded that we would formally start enforcement proceedings to prohibit the individuals responsible for these failings from being trustees.

We issued a Warning Notice on 24 October 2017, which set out how Mr Johnson, Ms Turner and Mr Stowers (collectively referred to as the respondents) were involved in this proposed transaction and not only lacked knowledge and understanding of employer-related investments, but also failed to obtain appropriate legal and investment advice on this proposed transaction.

## Outcome

While the respondents do not accept the case team's prohibition case, they were willing to enter into settlement negotiations to never be trustees of schemes again.

We obtained signed undertakings from the respondents confirming that they would not act as trustee of any occupational pension schemes again (with one exception, allowing Mr Johnson to remain a trustee of a family small self-administered scheme).

N W Brown Trustees Limited and its parent company N W Brown Group Limited confirmed that they would wind down or transfer all appointments to occupational pension schemes by the end of 2019 and would cease to offer trustee services in relation to occupational pension schemes.

As a result of these agreements we were satisfied that the risk to this and other schemes had been eliminated and therefore there was no need for costly and extensive litigation. However, if any of the undertakings are breached or if any new evidence comes to light that we were previously unaware of, we continue to reserve the right to pursue these proceedings in relation to prohibition and any criminal prosecution, or any other relevant enforcement action.

## Our approach

We expect trustees to act prudently and to recognise when they may need to take advice. Trustees who charge for their services or who hold themselves out to be experts (ie professional trustees) should show a higher standard of expertise than lay trustees. If they are making major decisions such as an employer-related investment yet lack sufficient knowledge and understanding and do not obtain proper advice, we believe this is significant enough to consider prohibiting them as trustees. Our **prohibition statement** ([www.tpr.gov.uk/-/media/thepensionsregulator/files/import/pdf/statement-prohibition-orders-july-2016](http://www.tpr.gov.uk/-/media/thepensionsregulator/files/import/pdf/statement-prohibition-orders-july-2016)) provides more detail about our expectations of lay and professional trustees, as well as when we will look to prohibit trustees.

We also expect administrators to be able to identify and challenge such requests from trustees to make transactions which appear to be employer-related loans (even if they are accompanied by letters of comfort detailing the advice they received) and to let us know about the proposals if they have any concerns.

## Timeline

**14 November 2016:** The scheme's trustees sign the letter of comfort for scheme administrator to transfer £500,001 from that scheme to the employer.

**16 November 2016:** TPR opens case.

**17 November 2016:** Trustees provide an undertaking stating that they will not proceed with the transaction.

**24 October 2017:** TPR issues a Warning Notice seeking the prohibition of Mr Johnson, Ms Turner and Mr Stowers.

**15 February 2018:** TPR receives representations from all Directly Affected Parties.

**13 December 2018:** TPR responds to representations.

**3 June 2019:** TPR receives undertakings from Mr Johnson, Ms Turner, Mr Stowers, N W Brown Trustees Limited and N W Brown Group Limited.

**The regulator's consideration and approach to individual cases is informed by the specific circumstances presented by a case, not all of which are referred to or set out in this summary report.**

This summary report must be read in conjunction with the relevant legislation. It does not provide a definitive interpretation of the law. The exercise of the regulator's powers in any particular case will depend upon the relevant facts and the outcome set out in this report may not be appropriate in other cases. This statement should not be read as limiting the regulator's discretion in any particular case to take such action as is appropriate. Employers and other parties should, where appropriate, seek legal advice on the facts of their particular case.



**Regulatory intervention report:** Marcus Johnson, Lynda Turner and Andrew Stowers

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