1. The Determinations Panel (“the Panel”) of the Pensions Regulator (“the Regulator”) has reviewed its determination made following a Special Procedure hearing on 13 June 2013 when xxxxxxx xxxxxxx xxxxxxx xxxxxx an independent trustee, Dalriada Trustees Ltd, was appointed with a vesting order.

Directly affected parties

2. The following parties are directly affected by this determination:

   Martin Brown  
   The current trustee

   Marley Administration Services Ltd  
   Scheme administrator

   Turnberry Wealth Management Ltd  
   The employer

   Margaret Brown  
   Co-director of TWM Ltd and trustee.

   Margaret Cartwright  
   Employee and co-signatory to pension schemes

   Dalriada Trustees Ltd  
   The new trustee

At the time of the initial special procedure hearing the Regulator did not know that Mrs Brown was also a trustee. She has, however, always been a directly affected party by virtue of her role as co-director of Turnberry Wealth Management Ltd.
Background

3. This is the compulsory review of the decision taken by the Panel on 13 June 2013 to appoint an independent trustee, Dalriada Trustees Ltd.

4. The decision taken at the special procedure hearing followed serious concerns being raised by the Regulator regarding the Scheme. The Regulator was concerned that the Scheme displayed many indicators that it was being used as a vehicle for pension liberation fraud and at the special procedure hearing relied, in particular, on the following:

i. XXXXXXXXXXXX XXX XXXXXX XXX XXX XXXXXX XXX XXX XXXXXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXXXXX
Compulsory Review Determination

7. Having completed the compulsory review, the Panel determined to confirm the determination referred to in paragraph 1 above, and to confirm the Orders made on 13 June 2013 under sections 7 - 9 of the Pensions Act 1995.

8. In reaching its decision, the Panel considered representations received from xxxxxxx on behalf of Mr Brown, xxxxxxx xxxxxx on behalf of Dalriada Trustees Ltd and from the Regulator’s case team.

Reasons for Decision

9. The Panel gave careful consideration to the issues raised and 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. It determined to uphold its previous determination for the following reasons.

10. Xxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xxxxxx xx xx xxx xxxx xxxxx xxxxx xxxxxx xxxxxx xxx xxxxxxxxx xx xx xxx xxxxx xxxxx xxx xxxxxx xx xx xxx xxxxxxxxx xx xx xx xx xxx. Xxx xxx xxxx xxx xxx xxxxxxxxx xxxxxxx xx xxx xxx xx xx xxx xxxxxxxxx xxxxxxx xx xxxx xxx xxxxxx xxx xx xxx xxxxxxxxx xx xx xxx xxxxx xxxxxxxxx xx xxx xx xxx. Xxxx xxx xxx xxxxxxxxx xxxxxxx xx xxx xxx xxxxxxxxx xx xx xx xx xxxxxxx xxxxxxxxxx xx xxxx xxxxxxx. The Panel noted that Mr Brown, xxxxxxx xxx done nothing to allay concerns about the investment of the Scheme’s assets and therefore the concerns relating to diversification and security of the investments remain.

11. At the special procedure hearing, the Panel gave significant weight to the evidence of investments being made in assets inappropriate for an occupational pension scheme. At the time of the initial determination, there was limited evidence of specific investments in inappropriate, high-risk assets. The Panel noted that, following receipt of Dalriada’s representations, there is further evidence in relation to the xxxxxx xxxxx and xxxx xxxxxx investments. From the Scheme bank statements, Dalriada have identified a payment to xxxxx xxxxx in an amount of £2,684,000 to the xxxx xxxx and of £125,000 to xxxx xxxx. Given these payments the Panel remained concerned both as regards whether there had been appropriate diversification of investments, and the lack of documentary evidence/investment advice in relation to these payments. Xx xxxxxxxxx xx xx xxxxxx xxxxxxxxx xxxxxxxxx xxxxxxxx xx xxxxxx xxxxxxxxx xx xxxx xxxxxxxxx xxxxxx xx xxxxxx xxxxxxxxxx xx xxx x xxxxxxx. The Panel noted that Mr Brown, xxxxxxx xxx done nothing to allay concerns about the investment of the Scheme’s assets and therefore the concerns relating to diversification and security of the investments remain.
12. In its initial determination the Panel was also strongly influenced by the evidence about pension liberation, which by its nature has the implication that trustee duties are not being complied with. Mr Brown's representations for the compulsory review disputed the relevance of evidence not directly relating to the TWM scheme. In the Panel's view, this evidence was relevant. XXXXXX xxx xxxxx xxxxxx xxxxxxxx xxx xx xxx xx xxxxxxxx xxxxxxxx xxx xx xxx xxxxxxxxxxxxxx xxx xx xxx xx xxxxxxxx xxxxxx xxxxxxxx xxx xx xxxxxxxx xxxxxx xxxxxxxx xx xxx xxxxx xx xxxxxxx xxxxxx xxxxxxxx xxx xx xxx xxxx xxxxxxx xxxxxxxx xxxxxx. This was particularly so where there was no independent scrutiny of the trustee's actions and given the evidence submitted by the Regulator of a very large number of schemes administered by Marley Administration Services and which all have a limited number of scheme addresses, scheme trustees and employer addresses.

13. Similarly, the Panel was not prepared to ignore the evidence relating to XXXXX XXXXXXX Q&A document. The Panel was not convinced by Mr Brown's response that this document had no bearing on the scheme in question, given that XXXXX XXXXXXX identified himself as associated with TWM Ltd, and that Mr Brown is associated with all the schemes administered by Marley Administration Services.

14. Questions about Mr Brown's knowledge and understanding of the role of a pension fund trustee and about registration requirements were considered as additional matters supporting the Panel's decision to XXXXX XXXXX XXXXX appoint Dalriada as trustee rather than as the primary reason for the decision. Mr Brown's representations regarding registration of the Scheme with TPR were accepted by the Panel. The Panel also noted Mr Brown's account of his interaction with the trustee toolkit, but was conscious that no evidence was submitted in support of this account. In the Panel's view the concerns about knowledge and understanding were wider, and some of those concerns had been reinforced by confusion in the deeds of the Scheme between the nature of occupational pension schemes and personal pension plans, by the absence of independent oversight of the activities of Mr Brown in his multiple roles, by the apparent absence of any business activity associated with the employer registered at that same address and by Mr Brown's incomplete account of the documentation held by the Scheme.

15. The issues raised in Mr Brown's representations relating to his authorisation by the FCA were noted but the Panel had made no presumption about the currency of Mr Brown's FCA authorisation at the special procedure stage.

16. The Panel was concerned that there may have been a breach of s.255 of the Act which requires schemes to limit activities to those relating to providing retirement benefits. The Panel noted that Mr Brown stated that he had fully complied with his obligations but, given the Panel's concerns regarding pension liberation, it was not in a position to say that there had
been no breach. In any event, breach of s.255 was not decisive in the Panel’s decision to appoint Dalriada.

17. The Panel took note of the fact that it was now known that Mr Brown was not the sole trustee of TWM. Following both the representations of Mr Brown and Dalriada, it is clear that Mrs Margaret Brown is also a trustee.

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

Chairman : Alasdair Smith
Date : 29 October 2013
Appendix 1

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 103 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 signed by you and filed with a copy of this Final Notice.

The Tribunal's address is:
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 ‘Reference Notice (Financial Services)’ can be found at:

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