

**DETERMINATION NOTICE**  
**under section 96(2)(d) of the**  
**Pensions Act 2004 (“the Act”)**

The Pensions  
Regulator  
case ref:  
2535/05

Scheme: Horizon **Pension** Plan (scheme X)

**To:** Mr Peter Rees, **WWH Pensions Trustees Ltd** (Independent Trustee)

**Of:** 100 Fetter Lane

London

EC4A 1BN

**To:** Mr George Purdie (tr A)

**Of:** Merlins Brook

Park RoadI

Addington

West Malling

Kent

ME19 5BQ

**To:** Mr Neil Alexander Mcleod Campbell (tr B)

**Of:** 19 Soleoak Drive

Sevenoaks

Kent

TN13 1QD

**Date:** 20 December 2006

**TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 14 December 2006**

**1. Determination**

**1.1** An application by the Regulator for the appointment of an independent trustee to the scheme under section 7(3)(c) of the Pensions Act 1995 to secure the proper use or application of scheme assets and for the order of appointment to provide for:

(a) removal of the appointed trustee on 28 days notice in accordance with section 7(5)(c);

(b) the fees and expenses of the trustee appointed to be paid out of the

employer has already been liquidated; and

- (c) the trustee appointed to have exclusive powers in accordance with section 8(4)(b).

The Regulator makes this application on the grounds that it is necessary to do so because:

- (a) A recent investment was imprudent and was enacted in a very short space of time. The **trustees** state they are intending to adopt an active investment strategy which could leave the scheme open to unacceptable risk.
- (b) There are conflicts of interest.
- (c) The **trustees** took advice from advisers not properly appointed.
- (d) The **trustees** appear to have provided materially inaccurate information and have been dilatory in providing full responses to the Regulator.
- (e) There have been a number of breaches of the Pensions Act 1995.

**1.2** The application was refused.

## **2. Procedure Followed: Standard**

**2.1** By its Warning Notice dated 16 August 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** The Regulator determined that the following parties are directly affected by this determination:

- |   |   |
|---|---|
| 1. <b>WWH Pensions Trustees Limited</b> | In its role as the independent trustee appointed by the insolvency practitioner |
| 2. George Purdie                        | In his role as an individual trustee (tr A)                                     |
| 3. Neil Alexander Macleod Campbell      | In his role as an individual trustee (tr B)                                     |

(collectively referred to as “the directly affected parties”)

These directly affected parties were entitled to make representations to the Pensions Regulator about the determination.

**2.3** Following the issue of the Warning Notice **WWH Pensions Trustees Limited** (independent trustee) exercised its right to make representations to the Pensions Regulator.

2.4 The Pensions Regulator has taken both the written and oral representations of the directly affected parties into account and has considered those materials carefully and has determined to take the action as detailed in 6 below for the reasons set out in 6 below.

### 3. Relevant Statutory Provisions

See Appendix 1 at page 16.

### 4. Background to the Application

#### 1. Background to scheme

- (a) This is a closed, defined benefit, contracted out scheme and as at 5 April 2002 the size of the fund was £5,377,000. There was a deficit of £463,000 which represented a funding level of 92% on the Minimum Funding Requirement basis. The employer company, Horizon Exploration Limited (Co A), (Co A) went into administration on 24 September 1999 and benefit accrual and contributions ceased on 30 September 1999. The **trustees** did not commence the winding up of the scheme at that time. The Regulator does not know why wind up did not commence.
- (b) **WWH Pensions Trustees Limited** (independent trustee) was appointed in 1999 under section 23 of the Pensions Act 1995 when the principal employer went into voluntary liquidation.
- (c) In 2004 Opra dealt with the **trustees'** intention to stop quoting Cash Equivalent Transfer Values (CETVs) as the scheme would soon be going into wind up. Opra granted the **trustees** this compliance dispensation provided that the wind up of the scheme was commenced within a satisfactory time period. The **trustees** were asked to notify Opra of any significant problems or delays that were encountered. No such reports were sent to either Opra or the Regulator, despite the fact that wind up had still not commenced.

#### *Grounds put forward by the Regulator in the Warning Notice*

#### 2. Imprudent investments

- (a) On 18 January 2006 the scheme actuary at KPMG made a report, protected by section 70 of the Pensions Act 2004, to the Regulator. The report concerned a loan in July/August 2005 from scheme assets of approximately £1.25 million (\$2m) to a company, Laurentian Holdings Limited (Co B), based in the British Virgin Islands. This loan represented about 20% of the scheme assets of £5.4 million at that time. The loan to the company was supported by a second charge on MV CGG Laurentian, a vessel owned by LHL (Co B). The vessel was

purchased for \$11.5m. A first charge amounting to \$6.5m had already been placed on the vessel by the Clydesdale Bank and the investment by the **trustees** constituted a second charge of \$2m. KPMG (scheme actuary) considered the above investment to be counter to what it understood to be the current Statement of Investment Principles (SIP).

- (b) The report also stated: *“The **trustees** have taken the decision to run the Plan as a closed scheme and not to trigger wind up.*

*As a result, benefits are continuing to be paid in full when members reach retirement, and unless investment returns are significant over the future, there will be insufficient assets to provide the benefits for all members. We have been approaching the **trustees** as and when a member approaches retirement with details of their likely full benefits available, and have been instructed by the **trustees** each time to continue to calculate and administer benefits in full.*

*Furthermore, expenses are continuing to be incurred and met. These expenses include our own fees and those of the **trustees**. Whilst we have not felt able to question the level of these fees, our experience of professional **trustees**’ costs in general suggest that the **trustees**’ fees are significant relative to the activity that we are aware of on the Plan.”*

- (c) The Regulator contacted the scheme actuary and administrators and they confirmed that a sum of money matching the description of the funds involved in the investment had been removed from the fund during August 2005. (The **trustees** wrote to the Regulator on 3 August 2006 stating that the above mentioned loan had been repaid.)
- (d) On 8 February 2006 the Regulator wrote to the **trustees** requesting details of the **trustees**’ intentions regarding the winding up of this scheme; a copy of the current SIP and full details of the current asset mix.
- (e) The **trustees** replied on 27 February 2006 stating: *“**Wind Up** Please note that the **trustees** of this scheme remain reluctant to place it into formal wind up.*

*The **trustees** have now been advised that the scheme will not qualify for PPF support and as such the status of the scheme as a closed scheme has recently been reviewed by the **trustees** who have concluded that no present change in the status of the scheme is immediately required.*

*As we have advised you previously, the **trustees** do recognise that there is no absolute right or wrong answer with regard to the question of deferral. However, the **trustees** are of the view that by pursuing an active prudent investment strategy they can go some way to reducing the current actuarial deficit thereby increasing **pension** benefits for the members. In the alternative, if the **trustees** were to lock into the present position by proceeding to immediate wind up then although matters could not deteriorate there would be no opportunity to make*

members.”

- (f) The **trustees** also advised that they had written to all scheme members on 31 January 2005 seeking their views on whether or not the scheme should proceed to immediate wind up or continue to operate as a closed scheme. From 59 responses received, only 7 members wished to proceed to immediate wind up. The **trustees** stated: *“In all the circumstances, therefore, the **trustees** are of the view that their decision to continue to operate the scheme in its present mode as a closed scheme is supported by the membership although the situation is being kept under constant review as it is the **trustees**’ aim to place the scheme into wind up eventually but at a time when it is considered [to be] in the best overall interest of the membership to do so.”*
- (g) The **trustees** supplied a copy of their revised SIP and details of the fund’s current asset mix.
- (h) Information provided by KPMG (scheme actuary) and the **trustees** showed that one of the **trustees**, Mr Purdie (tr A), brought the possible investment opportunity in the vessel to the attention of the other **trustees**. The **trustees** only had one week from the date of being informed of an opportunity to invest in the vessel to the date by which the investment had to be concluded. No information was provided to indicate why there was such a short window of opportunity.
- (i) The **trustees** sought investment advice from Park Caledonia Associates Limited (PCA) (finance co) which they duly provided, although it appeared to be based on incomplete information supplied to them by the **trustees**. PCA (finance co) acknowledged that the proposed investment would breach the scheme’s then current SIP. PCA (finance co) did not discuss why the SIP, which reflected the scheme’s frozen status, was framed in the way it was and whether this had any bearing on the proposed investment. The SIP had been prepared by KPMG (scheme actuary) and suited a scheme that no longer had a sponsoring company and was heading for wind up. This fundamentally affected the merits of the investment that the PCA (finance co) was advising on.

### 3. Conflicts of Interest

- (a) The vessel invested in, MV CGG Laurentian, is managed by a company called Techmarine International plc (Co C) based in Darenth House, Otford, Kent
- (b) George Purdie (tr A) (scheme trustee and deferred member) is a current director and shareholder of TI (Co C).
- (c) Neil Campbell (tr B) (scheme trustee and deferred member) is a current shareholder and former secretary and director of TI (Co C).
- (d) The vessel’s previous owner was Strandraven Limited (Co D) also based at Darenth House, Otford, Kent.

- (e) The vessel was sold to LHL (Co B) on 22 August 2005. LHL (Co B) is a company registered in the British Virgin Islands but has a base of operations in the UK at Darenth House, Otford, Kent. As the company is registered in the British Virgin Islands it is not possible to determine the names of the directors and shareholders. A letter from

PCA (finance co) to the **trustees**, dated 12 August 2005, states that one of the **trustees**, George Purdie (tr A), is also serving as a director of LHL (Co B). PCA (finance co) also advised that the ability of the **trustees** to force early repayment of the loan was, on the face of it, limited and would ultimately be governed by LHL's (Co B) financial position. PCA (finance co) did consider the conflict of interest suffered by Mr Purdie (tr A) as both a trustee of the scheme and a director of the borrower but simply viewed this conflict as mitigating the risk element and protecting the members.

- (f) The appointed legal advisers to the scheme are Beachcroft Wansbroughs (now known as Beachcroft LLP) (legal co 1). One of the partners of Beachcroft Wansbroughs, Peter Rees (legal co 1) is also a director of **WWH** (independent trustee). A letter dated 18 July 2005 from Beachcroft Wansbroughs (legal co 1) to PCA (finance co) states that they act for the **trustees**. This letter was signed by Peter Rees. (Mr A). The Regulator has copies of invoices from the **trustees** signed by Peter Rees (Mr A) as trustee of the scheme. It would seem that Peter Rees (Mr A) is acting as both a trustee of, and legal adviser to, the scheme which constitutes a serious conflict of interest.
- (g) In view of the above, the Regulator is of the view that there is a significant conflict of interest for all **trustees** and possible personal gain as a result of this investment in relation to George Purdie (tr A) and Neil Campbell (tr B).

#### **4. Trustees taking advice from inappropriate persons**

- (a) On 8 February 2006 the Regulator wrote to **WWH** (independent trustee) asking for information on the **trustees'** current intentions with regard to the deferral of the winding up of the scheme and the investment strategy.
- (b) On 30 March 2006 the Regulator asked **WWH** (independent trustee) for details on the investment in the MV CGG Laurentian vessel; a copy of the appointment letter of PCA (finance co) and for further details on why the **trustees** considered that PCA (finance co) was a suitable replacement for the scheme's previous investment manager, KPMG.
- (c) At no point on their website do PCA (finance co) claim expertise in advising **pension** scheme **trustees** on investment issues, nor do they claim to have expertise in shipping vessels or ship finance. PCA (finance co) appears to be an IFA specialising in personal finance. The advice obtained by the **trustees** from PCA (finance co) is solely based on information provided by the **trustees**. It appears that inadequate information was provided by the **trustees** as PCA (finance co) mention in their letter dated 12 August 2006 that they had not

been provided with a number of other documents.

- (d) PCA (finance co) comment approvingly on the high interest rate offered by this loan, without considering why the borrower would not prefer to raise cheaper finance elsewhere. In other words, PCA (finance co) have not considered that the **pension** scheme may be the only party prepared to lend to the borrower and that the strength of the covenant of the borrower, and its ability to repay this loan would need to be considered very carefully. This is a vital factor in the context of a scheme with no sponsoring employer and which is heading ultimately for wind up and the purchase of annuities

heading ultimately for wind up and the purchase of annuities.

- (e) PCA (finance co) seem to have accepted at face value the suggestion by the borrower that they would set up a ring fenced sinking fund to redeem the loan, or would make partial repayments while paying interest on the original gross value of the loan. This raises questions about preference. There is no suggestion that the lender with the first charge would need to be consulted and give consent. They do not appear to have considered their advice in the context of investments for pensions.
- (f) The **trustees** have stated that Cripps Harries Hall (legal co 2) has not been appointed as legal advisors in accordance with the Pensions Act 1995 but that ad hoc advice has been obtained when it has been perceived that there may be a conflict of interest with Beachcroft Wansbroughs (legal co 1).
- (g) The Regulator asked for a copy of the appointment letters for the current legal and investment advisers and after considerable delay, these were finally received (see information under next section heading). The advice given by Cripps Harries Hall (legal co 2) does not address a number of relevant issues in connection with the deferral of the wind up, in particular whether the procedures set out in the various provisions of the trust deed relating to winding up were in fact followed and whether the **trustees** ought to consider the legal authorities in connection with the duties of a trustee towards the beneficiaries of a trust.

***5. The trustees appearing to have provided materially inaccurate information and having been dilatory in providing full responses to the Regulator***

- (a) The **trustees** wrote to the Regulator's predecessor, Opra, on 21 March 2003 and stated that they expected the scheme to commence winding up within the next six months: *"That is on or before 20 August 2003."*
- (b) Opra corresponded with the **trustees** during the course of 2004 with regard to delays in commencing the winding up of the scheme; failure to implement a Schedule of Contributions and the **trustees'** decision to suspend the quotation of CETVs. The **trustees** have stated, and still state, that they are deferring the wind up of the scheme because they believe it to be in the interests of the members to do so and that the majority of members agree with this course of action. The **trustees**

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were also advised by KPMG (scheme actuary) in 2004 that they should consider winding up the scheme. Opra warned the **trustees** of the dangers in not proceeding to wind up the scheme, and the case was closed and a letter to the **trustees** dated 6 December 2004 stated that Opra investigations were now concluded and the **trustees** were granted a compliance dispensation on the basis that the scheme was to be wound up without further delay. The **trustees** were explicitly asked to report to the Regulator should any significant problems or delays be encountered. This has not been done.

- (c) The Regulator wrote to **WWH** (independent trustee) on 8 February 2006 requesting information and a reply was received dated 27 February 2006. The Regulator considers the reply to be incomplete as it fails to identify the loan. In addition, although it refers to the increase in the value of the assets it does not address the question of

whether those assets are matched to the liabilities of the scheme, nor to any divergence from the current SIP.

- (d) The members have approved the **trustees'** proposal for running the scheme as a closed scheme. It is clear that the members' approval was based on a letter to members which suggested that the scheme should continue as a closed scheme based on the assumption that if it did so, the scheme would receive the protection of the PPF. The **trustees** have not taken account of the failure of the scheme to qualify for the PPF or the FAS nor have they re-canvassed the members. However, the **trustees** continued to use the support of the membership as grounds for their continued policy of running the fund as a closed scheme, when it was clear that the membership made their decisions on a set of circumstances which did not apply.
- (e) On 30 March 2006 the Regulator wrote to the **trustees** requesting information and relevant documents to be provided by 21 April 2006. On 15 May 2006 the Regulator phoned the **trustees** to enquire as to the whereabouts of the documents and was told that a letter and a separate folder of information had been sent. These were not received by the Regulator. The Regulator then asked the **trustees** to send the letter and documents by recorded delivery to arrive the following day. The documents arrived on 18 May 2006 with a letter dated 27 April 2006.
- (f) Upon examining the letter and the large quantity of documents provided, it became apparent that not all of the information requested in the Regulator's letter to the **trustees** dated 30 March 2006 had been supplied. Instead, a quantity of detailed information about the vessel, such as shipping radio licences and schematics regarding the echo-sounding equipment had been sent.
- (g) On 1 June 2006, the Regulator phoned the **trustees** to enquire about the missing information and was told that one of the **trustees** would phone back shortly.
- (h) On 6 June 2006, as no phone call had been received from the **trustees**, the Regulator wrote to the **trustees** asking for the missing

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information to be provided by 16 June 2006.

- (i) As this letter was not acknowledged by the **trustees** and the information requested was not received by the deadline of 16 June 2006, the Regulator wrote to the **trustees** again on 20 June 2006 with a further request for the information (by 27 June 2006) and noting with some concern that the **trustees** had yet again not responded to one of the Regulator's letters. This missing information was finally received on 28 June 2006, a period of nearly three months to provide all the requested basic information.
- (j) The **trustees** provided a tabled breakdown of their fees and expenses since they were appointed, and also the fees and expenses of the scheme's advisers in the large folder of information provided on 18 May 2006.
- (k) On 1 June 2006, the scheme administrators, KPMG (scheme actuary) provided photocopies of actual invoices signed by Peter Rees (Mr A) on behalf of the **trustees** and Beachcroft Wansbroughs (legal co 1). Despite enquiries with KPMG (scheme actuary), it is unclear why the invoice numbers differ; however, the Regulator has compared dates

in order to reconcile the two sets of records. It is not clear why there is a discrepancy between the two sets of information.

- (l) It is noted that there is a large discrepancy between the amounts of legal fees that **WWH** (independent trustee) claim have been charged to the scheme and the amount of legal fees claimed on the photocopied invoices. This is shown highlighted in the comparison table prepared by the Regulator's case worker.

#### 6. Breaches of the Pensions Act

- (a) A revised Statement of Investment Principles was adopted by the **trustees** by resolution on 19 August 2005. The Regulator has not seen a copy of the resolution. The SIP seeks to balance risk and growth, the latter being a strategy to deal with any deficit. Part of the strategy is also to move from equities to gilt and fixed interest investments.
- (b) On 18 January 2006 an email was received from Andrew Halliday on behalf of KPMG (scheme actuary) who reported her belief that "*the recent decisions made by the Trustees of this Plan in respect of investment are not consistent with their investment principles*". These constitute a prima facie breach of Section 35 and Section 36 of the Pensions Act 1995.
- (c) On 22 June 2006 **WWH** (independent trustee) wrote to Regulator stating: "*Please note that we have also taken legal advice from Cripps Harries Hall (legal co 2) but do not have a retainer letter with them. The advice they have given has been on an ad hoc basis when it has been perceived that there may be a conflict with Beachcroft LLP (legal co 1)*". Reliance on Cripps Harries Hall (legal co 2) in these circumstances constitutes a prime facie breach of Section 47 of the Pensions Act 1995.

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- (d) The scheme actuary has confirmed that the **trustees** have not instructed her to obtain a minimum funding requirement valuation as at 5 April 2005, by 5 April 2006, as required by Sections 56 and 57(1)(a) of the Pensions Act 1995. She has further stated that on numerous occasions she has advised the **trustees** that this valuation needs to be undertaken but the **trustees** have not acknowledged this matter. On 26 June 2006 **WWH** (independent trustee) wrote to the Regulator "*to seek your approval to commence a tri-annual valuation of the scheme with effect from 5 April 2006 as opposed to the due date of 5 April 2005.*"

#### 7. Warning Notice and responses

- (a) The Regulator sent the Warning Notice, with exhibits, to **WWH** (independent trustee), Mr Campbell (tr A) and Mr Purdie (tr B) on 16 August 2006. The date to respond by was given as 31 August 2006. On 25 August 2006, **WWH** (independent trustee) responded to the Regulator on behalf of all the scheme **trustees**. In that letter, they asked for an extension of the deadline until 14 September 2006. The **trustees** stated that they had only provided a partial response at this time and would provide a full response by 14 September. Also on 25 August, a letter from the Regulator to **WWH** (independent trustee) agreed to the extension of the deadline for providing a full response to 14 September 2006.

- (b) On 1 September 2006, the Regulator responded to a number of points raised in the **trustees'** letter and noted that the **trustees** would be sending a further response by 14 September 2006.
- (c) On 18 September 2006, the **trustees** provided a full response to the warning notice. On 27 September 2006, the Regulator responded to the **trustees** and stated that the warning notice and all exhibits would be put before the Determinations Panel.
- (d) A further response from **WWH** (independent trustee) dated 10 October 2006 enclosing a note of a meeting held with PCA (finance co) on 26 September was received at the Regulator's office on 17 October 2006. This letter stated that the **trustees** considered that a meeting should take place between them and the Regulator.

## 5. Hearings

### Preliminary Hearing 18 October 2006

1. There was a preliminary meeting of the Determinations Panel on 18 October 2006 when it was considered how best to deal with this application from the Regulator. After considerable discussion on the Warning Notice and its exhibits it was agreed that the case should be **Adjourned**. The directly affected parties and the Regulator were advised.
2. The Determinations Panel adjourned making a decision to enable the

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Regulator to give due consideration to the request from the **trustees** for a meeting between the Regulator and the **trustees**. The request for such a meeting was referred to in the letter dated 10 October 2006 to Mr D Thomas from **WWH** (independent trustee). The panel felt that a meeting would enable the Regulator and the **trustees** to give consideration to the investment strategy of the scheme as presented. The panel asked that the parties consider possible ways in which the interests of the scheme members could be safe guarded, including, but not exclusively restricted to, the appointment of an independent trustee to the scheme.

3. A meeting was held on 13 November 2006 at the Regulator's office and was attended by the staff of the Regulator involved in this case and Mr Peter Rees (Mr A) of **WWH** (independent trustee) and Mr George Purdie (tr A).
4. It did not prove possible to resolve matters at this meeting and the **trustees** were informed that the Regulator had not moved from its initial view that there should be a new independent trustee in place and that the case would proceed to an oral hearing which was provisionally set for 30 November 2006.
5. The **trustees** were subsequently invited to attend an oral hearing on 30 November 2006.
6. A reply was received from **WWH** (independent trustee) dated 22 November 2006 which, inter alia, stated: *"It therefore appears that the only significant remaining area of difference between us is the question of whether there should be the appointment of a further independent trustee. As your own interpretation of the legislation makes clear, this should be done if the Determinations Panel is satisfied that this is*

*snouia de aone ij the Determinations Panel is satisfied that this is necessary and that the objective of protecting the interests of the scheme members cannot be achieved in any other way.”*

7. The letter also went on to say that the **trustees** would be asking the Determinations Panel to adjourn the further consideration of the matter for a period of three months.

#### **Oral hearing on 30 November 2006 at the Regulator’s Office in Brighton**

1. This was attended by Mr Peter Rees (Mr A) and Ms Melissa Hope of **WWH** (independent trustee) and Mr George Purdie (tr A).
2. The panel heard Mr Rees’ (Mr A) application for an adjournment of the hearing and, having considered it, advised Mr Rees (Mr A) that the application was refused on the basis that no reasons had been put forward to necessitate an adjournment and the hearing would continue.
3. It became very clear soon after the Regulator’s Counsel started to put her case forward that Messrs Rees (Mr A) and Purdie (tr A) did not have a complete paginated set of papers which made it difficult for them to follow the barrister’s case.

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4. The meeting adjourned and on returning Mr Rees (Mr A) requested a further adjournment of the hearing so that they could be supplied with a complete sets of papers.
5. After due consideration the panel granted this application and stated that the panel would reconvene in London on 14 December and details of the hearing and all papers before the panel, including the further exhibits received immediately prior to and at the hearing, would be sent to the **trustees**.

#### **Oral hearing on 14 December 2006 at the CBI, London**

1. This was attended by Mr Peter Rees (Mr A) and Ms Melissa Hope of **WWH** (independent trustee) and Miss Jane Giret, Counsel for the **trustees**.
2. The Panel heard submissions on behalf of the Regulator and Counsel for the **trustees**. Mr Rees (Mr A) of **WWH** (independent trustee) was called to give evidence on oath. The Regulator’s Counsel called no witnesses. The panel put questions to both sides.
3. In making her case for the Regulator, Counsel commented on the consequences of this scheme not having been placed in wind up, particularly that there continued to be priority drift in which the younger members of the scheme would be prejudiced by the actions of the **trustees** in dealing with the benefits of older members. She also concentrated on the alleged conflict of interest of Mr Rees (Mr A); that he was a director of Beachcroft Wansbroughs (legal co 1) as well as a trustee and had acted as lawyer for the **trustees**.
4. The panel heard an objection from Counsel for the **trustees** that the Regulator had changed the basis of their case and that the **trustees** had had inadequate notice. When asked by the Chairman of the panel, Counsel for the Regulator said that whilst not concentrating on them as

part of this hearing the original grounds of concern set out in the Warning Notice still stood. The panel allowed the Regulator to put their case in this manner since the issue of priority drift, as a result of operating as a closed scheme, was one of the issues referred to by the Regulator in the Warning Notice.

5. The Regulator accepted that the **trustees** now intended to wind up the scheme but maintained the application for the appointment of an independent trustee because certain steps had still to be carried out. These were the appointment of a lawyer to advise on the procedures and technical issues relating to wind up, including the review of the Trust Deed and Rules. They also needed to “unpick” the decisions already taken in the cases of certain pensioners who had benefited from decisions made when there had been priority draft. The Regulator considered that the **trustees** would not be able to look at these issues objectively.
6. Counsel for the **trustees** submitted that the Regulator had not shown that

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it was necessary to appoint an independent trustee for these steps to be taken and for the scheme to be wound up. They did not accept the allegations of the Regulator in the five grounds other than certain breaches which they regarded as technical. The legal work done by Beachcroft Wansbroughs (legal co 1) had been carried out by members of the firm other than Mr Rees (Mr A). The scheme would go into wind up once legal advice had been received on the technical issues. There were only three beneficiaries who had had full benefit as a result of decisions made by the **trustees** which had been challenged by Counsel for the Regulator in her submissions, but the evidence of Mr Rees (Mr A) was that they were being paid on an interim basis and that they had been told that payment would be subject to review. There was no reason to appoint a new independent trustee to carry out what was needed to be done.

The panel retired to make their decision.

## 6. Details of Decision and Reasons for Decision

On resumption, the Chairman of the Panel advised those in attendance that it had made a decision and was in a position to give a preliminary notification of that decision.

The panel was not satisfied that the Regulator had made the case that a new independent trustee was necessary in this scheme.

The reasons why they were not satisfied are set out below:

1. The panel was mindful that since the Warning Notice was first brought forward the circumstances of this scheme had changed. The **trustees** had reconsidered their investment strategy and had come to a conclusion that they should commit themselves to winding up this scheme. The panel considered that to be a material difference from the position when it was first considered by the Regulator. The Chairman emphasised that it was important to stress that this was a significant factor in arriving at their decision and affected the weighting given to the five allegations that were brought and set out in the Warning Notice.
2. The panel looked to see whether it was appropriate to make a decision

2. The panel looked to see whether it was appropriate to make a decision on the basis of the test which had been well expressed of whether it was “**necessary**” to appoint an independent trustee “to secure the proper use or application of the scheme assets”.
3. The panel looked carefully at the submissions made relating to the concerns of the Regulator about the steps that had to be carried out to ensure that the winding up was satisfactorily achieved; namely, the appointment of a lawyer, the unpicking of the decisions that had already been made in respect of certain beneficiaries and issues concerning the objectivity of the **trustees**. They did not feel that, in respect of any of these matters, the Regulator had been able to make the case that what had to be done could not be done in any other way to secure the proper use and application of the assets of the scheme than by appointing an

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independent trustee.

4. The panel believed that the **trustees**, as stated in their letter to the Regulator dated 22 November 2006, understood what now had to be done and what advice would be needed to take matters to the appropriate conclusion.
5. The panel thought it was appropriate to register their concern that this scheme did enter into wind up. They had made their decision on the basis that the only matters that stood in the way of achieving wind up were procedural or mechanistic, including revising the decisions referred to in respect of the three beneficiaries being paid on an interim basis. There were no matters of principle that stood between where they were now and the decision to wind up.
6. In the panel’s view the Regulator had a continuing interest to see that what needed to happen did happen and their expectation, therefore, in making this decision was that the winding up resolution would occur within the quickest timescale possible. It was difficult to put a time limit on this because there were technicalities to be observed on which advice would be obtained.
7. The panel’s expectation, subject to securing completion of those technicalities, was that the scheme should be put into wind up at the earliest possible time.
8. The panel expected that the **trustees** would report to the Regulator on progress made. Equally, they expected that if the Regulator was not satisfied that such progress was being made on the steps that had to be undertaken, then the Regulator would bring this case back to the Determinations Panel.
9. The Chairman asked Mr Rees (Mr A) if he was content to proceed on this basis and he confirmed that he was.

## 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

<b>Name of scheme</b>	Horizon Pension Plan
<b>Type of scheme</b>	Defined Benefit
<b>Status of scheme</b>	Closed
<b>Membership</b>	178 (169 deferred, 9 pensioner)
<b>Contracted in/out</b>	Contracted out

## 10. Scheme trustees

	<b>Name</b>	<b>Period of office</b>	<b>Status of trustee</b>
1.	WW Pension Trustees Limited	from 8/12/99 to date	Independent trustee appointed by the insolvency practitioner
2.	George Purdie (tr A)	from 2/2/94 to date	Individual trustee
3.	Neil Alexander MacLeod Campbell (tr B)	from 2/2/94 to date	Individual trustee

## 11. Scheme advisers

	<b>Type</b>	<b>Period of office</b>	<b>Company</b>
1.	Administrator	From unknown to ?	KPMG (actuarial co)
2.	Actuary	From 2.2.98 to ?	Sophie Ash (Ms A) KPMG
3.	Insurer	From unknown to date	Prudential Assurance Company Ltd
4.	Auditor	From 21/12/00 to date	Grant Thornton LLP
5.	Legal Adviser	From 11/5.04 to date	Beachcroft Wansbroughs LLP (legal co 1)
6.	Investment adviser	From unknown to August 2005	KPMG (actuarial co)
7.	Investment adviser	From August 2005 to date	Park Caledonia Associates Limited (finance co)

## 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 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).

**13.2** You should note that the Tribunal Rules provide that at the same time as

**15.2** 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

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DM: 538128

House, Trafalgar Place, Brighton BN1 4DW.

Signed: **John Scampion** .....

Chairman: *John Scampion* .....

Date: 20 December 2006.....

## Relevant Statutory Provisions

## Appendix 1

### Section 7 of the Pensions Act 1995

...

(3) The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is necessary to do so in order:

...

(c) to secure the proper use or application of the assets of the scheme.

...

(5) The power to appoint a trustee by an order under this section includes power by such an order-

...

(b) to require a trustee appointed by the order to be paid fees and expenses out of the scheme's resources,

(c) to provide for the removal or replacement of such a trustee.

Section 8 of the Pensions Act 1995 - Appointment of **trustees**: consequences

(1) An order under section 7 appointing a trustee may provide for any fees and expenses of **trustees** appointed under the order to be paid-

(b) out of the resources of the scheme

(4) Such an order may make provision-

(b) for powers or duties to be exercisable by a trustee so appointed to the exclusion of other **trustees**.

### Section 70 of the Pensions Act 2004

Duty to report breaches of the law

(1) Subsection (2) imposes a reporting requirement on the following persons-

(d) a professional adviser in relation to such a scheme;

(2) Where the person has reasonable cause to believe that-

(a) a duty which is relevant to the administration of the scheme in question, and is imposed by or by virtue of an enactment or rule of law, has not been or is not being complied with, and

(b) the failure to comply is likely to be of material significance to the Regulator in the exercise of any of its functions,

he must give a written report of the matter to the Regulator as soon as reasonably practicable.

(3) No duty to which a person is subject is to be regarded as contravened merely because of any information or opinion contained in a written report under this section. . . .

**Section 5(1) – Regulator’s objectives**

The main objectives of the Regulator in exercising its functions are –

- (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.

**Section 100 of the Pensions Act 2004 - Duty to have regard to the interests of members etc**

(1)The Regulator must have regard to the matters mentioned in subsection

(2)-

(a)when determining whether to exercise a regulatory function-

(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.

(2)Those matters are-

(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.