

Scheme: Sanpark Data Pension Fund	
<b>To:</b>	Mr XXXXXXXXXXXX (The member - trusteeship in question)
<b>Of:</b>	XXXXXXXXXXXXXX XXXXXXXXXXXXXX XXXXXX XXXXXX XXXXXX XXXXXX
<b>To:</b>	Mr XXXXXXXXXXXXXXXX (Trustee 1)
<b>Of:</b>	XXXXX XXXX XXX XXXXX
<b>To:</b>	Mr XXXXXXXXXXXXXXXX (Trustee 2)
<b>Of:</b>	XXXXXXXXXXXXXX XXXXXXXXXXXXXX XXXXXX XXXXXX
<b>To:</b>	Mr Marc Gwynne
<b>Of:</b>	The Pal Partnership Limited (formerly Santhouse Whittington Actuarial Services Ltd) PO Box 524 Alberton House St Mary's Parsonage Manchester M60 3ES
<b>To:</b>	Mr Matthew Dunham
<b>Of:</b>	BDO Stoy Hayward LLP Commercial Buildings 11-15 Cross Street Manchester M2 1BD

<b>To:</b>	Mr Dermot J Power
<b>Of:</b>	BDO Stoy Hayward Commercial Buildings 11-15 Cross Street Manchester M2 1BD
<b>To:</b>	Conway Belwell Williams (Forensic Consultancy) Limited
<b>Of:</b>	Four Oaks House 160 Lichfield Road Sutton Coldfield Birmingham B74 2TZ
<b>Date:</b>	<b>20 December 2006</b>

**TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 13 December 2006.**

<b>1.</b>	<b>Determination</b>
<b>1.1</b>	<p>The Regulator made the following applications.</p> <p><b>1. Prohibition</b></p> <p>For XXXXXXXXXXXXXXXX (Trustee 1) and XXXXXXXXXXXX (Trustee 2) to be prohibited from being trustees of this pension scheme under section 3 of the Pensions Act 1995.</p> <p><b>2. Appointment of an independent trustee</b></p> <p>That an independent trustee be appointed under section 23 of the Pensions Act 1995 with immediate effect, such appointment to include provision that:</p> <ol style="list-style-type: none"> <li>any fees or expenses of the appointed trustee be paid by the employer in accordance with section 25(6)(a), or in the alternative;</li> <li>that they be paid partly out of the resources of the scheme and partly by the employer in accordance with section 25(6)(c).</li> <li>If an order is made in terms of section 25(6)(c) the Regulator would request that it also include provision under section 25(7) that an equal amount (if any) to that paid out of the scheme be treated for all purposes as a debt on the employer to the trustee of the scheme.</li> <li>In respect of any fees or expenses of the trustee paid out of scheme resources by virtue of section 25(6)(c) the panel is requested to order that in accordance with section 25(8), the trustee is entitled to be so paid in priority to all other claims falling to be met out of those resources.</li> </ol> <p><b>3. Authorisation to wind up</b></p> <p>That an order be issued to authorise the independent trustee appointed under section 23 to wind up the scheme in accordance with section 11 of the Pensions Act 1995.</p>

<b>1.2</b>	<p>The Determination Panel decided that the application for:</p> <ol style="list-style-type: none"> <li>1. the prohibition of XXXXXXXXXXXXXXXX (Trustee 1) and XXXXXXXX XXXXXXX (Trustee 2) be refused;</li> <li>2. the appointment of an independent trustee be granted; and</li> <li>3. authorisation to wind up the scheme be refused.</li> </ol>

<b>2.</b>	<b>Procedure Followed: Standard</b>												
<b>2.1</b>	<p>By its Warning Notice dated 28 June 2006 (“the Warning Notice”) the Pensions Regulator gave notice of the applications referred to above.</p>												
<b>2.2</b>	<p>The Regulator determined that the following parties are directly affected by this determination:</p> <table border="0" style="width: 100%;"> <tr> <td style="width: 50%;">1. Mr XXXXXXXX</td> <td>In his role as a member of the scheme</td> </tr> <tr> <td>2. Mr XXXXXXXXXXXXXXXX</td> <td>In his role as trustee of the scheme (Trustee 1)</td> </tr> <tr> <td>3. Mr XXXXXXXX</td> <td>In his role as trustee of the scheme (Trustee 2)</td> </tr> <tr> <td>4. The Pal Partnership Limited acting by Mr Marc Gwynne,</td> <td>In its role as the pensioner trustee.</td> </tr> <tr> <td>5. Mr Matthew Dunham, BDO Stoy Hayward</td> <td>In his role as the administrative receiver of Jester Interactive Ltd.</td> </tr> <tr> <td>6. Mr Dermot J Power, BDO Stoy Hayward</td> <td>In his role as the administrative receiver of Jester Interactive Ltd.</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 XXXXXXXX	In his role as a member of the scheme	2. Mr XXXXXXXXXXXXXXXX	In his role as trustee of the scheme (Trustee 1)	3. Mr XXXXXXXX	In his role as trustee of the scheme (Trustee 2)	4. The Pal Partnership Limited acting by Mr Marc Gwynne,	In its role as the pensioner trustee.	5. Mr Matthew Dunham, BDO Stoy Hayward	In his role as the administrative receiver of Jester Interactive Ltd.	6. Mr Dermot J Power, BDO Stoy Hayward	In his role as the administrative receiver of Jester Interactive Ltd.
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<b>2.3</b>	<p>Following the issue of the Warning Notice Mr XXXXXXXX (Trustee 1), Mr XXXXX (Trustee 2), Mr XXXXX (The member) and the pensioner trustee exercised their right to make representations to the Pensions Regulator.</p>												
<b>2.4</b>	<p>The Pensions Regulator has taken those representations into account and has considered those materials carefully and has determined to take the action as detailed in <b>7</b> below for the reasons set out in <b>6</b> below.</p>												

<b>3.</b>	<b>Relevant Statutory Provisions/Legislation</b>
	See Appendix A at page 12.

<b>4.</b>	<b>Relevant Guidance</b>
<b>4.1</b>	The legal adviser confirmed to the panel that the Regulator may authorise the Determinations Panel to exercise, on behalf of the Regulator, the power to appoint an independent trustee under section 23 of the Pensions Act 1995 by virtue of paragraph 20(5)(m) of Schedule 1 of the Pensions Act 2004 .

<b>5.</b>	<b>Background to the Application</b>
	<ol style="list-style-type: none"> <li>1. The Sanpark Data Pension Fund was set up under trust as a Small Self Administered Scheme (SSAS) in 1996, the employer being Morgan Computing Ltd ( “the Company”). XXXXXXXX (The member) was the single scheme member and director of the Company. In March 2004 Mr XXXXX (The member) transferred ownership of the Company to XXXXXXXXXXXX (Trustee 1) and XXXXXXXXXXXX (Trustee 2).</li> <li>2. The Company was renamed as ‘Jester Interactive Ltd’ and was subsequently put into administrative receivership on 15 October 2004. The Administrative Receivers are currently responsible for carrying out any functions of the Company.</li> <li>3. The power to amend the scheme rules is with the Company.</li> <li>4. As directors of the Company, Mr XXXXX (Trustee 2) and Mr XXXXXX (Trustee 1), were able to cause the Company to appoint them as trustees to the scheme under scheme rule 28, which they did on 7 September 2004 by a deed of appointment in which they were appointed to act together with Mr XXXXXX (The member) and the pensioner trustee. On 28 September 2004 the Company, acting by Mr XXXXXXXX (Trustee 1) and Mr XXXXX (Trustee 2) as its directors purported to remove the member as a trustee under Rule 28.</li> <li>5. In June 2004 Mr XXXXXXXX (Trustee 1) and Mr XXXXX (Trustee 2) applied to become members of the scheme, which the Company allowed under rule 5 of the scheme rules.</li> <li>6. Because the scheme was a SSAS it was necessary for the employer to make contributions in respect of each member. There is no evidence that the employer made any contribution in respect of Mr XXXXXXXX (Trustee 1) and Mr XXXXX (Trustee 2). £100 was paid in respect of each of them into the scheme. On 6 September 2005 HMRC advised the pensioner trustee that these nominal personal contributions were ineligible contributions that could not qualify them as members of the SSAS.</li> </ol>

	<p>7. Since January 2005 there has been extensive discussion in correspondence about what should happen to the scheme. Mr XXXXX (The member) sought that the principal employer should be changed to another company by which he is now employed. Mr XXXXX (Trustee 1) and Mr XXXXX (Trustee 2) did not agree with this approach. Correspondence has continued until recently and in April 2005 the Pensions Regulator became involved. XXXXXXXXXXXXXXXXXXXX XX XXXXXXXXXXXXXXXXXXXXXXXXXXXX.</p>
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6.	<p><b>Facts, Matters Relied Upon and Conclusions</b></p>
	<p><b>Prohibition of Trustees</b></p> <ol style="list-style-type: none"> <li>1. The allegation was that Mr XXXXX (Trustee 1) and Mr XXXXX (Trustee 2) were not fit and proper persons to be trustees because of conflicts of interests. A specific point relied on was that they had a personal interest in any surplus. It was also alleged that they purported to remove Mr XXXXX (The member) as a trustee in contravention of rule 28.</li> <li>2. The whole structure of a SSAS inevitably involves conflicts as all the individual member trustees must by definition have an interest. Also in any such scheme it is likely that they will be directors of the employer company. Thus it is inherent there will be conflicts, but these have to be managed.</li> <li>3. In their representations Mr XXXXX (Trustee 1) and Mr XXXXX (Trustee 2) discuss how they sought to do this. At least since mid-2005 they have been taking legal advice.</li> <li>4. The onus was on the Regulator to make the case on the balance of probabilities and the Panel did not think that this had been done. In view of the above the panel did not consider that a case had been made out to enable them to conclude that Mr XXXXX (Trustee 1) and Mr XXXXX (Trustee 2) were not fit and proper to act as trustees.</li> <li>5. The panel acknowledged that there were clearly conflicts between the trustees, both professional and personal, but no evidence had been put forward by the Regulator to show that any decisions taken in relation to the scheme had been to its detriment.</li> </ol> <p><b>Appointment of independent trustee</b></p> <ol style="list-style-type: none"> <li>1. The panel did not feel able to conclude from the conflicting views put forward by the Regulator, and Counsel for Mr XXXXX (Trustee 1) and Mr XXXXX (Trustee 2), as to whether or not Mr XXXXX (The member) continued to be a trustee of the scheme.</li> <li>2. It was also very clear from the papers submitted that there were serious issues of conflict and disharmony between the trustees, including difficulties between the pensioner trustee and Mr XXXXX (Trustee 1) and Mr XXXXX (Trustee 2) and that they could not agree amongst themselves on how to proceed. Some examples of the problems are: -</li> </ol>

- Mr XXXXXX (The member's) status as a trustee
- the issues about the conflicts of Mr XXXXXX (Trustee 1) and Mr XXXXX (Trustee 2) raised and discussed in relation to the issue of prohibition;
- the status as members of Mr XXXXXX (Trustee 1) and Mr XXXXX (Trustee 2) under the scheme and what their rights may be;
- the personal allegations by Mr XXXXXX (Trustee 1) and Mr XXXXX (Trustee 2) about Mr XXXXXX (The member's) conduct and allegations that he had dealt with the assets of the scheme in an inappropriate manner;
- suggestions by Mr XXXXX (The member) about the conduct of Mr XXXXXX (Trustee 1) and Mr XXXXX (Trustee 2);
- the pensioner trustee having in a number of instances taken a position which seemed to be very much in favour of Mr XXXXX (The member), including indicating on the application form to the Pensions Ombudsman that it was representing Mr XXXXX (The member) in that complaint;
- the pensioner trustee being unwilling to meet Mr XXXXXX (Trustee 1) and Mr XXXXX (Trustee 2).

In essence the present position seems to be one of paralysis.

3. It appeared that amongst other things the trustees of the scheme needed to take clear decisions on a number of important issues and how these should be moved forward including:
  - who are the members of the scheme and what are the benefits to which each is entitled;
  - the financial position of the scheme.
4. The representations suggested that an independent trustee should not be appointed because of the increase of costs this would involve. It was acknowledged that appointing an independent trustee would involve some extra costs being incurred. However, whoever undertook the work involved in taking the scheme forward would charge fees to the scheme and the appointment of an independent trustee would also involve some savings. Any net increase should not be material.
5. Before reaching a conclusion the panel considered the Regulator's objectives, particularly Section 5(1)(a) of the Pensions Act and Section 100 and that in exercising a regulatory function it should have regard to the interests of the generality of the members of the scheme and the interests of such persons who are directly affected by the exercise of that function. This scheme does or could benefit or affect Mr XXXXX (The member), Mr XXXXXX (Trustee 1) and Mr XXXXX (Trustee 2) and the Company. It was in the interest of all the interested parties that matters should move forward and that each of them should be able to have confidence that their particular position would be considered properly.

	<p>6. For these reasons the panel felt that it should exercise its discretion to appoint an independent trustee.</p> <p><b>Authorisation to wind up scheme</b></p> <p>1. The panel did not feel that authorisation to wind up at this time was necessary, in the light of the decision made to appoint an independent trustee, in order to protect the interests of the generality of the members of the scheme.</p> <p>2. It was noted that the employer does have the technical ability within the scheme's rules to commence the winding up of the scheme.</p> <p>3. The panel considered that the newly appointed independent trustee should look at the overall circumstances of the scheme and make a decision in relation to its wind up. If it appeared that an order was required to enable this to happen this could be considered later.</p>
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<b>7.</b>	<b>Conclusion: Details of Determination</b>
	<p><b>Prohibition of Trustees</b></p> <p>The application for the prohibition of Mr XXXXXXXXXXXXXXXX (Trustee 1) and Mr XXXXXXXXXXXXXXXX (Trustee 2) as trustees of this pension scheme is refused.</p> <p><b>Appointment of Trustee</b></p> <p>1. The Pensions Regulator hereby appoints Conway Belwell Williams (Forensic Consultancy) Limited of Portman House, 5-7 Temple Row West, Birmingham B2 5NY as Trustee of the Sanpark Data Pension Fund pursuant to section 23(1) of the Pensions Act 1995 with effect on and from 13 December 2006.</p> <p>2. Conway Belwell Williams (Forensic Consultancy) Limited's fees and expenses shall be paid partly by the employer and partly out of the resources of the scheme pursuant to section 25(6)(c) of the Pensions Act 1995.</p> <p>3. An amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection 25(6)(c) should be treated for all purposes as a debt due from the employer to Conway Belwell Williams (Forensic Consultancy) Limited, pursuant to section 25(7) of the Pensions Act 1995.</p> <p>4. In respect of any fees or expenses of Conway Belwell Williams (Forensic Consultancy) Limited paid out of the scheme by virtue of section 25(6)(c), Conway Belwell Williams (Forensic Consultancy) Limited is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources by virtue of section 25(8) of the Pensions Act 1995.</p>

	<p><b>Winding up</b></p> <p>That the application for authorisation to wind up the scheme be refused.</p>
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<b>8.</b>	<b>Decision Maker</b>
	The determination which gave rise to the obligation to give this Determination Notice was made by the Determinations Panel.

<b>9.</b>	<b>Scheme details</b>	
	<b>Name of scheme</b>	The Sanpark Data Pension Fund
	<b>Type of scheme</b>	Small self administered scheme
	<b>Status of scheme</b>	Paid up
	<b>Membership</b>	One
	<b>Size of fund</b>	£ 333,000 as at April 2005
	<b>Contracted in/out</b>	Unknown

<b>10.</b>	<b>Scheme trustees</b>		
	<b>Name</b>	<b>Period of office</b>	<b>Status of trustee</b>
<b>1.</b>	Santhouse Whittington Actuarial Services Limited		Pensioner trustee
<b>2.</b>	XXXXXXXXXX (Trustee 1)	From 7 <sup>th</sup> September 2004 to date	Individual trustee
<b>3.</b>	XXXXXXXXXX (Trustee 2)	From 7 <sup>th</sup> September 2004 to date	Individual trustee

<b>11.</b>	<b>Scheme advisers</b>			
	<b>Type</b>	<b>Name</b>	<b>Period of office</b>	<b>Company</b>
<b>1.</b>	Independent Financial Advisers	Richard Bamber & Company	Independent Financial Advisers	Richard Bamber & Company

<b>12.</b>	<b>Employer details</b>	
	<b>Name</b>	Jester Interactive Limited
	<b>Address</b>	Numerica South Central 11 Peter Street Manchester M2 5LG
	<b>Nature of business</b>	Software consultancy and supply
	<b>Number of employees</b>	Not known
	<b>Comp any Registered</b>	02602607

<b>12.</b>	<b>Employer details</b>	
	<b>Number</b>	
	<b>Current Status</b>	In administration
	<b>If dissolved enter date of dissolution</b>	Not applicable

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

<b>14.</b>	<b>Referral to the Pensions Regulator Tribunal</b>
<b>14.1</b>	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).
<b>15.2</b>	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: **Michael Maunsell**.....

Chairman: Michael Maunsell .....

Date: 20 December 2006.....

**Relevant Statutory Provisions/Legislation**

**Appendix A**

**Prohibition orders**

Section 3 of Pensions Act 1995 (as amended)

(1) The Authority may by order prohibit a person from being a trustee of –

- (a) a particular trust scheme,
- (b) a particular description of trust schemes, or
- (c) trust schemes in general,

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.

(2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

(3) The Authority may, on the application of any person prohibited under this section, by order revoke the order either generally or in relation to a particular scheme or description of schemes.

(4) An application under subsection (3) may not be made-

- (a) during the period within which the determination to exercise the power to make the prohibition order may be referred to the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004, and
- (b) If the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) A revocation made at any time under this section cannot affect anything done before that time.

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.

(7) The Authority may revise any statement published under subsection (6) and must publish any revised statement.

**3 Prohibition orders**

Section 3 of Pensions Act 1995 (as amended)

(2) The Authority may by order prohibit a person from being a trustee of –

- (a) a particular trust scheme,
- (b) a particular description of trust schemes, or
- (c) trust schemes in general,

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.

(2) Where a prohibition order is made under subsection (1) against a person in respect of one or more schemes of which he is a trustee, the order has the effect of removing him.

(3) The Authority may, on the application of any person prohibited under this section, by order revoke the order either generally or in relation to a particular scheme or description of schemes.

(4) An application under subsection (3) may not be made-

(a) during the period within which the determination to exercise the power to make the prohibition order may be referred to the Tribunal under section 96(3) or 99(7) of the Pensions Act 2004, and

(b) If the determination is so referred, until the reference, and any appeal against the Tribunal's determination, has been finally disposed of.

(5) A revocation made at any time under this section cannot affect anything done before that time.

(6) The Authority must prepare and publish a statement of the policies they intend to adopt in relation to the exercise of their powers under this section.

(7) The Authority may revise any statement published under subsection (6) and must publish any revised statement.

(8) In this section "the Tribunal" means the Pensions Regulator Tribunal established under section 102 of the Pensions Act 2004.

### **23 Power to appoint independent trustees**

(1) While section 22 applies in relation to a trust scheme, the Authority may by order appoint as a trustee of the scheme a person who-

- (a) is an independent person in relation to the scheme, and
- (b) is registered in the register maintained by the Authority in accordance with regulations under subsection (4).

(2) In relation to a particular trust scheme, no more than one trustee may at any time be an independent trustee appointed under subsection

(1).

(3) For the purposes of this section a person is independent in relation to a trust scheme only if-

(a) he has no interest in the assets of the employer or of the scheme otherwise than as trustee of the scheme,

(b) he is neither connected with, nor an associate of-

(i) the employer,

(ii) any person for the time being acting as an insolvency practitioner in relation to the employer, or

(iii) the official receiver acting in any of the capacities mentioned in section 22(1)(b) in relation to the employer, and

(c) he satisfies any prescribed requirements;

and any reference in this Part to an independent trustee is to be construed accordingly.

(4) Regulations must provide for the Authority to compile and maintain a register of persons who satisfy the prescribed conditions for registration.

(5) Regulations under subsection (4) may provide-

(a) for copies of the register or of extracts from it to be provided to prescribed persons in prescribed circumstances;

(b) for the inspection of the register by prescribed persons in prescribed circumstances.

(6) The circumstances which may be prescribed under subsection (5)(a) or (b) include the payment by the person to whom the copy is to be provided, or by whom the register is to be inspected, of such reasonable fee as may be determined by the Authority.

(7) This section is without prejudice to the powers conferred by section 7.

## **25 Appointment and powers of independent trustees: further provisions**

(1) If, immediately before the appointment of an independent trustee under section 23(1), there is no trustee of the scheme other than the employer, the employer shall cease to be a trustee upon the appointment of the independent trustee.

(2) While section 22 applies in relation to a scheme and there is an independent trustee of the scheme appointed under section 23(1) -

(a) any power vested in the trustees of the scheme and exercisable at their discretion may be exercised only by the independent trustee, and

(b) any power-

(i) which the scheme confers on the employer (otherwise than as trustee of the scheme), and

(ii) which is exercisable by him at his discretion but only as trustee of the power,

may be exercised only by the independent trustee.

(3) While section 22 applies in relation to a scheme and there is an independent trustee of the scheme appointed under section 23(1), the independent trustee may not be removed from being a trustee by virtue only of any provision of the scheme.

(4) If a trustee appointed under section 23(1) ceases to be an independent person (within the meaning of section 23(3)), then-

(a) he must as soon as reasonably practicable give written notice of that fact to the Authority, and

(b) subject to subsection (5), he shall cease to be a trustee of the scheme.

(5) If, in a case where subsection (4) applies, there is no other trustee of the scheme than the former independent trustee, he shall not cease by virtue of that subsection to be a trustee until such time as another trustee is appointed.

(5A) Section 10 applies to any person who, without reasonable excuse, fails to comply with subsection (4) (a).

(6) An order under section 23(1) may provide for any fees and expenses of the trustee appointed under the order to be paid-

(a) by the employer,

(b) out of the resources of the scheme, or

(c) partly by the employer and partly out of those resources.

(7) Such an order may also provide that an amount equal to the amount (if any) paid out of the resources of the scheme by virtue of subsection (6)(b) or (c) is to be treated for all purposes as a debt due from the employer to the trustees of the scheme.

(8) Where, by virtue of subsection (6)(b) or (c), an order makes provision for any fees or expenses of the trustee appointed under the order to be paid out of the resources of the scheme, the trustee is entitled to be so paid in priority to all other claims falling to be met out of the scheme's resources.

## **11 Powers to wind up schemes**

(1) Subject to the following provisions of this section, the Authority may by order direct or authorise an occupational pension scheme to be wound up if they are satisfied that-

- (a) the scheme, or any part of it, ought to be replaced by a different scheme,
- (b) the scheme is no longer required, or
- (c) it is necessary in order to protect the interests of the generality of the members of the scheme that it be wound up.

(2) The Authority may not make an order under this section on either of the grounds referred to in subsection (1)(a) or (b) unless they are satisfied that the winding up of the scheme-

- (a) cannot be achieved otherwise than by means of such an order, or
- (b) can only be achieved in accordance with a procedure which-
  - (i) is liable to be unduly complex or protracted, or
  - (ii) involves the obtaining of consents which cannot be obtained, or can only be obtained with undue delay or difficulty,

and that it is reasonable in all the circumstances to make the order.

(3A) The Authority may, during an assessment period (within the meaning of section 132 of the Pensions Act 2004 (meaning of "assessment period" for the purposes of Part 2 of that Act)) in relation to an occupational pension scheme, by order direct the scheme to be wound up if they are satisfied that it is necessary to do so in order-

- (a) to ensure that the scheme's protected liabilities do not exceed its assets, or
- (b) if those liabilities do exceed its assets, to keep the excess to a minimum.

(3B) In subsection (3A)-

- (a) "protected liabilities" has the meaning given by section 131 of the Pensions Act 2004, and
- (b) references to the assets of the scheme are references to those assets excluding any assets representing the value of any rights in respect of money purchase benefits (within the meaning of that Act) under the scheme.

(4) An order under this section authorising a scheme to be wound up must include such directions with respect to the manner and timing of the winding up as the Authority think appropriate having regard to the purposes of the order.

This subsection is subject to sections 28, 135 and 219 of the Pensions Act 2004 (winding up order made when freezing order has effect in relation to scheme, during assessment period under Part 2 of that Act etc).

(5) The winding up of a scheme in pursuance of an order of the Authority under this section is as effective in law as if it had been made under powers conferred by or under the scheme.

(6) An order under this section may be made and complied with in relation to a scheme-

(a) in spite of any enactment or rule of law, or any rule of the scheme, which would otherwise operate to prevent the winding up, or

(b) except for the purpose of the Authority determining whether or not they are satisfied as mentioned in subsection (2), without regard to any such enactment, rule of law or rule of the scheme as would otherwise require, or might otherwise be taken to require, the implementation of any procedure or the obtaining of any consent, with a view to the winding up.

(6A) Subsection (6) does not have effect to authorise the Authority to make an order as mentioned in paragraph (a) or (b) of that subsection, if their doing so would be unlawful as a result of section 6(1) of the Human Rights Act 1998 (unlawful for public authority to act in contravention of a Convention right).

(7) In the case of a public service pension scheme-

(a) an order under subsection (1) directing or authorising the scheme to be wound up may only be made on the grounds referred to in paragraph (c), and

(b) such an order may, as the Authority think appropriate, adapt, amend or repeal any enactment in which the scheme is contained or under which it is made.

### **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 schemes, ...
- (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.

### **100 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.

