

<p>The Pensions Regulator</p>	<p>Standard Procedure</p> <p>DETERMINATION NOTICE</p> <p>under Section 96(2)(d) of the Pensions Act 2004 (“the Act”)</p> <p>The CPL Executive Pension Scheme</p> <p>(“the Scheme”)</p>	<p>The Pensions Regulator case ref:</p> <p>C13725717</p>
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1. The Determinations Panel (“the Panel”) met on 4 March 2013 to determine whether Mr Peter Ronald Collins and Mrs Jacqueline Ann Collins should be given notice in writing pursuant to section 29(5)(a) of the Pensions Act 1995 (“the 1995 Act”) to waive their disqualification to act as trustees of the CPL Executive Pension Scheme. This is a reserved regulatory function under the Act and may only be exercised by the Panel. The request to exercise this power is an application under section 10(2)(b) of the Act.

The Panel determined that the above function should be exercised.

2. **Directly Affected Parties**

The Warning Notice specified the following parties as being directly affected by the regulatory action outlined therein.

- (a) Mr Peter Ronald Collins; and
- (b) Mrs Jacqueline Ann Collins (“the Applicants”)
- (c) xxxxxxxxxxxxxxxxxxxxxxxxxxx (“the Trustee”)
- (d) xxxxxxxxxxxxxxxxxxxxxxxxxxx (“the Employer”)

3. **Details of the Scheme**

The Scheme is a defined contribution scheme open to future accrual with two members which was established as a small self-administered scheme (SSAS). The SSAS status was revoked following the pensions tax simplification which took place in April 2006. However, many of the relaxations that applied to SSAS schemes continue to apply to small occupational pension schemes (SOPS). The Pensions Regulator (“the Regulator”) understands that the Scheme qualified as a SOPS prior to the Applicants’ disqualification.

4. Background to Application

1. The Applicants are the only two members of the Scheme. One of the Applicants, Mr Collins, plans to retire by xxxxxxxxxxxx Mrs Collins currently plans to retire by xxxxxxxxxxxx.
2. The Trustee is an independent trustee of the Scheme.
3. The Applicants consider that the Scheme requires active management and control. The additional administrative requirements (and therefore costs) of running the Scheme other than as a SOPS were cited as the reason for wishing to regain SOPS status.
4. The Applicants have confirmed that they wish to be reappointed as trustees.
5. In the event that the waiver is granted, the Employer has the power to reappoint the Applicants as trustees of the Scheme under Clause 4(2) of the Deed of Amendment. Mr Collins, as the sole director of the Employer, has confirmed that it would be the Employer's intention to reappoint the Applicants as trustees should the waiver be granted.
6. The Trustee has confirmed that it would have no objections to the re-appointment of the Applicants as trustees.
7. Mrs Collins has confirmed that all communications sent by Mr Collins in this matter are acceptable to her.

Disqualification Undertakings

8. On 22 March 2012 Mr Collins signed "a form of Disqualification Undertaking" under section 1A and section 7 of the Company Directors Disqualification Act 1986 (CDDA) by which he agreed to be disqualified from acting as a company director from 20 April 2012 to 19 April 2015. This accords with the entry on the register of disqualified directors held by Companies House. As a consequence, he was automatically disqualified from being a trustee pursuant to section 29(1) of the 1995 Act. He was automatically removed as a trustee of this Scheme pursuant to section 30(1) of the 1995 Act by virtue of his disqualification as a director.
9. On 22 March 2012 Mrs Collins signed a form of Disqualification Undertaking under section 1A and section 7 of the CDDA by which she agreed to be disqualified from acting as a company director from 20 April 2012 to 19 April 2014. This accords with the entry on the register of disqualified directors held by Companies House. As a consequence, she was automatically disqualified from being a trustee pursuant to section 29(1) of the 1995 Act. She was automatically

removed as a trustee of this Scheme pursuant to section 30(1) of the 1995 Act by virtue of her disqualification as a director.

10. Disqualification under section 7 of the CDDA is as a result of being unfit to act as company director following an undertaking by an individual. Details of the undertakings in respect of Mr Collins and Mrs Collins give the following reason:-

xx.

11. The Applicants were aware of the consequences of entering into the Disqualification Undertakings, in particular that they would automatically be disqualified from acting as trustees under section 29(1) of the 1995 Act.
12. Mr Collins has been granted a court order dated 17 April 2012 giving permission for him to continue as a director of the Employer.

The Application and Information Provided to the Regulator

13. The Applicants have made an application to the Regulator asking it to consider granting an order for a waiver of disqualification from acting as trustees in respect of the Scheme. The reason for requesting such a waiver is the requirement for all members of the Scheme to be trustees in order for it to qualify as a SOPS. As a SOPS the Scheme is exempt from several requirements to which it would otherwise be subject.
14. The Regulator wrote to the Applicants on 13 July 2012 requesting details of the evidence in support of the application, why it was important for the Scheme to regain its SOPS status and confirmation that the applicants intended to seek reappointment as trustees in the event that the requested waiver was granted.
15. In their response, the Applicants advised that they voluntarily accepted responsibility for the actions of the management of CPL Joinery Ltd and that the reason for requesting the waiver was to enable the active management and control of the scheme and to reduce any increased management charges. They also confirmed that they wished to be reappointed as trustees in the event that the waiver was granted.
16. The Regulator wrote again to the Applicants on 13 November 2012 seeking clarification and further information including details of the possible increased running costs to the Scheme should it not regain its SOPS status and the nature and quantum of the Scheme's investments.
17. Mr Collins replied by email on 14 November 2012. He confirmed that the Scheme had no investments with the Employer or the members

and that the bulk of the investments were held in xxxxxxxx with well known financial institutions. This was confirmed by email from Mr Collins' financial advisers xxxxxxxxxxxxxxxx who provided a breakdown of the Scheme's assets.

18. The Regulator also wrote to the Trustee on 14 November 2012 seeking further information including as to the nature and quantum of the Scheme's investments and the cost implications of the Scheme failing to regain SOPS status. The Trustee replied by email on 29 November 2012 providing a summary of the assets and estimated additional costs if the Scheme did not regain its SOPS status.

Request by the Panel for further documents and information to support statements in the exhibits to the Warning Notice

19. The Panel requested sight of the letter dated 30 March 2012 referred to in the letter dated 25 September 2012 from xxxxxxxxxxxxxxxx to the Regulator. This was subsequently provided.
20. On 19 February 2013, and in accordance with paragraph 26(ii) of the Determinations Panel Procedure, the parties were requested to supply the Panel with supporting evidence and more detail in relation to the costs of administering the Scheme and on the 'active management and control' of the Scheme if it did regain its status as a SOPS. Information was provided by xxxxxxxxxxxxxxxx in an email, with attachments, dated 21 February 2013.

5. Decision

The Panel agreed that it was appropriate to make the following orders:

A. Mr Peter Ronald Collins

The Pensions Regulator hereby orders as follows:

1. The waiver of the disqualification as Trustee of Mr Peter Ronald Collins of xxxxxxxxxxxxxxxx with effect on and from 4 March 2013 in relation to The CPL Executive Pension Scheme pursuant to section 29(5)(a) of the Pensions Act 1995.
2. This waiver is only ordered in respect of The CPL Executive Pension Scheme.

B. Mrs Jacqueline Ann Collins

The Pensions Regulator hereby orders as follows:

1. The waiver of the disqualification as Trustee of Mrs Jacqueline Ann Collins of xxxxxxxxxxxxxxxx with effect on and from 4 March 2013 in relation to The CPL Executive Pension Scheme pursuant to section 29(5)(a) of the Pensions Act 1995.

2. This waiver is only ordered in respect of The CPL Executive Pension Scheme.

6. **Reasons for decision**

In making their decision the Panel had regard to the objectives of the Regulator as set out in Section 5 of the Act and to the matters mentioned in Section 100, as set out in **Appendix 1**.

As the Applicants, Mr and Mrs Collins, were the only two members of the Scheme, and bearing in mind the requirements of Sections 100(2)(a) and (b) of the Act, the Panel felt that a waiver of disqualification should be granted to enable the Scheme to regain its status as a SOPS so as to minimise the costs to the Scheme and to allow the Applicants to secure their maximum benefits.

7. **Appendix 2** to this Determination Notice contains important information about the rights of appeal of the directly affected parties against this decision.

Signed: **Suzanne McCarthy**.....

Chairman: Suzanne McCarthy.....

Dated: 5 March 2013.....

Section 5 of the Pensions Act 2004
Regulator's objectives

- (1) 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,
 - (b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),
 - (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.
- (2) For the purposes of subsection (1)(b) the members of personal pension schemes within this subsection are-
- (a) the members who are employees in respect of whom direct payment arrangements exist, and
 - (b) where the scheme is a stakeholder pension scheme, any other members.
- (3) In this section-
- “stakeholder pension scheme” means a personal pension scheme, which is or has been registered under section 2 of the Welfare Reform and Pensions Act 1999 (c.30)(register of stakeholder schemes);
- “work-based pension scheme” means-
- (a) an occupational pension scheme,
 - (b) a personal pensions scheme where direct payment arrangements exist in respect of one or more members of the scheme who are employees, or
 - (c) a stakeholder pension scheme.

Section 100 of 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.

Referral to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”)

You have the right to refer the matter to which this Determination Notice relates to the Tribunal. Under Section 103 of the Pensions Act 2004 (“the Act”) you have 28 days from the date this Determination Notice is given 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:

The Tax and Chancery Chamber of the Upper Tribunal
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