July 2012

Report under s89 of the Pensions Act 2004

Issued by The Pensions Regulator (the 'regulator') in relation to GP Noble Trustees Limited ('GPNT') and others.

This report sets out the regulator's position in respect of events relating to nine pension schemes to which the above trustee company acted as the professional trustee and the regulatory action taken. The nine schemes (the 'Schemes') were:

- Berry Birch & Noble Staff Pension Fund
- Cuthbert Heath Family Security Plan
- Hill and Tyler Pension and Assurance Scheme
- R Taylor and Son (Orthopaedic) Limited Pension Fund GO 3986
- The Alenoy Limited Pension and Assurance Scheme
- The BDC Pension Scheme
- The Melton Medes Group Pension and Life Assurance Scheme
- The Ravenhead Company Pension Plan
- Venson Pension and Life Assurance Scheme.

The Pensions Regulator

Background

The Schemes were all defined benefit (DB) occupational schemes, with approximately 2,180 members. All of the Schemes were at various stages of being assessed by either the Financial Assistance Scheme (FAS) or the Pension Protection Fund (PPF). The Schemes were predominately under the control of GPNT.

GPNT is a corporate trustee and at all material times Graham Pitcher and Gary Cordell were directors of GPNT. Prior to regulatory action, GPNT acted as a corporate trustee to various occupational pension schemes. The day-to-day running of GPNT was carried out by Mr Pitcher and Mr Cordell.

GPNT was a wholly owned subsidiary of Mentor Pension Trustees Limited ('MPT'). The directors of MPT were the same as GPNT. MPT was a wholly owned subsidiary of Money Portal. Money Portal owned a series of financial services companies but was placed into receivership on 22 June 2009. BDC Trustees Limited was wholly owned by Mr Pitcher who was also the company secretary.

Regulatory action

At the beginning of July 2008 as a result of its intelligence-gathering activities, the regulator became concerned over GPNT's investment of the Schemes' assets, which was corroborated by similar concerns raised by the PPF at this time.

On 4 and 9 July 2008 following requests by the regulator to the Determinations Panel, by way of the special procedure[1], GPNT, Mr Pitcher, BDC and MPT were suspended from acting in respect of the Schemes. An independent trustee, Independent Trustee Services Limited was appointed with exclusive powers to administer the nine Schemes.

The central feature of this case concerned the disinvestment of some £52 million of assets, from a total of approximately £57.6 million belonging to the Schemes. Initially the precise whereabouts of all of the disinvested assets (funds) were unknown and required the appointed trustee to commence extensive investigation and civil proceedings to assist in the recovery of the funds.

The appointed trustee established that the majority of the Schemes' assets had been invested in off-shore investment vehicles registered in the British Virgin Islands and Nevis which were not sufficiently transparent (with many of the terms and ownership structures being unclear), illiquid (ie could not be converted into cash in the short term) and contained many commercial terms which were not considered to be in the best interests of the members of the Schemes. Some £36m of the Schemes' funds were invested in two companies called Fareston and Multiple and Unilateral Financial Futures Limited. Fareston was incorporated by GPNT in June 2007. GPNT appointed a number of advisers to manage its investment in Fareston including a company called Aspect Invest and Finance Limited ('Aspect'). Aspect was paid more than £1.8m for its services. In the regulatory case team's view, it should have been obvious to Mr Pitcher and Mr Cordell that proper due diligence was not conducted in relation to these transactions.

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[1] Section 97 of the Pensions Act 2004

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In light of the above, the regulator in August 2008 reported its concerns to the SFO. The SFO and the appointed trustee, with the assistance of the regulator, obtained freezing orders on several bank accounts around the world which had been identified as holding several million pounds of the Schemes' funds.

In addition to the above action, the regulator also made an application to prohibit GPNT, along with Mr Pitcher, Mr Cordell, BDC and MPT, from acting as trustees on 25 January 2010 on a range of grounds including failure to obtain proper investment advice, the improper nature of the investments, and the failure to notify the PPF and FAS. The Determinations Panel made orders to prohibit. In particular, the regulator's Determinations Panel found that Mr Pitcher and Mr Cordell had committed serious and persistent breaches of trust law and pensions legislation. They had failed to exhibit the levels of competence that the Panel expected of trustees and were not fit and proper persons to act as trustees.

Amongst other matters, the Panel determined a wide range of issues including:

- the failure to obtain proper investment advice
- the improper nature of investments
- the failure to notify the PPF and FAS in relation to changes of scheme investments
- Conflict of interest
- Failure to have adequate internal controls.

Outcome

Following the regulator's initial investigation and regulatory action, approximately £36m has been recovered via civil proceedings brought by the appointed trustee. These civil proceedings are still ongoing to recoup further funds.

The regulator has worked closely with the appointed trustee, PPF and FAS following the initial suspension of GPNT in July 2008 to try and minimise the impact to the Schemes' members and in particular to assist with the initial short term funding issues raised by the lack of assets remaining in the Schemes to pay ongoing pension payments while the Schemes were in the PPF and FAS assessment periods.

The Serious Fraud Office (SFO) has now concluded three criminal trials against individuals involved with the disinvestment of the £52 million.

General

Where evidence of fraud is uncovered during the course of its investigations, the regulator will use the most effective regulatory tools available to it. As well as utilising its own powers, this includes working collaboratively with other regulatory authorities or law enforcement agencies best placed to take appropriate legal action. To act as a deterrent against individuals abusing their positions as trustees the regulator will publish details of its regulatory interventions in line with our publication policy: www.tpr.gov.uk/regulate-and-enforce/determinations

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