

The Pensions Regulator 	DETERMINATION NOTICE under Section 96(2)(d) of the Pensions Act 2004 (the "Act")	The Pensions Regulator case ref:
	Dixon Motor Holdings Ltd Final Salary Scheme (the "Scheme")	TM9057

1. The Determinations Panel (the "Panel"), on behalf of The Pensions Regulator (the "Regulator"), met on 4th August 2010 to decide whether to exercise a reserved regulatory function in relation to the issues in the Warning Notice dated 21 June 2010. The Regulator considered under Section 10(2) of the ~~2004~~ Act that the exercise of a reserved regulatory function was appropriate. *Act SMC 17/09/2010*

2. **Parties**

The Warning Notice specified the following parties as being directly affected by the regulatory action outlined in the Warning Notice:

- (a) Alexander Forbes Trustee Services Limited – "the Trustee"
- (b) Dixon Motor Holdings Limited – "the Employer"
- (c) The Pension Protection Fund – "the PPF"

3. **Matter to be determined:**

The function the Panel was asked to exercise was the application made by the Trustee and supported by the Regulator pursuant to Section 9 of the Pensions 1995 Act (the "1995 Act") to make an order vesting the Scheme's assets in the Trustee.

4. **Background**

- (a) The Scheme is a defined benefit arrangement in the process of winding up and is currently subject to a PPF Assessment Period.
- (b) The Trustee was appointed, by order, by the Regulator on 18 March 2008 under section 7(3)(b) of the 1995 Act.
- (c) The Employer is currently subject to a Creditors' Voluntary Liquidation. It was the entry of the Employer into Administration on 26 July 2007 that triggered the Scheme's PPF Assessment Period. The

Scheme was initially rejected by the PPF. However, since May 2009 it has been subject to a further Assessment Period.

- (d) The Employer was acting as the Scheme's sole trustee until 26 July 2007 when it ended its trusteeship following its administration.
- (e) The former trustee (R Roodhouse Limited who was also the Scheme's former employer) was dissolved before it could have vested and transferred the Scheme's Assets in, and to, the Employer, when it was due to be appointed as the Scheme's trustee. Due to the timing of this dissolution, the validity of this Deed has been questioned by the Trustee.
- (f) On the basis that it appears that the Scheme's Assets were never validly vested in, and transferred to, the Employer, the Trustee has requested that the Regulator exercise its power under section 9 of the 1995 Act to vest, by order, the Scheme's Assets in the Trustee.

5. Decision

- (a) The Panel agreed that it was appropriate to make the following order:
 - + to SJMC 17/09/2010*
I. pursuant/Section 9 of the 1995 Act to make an order vesting any property in, or transferring property to, a Trustee appointed pursuant Section 7 of the 1995 Act.
 - + to SJMC 17/09/2010*
II. The Pensions Regulator hereby orders that:

Vesting Order Pursuant to Section 9 of Pensions Act 1995

- (a) The Pensions Regulator hereby orders the vesting in, and the assignation and transfer to, Alexander Forbes Trustee Services Limited, 6th Floor, Market Square House, St James's Street, Nottingham, NG1 6FG as trustee of the Dixon Motor Holdings Ltd Final Salary Scheme, appointed pursuant to Section 7 of The Pensions Act 1995 by The Pensions Regulator, of all property and assets of the above scheme, heritable, moveable, real and personal, of every description and wherever situated.
- (b) This Order is made by The Pensions Regulator pursuant to Section 9 of The Pensions Act 1995, as amended.
- (c) This Order will take immediate effect as at the date of this Order.

6. **Submissions of the parties**

In making its determination the Panel took into account the evidence and submissions included in the Warning Notice. It also took into account the responses and submissions to the Warning Notice sent by:

- (a) The PPF; and
- (b) the Trustee.

7. **Statutory issues**

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**.

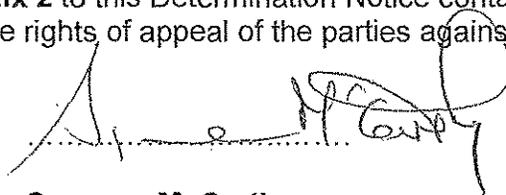
8. **Reasons for decision**

The Panel's reasons are as follows:

- (a) The transfer was needed in order for the Trustee to be able to deal with the administration of the Scheme, conduct the winding up and complete the Scheme's Assessment Period.
- (b) The alternative options which are an application to the court for a vesting order under the Trustee Act 1925 which would prove to be too costly, or restoring the former employer R Roodhouse Ltd to the Companies House register which in this case would be time barred and unavailable.
- (c) The Panel therefore considered that the only realistic option was to grant the vesting order.
- (d) In granting the vesting order the Panel took into account Section 100 of the 2004 Act in that it was in the members' interests to allow the Trustee to administer the Scheme properly.

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

Signed:



Chairman: **Suzanne McCarthy**.....

Dated:

5 August 2010

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
 - (i) 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