

	DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)	The Pensions Regulator case ref: 1656/05
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Scheme:	
To:	Derek Walter Thomas
Of:	XXXXXXXXXXXXXXXXXX XXXXXXXXXX XXXXXX XXXXXXXXXXXX
Date:	21 April 2006

TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 19 April 2006.

1.	Determination
1.1	An application by Derek Walter Thomas for the revocation of his prohibition to act as trustee of certain named schemes and waiver of his disqualification to act as a trustee of all schemes.
1.2	The application was refused.

2.	Procedure Followed: Standard		
2.1	By its Warning Notice dated 6 February 2006 (“the Warning Notice”) the Pensions Regulator gave notice that it proposed to take the above action.		
2.2	<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: 40%;">1. Derek Walter Thomas</td> <td>In his role as prohibited trustee of certain named schemes and disqualified trustee of all schemes</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. Derek Walter Thomas	In his role as prohibited trustee of certain named schemes and disqualified trustee of all schemes
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2.3	Following the issue of the Warning Notice Derek Walter Thomas exercised his right to make representations to the Pensions Regulator.		

2.4	The Pensions Regulator has taken those representations into account and has considered those materials carefully but has nevertheless determined to take the action as detailed in 7 below for the reasons set out below:
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3.	Relevant Statutory Provisions/Legislation
	<p>Sub-section 3(3) of the Pensions Act 1995 as amended by section 33 of the Pensions Act 2004 <i>(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.”</i></p> <p>Sub-section 29(5) of the Pensions Act 1995 as amended by section 37 of the Pensions Act 2004 <i>(5) The Authority may, on the application of any person disqualified under this section –</i> (a) give notice in writing to him waiving his disqualification, either generally or in relation to a particular scheme or particular description of schemes.</p> <p>Section 100 of Pensions Act 2004 – Duty to have regard to the interests of members etc</p> <p>(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.</p>

4.	Relevant Guidance
	<p>When exercising its discretion to grant an order revoking Mr Thomas’ prohibition or to waive his disqualification, the Determinations Panel will need to bear in mind the overriding statutory objectives of the Pensions Regulator. These are set out under sub-section 5(1) of the 2004 Act which states that:</p> <p style="text-align: center;"><i>“The main objectives of the Regulator in exercising its functions are-</i></p> <p style="text-align: center;"><i>(a) to protect the benefits under occupational pension schemes of, or in respect of, members of such schemes,</i></p>

	<p><i>(b) to protect the benefits under personal pension schemes of, or in respect of, members of such schemes within subsection (2),</i></p> <p><i>(c) to reduce the risk of situations arising which may lead to compensation being payable from the Pension Protection Fund (see Part 2), and</i></p> <p><i>(d) to promote, and to improve understanding of, the good administration of work-based pension schemes.”</i></p>
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5.	Background to the Application / Case
	<p>On 6 May 1998 a determinations committee of the board of Opra met to consider alleged breaches of the Pensions Act 1995 in respect of the following pension schemes of which Mr Derek Walter Thomas was a co-trustee.</p> <p>Rabobank Supplementary Benefits Scheme Rabobank London Branch Pension Fund Elliot-Thwaites Pension Scheme No 1 Elliot-Thwaites Pension Scheme No 2 The Dove Pension Fund</p> <p>Mr Thomas was fined and prohibited from acting as trustee of the above schemes, and disqualified from acting as trustee of any occupational pension scheme. The reasons cited for this decision were:</p> <p><i>“The Committee expects scheme professionals to provide a high standard of service. Mr Thomas held himself out as a scheme professional but he has demonstrated a lack of professional knowledge in his involvement in the scheme, leading to his client/fellow trustee being seriously misled. Mr Thomas failed to take any steps to advise his client/fellow trustee in the correct manner. His actions showed his lack of knowledge of the Pensions Act 1995 and in view of these failings, and the responsibility Mr Thomas must take for them professionally, the Committee decided that Mr Thomas is not suitable to be a trustee of this scheme, or any occupational pension scheme.”</i></p> <p>2. On 8 January 2003 a determination committee of the board of Opra met to consider Mr Thomas’ application for a partial revocation of his disqualification in respect of a specific number of schemes. This application was refused for the following reasons:</p> <p><i>“Mr Thomas’ standard of service in 1998 fell so far below the standard which Opra expects scheme professionals to provide that he was disqualified from being a trustee of any trust scheme</i></p> <p><i>His actions in the past showed his lack of knowledge of the Pensions Act 1995 and no evidence has been supplied to show otherwise</i></p> <p><i>There is insufficient evidence that it is now desirable for him to be a trustee of any trust scheme</i></p>

	<p><i>He is still able to supply those services his clients require, and they continue to have the protection of an approved Pensioner Trustee in place.”</i></p> <p>3. Mr Thomas was suspended by the Institute of Actuaries in February 1998, for a period of 18 months, for misappropriation of client funds in 1992/3.</p> <p>4. On 1 August 2005, the Pensions Regulator received a letter from Mr Thomas asking that his prohibition and disqualification as a trustee be revoked and waived respectively. Mr Thomas states that he was found guilty of a number of breaches but they were all requirements from which SSASs were exempt and that the reason he was technically in breach was that he had not altered the scheme rules of the schemes to require unanimity among trustees on investment decisions. Mr Thomas further stated that no member or participating employer was ever disadvantaged financially or in any other way.</p> <p>5. Mr Thomas also stated that it will no longer be necessary for Sealgrove Trustees Limited, which is currently acting as pensioner trustee of his schemes, to be involved because there will no longer be a need for an approved pensioner trustee after 6 April 2006. Most of his clients would like him to be a trustee again to minimise the parties involved and to give them the support and involvement of an independent trustee.</p>
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6.	Facts and Matters Relied Upon
	<p>The Panel did not consider that Mr Thomas had demonstrated that he was a fit and proper person to be a trustee of an occupational pension scheme. Mr Thomas had not:-</p> <p style="padding-left: 40px;">(a) provided any proof of his competence and capability to act as a trustee in relation to having the requisite trustee knowledge and understanding as required under section 247 of the Pensions Act 2004.</p> <p style="padding-left: 40px;">(b) submitted any proof of his financial soundness as he had been invited to do in the Warning Notice.</p> <p>Note</p> <p>The Panel agreed that there was no suggestion that he had been acting as a trustee whilst disqualified and this fact was accepted by the Panel. This point is clarified in the Regulator’s letter to Mr Thomas dated 13 March 2006 (DT14).</p>

7.	Conclusion: Details of Determination
	<p>The application by Mr Derek Walter Thomas for the revocation of his prohibition to act as trustee of certain named schemes and waiver of his disqualification to act as a trustee of all schemes was refused.</p>

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8.	Decision Maker
	The determination which gave rise to the obligation to give this Determination Notice was made by the Determinations Panel.

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

10.	Referral to the Pensions Regulator Tribunal
10.1	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 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 Tribunal Rules.
10.2	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 House, Trafalgar Place, Brighton BN1 4DW.

Signed:	<i>John Scampion</i>
Chairman:	John Scampion
Date:	21 April 2006