

	DETERMINATION NOTICE under section 96(2)(d) of the Pensions Act 2004 (“the Act”)	The Pensions Regulator case ref: 27/2000
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Cheney Pension Scheme	
To:	Mrs Adrienne Morris
Of:	XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX XXXXXXXXXX XXXXXXXXXXXXXXXXXXXX
Date:	23 October 2006

TAKE NOTICE that the Pensions Regulator of Napier House, Trafalgar Place, Brighton BN1 4DW (“The Regulator”) has made a determination on 18 October 2006

Note on point of procedure

The Determinations Panel first considered this review on 20 September 2006. On 29 September 2006 a further letter from Mrs Adrienne Morris dated 27 July 2006, correctly addressed to the Regulator’s case worker, arrived back at the Regulator’s office. This letter was first received at the Regulator’s office on 28 July 2006 but was forwarded, in error, to the National Insurance Contributions Office (NICO) at Newcastle.

The Determinations Panel considered that they were under both a procedural and statutory duty to consider the representations of directly affected parties but for the reasons outlined above, Mrs Morris’s letter was not considered on the 20 September 2006.

In view of the aforementioned duty to consider such representations the Determinations Panel determined to hold a complete rehearing on 18 October 2006 to take account of the letter of 27 July 2006.

1.	Determination
1.1	Mrs Adrienne Morris applied for a review of the determinations, made by the Occupational Pensions Regulatory Authority (Opra), on 19 September and 19 November 2001 in relation to the following financial penalties imposed on her: (a) 19 September 2001: £500 for failure to appoint a scheme auditor; and

	<p>(b) 19 November 2001: £5,000 for failure to obtain and consider proper advice on the question of whether investments undertaken after 28 April 2000 were satisfactory.</p> <p>The review in respect of the determination of 19 September 2001 was subsequently withdrawn by Mrs Morris on 5 January 2002.</p>
1.2	<p>The decision made by Opra on 19 November 2001 in respect of the financial penalty imposed of £5,000 for failure to obtain and consider proper advice on the question of whether investments undertaken after 28 April 2000 were satisfactory, was upheld.</p> <p>The Determinations Panel did not consider that a further review application in respect of 1.1(a) had been properly made.</p>

2.	Procedure Followed:
2.1	By its Review Statement of Facts (RSoF) the Pensions Regulator gave notice that it proposed to proceed with the above review of the decisions made by Opra on 19 September and 19 November 2001 pursuant to the application for a review received from Mrs Adrienne Morris.
2.2	<p>The Regulator determined that the following party is directly affected by this determination:</p> <p>1. Mrs Adrienne Morris In her role as a former trustee of the scheme (referred to as “the directly affected party”)</p> <p>This directly affected party was entitled to make representations to the Pensions Regulator about the determination.</p>
2.3	Following the issue of the Review Statement of Facts Mrs Morris exercised her right to make representations to the Pensions Regulator including the letter dated 27 July 2006.
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 in 6 below.

3.	Relevant Statutory Provisions/Legislation
	For details see Appendix 1 at page 8.

4.	Relevant Guidance
	<p>In relation to whether the Determinations Panel was now to consider a review in respect of one, or both, financial penalties imposed by Opra, the legal adviser confirmed to the panel that whilst there was a general discretion under Regulation 3(4) of the Occupational Pensions Regulatory Authority (Determinations and Review Procedure) Regulations 1997 to allow for an application out of time to extend the time limit for making an application for a review, it was contingent upon an application having been made.</p>

5.	Background to the Review
	<ol style="list-style-type: none"> 1. On 19 September 2001 an Opra determination committee found that there had been a failure by Mrs Adrienne Morris to take all such steps as are reasonable to appoint a scheme auditor within three months of the resignation of the previous scheme auditor. A financial penalty of £500 was imposed on Mrs Morris for this failure. 2. On the same date there was also a finding in respect of Mrs Morris in that she had failed to obtain and consider proper advice on the question of whether investments undertaken after 28 April 2000 were satisfactory, having regard to: <ol style="list-style-type: none"> a. the need for diversification of investments, in so far as appropriate to the circumstances of the scheme, and b. the suitability to the scheme of investments of the description of investment proposed and of the investment proposed as an investment of that description c. the principles contained in the statement of investment principles as required by section 36(3) and contrary to section 36(8) of the Pensions Act 1995. 4. Mrs Morris was informed that the committee was considering imposing a fine of £5,000 on her in respect of this breach. 5. On 19 November 2001 the determination committee imposed a financial penalty of £5,000 on Mrs Morris and stated that the committee had noted the representations received from her but did not consider there was any new evidence which would cause the committee to change its decision. 6. On the same date Mrs Morris was prohibited from being a trustee of the Cheney Pension Scheme and disqualified from being a trustee of all occupational pension schemes. 7. Mrs Morris originally applied for a review in 2001 and this was set down for an oral hearing in June 2002. 8. On 5 January 2002 Mrs Morris wrote to Opra stating that she had decided to withdraw her application for a review in respect of the financial penalty for the failure to appoint a scheme auditor finding.

6.	Facts and Matters Relied Upon
	<ol style="list-style-type: none"> 1. The Determinations Panel did not feel that the applicant had provided sufficient and detailed evidence of her means. In particular: <ol style="list-style-type: none"> (a) she had failed to state whether or not she had any further accounts in this country or abroad; (b) she had not provided a statement of her Abbey National account; (c) she had not provided full details of her Lloyds bank statement (there were pages missing) (d) she had not provided full information in relation to other finances XXXXXXXXXXXXXXXXXXXXXXXXXXXX. 2. Mrs Morris' failure to comply with the law constituted a serious breach of trust. 3. The consequences of these breaches had been: <ol style="list-style-type: none"> (a) to put the scheme at risk; (b) to cause a huge dissipation of scheme assets. 4. The panel were of the view that any appeal against the penalty of £500 for failure to appoint a scheme auditor was barred because of the regulations, but even if it had not been, the panel would not have reduced it in view of points 1-3 above.

7.	Conclusion: Details of Determination
	<ol style="list-style-type: none"> 1. That the financial penalty of £5,000 imposed for failure to obtain and consider proper advice on the question of whether investments undertaken after 28 April 2000 were satisfactory should be upheld. 2. The financial penalty of £500 imposed for failure to appoint a scheme auditor remains unchanged in view of the points made in 'Facts and matters Relied Upon'. 3. If The Pensions Regulator has not heard that you have applied to the Pensions Regulator Tribunal for a reference within 28 days of sending you this Determination Notice, by 23 November 2006, then the financial penalties of £5,500 become payable within 56 days of sending you this Determination Notice, by 21 December 2006, and your cheque for this amount should be sent to Determinations Support, the Pensions Regulator, Napier House, Trafalgar Place, Brighton BN1 4DW by 21 December 2006.

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

9.	List of Exhibits			
	Exhibit	Date of Document	Description	Page
	CB1	19 September 2001	Minutes and determination of the Determination Committee meeting held at Invicta House	1
	CB2	19 November 2001	Minutes and determination of the Determination Committee meeting held by way of telephone conference	10
	CB3	5 January 2002	Letter from Mrs A Morris to Opra	13
	CB4	13 May 2002	Statement of Facts submission for the Review Committee meeting	14
	CB5	10 June 2002	Letter from Ms S Williams of Hallinan, Blackburn Gittings & Nott to Opra	30
	CB6	13 June 2002	Letter from Opra to Ms S Williams of Hallinan, Blackburn Gittings & Nott	32
	CB7	1 June 2003	Tenancy agreement between Ryan Morris and Mrs A Morris	33
	CB8	8 September 2005	Notification of Housing Benefit from Camden Council to Mrs A Morris	37
	CB9	2 November 2005	Serious Fraud Office Press Release regarding the Cheney Pension Scheme	41
	CB10	11 January 2006	Gas Bill in the name of Mr K Sykes and Ms A Morris	44
	CB11	16 January 2006	Electricity Bill in the name of Mr K Sykes and Mrs A Morris	45
	CB12	6 March 2006	Letter from the Pensions Regulator to Mrs A Morris	46
	CB13	7 March 2006	HSBC Gold Credit Card statement for Mrs A Morris	47
	CB14	13 March 2006	Letter from Mrs A Morris to the Pensions Regulator	48
	CB15	13 March 2006	Lloyds TSB Bank statement for Mrs A Morris	49
	CB16	17 March 2006	Means form in respect of Mrs A Morris	50
	CB17	Undated	Letter from Mrs A Morris to the Pensions Regulator	52
	CB18	3 August 2006	Letter from Mrs A Morris to the Pensions Regulator enclosing copies of credit card and bank statements	55
			Additional exhibits	
	CB19	27 July 2006 Received at the Regulator's office on 29 September 2006	Letter from Mrs A Morris to the Pensions Regulator enclosing sent by NICO on 26 September 2006: 1. Patient Information Leaflet on 'Zopiclone'. 2. Page 2 of 4 of a communication in relation to Incapacity Benefit	61

9. List of Exhibits				
	Exhibit	Date of Document	Description	Page
	CB20	Undated	Supplementary Legal Analysis	70

10. Scheme details	
Type of scheme	Hybrid
Status of scheme	Winding up as at 9 May 2001
Membership	83
Size of fund	£742,000 as at 4 July 2006
Contracted in/out	Contracted out

11. Scheme trustees			
	Name	Period of office	Status of trustee
1.	Independent Trustee Services	from 20 October 2000 to date	Independent trustee appointed by Opra under section 7 of the Pensions Act 1995

12. Scheme advisers				
	Type	Name	Period of office	Company
1.	Actuary	IPS Actuarial Services Ltd	Unknown	

13. Employer details	
Name	C W Cheney & Son Ltd
Address	Factory Road Hockley Birmingham B18 5LH
Nature of business	Manufacture of industrial and domestic locking devices
Number of employees	Nil
Company Registered Number	01622106
Current Status	In compulsory liquidation
If dissolved enter date of dissolution	

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

15.	Referral to the Pensions Regulator Tribunal
15.1	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 Pensions Regulator Tribunal Rules 2005 (SI 2005/690).
15.2	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: **Daniel Taylor**.....

Chairman: Daniel Taylor.....

Date: 23 October 2006

Relevant Statutory Provisions/Legislation

Appendix 1

The Pensions Act 1995

Section 96 Review of decisions

- (1) Subject to the following provisions of this section and to section 97, any determination by the Authority of a question which is within their functions to determine shall be final.
- (2) The Authority must, on the application of any person ("the applicant") at any time within the prescribed period, review any determination of theirs –
 - (a) to make an order against an applicant under section 3,
 - (b) to require the applicant to pay a penalty under section 10 of this Act or section 168 of the Pension Schemes Act 1993, or
 - (c) to disqualify the applicant from being a trustee of a trust scheme under section 29(3) or (4).
- (3) *not applicable to this application*
- (4) The Authority's powers on a review under subsection (2) or (3) include power –
 - (a) to vary or revoke any determination or order previously made,
 - (b) to substitute a different determination or order, and
 - (c) generally to deal with matters arising on the review as if they had arisen on the original determination;and also include power to make savings and transitional provisions.
- (5) Subject to subsection (6), regulations may make provision with respect to the procedure to be adopted on any application for a review under subsection (2) or (3) or under any corresponding provision in force in Northern Ireland and generally with respect to such applications and reviews.
- (6) Nothing in subsection (5) shall be taken to prevent such a review being entered upon by the Authority without an application being made.

The Occupational Pensions Regulatory Authority (Determination and Review Procedure) Regulations 1997 (S.I.1997/794)

3 Application to the Authority for a review

- (1) An application to the Authority for the review of a determination shall be made in writing, signed by the applicant and shall state-
 - (a) the name and address of the applicant;
 - (b) the particulars of the determination in respect of which a review is sought;
 - (c) the grounds on which a review of the determination is sought;
 - (d) the name and address of the applicant's representative (if any) and whether the Authority should send replies or notices concerning the application to that representative rather than to the applicant.

(2) For the purposes of section 96(2) of the 1995 Act (decisions the Authority must review on application being made within prescribed period), the prescribed period is 28 days beginning with the date of the notice referred to in regulation 2.

(3) The applicant shall send with any application, or within 14 days thereafter, a copy of the documents on which he intends to rely for the purposes of the review.

(4) The Authority may, in any particular case, extend the time limit prescribed in paragraph (2), or in any corresponding provision in force in Northern Ireland, whether or not it has already expired.

(5) Where an application will, or is likely to be, received outside the time limit prescribed in paragraph (2), or in any corresponding provision in force in Northern Ireland, the applicant shall include with the application for a review a statement of the reasons on which he relies to justify the delay, and the Authority must consider any such statement in deciding whether or not to extend the time limit.

(6) Notwithstanding paragraph (1), the Authority may allow an application for a review to be treated as properly made even if the requirements of paragraph (1) are not met.

(7) The applicant may, at any time before he is notified of the date of the review, or, with the leave of the Authority, at any time after he is so notified, amend the grounds referred to in paragraph (1)(c) and submit any documents upon which he wishes to rely in support of those grounds as amended.

6 Statement of facts

(1) Where the Authority decide to review a determination, they shall prepare a statement of facts relating to the review and shall send that statement to the applicant, or if none, to such other persons as appear to them to be directly affected by that determination.

(2) A person notified under paragraph (1) shall reply to the Authority within 28 days of the date of the statement therein referred to, indicating-

(a) whether and in what respect any of the facts are disputed; and

(b) subject to regulation 14(2), any other facts which, in the opinion of the person so notified, are relevant to the review.

8 Notice of date, time, place and manner of review

(1) The Authority shall fix the date, time and place for the review and whether it is to be dealt with by an oral hearing or not, and, not less than 28 days before that date, send to the applicant, and to such other persons as they consider the justice of the case may require, a notice in writing specifying the date, time, place and manner of the review.

(2) Where the Authority has decided to deal with a review by way of an oral hearing, the notice referred to in paragraph (1) shall also ask the person

notified to confirm within 21 days of the date of the notice-

- (a) whether that person or any representative of that person will attend the hearing; and, if so,
- (b) the names, addresses and occupations of the witnesses, if any, that person or his representative intends to call.

(3) The Authority may postpone the date of the review (whether it is to be dealt with by way of an oral hearing or not)-

- (a) where both the applicant and the Authority agree; or
- (b) in exceptional circumstances,

provided that they send to persons notified under paragraph (1), a notice specifying the new date, time and place of the review not less than 28 days before that date.

9 Withdrawal of application

The applicant may at any time before the date fixed for a review withdraw an application by sending to the Authority a notice in writing signed by the applicant which states that the applicant withdraws that application.

The Pensions Act 2004

7 Transfer of OPRA's functions to the Regulator

(1) Subject to the provisions of this Act, the functions of the Occupational Pensions Regulatory Authority ("OPRA") conferred by or by virtue of-

- (a) the Pension Schemes Act 1993 (c. 48),
 - (b) the Pensions Act 1995 (c. 26), and
 - (c) the Welfare Reform and Pensions Act 1999,
- are hereby transferred to the Regulator.

Section 10 Functions exercisable by the determinations panel

(1) The Determinations Panel is to exercise on behalf of the Regulator-

- (a) the power to determine, in the circumstances described in subsection (2), whether to exercise a reserved regulatory function, and
- (b) where it so determines to exercise a reserved regulatory function, the power to exercise the function in question.

(2) Those circumstances are-

- (a) where the Regulator considers that the exercise of the reserved regulatory function may be appropriate, or
- (b) where an application is made under, or by virtue of, any of the provisions listed in subsection (6) for the Regulator to exercise the reserved regulatory function.

(3) Where subsection (1) applies, the powers mentioned in that subsection are not otherwise exercisable by or on behalf of the Regulator.

(4) For the purposes of this Part, a function of the Regulator is a "reserved regulatory function" if it is a function listed in Schedule 2.

(5) Regulations may amend Schedule 2 by-

- (a) adding any function of the Regulator conferred by, or by virtue of, this or any other enactment,
- (b) omitting any such function, or
- (c) altering the description of any such function contained in that Schedule.

(6) The provisions referred to in subsection (2)(b) are-

- (a) section 20(10) (application to permit payments out of an account that is subject to a restraining order);
- (b) section 26(2) (application for order validating action taken in contravention of freezing order);
- (c) section 41(7) (application for the issue of a revised contribution notice under section 41(9));
- (d) section 50(7) (application for the issue of a revised contribution notice under section 50(9));
- (e) section 3(3) of the Pensions Act 1995 (c. 26) (application for revocation of prohibition order);
- (f) section 4(5) of that Act (application for revocation of a suspension order);
- (g) section 7(5A) of that Act (application for appointment of a trustee under section 7(3)(a) or (c) of that Act);
- (h) section 29(5) of that Act (application for waiver of disqualification);
- (ha) section 58(7) of that Act (power of the Regulator in prescribed circumstances to extend or further extend the period referred to in section 58(6) of that Act in relation to a schedule of contributions);
- (hb) section 60(7) of that Act (power of the Regulator in prescribed circumstances to extend or further extend the period applicable under section 60(3) of that Act in relation to securing an increase in value);
- (i) section 69(1) of that Act (application for order authorising modification or modifying a scheme);
- (j) section 71A(2) of that Act (application for modifying a scheme to secure winding up);
- (k) section 99(4A) of the Pension Schemes Act 1993 (c. 48) (application for extension under section 99(4) of that Act of a period for compliance);
- (l) section 101J(6)(a) of that Act (application for extension under section 101J(2) of that Act of a period for compliance).

(7) Regulations may amend subsection (6) by-

- (a) adding any provision of this or any other enactment to the list in that subsection, or
- (b) omitting or altering the description of any provision mentioned in that list.

(8) The Panel may be authorised under paragraph 20(4) or (6) of Schedule 1 to exercise further functions of the Regulator on behalf of the Regulator.

(9) The Panel may authorise any of its members or any of its sub-committees to exercise on its behalf-

- (a) any of the functions of the Regulator which are exercisable by the Panel on behalf of the Regulator, or
- (b) any of the functions of the Panel under section 93(3), section 99(11) and

paragraph 18(2) of Schedule 1 (procedure).

(10) This section is subject to any regulations made by the Secretary of State under paragraph 21 of Schedule 1 (power to limit or permit delegation of functions).

The Pensions Act 2004 (Commencement Order No.3, Transitional provisions and Amendments) 2005 (S.I.2005/695)

4 Transitional modification of section 10 of the Act

Section 10 of the Act (functions exercisable by the Determinations Panel) shall, for the purposes of paragraph (6)(b) and (c) of article 5 of this Order, be modified for so that it shall have effect as if, after subsection (4), there were inserted the following subsection-

(4A) "For the purposes of this Part, a function conferred on the Occupational Pensions Regulatory Authority ("OPRA") by or by virtue of the Pensions Act 1995 relating to-

(a) the review, under section 96 of that Act (review of decisions), of a determination made by OPRA before the 6th April 2005 ("the appointed day") of a question falling within OPRA's functions, or

(b) the reference for a decision by the court, under section 97 of that Act (references and appeals from the Authority), of any matter arising for determination by OPRA before the appointed day or of any matter arising before that day on-

(i) an application for a review of a determination; or

(ii) a review entered upon by OPRA without an application,

shall, where that function falls to be exercised by or in relation to the Regulator on or after the appointed day, also be a reserved regulatory function."

5 Transitional provisions

(1) In this article, unless the context otherwise requires, "function of the Authority" means a function of the Authority which is transferred to the Regulator under subsection (1) of section 7 of the Act (transfer of OPRA's functions to the Regulator) on 6th April 2005 ("the appointed day").

(2) Anything done (or having effect as if done) by or in relation to the Authority before the appointed day pursuant to, or for the purposes of, any function of the Authority shall, so far as is required for continuing its effect, have effect as if done by or in relation to the Regulator pursuant to, or for the purposes of, that function.

(3) Subject to paragraph (5), anything which, immediately before the appointed day, is in the process of being done by or in relation to the Authority pursuant to, or for the purposes of, any function of the Authority shall be continued by or in relation to the Regulator pursuant to, or for the purposes of, that function.

(4) Any reference to the Authority in any document constituting or relating to anything to which paragraph (2) or (3) applies in relation to any function of the Authority shall, so far as is required for giving effect to those provisions, be construed as a reference to the Regulator.

(5) Where any function of the Authority described in paragraph (6) would, but for its dissolution, fall to be exercised on or after the appointed day, or fell to be exercised before the appointed day but has not been exercised, that function shall be exercised by the Regulator as if it were a function of the Regulator conferred on it under or by virtue of the Act.

(6) The functions of the Authority to which paragraph (5) refers are-

(a) the investigation of any matter falling within the Authority's functions where the matter under investigation occurred, or first occurred, before the appointed day,

(b) the review, under section 96 of the 1995 Act, of a determination made by the Authority before the appointed day of a question falling within the Authority's functions, and

(c) the reference for a decision by the court, under section 97 of the 1995 Act, of any matter arising for determination by the Authority before the appointed day or of any matter arising before that day on an application for a review of a determination or on a review entered upon by the Authority without an application.

(7) Where any function under regulation 6(1)(a) of the Register of Occupational and Personal Pension Schemes Regulations 1997 fell to be exercised by the Authority, as Registrar, before the appointed day but has not been exercised, or would have fallen to be exercised by the Authority on or after the appointed day, that function shall be exercised by the Secretary of State (or by a person appointed by him).

(8) Schedule 2, which makes further transitional provision, has effect.

Schedule 2 Further transitional provisions

3 Transitional provisions relating to section 96 of 1995 Act

Section 96 of the 1995 Act (review of decisions) shall be modified so that it shall have effect as if-

(a) for the words "any determination of theirs" in subsection (2), there were substituted the words "any determination of the Occupational Pensions Regulatory Authority"; and

(b) for the words "any other such determination of theirs" in paragraph (a) of subsection (3), there were substituted the words "any other such determination of the Occupational Pensions Regulatory Authority".

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 scheme,
- (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.”

Section 100 of the 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.