

*PROCEDURE – Jurisdiction of Tribunal – Strike-out application – Tribunal Rules – Reference notice and subsequent representations fail to identify issues in Determination Notice that Applicant wishes Tribunal to consider – No relevant “matter referred” – Whether Tribunal has jurisdiction to entertain points taken by Applicant – No – Reference struck out*

**THE PENSIONS REGULATOR TRIBUNAL**

**NIGEL ANTONY RYDER  
(No. 2)**

**Appellant**

**- and -**

**THE PENSIONS REGULATOR**

**Respondents**

**Tribunal: STEPHEN OLIVER QC (Chairman)**

**Given in Chambers – 15 May 2006**

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## DECISION

1. The Regulator has applied to strike out the reference notified to the Tribunal  
5 by Mr N A Ryder on 17 September 2005. The grounds for the Regulator’s application  
are Mr Ryder’s failure to have addressed the determination made by the  
Determinations Panel of the Regulator in either his original reference notice or in his  
reply of 6 January 2006 to the Regulator’s Statement of Case.

### 10 **The Tribunal’s power to strike out a reference**

2. The Tribunal is given power by the Tribunal Rules (SI 2005 No. 690) (“the  
Rules”) to ensure that the cases for both parties are properly explained and prepared.  
Rule 4 requires that the applicant (Mr Ryder in this case) shall set out in his reference  
15 notice “the issues concerning the determination notice ... that (he) wishes the tribunal  
to consider”. (The Pension Regulator contends that Mr Ryder’s reference notice  
contains nothing that effectively challenges the Determination Notice.) Rule 6  
requires the Applicant to put in a written representation that states “the grounds on  
which he relies in the reference” and identifies “all matters in the statement of case  
20 which are disputed by (him)” and states his reasons for disputing this. (The Pension  
Regulator contends that nothing in Mr Ryder’s reply letter of 6 January 2006 or in any  
subsequent communications from him does any of those things.) Both those  
procedural matters underly a fundamental objection to Mr Ryder’s purported  
reference. This is that Mr Ryder’s case does not engage the jurisdiction of this  
25 Tribunal which therefore has no right to hear the reference

3. What happens if an application does not comply with either or both of rules 4  
and 6? Rule 33 gives the Tribunal the power to, among other things, dismiss the  
whole or part of the reference when the Applicant has, without reasonable excuse,  
30 failed to comply with the provision of the Rules. But by rule 33(4) the Tribunal  
cannot take that step without giving the person in question the opportunity to make  
representations against the Tribunal’s dismissal of the reference. This is all the more  
relevant in the present case where the Pensions Regulator contends that the Applicant  
cannot comply with the Rules quite simply because they do not apply where the point  
35 in issue is outside the Tribunal’s jurisdiction.

4. Mr Ryder was sent a copy of the Regulator’s application to strike out on 27  
February 2006. On 7 February 2006 he had written to the Tribunal in response to a  
notification of a pre-hearing review stating that – “I will not be attending the pre-  
40 hearing as I feel that I have said everything that needed to be said in my previous  
letter”. I shall refer to the details from Mr Ryder’s previous letters in due course.  
These consistently express his profound sense of grievance at what has happened to  
his pension rights. Mr Ryder did not, as he had written, attend the present hearing.

45 5.. I decided to go ahead and hear the Regulator’s application. Rule 24(4)(a) of  
the Pensions Regulator Tribunal Rules 2005 (“the Rules”) permits this. Christine  
Brightwell, representing the Regulator, explained the background to the reference and

took me through the statutory provisions. She pointed out that the thrust of Mr Ryder's grounds in his initial reference notice and in his reply of 6 January 2006 to the Regulator's statement of case was his grievance against his employer company; the grounds did not allege that the Regulator's determination had been improperly made. By the conclusion of the hearing I had formed the view that neither the reasons for making the reference as set out in Mr Ryder's reference notice nor the contents of Mr Ryder's later letters addressed "the determination which is the subject-matter of the determination notice"; these disclosed nothing capable of being referred to the Tribunal under section 96(3) of Pensions Act 2004.

6. It would have been wrong to have struck out or dismissed Mr Ryder's reference without giving him the opportunity to put his case to the Tribunal. In any event rule 33(4) prevents such a thing happening. I therefore produced a Direction designed to enable Mr Ryder to do this, if he chose. Accompanying the Direction was a Decision explaining what I was doing and setting out my provisional views as to the strength of Mr Ryder's case. I invited Mr Ryder to consider these and, if he had reasons for disputing any of the conclusions that I expressed, he was asked to explain what his objections were and why he objected. Mr Ryder has done so and I address his points later in this Decision.

#### **The Determination Notice referred by Mr Ryder to the Tribunal**

7. The Determination Notice was issued on 5 September 2005. The Determinations Panel of the Regulator had met on 25 August 2005 and considered a determination made by the OPRA Determination Committee ("the ODC") on 19 January 2005. The Determinations Panel of the Regulator upheld the decision of 19 January 2005 that an application by The Trustee Corporation Ltd (in its role as statutory independent trustee of the pension scheme of which Mr Ryder is a member) under regulation 13(a)(i) of the Occupation Pension Schemes (Transfer Values) Regulations 1996 ("the Transfer Values Regulations") for an extension of the time limit for the payment of a cash equivalent transfer be granted to 19 July 2005.

#### **Background to the Determination Notice**

8. Mr Ryder is a member of the Sheffield Forgemasters Pension Scheme ("the Scheme") which is a salary related occupational pension scheme. Mr Ryder was a directly affected party for the purposes of the determination for which he seeks the reference, the review having been granted in respect of another scheme member.

9. On 26 February 2004 Mr Ryder signed a form of request to transfer the cash equivalent (which appears from the form to have been £30,426), "the CETV", requiring the trustees of the scheme to use that amount for the purpose of securing rights for Mr Ryder under a personal pension scheme chosen by him. The "guarantee date" was apparently expressed as 18 February 2004.

10. On 6 June and 7 July 2004 the scheme trustee applied under regulation 13 of the Occupational Pension Schemes (Transfer of Values) Regulations 1996 for an

extension of time for paying the transfer of value. It will be noted that a member who within three months of the guarantee date accepts his CETV by making a relevant application to the trustee of the scheme in accordance with section 95 of the Pension Schemes Act 1993 gains a “right” under section 94(1)(aa) to that so-called “guaranteed” CETV. The CETV must then be dealt with in accordance with the member’s instructions (usually being transferred to another scheme) within a “payment period” of six months from the guarantee date. The trustee may apply to the Regulator for the Regulator to exercise the power under section 99(4) of the 1993 Pension Schemes Act to extend the payment period. That discretion is exercisable on three grounds alone; the ground relevant to the present situation was that “the scheme is being wound up or is about to be wound up”.

11. Mr Ryder’s guarantee date being 18 February 2004, the payment period would have ended on 18 August 2004. However on 8 July 2004 The Trust Corporation Ltd, as trustee of the scheme, applied to the Regulator for extension of the payment period. The trustee had hoped that during the six month extension period the future of the scheme would be decided; the most probable outcome, the trustee believed, would be that the scheme would commence winding up and there would be insufficient funds to pay members’ CETVs at the values quoted. An extension was therefore necessary to allow the trustees to reduce the CETVs within the extended payment period on the basis of the priority order then taking effect under section 73 etc of the 1995 Pensions Act. The application was considered by the ODC (the OPRA Determinations Committee) in January 2005. On 19 January the ODC determined that the period for payment of a CETV from one member (a Mr J) be extended until 19 July 2005. Mr Ryder, as one of the fifteen other members, was a directly affected party. (Mr Ryder was directly affected in that, if the extension had been improperly granted in relation to Mr J’s CETV, Mr Ryder would have been able to ask the trustee to make payment of his own CETV.) The basis for the ODC’s determination was that the scheme was about to be wound up.

12. On 27 January 2005 Mr J applied to OPRA for a discretionary review of the 19 January 2005 determination of the ODC. That application, supported by Mr Ryder, was granted by an OPRA determinations panel on 16 March 2005.

13. The Pensions Regulator assumed its statutory functions under the Pensions Act 2004 on 6 April 2005. On 25 August 2005, as noted at the start of this Decision, a Determinations Panel of the Regulator reviewed the OPRA determination of 19 January 2005 and on 5 September 2005 published its determination upholding the OPRA decision to grant the extension to 19 July 2005.

#### **The determinations of the Determination Panel**

14. It is the determination of the Determination Panel released on 5 September 2005 that Mr Ryder has referred to this Tribunal. The first question for the Panel’s determination was whether the ODC should have made their determination on the grounds that the scheme was about to be wound up. The Determinations Panel’s view was that on the evidence available to it on 27 August 2005 the scheme was about to

be wound up; in this respect the Determinations Panel considered it was entitled to look at the evidence contemporary to its (the Determinations Panel's) decision. (In fact on 26 July 2005 the winding up of the scheme had been triggered by an employer's notice that it was ceasing to make contributions; on 27 July the employer had lodged proposals at the County Court for a company voluntary arrangement and on 27 July the scheme entered the Pensions Protection Fund assessment period.)

15. The Determinations Panel also considered whether it had been reasonable for the ODC to have exercised its discretion on 19 January 2005 to extend the payment period. The Determinations Panel concluded from the evidence that was available at that date that it was reasonable to grant the application because the likely consequence of a decision by OPRA to refuse the application for an extension would have been to trigger a sufficient number of further CETV requests, thereby resulting in a disparity of treatment for the generality of the members.

16. Then the Determinations Panel considered whether the current facts, namely that the scheme was then in the process of winding up, changed their view. They concluded it did not. If the extension were not granted there would be a differential between the benefits of those who had applied already for transfers and the generality of members assessed on the papers at some 8%. There would probably be further applications for transfers before the value of the scheme was finally assessed and the involvement of the Pensions Protection Fund at assessments stage gave rise to further uncertainty as to the ultimate valuations that would be made. The Determinations Panel decided that it was appropriate in all the circumstances to extend the period of payment of the CETV so that the position of all members of the scheme could be dealt with equally by the trustees.

17. For those reasons the Determinations Panel decided that the decision of the ODC to grant an extension of the time limit for the payment of the CETV in respect of Mr J to 19 July 2005 should be upheld.

### **Mr Ryder's reasons for making the reference to the Tribunal**

18. I quote the reasons in paragraph 8 of Mr Ryder's reference notice:

"The company took six month to give transfer value. This was then signed and returned then over three months had passed, then they applied for a pensions extension.

If I am not mistaken the company has three months from me signing to pay out, this they did not do, and then after three months applied for a extension. This as I am aware is legally wrong. To me this cannot be any clearer and hope you can see this. I do not what else to say, I have my future in your hands, I have received a letter from Downing Street, and this is going to be looked into now by the Pensions dept."

19. Mr Ryder's reply (in his letter of 6 January 2006) reads, so far as is relevant, as follows:

5 "As to the details of this case I will try to make things clear. First and foremost I only worked for the company for about 4½ years, but was told by members of staff it was a very good scheme. So I transferred all my previous job's pension into it. When I left some months later I decided to move my pension to my new job, but every time I got in touch about it I was passed from pillar to post and could not get a real answer, in the end I got a transfer value of 10 some £33,000. This took from September to March. Some seven months. This was accepted and signed right away and sent back. My present company in July told me they still had not been sent the cheque. So I chased this matter up, at which point I was told the company had applied for a pensions extension. No info. or straight answers were given at first but in the end was told that this 15 was applied for in June. My transfer value was signed and returned at the beginning of March. So after waiting seven months for a quote then another four for the cheque I have been robbed of my future, this is legal theft. The company have deliberately held back and kept this ongoing knowing what is going to happen."

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20. Mr Ryder responded to the invitation referred to in paragraph 6 above to state whether he had any reasons for disputing my provisional conclusions. He wrote back restating his point that it had taken his employer company seven months from the time his application in September 2003 had been put in to provide him with a written 25 Statement of Entitlement: the Statement, he said, was signed on around 13 March 2004. That, he said, was in breach of the rules (to which I shall refer in paragraph 22 of this decision). He went on to say:

30 "If it had ... been given in that six months I would not have been involved in any of this now".

### **Conclusions on Mr Ryder's main point**

21. Before reaching any conclusions I need to make two introductory points. 35

22. First and for reference, the rules relating to CETVs are as follows. Under section 93A of the Pension Schemes Act 1993 trustees or managers of a salary related occupational pensions scheme must on receipt of an application from a deferred scheme member provide him with a written Statement of Entitlement. The statement 40 must set out the amount of the cash equivalent of his accrued benefits within the scheme at the guarantee date (i.e the date at which the calculation is based). This amount is known as the CETV. The statement of entitlement must usually be provided within three months or, in exceptional circumstances, within six months of a member's application (see regulation 6 of the Occupational Pension Schemes 45 (Transfer Values) Regulations 1996 ("the Transfer Values Regulations")).

23. Second, I need to identify the “matter referred” to this Tribunal. This is because section 103(4) of the Pensions Act 2004 sets out the function of the tribunal which is to-

5 “... determine what (if any) is the appropriate action for the Regulator to take in relation to the *matter referred* to the Tribunal”.

The “matter referred” to the Tribunal is the Determination Notice given by the Determinations Panel on 5 September 2005 under section 96(2)(b) of the Pensions  
10 Act 2004. The matter before the Determinations Panel had (as mentioned in paragraphs 7 and 17 above) been concerned with the review of the determination, made by OPRA, on 19 January 2005 that the application under regulation 13(a)(i) of the Transfer Values Regulations for an extension of the time limit for the payment of a cash equivalent to transfer be granted to 19 July 2005. The Determinations Panel of  
15 the Pensions Regulator upheld OPRA’s determination and issued the Determination Notice referred by Mr Ryder to this Tribunal.

24. Mr Ryder’s Reference Notice to this Tribunal has not challenged the decision of the Pensions Regulator Determinations Panel. That decision or determination is the  
20 only matter to which the authority of this Tribunal relates. Mr Ryder’s challenge goes to matters that were not before the Determinations Panel.

25. The Determinations Panel did not deal with Mr Ryder’s main complaint which is that his employer company and the scheme trustees took too long to provide him with his CETV. That complaint had not been formally addressed to OPRA; it had not  
25 been the subject of a decision of the ODC and consequently it had not been before the Determinations Panel of the Pensions Regulator. It is not therefore a “matter referred” over which the Tribunal has any authority to make a determination. That is why the Pensions Regulator’s contention that this Tribunal has no jurisdiction over the point,  
30 with the result that Mr Ryder’s reference should be struck out, is in my opinion correct.

26. Before leaving Mr Ryder’s main point I have two further observations. These are strictly immaterial to my decision, but they throw some light on the circumstances  
35 leading to the issue of Mr Ryder’s CETV in February 2004.

27. On 24 February 2004 Mr Ryder was notified in writing of the transfer value (£30,426). There is no record of when Mr Ryder put in the application; his account is that it was put in in September 2003. On that basis, the certificate was issued within  
40 six months and not in seven months as Mr Ryder has asserted.

28. The second point is this. I note from the file provided for the hearing that a fellow member of the Scheme (a Mr P B) had complained in writing about the excessive delays in receiving his pension transfer money. His letter recites that he had  
45 requested a transfer value on 10 September 2003. He subsequently received a letter from The Trustee Corporation Ltd on 7 December 2003 stating that –

“... they were not going to provide me with a transfer value quotation within a three month time limit “due to circumstances beyond our control”. I subsequently did not receive my transfer value quotation until 20 February 2004, some two months late”.

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The conclusion I draw from this is that Mr Ryder’s and Mr P B’s application were processed at much the same time. The “circumstances beyond our control” were most likely to have ranked as “exceptional circumstances” within regulation 6 of the Transfer Values Regulations. And if exceptional circumstances justified the overrun beyond three months in Mr P B’s case, they will have done so in Mr Ryder’s case.

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### **Other points taken by Mr Ryder**

29. Mr Ryder’s second written reason for referring the Decision Notice is that he signed and returned the CETV within three months. This is not in dispute. By signing it within three months of the guarantee date Mr Ryder gain the “right” under section 94(1)(aa) of the 1993 Pension Schemes Act to that guaranteed CETV (which is then had to be dealt with in accordance with Mr Ryder’s instructions and transferred to another nominated scheme within six months of the guarantee date (section 99(2)(a)) of the 1993 Pensions Act.

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30. Mr Ryder’s third written reason for referring the Decision Notice is that “they” (the employer or the trustees) applied for an extension after he had submitted his form of request to them on 26 February 2004. Mr Ryder’s reasons, set out in the Reference Notice, say that the company should have made the application within three months of his signing the CETV.

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31. This point was not before the ODC nor was it the subject of a determination by the Determination panel. It is not, therefore, within the jurisdiction of this Tribunal. But for what it is worth, this is my reaction. As I read the law the trustees were entitled to apply to the then Regulator (OPRA) and ask OPRA to exercise its power to grant an extension to the payment period. The payment period is six months from the guarantee date which in Mr Ryder’s case was 18 February 2004. The payment period therefore lasted until 18 August 2004. OPRA received the trustees’ extension application on 8 July 2004 which was within the payment period. For those reasons I do not agree with Mr Ryder when he asserts that the trustees’ application for an extension was legally wrong in that it was made out of time. By making an effective in-time application for an extension of the payment period, the trustees lawfully postponed the time at which they would otherwise have had to have dealt with Mr Ryder’s CETV, i.e. transferred it to the other scheme.

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### **Overall conclusions**

32. None of the reasons advanced by Mr Ryder in the Reference Notice or in any subsequent written submissions of his show that he is challenging the Determination of the Determinations Panel issued on 5 September 2005. In particular no challenge is made to the grounds for the OPRA Decision Committee’s decision (which was the

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one and only matter upheld by the Determinations Panel's determination) that the scheme was being wound up or was about to be wound up. There is therefore nothing contained in the Reference Notice and in any of Mr Ryder's written submissions that engages the authority of the Tribunal to make a determination under section 103(4) of the Pensions Act. If I were not now to strike out the reference, the matter would proceed to a hearing on the points taken by Mr Ryder. I would be bound to decide the matter against him and dismiss his reference. By the same process of reasoning, I agree with the contention of the Pensions Regulator that Mr Ryder's reference notice contains nothing that effectively challenges the Determination Notice; the result is that Mr Ryder has submitted nothing that can clearly be described as "matters in the statement of case which are disputed by (him)" (see rule 6 of the Rules). Mr Ryder has had a reasonable opportunity, following the Direction that I gave on 14 March 2006, to remedy the omission.

33. I am more than aware that Mr Ryder is unrepresented. The statutory provisions are technical and complicated and he has been drawn into this by matters outside his control. At the same time I do not want to waste his and the Pensions Regulator's time and effort by pursuing a pointless dispute before the Tribunal. Thus, taking everything into consideration, I have decided that the Pensions Regulator's application to strike out the reference should be allowed.

34. I direct that the reference be struck out.

**STEPHEN OLIVER QC  
CHAIRMAN**

**RELEASED:**

PRT/05/001