

DATED 8th December 2020

# **DEFINITIVE TRUST DEED AND RULES**

relating to the

## **HYP SSAS Pension**

## CONTENTS

Rule	Heading	Page
Trustees .....		8
1.	Administration and Management .....	8
2.	Power to Determine Entitlement .....	8
3.	Power to Act on Advice .....	8
4.	Maintenance of Scheme Registration .....	8
5.	Power to Employ Agents and Trustees' Decisions.....	8
6.	Power to Extend Time Limits.....	9
7.	Appointment and Removal of Trustees.....	9
8.	Appointments .....	9
9.	Trustees' Indemnities .....	10
10.	Trustees' Entitlement to Benefits.....	10
11.	Accounts.....	10
12.	Audit and Inspection of Accounts .....	10
13.	Operation of a Bank Account .....	10
14.	Expenses .....	11
15.	Perpetuity Period .....	11
16.	Power to Insure .....	11
17.	Trustees' Resolutions .....	12
18.	Trustees' Interests .....	12
19.	Registration of the Scheme .....	12
20.	Unanimous Decisions.....	12
21.	Power to Amend .....	12
22.	Adherence of new Employer to the Scheme.....	12
23.	New Principal Employer .....	13
Investments .....		14
24.	Investment Powers.....	14
25.	Power to Borrow .....	14
General .....		16
26.	Notices .....	16
27.	Place of Residence .....	16
28.	Place of Payment.....	16
29.	Evidence Wanted .....	16
30.	Error in Statement.....	17

31.	Actuarial Investigations .....	17
32.	Power to Actuary .....	17
33.	Liability of Employers .....	17
34.	No Restriction on Dismissal.....	17
35.	Claims only under Deed and Rules.....	17
36.	Inspection of Documents .....	18
37.	Purchase of Annuity .....	18
38.	Employer's Lien .....	18
39.	Appointment of Scheme Administrator .....	19
40.	Pensions Act 2004 Conditions .....	19
41.	Assignment, Surrender, Etc .....	19
Membership .....		21
42.	Eligibility .....	21
43.	Membership and Rules .....	21
44.	Temporary Absence.....	21
45.	Cessation of Membership .....	21
46.	Employee Rejoining Pensionable Service .....	21
47.	Resumption of Membership .....	21
48.	Evidence .....	22
49.	Closure to New Members .....	22
Contributions.....		23
50.	Contributions Paid by Employers .....	23
51.	Contributions Paid by Employee .....	23
52.	Reduction or Suspension.....	23
53.	Reduction of Salary .....	23
54.	Schedule of Contributions.....	23
Benefits .....		24
55.	Normal Retirement .....	24
56.	Retirement before Normal Retirement Date .....	24
57.	Retirement After Normal Retirement Date .....	24
58.	Pension.....	24
59.	Drawdown .....	24
60.	Lump Sum on Retirement .....	25
61.	Lump Sum payable on Death .....	26
62.	Dependant's Pensions .....	26
63.	Payment of Pensions .....	26

64.	Payment of Child's Annuity .....	27
65.	Allocation .....	27
Benefits on Leaving Pensionable Service.....		29
66.	Range of Alternatives .....	29
67.	Entitlement to Short Service Benefits .....	29
68.	Payments of Short Service Benefits .....	29
69.	Deferred Benefits .....	29
70.	Calculation of Deferred Benefits .....	29
71.	Determination of Qualifying Service .....	30
72.	Increase of Deferred Benefits .....	31
73.	Purchase of Annuity Contract .....	31
74.	Transfer Payment .....	31
75.	Notification to the Leaving Member .....	31
Leaving Pensionable Service.....		32
76.	Uses of Transfer Value .....	32
77.	Election Procedure .....	32
78.	Effective Election .....	32
79.	Variation in Benefits .....	32
80.	Cessation of Scheme's Liability .....	32
Transfers .....		33
81.	Transfers Out .....	33
82.	Termination of Responsibility.....	33
83.	Transfer received .....	33
84.	Transfer of Scheme assets .....	34
85.	Transfer from an Existing Scheme .....	34
Reconstruction and Winding-up.....		35
86.	Determination of the Scheme .....	35
87.	Reconstruction or Winding-up or Replacement of the Principal Employer .....	35
88.	Cessation of Principal Employer .....	35
89.	Winding-up .....	35
90.	Withdrawal of an Employer .....	36
91.	Loss of Principal Employer's Powers .....	37
92.	Power to run as a Closed Scheme .....	37
HMRC Requirements from 6 April 2015 .....		38
93.	Benefits for Member .....	38
94.	Benefits Following Death of Member .....	38

95.	Overall Limit on Benefits and contributions.....	39
96.	Pension Commencement Lump Sum .....	39
97.	Income Withdrawal.....	40
98.	Lump Sum Death Benefits.....	40
99.	Alternative Application of Individual Fund Share.....	41
100.	Payment of benefits .....	41
101.	Application of the General Fund .....	41
102.	Preservation Requirements.....	42
103.	Taxation and overpayments .....	42
	Pension Sharing on Divorce .....	43
104.	Creation of Pension Debits and Credits.....	43
105.	Benefits and Options Available to Ex-Spouse Participant .....	44
106.	Death of Ex-Spouse Before the Pension Sharing Order is Implemented.....	45
107.	Transfer Payments .....	46
108.	Annuity Purchase .....	47
109.	Disclosure of Information.....	47
110.	Charges.....	48
111.	Time Limits .....	48
112.	Trustees' Policy.....	48
113.	Earmarking Orders .....	48
	Interpretation .....	49

**THIS DEFINITIVE TRUST DEED AND RULES is made on 8th December 2020**

**BETWEEN:**

- (1) **HYP Investment Limited** (Company No. 11176178) whose registered office of which is at c/o Fylde Tax Accountants 155 Newton Drive Blackpool FY3 8LZ (the “**Principal Employer**”); and
- (2) **David Frederick Allan Hamer** of Westleigh Farm Lane Ashted Surrey KT21 1HP (the “**Trustees**”).

**BACKGROUND:**

- A. The Principal Employer wishes to establish under irrevocable trust the HYP SSAS Pension (the “**Scheme**”) as a Registered Pension Scheme to be registered under Chapter 2 of Part 4 of the Finance Act 2004 for the purposes of providing retirement and death benefits in respect of certain of the employees and directors of the Principal Employer and such other employers (if any) as may be admitted to participation in the Scheme from time to time and wishes to adopt the first governing rules appended hereto (the “**Rules**”) to be the rules of the Scheme.
- B. The Principal Employer wishes to appoint the Trustees as the first trustees of the Scheme and its underlying fund (the “**Fund**”).

**OPERATIVE PROVISIONS:**

1. The Principal Employer HEREBY APPOINTS the Trustees to be the first trustees of the Scheme and the Fund.
2. The Principal Employer and the Trustees HEREBY ADOPT the Rules attached to this Deed as the governing rules of the Scheme with effect from the date of this Deed.
3. The Fund shall be held by the Trustees upon irrevocable trust to be applied in accordance with the terms of this Deed and the Rules.
4. To the extent that the Rules have the effect of limiting the benefits to be paid to or in respect of any Beneficiary or the amount of a transfer payment, such limitations shall not apply to any payment where the Principal Employer and the Trustees have agreed to disapply such limitations, including by any grant, improvement or augmentation permitted under the Rules.
5. This Deed and the Rules brought into effect hereunder will be read and construed in accordance with the laws of England and Wales.

6. The sections which constitute the Rules hereto shall be deemed to be incorporated into and to form part of this Deed which shall be read and construed accordingly.

## **RULES**

### **Trustees**

#### **1. Administration and Management**

The administration and management of the Scheme shall be vested in the Trustees in accordance with the powers expressed in this Deed and the Rules.

#### **2. Power to Determine Entitlement**

Subject to the powers to be exercised by the Employers as herein expressed the Trustees shall have full power to determine in consultation with the Principal Employer whether or not any person is entitled from time to time to any benefit or payment in accordance with the Scheme and in deciding any question of fact they shall be at liberty to act upon such evidence or presumption as they shall in their discretion think sufficient although the same be not legal evidence or legal presumption. Subject as aforesaid the Trustees shall also have power conclusively to determine all questions and matters of doubt arising on or in connection with the Scheme and whether relating to the construction thereof or the benefits thereunder or otherwise.

#### **3. Power to Act on Advice**

The Trustees shall have the power:

- (a) to act on the advice or opinion (whether or not obtained by them) of any lawyer, broker, accountant, investment adviser, medical practitioner, surveyor or other suitably qualified person and (subject to the provisions of Rule 9) shall not be responsible for any loss occasioned by so acting; and
- (b) to settle, compromise or submit to arbitration any claim or matter relating to the Scheme or the trusts thereof.

#### **4. Maintenance of Scheme Registration**

The Deed and the Rules shall be deemed at all times to include any amendments, additions or deletions as may be required from time to time by HMRC for the maintenance of Registration. The Principal Employer and the Trustees agree that the Scheme and the Fund shall at all times be operated in a manner consistent with Registration and shall execute such further documentation as may be required by HMRC for the maintenance of Registration.

#### **5. Power to Employ Agents and Trustees' Decisions**

- 5.1. The Trustees shall have power to employ such agents as they think fit in the transaction of any business of the Scheme or the Fund including the payment of pensions and other benefits and any valid receipt therefore given to such agents shall be a good and sufficient discharge to the Trustees.



5.2. The Trustees shall have the power to delegate any of their duties discretions or powers to any of their number or to any person whom they reasonably believe by qualifications or training or experience is capable of carrying out duties, discretions or powers provided that the Trustees may not delegate any of their powers in connection with the following:

- (a) any alteration to any of the provisions of the Scheme under Rule 21;
- (b) the appointment or removal of trustees where any such power may from time to time vest in the Trustees;
- (c) the investment of assets of the Scheme under Rule 24;
- (d) the winding-up of the Scheme and the distribution of assets thereunder; and

5.3. The exercise of the duties, discretions or powers at Rules 5.2(a), 5.2(b), 5.2(c) and 5.2(d) above shall require the unanimous approval of all the Trustees for the time being.

## **6. Power to Extend Time Limits**

Except for any sum directed to be held on Discretionary Trusts where any period or date is specified in the Rules as the period within which or the date by which anything is to be done by or to or in respect of an Employee who is eligible for membership, a Member, a Deferred Pensioner or a Postponed Pensioner, the Trustees may on written application being made in that behalf, notwithstanding that the period has expired or that date has passed, extend that period or fix a later date on such terms and conditions as they may prescribe.

## **7. Appointment and Removal of Trustees**

7.1. The Principal Employer may at any time by deed:

- (a) remove from trusteeship any one or more of the Trustees with or without replacement; and
- (b) appoint one or more persons to be new or additional trustees of the Scheme.

7.2. Any Trustee (except a sole Trustee) may retire from trusteeship by giving notice in writing to the remaining Trustees and will then be discharged and cease to hold office immediately.

7.3. The Members may, by deed executed by each of them who is not a minor or unable to act by reason of mental disorder, remove from trusteeship any Trustee who is not such a member.

7.4. There shall be no minimum or maximum number of Trustees.

## **8. Appointments**

8.1. Subject to section 47 of the 1995 Act, the Trustees shall from time to time appoint and may from time to time remove:

- (a) such professional advisers as they think fit;

(b) an Auditor; and

(c) a fund manager, if required under section 47(2) of the 1995 Act,

upon such terms as to their tenures of office duties and remuneration as the Trustees may think fit subject in the matter of remuneration to the consent of the Principal Employer.

## **9. Trustees' Indemnities**

9.1. The Trustees shall be entitled to all the indemnities conferred on trustees by law and no Trustee shall be liable for any acts or omissions not due to its or his own wilful neglect or default knowingly and deliberately committed in bad faith and each Trustee will (except to the extent that he recovers under any insurance policy under Rule 9.3) be indemnified by the Principal Employer against the exercise of all the Trustees' powers and the application of the Trustees' discretion and any liabilities relating to the Scheme.

9.2. If the Principal Employer fails to indemnify the Trustees fully under Rule 9.1 before the expiry of a reasonable period of notice of not less than one month given to it by the Trustees, the Trustees shall be indemnified to the extent necessary out of the Fund, subject to any restrictions imposed by law.

9.3. The Trustees may effect any insurance or policy of indemnity in relation to acts or omissions or liabilities of themselves, their servants, agents or other persons (including former Trustees and employees of the Employers) in connection with the Scheme and the premiums for the insurance shall be payable in accordance with Rule 14.

## **10. Trustees' Entitlement to Benefits**

Any Member will be entitled absolutely to any benefit accruing to him as a Member of the Scheme notwithstanding that he may from time to time be a Trustee of the Scheme for the time being.

## **11. Accounts**

The Trustees shall cause true and full accounts to be kept of all monies passing through their hands and also a record of all persons receiving benefits and of all other matters proper to be recorded so as to show the full facts relating to the Scheme.

## **12. Audit and Inspection of Accounts**

Where requested by the Trustees the accounts of the Scheme shall be audited annually by an Auditor and such accounts shall be open to inspection insofar as is required by the Disclosure Regulations by any person entitled to benefit from the Scheme at the registered office for the time being of the Principal Employer.

## **13. Operation of a Bank Account**

13.1. The operation of any banking account shall be subject to any special requirements of HMRC.

- 13.2. Subject to 13.1 above the Trustees may from time to time in writing authorise such persons or person as they shall think fit to draw cheques on any banking account or to endorse cheques or to give receipts and discharges for any monies or other property payable transferable or deliverable to the Trustees and every such receipt or discharge shall be as valid and effectual as if it were given by the Trustees. The production of a written authority of the Trustees as aforesaid shall be a sufficient protection to any debtor or other person taking any such receipt or discharge as aforesaid and unless such debtor or other person shall have received express notice in writing of the revocation of such authority he shall be entitled to assume and act on the assumption that the authority remains unrevoked.

#### **14. Expenses**

All liabilities and expenses properly incurred in the execution or purported execution of the trust of the Scheme or otherwise properly incurred in relation thereto (including fees charged by advisers and, where applicable, financial advisers) shall be borne by the Employers in the same proportions as the contributions payable by them respectively to the Fund in respect of the period in which the liability or expense was incurred. The Principal Employer may at any time determine in writing that such liabilities and expenses are to be borne by the Fund or the Principal Employer should bear all the expenses. However, any fees which remain unpaid (for whatever reason) by the Employers for a period of ninety days are to be borne by the Fund.

#### **15. Perpetuity Period**

On the eightieth anniversary of the date of the establishment of the Trust (the period of eighty years from such date being the perpetuity period applicable to the trusts hereof and to the Scheme) if there shall have been no legislation making it lawful for the trusts of the Fund to continue for an indefinite time or in perpetuity or if before such perpetuity contingency occurs the Principal Employer by resolution of its Board of Directors decides that the Scheme shall be wound up then in either such case the Scheme shall be wound up and the Fund dissolved and the trusts of the Scheme shall cease and be determined in the manner prescribed in Rules 86 - 92 hereof.

#### **16. Power to Insure**

- 16.1. The Trustees may insure any asset of the Fund on such terms as they think fit and the premiums may be paid out of income or capital. Any insurance money received by the Trustees may be used to restore the asset concerned or (if the asset cannot be restored) may be applied by the Trustees as if it were the proceeds of the sale of the asset or (whether or not the asset can be restored) as the Trustees in the best interests of the Members, Deferred Pensioners, Postponed Pensioners, Beneficiaries and Ex-Spouse Participants shall determine.
- 16.2. The Trustees may at the expense of the Fund insure the Scheme against the risk of such loss to the Scheme as they think appropriate provided that if the Trustees effect a policy of insurance under this Rule where the risk is or includes the imposition of fines or penalties

imposed by the Regulator under the provisions of the 2004 Act the premiums shall not be an expense of the Fund but shall instead be paid by the Employers in such proportions as the Trustees advise.

**17. Trustees' Resolutions**

A resolution in writing signed by all the Trustees shall be as valid and effective as if it had been passed at a meeting of the Trustees duly convened and held and any such resolution may consist of one or more documents in similar form each signed by one or more of the Trustees.

**18. Trustees' Interests**

No decision of or exercise of a power by the Trustees shall be invalidated or questioned on the ground that the Trustees or any of them had a direct or other personal interest in the mode or result of such decision or of exercising such power.

**19. Registration of the Scheme**

The Trustees and Employers shall provide the Regulator with such information as is required under sections 59 to 65 of the 2004 Act.

**20. Unanimous Decisions**

Except where otherwise expressly provided for in this Deed and the Rules all decisions and resolutions of the Trustees shall require the unanimous approval of all the Trustees for the time being of the Scheme.

**21. Power to Amend**

21.1. The Principal Employer may, at any time and from time to time by Deed alter, add to or cancel any of the provisions of the Scheme with immediate, future or retrospective effect and subject only to compliance with section 67-67I of the 1995 Act.

21.2. The Trustees shall have power to give undertakings to HMRC and to any government agency notwithstanding that fulfilment of such undertakings would mean going beyond or outside the existing provisions of the Scheme or breaking the existing provisions of the Scheme and shall treat the existing provisions of the Scheme as being amended so far if at all as maybe appropriate in order to permit fulfilment of such undertakings.

**22. Adherence of new Employer to the Scheme**

22.1. The Principal Employer, with the consent of the Trustees, may admit into the Scheme as an Employer any company, firm or person associated in business with or subsidiary to the Principal Employer, or any other company, firm or person provided Registration is maintained.

22.2. The Employer shall enter into a deed by which it covenants with the Principal Employer and the Trustees to comply with and observe the provisions of the Deed and the Rules so far as they are applicable to it as an Employer.

22.3. The Principal Employer may, with the consent of the Trustees, apply any additional terms as it may decide from time to time in relation to the participation of an Employer in the Scheme.

**23. New Principal Employer**

23.1. The Principal Employer may by deed determine that any employer shall become Principal Employer. On any such determination being effective, the Scheme will continue with the substitution of the new employer as Principal Employer and it will have all the powers and responsibilities of the Principal Employer under the Scheme. If the existing Principal Employer is the subject of a Default Event, the Trustees may by deed determine that any Employer shall become Principal Employer.

## **Investments**

### **24. Investment Powers**

24.1. Subject to Rule 25 below:

- (a) All investments and monies for the time being constituting the Fund shall be held under the legal control of and by or in the names of the Trustees provided that such investments and monies may be placed by the Trustees in the name of or under the control of such body corporate or individuals as nominee for them as they shall from time to time select.
- (b) The Trustees may retain in any bank account or any account with a banking house in the United Kingdom such monies as are considered proper and subject thereto shall invest all monies received on account of the Fund in any investments which they could make if they were absolutely and beneficially entitled to those monies or any investments which they can make as trustees of a Registered Pension Scheme.

24.2. Without prejudice to Rule 24.1 above, trust monies may be invested or applied:

- (a) in the purchase from any Insurance Company of any annuity or annuities for the life or lives of any person or persons or for any period or periods whether depending upon or calculated by reference to life or not;
- (b) in effecting and paying premiums in respect of any policy or policies of life insurance;
- (c) in the underwriting or sub-underwriting or guaranteeing the subscription of any funds securities bonds debenture stocks or shares which may from time to time be investments authorised by or pursuant to the foregoing provisions of this Rule;
- (d) in the purchase of property assets of either an income producing or a non-income producing nature; and
- (e) in the purchase of assets of a non-income producing nature with the particular power of entering into any transaction calculated in the opinion of the Trustees to offset or reduce a risk of loss to the Fund by virtue of this power the Trustees may deal in foreign currencies (either at the official rate of exchange or any other rates) options traded options and traded futures whether for present or future settlement.

### **25. Power to Borrow**

25.1. The Trustees may raise or borrow any monies upon such terms as they think fit and may secure such monies by charging all or any part of the Fund. Monies so raised or borrowed shall be applied for all or any of the purposes of the Scheme including without prejudice to the generality thereof in the purchase of any investments hereby authorised.

- 25.2. Without prejudice to the generality of Rule 24 above the Trustees shall have power to charge all or part of the Fund in connection with any investment in real property by the Trustees jointly or in conjunction with the Principal Employer.

## **General**

### **26. Notices**

26.1. A notice under these Rules must be in writing and, unless the receiving party or his authorised agent acknowledges receipt, is valid if, and only if:

(a) it is given by hand, sent by registered post or recorded delivery, or sent by fax provided a confirmatory copy is given by hand or sent by registered post or recorded delivery on the same day; and

(b) it is served:

(i) where the receiving party is a company incorporated within Great Britain, at the registered office of that party; or

(ii) where the receiving party is not such a company at the last known address of the receiving party or at any address specified in a notice previously given by the receiving party to the party giving the notice.

26.2. Delivery is deemed if sent by registered post or recorded delivery, unless it is returned through the Royal Mail undelivered, and is to be treated as served on the third working day after posting whenever, and whether or not, it is received.

26.3. A notice sent by fax is to be treated as served on the day upon which it is sent, or the next working day where the fax is sent after 1600 hours or on a day that is not a working day, whenever and whether or not it or the confirmatory copy is received unless the confirmatory copy is returned through the Royal Mail undelivered.

26.4. A “**working day**” means a day when the United Kingdom clearing banks are open for business in the City of London.

26.5. If the receiving party consists of more than one person (i.e. joint recipients), a notice to one of them is notice to all.

### **27. Place of Residence**

Every person shall give notice in writing to the Scheme Administrator of his place of residence at the time he becomes entitled to a pension or annuity out of the Fund and thereafter shall give immediate notice of any change of residence.

### **28. Place of Payment**

Pensions and annuities are payable only at the registered office of the Principal Employer and any agreement for a payment through the post or otherwise which may in any particular case be made by the Trustees shall be at the risk of the recipient concerned.

### **29. Evidence Wanted**



Before making or sanctioning any payment out of the Fund the Trustees may require the production of a certificate or such other evidence as they may think fit of the birth marriage continued survival or death of a Member or any other person entitled to benefit from the Scheme or the widow widower or Dependant of any of them or the identity of any person named in a certificate or any other material fact.

**30. Error in Statement**

If any person or the widow, widower or Dependant of any of them shall make any misstatement as to any of the matters referred to in the preceding Rule 29 the Trustees on discovering such misstatement shall have power to make such arrangements as they shall consider just by way of adjustment or cancellation of any pension annuity or other money payable out of the Fund and shall have power to sue for repayment of any monies to which there is no valid entitlement.

**31. Actuarial Investigations**

At any time deemed appropriate by the Principal Employer or the Trustees, actuarial investigations into the condition of the Scheme and of its Fund shall be made by an Actuary. In the event of the Actuary advising that any alteration in the Deed or any individual Rules of the Scheme is desirable then the Trustees in consultation with the Principal Employer shall take such steps as they shall consider appropriate to ensure that such alterations or additions shall be made as the Principal Employer and Trustees may consider appropriate.

**32. Power to Actuary**

In the event Rule 31 above applies, the Actuary in making any determination or arriving at any opinion which it is necessary for him to make or arrive at for any of the purposes of the Scheme may act on such assumptions as he shall in his absolute discretion and having regard to the circumstances of the case think appropriate.

**33. Liability of Employers**

The Employers shall be under no liability whatsoever in connection with the Scheme except as expressly provided in the Deed and the Rules.

**34. No Restriction on Dismissal**

Nothing in the Scheme shall fetter the right of an Employer to dismiss any Employee neither shall any pension or benefit to which a Member or former Member might claim to be entitled under the Scheme be used as a ground for claiming or increasing any damages in any action brought by such Member or former Member against an Employer.

**35. Claims only under Deed and Rules**

No person whether a Member or a former Member or a person claiming through or under a Member or a former Member shall have any claim right or interest under the Scheme or any claim upon or against the Trustees or an Employer except under or in accordance with the provisions of this Deed and the Rules.

**36. Inspection of Documents**

Any person entitled to benefit under the Scheme shall be entitled to inspect a copy of the Deed and such of the Rules and undertakings as the Scheme Administrator shall decide are appropriate to him at the registered office of the Principal Employer or at such other address as the Trustees may determine.

**37. Purchase of Annuity**

37.1. The Trustees shall be at liberty and with the consent of HMRC to purchase in the name of the individual a contract or policy as satisfies the conditions prescribed by or under section 19 of the PSA and the Preservation Requirements providing a non-assignable annuity immediate deferred or contingent as the circumstances require payable to such person entitled to benefit under the Scheme not exceeding the amount of the pension which would otherwise have been payable out of the Fund by reference to the limits in Rules 93 - 103 and such annuity shall to that extent be in substitution for any pension under the Deed and the Rules.

37.2. The Trustees may direct that the policy shall contain such provisions corresponding with the provisions of the Deed and the Rules as in the opinion of the Trustees are appropriate to the circumstances.

**38. Employer's Lien**

38.1. Sums owing to an Employer or to the Scheme by reason of the criminal, negligent or fraudulent act or omission of a person otherwise entitled to benefits from the Scheme shall (subject to Rule 38.3(c) below) be deducted from those benefits subject to the production of a certificate as stated in Rule 38.3(b) below.

38.2. A certificate signed by any two directors of the Employer (or by the Trustees if the sum is owed to the Scheme) concerned that an amount is owing as stated in Rule 38.1 above shall (subject to Rule 38.3(c) below) be accepted by the Trustees as conclusive and the appropriate amount shall be deducted accordingly and paid to that Employer whose receipt shall be a complete discharge.

38.3. In the operation of this Rule:

- (a) no part of a transfer payment received from another scheme may be subject to deduction;
- (b) a copy of the Employer's or Trustees' certificate must be given to the individual concerned together with a statement of its effect on his benefits or prospective benefits; and
- (c) the Trustees and the Employer may not act on the certificate if it is disputed by the individual concerned, unless it is made enforceable by an order of a court of

competent jurisdiction or by an award of an arbitrator agreed upon by the parties to the dispute or failing such agreement an arbitrator named by the President for the time being of the Law Society or (in Scotland) appointed by the Sheriff.

**39. Appointment of Scheme Administrator**

The Principal Employer may appoint the Trustees or such other person, company or partnership as Scheme Administrator. In the event that such other person, company or partnership decides to resign from the role as Scheme Administrator the Principal Employer, shall appoint a successor whose appointment shall take effect the day after the date upon which the person, company or partnership resigns from such office.

**40. Pensions Act 2004 Conditions**

The Scheme Administrator shall administer the Scheme in accordance with the requirements and provisions of the 2004 Act, to the extent applicable to the Scheme.

**41. Assignment, Surrender, Etc**

41.1. Any benefit may be assigned, commuted, surrendered or charged and a lien or set-off may be exercised in respect of it only to the extent permitted by this Rule 41 or not prohibited under section 91 of the 1995 Act.

41.2. The Trustees may in their absolute discretion, but subject to the conditions in Rule 41.1, reduce any benefit (and any corresponding Fund Share) of a Beneficiary:

- (a) (except to the extent that it included transfer credits other than prescribed transfer credits) for the purpose of enabling an Employer to obtain the discharge by the Beneficiary of some monetary obligation due to the Employer and arising out of a criminal, negligent or fraudulent act or omission by him, or
- (b) for the purpose of discharging some monetary obligation due from the Beneficiary to the Scheme and arising out of a payment made in error in respect of the benefit, or arising out of a criminal, negligent or fraudulent act or omission by him, or (if he is a Trustee) arising out of a breach of trust by him.

41.3. The conditions in this Rule 41.3 are that:

- (a) the amount of the reduction must not exceed the amount of the monetary obligation in question;
- (b) the Beneficiary must be given a certificate showing the amount of the reduction and its effect on his Benefits; and
- (c) where there is a dispute as to its amount, the reduction must not be applied unless the obligation in question has become enforceable under an order of a competent court or in consequences court or in consequence of an award of an arbitrator or, in

Scotland, an arbiter to be appointed (failing agreement between the parties) by the Sheriff.

## **Membership**

### **42. Eligibility**

An individual Employee shall become a Member of the Scheme at the invitation of an Employer. The Employer or the Trustees shall also be permitted to admit such other individual to the Scheme which is consistent with the Scheme's status as a Registered Pension Scheme.

### **43. Membership and Rules**

Upon an Employee being offered membership of the Scheme an announcement letter will be issued to the Employee setting out the terms, conditions and contributions to be made by the Employer and the Employee.

### **44. Temporary Absence**

44.1. If a Member is temporarily absent from Pensionable Service:

- (a) on account of illness or injury; or
- (b) for not more than two years with the consent of the Principal Employer for any other reason

his pension rights shall not be affected thereby provided that there is a definite expectation of a return to Pensionable Service and the Member does not become a member of another Registered Pension Scheme during the period of absence and that he continues to pay contributions as specified (if any) in the Rules during his absence.

44.2. If a Member at the end of such absence does not return to Pensionable Service he shall be deemed to have left Pensionable Service at the date he ceased to contribute.

### **45. Cessation of Membership**

As soon as practicable after any person ceases to be a Member his Employer shall give notice in writing of that fact to the Trustees.

### **46. Employee Rejoining Pensionable Service**

If any person who has ceased to be a Member by reason of his having ceased to be in Pensionable Service subsequently again enters Pensionable Service in any capacity the Trustees with the consent of the Principal Employer may subject to the requirements of Rule 47 permit such person to resume membership of the Scheme on such terms and conditions in all respects as the Trustees may decide.

### **47. Resumption of Membership**

47.1. If a person who is entitled to a deferred pension or to Short Service Benefits resumes membership of the Scheme he may at his option become entitled to Long Service Benefits which will absorb and supersede his deferred pension or Short Service Benefits.

47.2. If his Employment is again terminated before his Normal Retirement Date the years of Qualifying Service shall be re-computed under the terms of Rule 71 as though the last date of termination were the first termination except that there may be excluded:

- (a) any periods of pensionable employment which were included at a previous termination; and
- (b) any previous period of employment while a Member of this Scheme that proved to be non-Qualifying Service.

47.3. If an individual who has no Short Service Benefits preserved by this Scheme in respect of previous employment resumes membership of this Scheme he will become prospectively entitled to Long Service Benefits from the date of resumption of membership. If his Employment again terminates before his Normal Retirement Date the calculation of the years of Qualifying Service (if any) will be in accordance with Rule 71 but will omit the periods of employment taken into account at previous terminations.

#### **48. Evidence**

Having regard to the requirements of the Data Protection Act 1998, every Employee who becomes a Member and every Member Deferred Pensioner Postponed Pensioner and Pensioner shall provide such evidence of age health and family circumstances and changes in circumstances as the Trustees may require.

#### **49. Closure to New Members**

The Principal Employer at any time by notice in writing to the Trustees direct that membership of the Scheme shall be closed to new Members and from the effective date of such notice no person shall be entitled to become a Member without the express consent of the Principal Employer.

## **Contributions**

### **50. Contributions Paid by Employers**

- 50.1. Each Employer shall pay such contributions (in respect of Members who were or are its Employees) as it determines and may at any time reduce suspend or terminate such contributions on giving notice thereof to the Trustees.
- 50.2. On receiving such notice the Trustees shall notify the Members (and if applicable the Postponed Pensioners). The Trustees shall then decide whether to continue to administer the Scheme on such terms as the Trustees may think fit in their absolute discretion or whether to wind up the Scheme in accordance with Rules 86 - 92.

### **51. Contributions Paid by Employee**

- 51.1. The Member shall not be required to contribute to the Scheme, but may make voluntary contributions to the Scheme to secure additional benefits for himself and/or his widow widower or Dependants, as the Trustees shall in their absolute discretion determine.
- 51.2. Each Member's contributions may be deducted by his Employer from his earnings and paid to the Trustees.

### **52. Reduction or Suspension**

If the contributions of an Employer or an Employee are reduced suspended terminated or not paid the benefits shall be adjusted as advised by the Trustees.

### **53. Reduction of Salary**

- 53.1. If the salary of a Member is reduced by reason of ill-health prior to his or her Normal Retirement Date the Trustees may agree (subject to the agreement of the Principal Employer and any requirements of HMRC) to continue to have his or her salary treated for the purposes of the Scheme as if it had not been reduced.
- 53.2. If the Trustees agree contributions shall be continued by the Member and his Employer without reduction and the pension and other benefits payable in respect of such Member shall be calculated as if his or her salary had continued without such reduction.

### **54. Schedule of Contributions**

Unless all Members of the Scheme are Trustees and all decisions are made only by the Trustees who are Members of the Scheme by unanimous agreement the Trustees shall ensure that a schedule of contributions is prepared maintained and revised from time to time indicating the contributions of an Employer and Employee (if any) and the dates on which payments are due. The Trustees and the Employer shall agree the schedule or failing agreement the schedule shall be determined by the Trustees.

## **Benefits**

### **55. Normal Retirement**

On retirement at the Normal Retirement Date a Member shall be entitled to receive a pension calculated by reference to the accrued value of his Fund Share at Normal Retirement Date.

### **56. Retirement before Normal Retirement Date**

56.1. With the consent of the Principal Employer the Trustees have discretion to award an immediate pension to a Member who retires if the Ill-Health Condition is proved to the satisfaction of the Trustees or in normal health at or after age 55. The Member shall be entitled to receive such benefits as can be made available (subject to the discretion of the Trustees and the consent of the Principal Employer) subject to the provisions of Rules 93 - 103.

56.2. As an alternative to an immediate pension the retiring Member may elect to receive a deferred pension payable from his Normal Retirement Date calculated as described in Rules 66 - 75.

### **57. Retirement After Normal Retirement Date**

With the consent of the Principal Employer a Member's retirement may be deferred beyond the Normal Retirement Date and for such postponed retirement the Member shall be entitled to receive such benefits as are stated in the announcement letter subject to the provisions of Rules 93 – 103. A person who benefits under this Rule will cease to be a Member at the Normal Retirement Date and will become a Postponed Pensioner.

### **58. Pension**

With the consent of the Principal Employer the Trustees have discretion to award a Scheme Pension to a Member in exchange for their accrued benefits under section 165 of the Finance Act.

### **59. Drawdown**

59.1. The Trustees shall pay out of an individual's Drawdown Fund to the individual such amounts and at such times as the individual may specify, provided that:

- (a) no payment shall be made if it would not qualify as Drawdown; and
- (b) the Trustees may impose such restrictions as to timing and minimum and maximum amounts of payments as they reasonably consider appropriate.

59.2. For the avoidance of doubt and without limiting their powers under this Rule 59 or more generally, the Trustees shall not be obliged to make any payment of Drawdown unless:



- (a) the individual has made such declarations, and has provided such relevant documents or other evidence or information, as the Trustees or Scheme Administrator may in their absolute discretion require; and
- (b) in the opinion of the Trustees, sufficient provision has been made for any appropriate deductions properly due to the Trustees.

59.3. Any declaration made to the Trustees in connection with Drawdown shall be treated as made to the Scheme Administrator for the purposes of the Finance Act.

59.4. An individual's Drawdown Fund may at any time at the request of the individual and with the consent of the Trustees be applied instead to provide a Scheme Pension in accordance with Rule 58.

## **60. Lump Sum on Retirement**

60.1. Subject to the provisions of Rules 93 - 103:

- (a) Upon receipt of a written request from a Member or Deferred Pensioner before payment of a pension commences or in the case of a Postponed Pensioner at any time on or after his Normal Retirement Date the Trustees may in their discretion commute part of such Member's Deferred Pensioner's or Postponed Pensioner's pension for a lump sum payable to such Member Deferred Pensioner or Postponed Pensioner which together with any other benefit not payable in the form of an annuity derived from any Relevant Scheme shall not exceed the amount stated in such person's Rules or such greater amount as described in Rules 93 - 103. The proportion of the Member's Deferred Pensioner's or Postponed Pensioner's pension so commuted shall be determined by the Trustees provided that:
  - (i) the amount of the lump sum shall not exceed the proportion of the Fund attributable to the pension commuted nor shall it be greater than that calculated in accordance with Rules 93 - 103 hereof. This amount shall be determined by the Trustees;
  - (ii) for the purpose of this Rule 60.1 if a Postponed Pensioner dies without having made a written request for a lump sum the Trustees may direct that this Rule shall be operated as though such a request had been made; and
  - (iii) after any commutation under this Rule 60.1 no further claim shall arise in respect of the pension or part so commuted except in respect of any contingent widow's widower's or Dependant's pension.
- (b) In the case of a Member who retires if the Ill-Health Condition is satisfied under Rule 56 the Trustees have discretion with the consent of the Principal Employer to commute the Member's pension for a lump sum as stated in the announcement letter subject to the limits in Rules 93 - 103.

60.2. Enhanced commutation factors may be utilised provided that:

- (a) the anticipated percentage rate of future increases on the basis of current annual contributions (future special contributions being disregarded for this purpose) is certified by the Trustees; and
- (b) the enhanced factor appropriate to the percentage certified by the Trustees shall be subject to review from time to time following increases actually given.

**61. Lump Sum payable on Death**

61.1. Subject to Rules 93 - 103 and the following Rules 61.2 and 61.3 on the death of a Member Deferred Pensioner Postponed Pensioner or Pensioner there shall be payable a lump sum equal to such amount as shall have been notified to the Member in writing by the Trustees.

61.2. The maximum lump sum benefit payable upon the death of a Pensioner will be the balance of 60 monthly instalments of pension over the number of monthly instalments actually paid multiplied by the last monthly instalment of pension paid immediately prior to the date of death.

61.3. The Trustees may at their discretion in lieu of any lump sum benefit or part thereof payable on the death of a Member Deferred Pensioner Postponed Pensioner or Pensioner substitute a pension of equivalent value by purchase of an annuity from an Insurance Company.

**62. Dependant's Pensions**

62.1. Subject to Rules 93 – 103, on the death of a Member Pensioner Deferred Pensioner or Postponed Pensioner there shall be payable such Dependant's pensions of such amount determined by the Trustees and in the event of there being more than one such person qualifying for benefit the Trustees shall have power to divide any benefits payable between them in such proportion as they shall think fit.

62.2. In the case of the death of a Deferred Pensioner the pension shall be equal to 2/3rds of the deferred pension at the date of death calculated in accordance with Rule 70.

62.3. In the case of the death of a Pensioner or Postponed Pensioner the pension shall be 2/3rds of the pension payable at the date of death (in the case of a Postponed Pensioner this shall be calculated on the basis as if the Postponed Pensioner had retired on the day before death).

**63. Payment of Pensions**

Subject to Rules 93 - 103 the Trustees shall from time to time either generally or in any particular case decide the method and frequency of all pension and annuity payments provided that any such payments may not be made more than one year in advance.

**64. Payment of Child's Annuity**

When under Rule 62 or under the Rules a pension is payable to any minor the Trustees may in their discretion:

- (a) pay the pension to the child's guardian, to any person with whom the child resides or under whose care and control he is or appears to be, without being obliged to ascertain whether such guardian or other person has any right to the care and control of the child or to supervise the application of the pension by such guardian or other person and without being responsible for any misapplication;
- (b) apply the pension or any part of it in pension form towards the education or other benefit of the child in any other way as they may see fit; or
- (c) with the consent of the Principal Employer continue payment of the pension to or in respect of such child after attainment of age 23.

**65. Allocation**

65.1. A Member Deferred Pensioner or Postponed Pensioner may apply to the Trustees which application shall be given:

- (a) by a Member within the period of one calendar month ending on the expected date of retirement;
- (b) by a Deferred Pensioner within the period of five calendar months ending on the date on which the pension is expected to commence;
- (c) by a Postponed Pensioner at any time while he is a Postponed Pensioner;

that he desires to substitute a reduced pension payable to himself in order to provide an annuity or annuities after death for any one or more named persons falling within the following categories for their respective life or lives or in respect of a child that is to say:

- (i) the widow or widower of the Member Deferred Pensioner or Postponed Pensioner; or
- (ii) any child of the Member Deferred Pensioner or Postponed Pensioner; or
- (iii) any Dependant of the Member, Deferred Pensioner or Postponed Pensioner

65.2. Rule 65.1 is subject to the following conditions:

- (a) the full amount of such annuity or annuities shall not exceed the amount of the reduced pension payable to the applicant after such application;
- (b) the terms and conditions of such annuity or annuities shall be determined on the advice of the Trustees; and

- (c) if before the applicant's pension becomes payable the death should occur of the person or persons in whose favour the applicant has elected to take a reduced pension then the applicant's pension shall be reinstated by the amount he elected to forego in respect of such person or persons.
- 65.3. The particular circumstances (if any) on the occurrence of which any such application shall be without effect shall be determined at the discretion of the Trustees and shall be advised to the applicant by the Trustees within one calendar month after receipt of such application.
- 65.4. Any individual who can make such application may on approaching the appropriate time ascertain from the Trustees the results to be expected from his proposal in order to assist him in making his decisions.

## **Benefits on Leaving Pensionable Service**

### **66. Range of Alternatives**

66.1. A Member who leaves Pensionable Service before his Normal Retirement Date shall receive his benefits in any one of the following ways which is available to him:

- (a) an immediate ill-health pension (see Rule 56);
- (b) an immediate early retirement pension (see Rule 56);
- (c) Short Service Benefits (see Rules 67 and 68);
- (d) deferred benefits (see Rules 69 and 70); or
- (e) the right to have the Transfer value of his accrued rights either transferred to another Registered Pension Scheme or used to purchase an annuity or the payment of a transfer value to a Registered Pension Scheme (see Rules 76 - 80).

66.2. If more than one of the alternatives listed in Rule 66.1 above is available to the Member he may choose which of those alternatives is to apply to him.

### **67. Entitlement to Short Service Benefits**

A Member who leaves Pensionable Service before his Normal Retirement Date and who at the date of leaving has completed periods of employment which constitute Qualifying Service (see Rule 71 below) will be entitled to preserved benefits designated in these Rules as Short Service Benefits.

### **68. Payments of Short Service Benefits**

Short Service Benefits will be payable at the Normal Retirement Date and will consist of the benefits appropriate to each actual termination date and will relate to:

- (a) the periods of employment with the Employer which would have constituted actual Pensionable Service in this Scheme;
- (b) any Transfer Credit;
- (c) any additional or augmentation of benefits in this Scheme awarded by the Principal Employer apportioned where necessary on the advice of the Trustees all relevant to each termination date.

### **69. Deferred Benefits**

A Member who leaves Pensionable Service before his Normal Retirement Date shall (subject to the other alternatives listed in Rule 66) become a Deferred Pensioner and be paid benefits set out in Rule 70 and payable in accordance with Rule 72.

### **70. Calculation of Deferred Benefits**

If a Member leaves the Scheme before Normal Retirement Date in circumstances which do not qualify him for immediate benefits he will become a Deferred Member. Subject to the provisions relating to early retirement and the ability for an individual Deferred Member to request the payment of a transfer value a Deferred Member who survives to his Normal Retirement Date will be provided with benefits at his Normal Retirement Date and the provisions of the Rules regarding payment of benefits at Normal Retirement Date shall apply equally to a Deferred Member.

**71. Determination of Qualifying Service**

71.1. On the termination of Employment (which for this purpose shall be deemed not to have occurred if Employment is resumed after a period not exceeding one calendar month or if the Member is a woman who has returned to work after an absence for pregnancy or confinement in exercise of a right under the ERA (or any modification or re-enactment thereof for the time being in force) or if the Member is absent from work in furtherance of a trade dispute) before the Normal Retirement Date the calculation of Qualifying Service (if any) shall be determined as follows:

- (a) First, by aggregating periods of actual employment which are:
  - (i) periods of Employment while a Member of this Scheme to the date of termination;
  - (ii) periods of employment during which the individual was a member of one or more schemes (other than this Scheme) of an Employer or its predecessor in business immediately preceding the periods of Employment referred to in Rule 71.1(a)(i) above;
  - (iii) periods of employment which constitute Linked Qualifying Service.
- (b) Secondly, by deducting from such total the aggregate of those periods of Employment or Linked Qualifying Service for which:
  - (i) refunds of contributions have been made;
  - (ii) transfer payments have been made to other schemes;
  - (iii) a lump sum has been paid in full satisfaction of the benefits due,

provided that any absence of a female Member for pregnancy or confinement in exercise of a right under the ERA or any modification or re-enactment for the time being in force shall be disregarded and the calculation shall not take into account any period of employment more than once. Where the result of this calculation is less than two complete years a Member will not be deemed to have completed Qualifying Service.

71.2. If any individual who while continuing in Employment ceases to be a Member of this Scheme and subsequently becomes a Member of any other scheme (whether an individual scheme or otherwise) of his Employer or its successor in business the Trustees of the Scheme shall if necessary enquire into the circumstances in which a termination of employment occurs in order to determine whether or not Qualifying Service has arisen in this Scheme and what Short Service Benefits (if any) are to be provided.

**72. Increase of Deferred Benefits**

Any deferred benefits which a Member who leaves Pensionable Service more than one year before his Normal Retirement Date is entitled to receive under the Scheme shall not exceed the value of the Deferred Pensioner's capital sum (as defined in such person's Rules) at the date of leaving increased to take account of the Scheme's investment yield and any capital accretion during the period for which receipt of the deferred benefits is deferred provided that the Trustees may deduct an amount not exceeding the actual administration expenses incurred in providing the deferred benefits.

**73. Purchase of Annuity Contract**

As an alternative to income drawdown, the Trustees may purchase an annuity under the terms of Rule 37 in substitution for benefits arising under Rules 66 - 75.

**74. Transfer Payment**

A Member who is leaving or a Deferred Pensioner who has left Pensionable Service whether entitled to a Short Service Benefit or a deferred pension may apply to the Trustees to have a transfer payment made on his behalf under the terms of Rules 81 - 85.

**75. Notification to the Leaving Member**

At the termination of any period of Pensionable Service the benefits payable shall be notified to the leaving Member.

## **Leaving Pensionable Service**

### **76. Uses of Transfer Value**

Every Deferred Member whose Pensionable Service has terminated may in accordance with the relevant provisions in Part 4 of the PSA elect that all or any part of his transfer value shall be used:

- (a) by transferring it to another Registered Pension Scheme whose trustees or managers are able and willing to accept the transfer, in accordance with the terms of Rules 81 - 85;
- (b) by purchasing with it one or more insurance policies or annuity contracts from an Insurance Company; or
- (c) by a combination of the above.

### **77. Election Procedure**

Any election made under Rule 76 above shall be in writing and subject to any other conditions as the Trustees may determine from time to time.

### **78. Effective Election**

The Trustees shall make effective any election under Rule 76 above in accordance with the statutory requirements.

### **79. Variation in Benefits**

The Trustees and the Member may agree any variations in the benefits to be provided in respect of the Transfer value that may be permitted by the regulations made under the PSA.

### **80. Cessation of Scheme's Liability**

After the Trustees have made effective any election made under Rule 76 above the Scheme shall cease to be liable for any benefits to which the Transfer value (or any part of the Transfer value dealt with under Rule 76) relates.



## **Transfers**

### **81. Transfers Out**

Where a person who has ceased to be a Member, Deferred Pensioner, Postponed Pensioner, Pensioner or Ex-Spouse Participant becomes a member of another Registered Pension Scheme and the trustees of that scheme (the “**Receiving Scheme**”) have power to accept a transfer payment the Trustees may at the request of such person make a transfer payment to the trustees of the other scheme subject to the following conditions:

- (a) the amount of the payment shall be determined by the Trustees;
- (b) the Receiving Scheme shall be one which is a Registered Pension Scheme;
- (c) the Trustees shall ascertain from the trustees of the Receiving Scheme the Pension Scheme Tax Reference number granted by HMRC;
- (d) the Trustees shall give a certificate to the trustees of the Receiving Scheme stating:
  - (i) the amount included in the transfer payment that is referable to the Employee's contributions; and
  - (ii) the periods of employment which are or may become Linked Qualifying Service; and
- (e) any expenses which may be payable by the Trustees in consequence of the transfer may be deducted in arriving at the amount of the transfer.

### **82. Termination of Responsibility**

A person in respect of whom a transfer shall have been made shall not thereafter be entitled to any benefit under the Scheme and the Trustees shall not be in any way responsible for or required to enquire into the use and application of the part of the Fund so transferred.

### **83. Transfer received**

The Trustees may accept a transfer payment from the trustees of a Registered Pension Scheme (the “**Transferring Scheme**”) of which a Member Postponed Pensioner or Deferred Pensioner or (at the Trustees' discretion) an Ex-Spouse Participant was formerly a member (the “**Transferring Member**”) and grant Transfer Credits from the Scheme as appropriate to the transfer received, provided that:

- (a) the Trustees shall obtain a certificate from the trustees of the Transferring Scheme stating:
  - (i) the amount (if any) which is to be regarded as Member's Credit and shall treat as Member's Credit to the Scheme for the purposes of any transfers out the

equivalent of the amount so certified subject to any restrictions arising through the operation of Rule 83(b); and

(ii) the periods of employment which are or may become Linked Qualifying Service; and

(b) the Trustees may where desired by the Member's previous employer or the trustees of the Transferring Scheme give an undertaking that the Transferring Member shall have an indefeasible title to such pension and ancillary benefits as are awarded in recognition of the Transfer Credit received.

**84. Transfer of Scheme assets**

Where the Principal Employer or any of the Employers establish or have established in the United Kingdom other Registered Pension Schemes which for any reason any or all Members Pensioners Postponed Pensioners Deferred Pensioners Ex-Spouse Participant or Beneficiaries desire to participate the Trustees may transfer to such scheme all or any part of the assets of this Scheme subject to such transfer being consistent with the conditions applicable under legislation in force at that time.

**85. Transfer from an Existing Scheme**

85.1. The Trustees may accept all or any part of the assets of a Registered Pension Scheme (the other scheme) which has been operating for the benefit of the Employees of an Employer or its predecessor in business. Such a transfer may relate to or include Members Postponed Pensioners Deferred Pensioners at Pensioners or (at the Trustees' discretion) Ex-Spouse Participants.

85.2. After acceptance of such a transfer annuities or pensions already in course of payment in the other scheme shall be continued at the same rate and on the same basis from this Scheme unless the Trustees direct otherwise.

85.3. Likewise annuities for Deferred Pensioners shall be preserved at the same amount.

85.4. Such proportion of the transfer as relates to Members and Postponed Pensioners shall be dealt with under the terms of Rule 83.

## **Reconstruction and Winding-up**

### **86. Determination of the Scheme**

The Scheme shall be wound up and the trusts thereof shall be determined:

- (a) at the expiration of the period stated in Rule 15 of this Deed unless there shall have been legislation making it lawful for the trusts of the Fund to continue for an indefinite time or in perpetuity;
- (b) on any earlier date on which the Principal Employer by notice in writing to the Trustees orders the Scheme to be wound up; or
- (c) on any earlier date on which the Trustees by notice in writing to the Principal Employer orders the Scheme to be wound up.

### **87. Reconstruction or Winding-up or Replacement of the Principal Employer**

87.1. If an order or effective resolution is passed for the winding up for the purpose of reconstruction of the Principal Employer or the Principal Employer is absorbed by another corporation the Trustees may make such arrangements as they think fit for the continuance of the Scheme in connection with such reconstructed or amalgamated Principal Employer or other corporation and the Deed and the Rules shall thereafter take effect in all respect as if such company instead of the Principal Employer had been a party to the Deed and such successor company shall become the Principal Employer for the purposes of the Deed and Rules.

87.2. If at any time the Scheme ceases to have a Principal Employer, the Trustees may arrange for another employer to become the Principal Employer by means of a deed to be executed by the Trustees and that other employer and, with effect from a date agreed between the Trustees and the succeeding employer (or if no date has been agreed, the date of the deed effecting the arrangement), the Deed and the Rules shall take effect as if all references to the “**Principal Employer**” were references to the succeeding employer.

### **88. Cessation of Principal Employer**

If circumstances arise in which there is no Principal Employer in relation to the Deed and Rules and the Principal Employer has not given notice under Rule 86(b) for the Scheme to be wound up and there are no other companies participating in the Scheme then the Trustees shall make arrangements in relation to the Scheme as they deem appropriate.

### **89. Winding-up**

89.1. If the Scheme is terminated under the provisions of Rule 86 or Rule 88 the assets comprising the Fund shall be applied so far as they permit so that each Member's Deferred Pensioner's Postponed Pensioner's and Pensioner's capital sum will be used to purchase non-commutable (except insofar as provided under the Scheme) non-assignable annuities

under the terms of Rule 37 regard being had to the provisions of the Scheme set out in the Deed and the Rules.

- 89.2. The Trustees may in substitution of the provisions of annuities as directed in the preceding paragraph apply (provided always that such application shall not offend against the law as regards perpetuities) any part of the Fund attributable to the interest of any one or more of the persons concerned by transferring the same to the trustees of another Registered Pension Scheme or a Qualifying Recognised Overseas Pension Scheme. Such transfer shall be subject to the terms of Rules 81 – 85 hereof relating to transfers provided that any part of the said capital sum which exceeds the amount required to purchase for the individual concerned the maximum permissible benefits for HMRC purposes (as set out in Rules 93 - 103) shall not be applied as aforesaid but subject to the prior agreement of HMRC and to the deduction of tax arising as a consequence shall instead be paid to the Employers in such proportions as the Trustees determine as equitable.

**90. Withdrawal of an Employer**

- 90.1. If and whenever:

- (a) an Employer ceases to be an associated or subsidiary company of the Principal Employer (otherwise than for the purpose of reconstruction or amalgamation);
- (b) an Employer gives notice to terminate its liability; or
- (c) the continued participation in the Scheme of an Employer would prejudice the approval of the Scheme by HMRC,

the Trustees will set apart out of the Fund investments and cash of such amount as the Trustees determine to be that part of the Fund applicable to those Members and Postponed Pensioners then in the Pensionable Service of that Employer or if the Trustees so decide to those Members and Postponed Pensioners then in the Pensionable Service of that Employer together with Pensioners and Deferred Pensioners formerly in the Pensionable Service of that Employer or its predecessors in business and beneficiaries whose title to benefits derives from such Members Postponed Pensioners and Deferred Pensioners.

- 90.2. The investments and cash so set apart shall at the option of the Trustees subject to the provisions of the Deed and the Rules and subject also to payment of costs charges and expenses properly payable thereout:

- (a) be transferred to the Trustees and upon the trusts of any Registered Pension Scheme approved or capable of approval by HMRC under the Finance Act as an exempt relevant scheme; or
- (b) be applied in like manner as stated in Rule 89

- 90.3. The Trustees shall have a period of two years in which to carry through such arrangements as may be determined under this Rule 90.

**91. Loss of Principal Employer's Powers**

If the Principal Employer is the subject of a Default Event then all the powers and discretions of the Principal Employer in respect of the Scheme and in particular the power of appointing and removing Trustees will immediately and automatically vest in the Trustees and the Principal Employer's consent will no longer be required for any purpose in relation to the Scheme other than approving any amendments to any of the provisions of the Scheme which would have the effect of increasing or adding to the liabilities of the Principal Employer in respect of the Scheme.

**92. Power to run as a Closed Scheme**

The Trustees shall have power at their sole discretion to determine that the Scheme, following the cessation of accrual and there being no Members under the Scheme that, as an alternative to determining the trust in accordance with Rule 86, that the Scheme operates as a closed scheme until such time as the Trustees determine otherwise in respect of all remaining Deferred Members.

## HMRC Requirements from 6 April 2015

### 93. Benefits for Member

93.1. Any Uncrystallised Fund of a Member shall:

- (a) be applied to pay a Pension Commencement Lump Sum in accordance with Rule 96; and
- (b) (as to any remainder) become designated as available for the provision of Drawdown in accordance with Rule 97,

no earlier than the earliest date on which:

- (i) the Member reaches his Normal Minimum Pension Age (or any protected pension age);
- (ii) or the Ill-Health Condition is satisfied.

93.2. As an alternative to the benefits under Rule 93.1, the Trustees may instead allow an Uncrystallised Fund of a Member to be applied to pay an Uncrystallised Funds Pension Lump Sum in accordance with the requirements of the Finance Act and any terms for payment as shall be determined by the Trustees from time to time.

93.3. On request by a Member, the Trustees will commute all the Member's benefits under the Scheme (including any contingent death benefits for his spouse or Dependants) for a Small Pot Lump Sum payable in accordance with the requirements of the Finance Act.

### 94. Benefits Following Death of Member

94.1. On the death of a Member the Trustees shall apply his Fund Share in such one or more of the following ways as the Trustees in their absolute discretion may determine:

- (a) designation as available for the provision of Drawdown for one or more surviving Dependants or nominees in accordance with Part 2 of Schedule 28 of the Finance Act (Pension Death Benefit Rules) and in accordance with 97;
- (b) provision of one or more lump sum death benefits in accordance with Rule 98; or
- (c) if no person exists for whom benefits can be provided in accordance with the preceding provisions of this Rule 94.1, allocation to the General Fund.

94.2. On the death of an individual for whom Income Withdrawal was being provided in accordance with Rule 97 following the death of a Member, the Trustees shall apply the individual's Fund Share in such one or more of the following ways as the Trustees in their absolute discretion may determine:

- (a) designation as available for the provision of Drawdown for one or more other successors of the individual in accordance with Part 2 of Schedule 28 of the Finance Act (Pension Death Benefit Rules) and in accordance with Rule 97;
- (b) provision of one or more lump sum death benefits in accordance with Rule 98; or
- (c) if no person exists for whom benefits can be provided in accordance with the preceding provisions of this Rule 94, allocation to the General Fund.

94.3. If a Dependant for whom Income Withdrawal was being provided in accordance with

Rule 97 following the death of a Member ceases to be a Dependant, the Trustees shall apply the Dependant's Fund Share in such one or more of the following ways as the Trustees in their absolute discretion may determine:

- (a) designation as available for the provision of Drawdown for one or more Dependents of the Members in accordance with Rule 97; or
- (b) allocation to the General Fund.

94.4. The Trustees may commute any pension death benefits payable under this Rule 94 for a Trivial Commutation Lump Sum Death Benefit which will be payable to the person entitled to that pension. The conditions necessary for payment of a Trivial Commutation Lump Sum Death Benefit must be satisfied.

## **95. Overall Limit on Benefits and contributions**

95.1. On a Benefit Crystallisation Event the benefits payable to a Member or his Dependents or other beneficiaries in respect of him shall not, when aggregated with all benefits of a like nature to which the Member is already entitled under this and all other Relevant Schemes exceed the Member's Lifetime Allowance.

95.2. The total of all Pension Commencement Lump Sums payable to a Member shall not, when aggregated with all other Pension Commencement Lump Sums to which the Member is already entitled under this and all other Relevant Schemes, exceed 25% of the Member's Lifetime Allowance.

95.3. Any contributions paid by the Member and/or his Employer (as the case may be) shall not in total exceed the Annual Allowance.

## **96. Pension Commencement Lump Sum**

A Pension Commencement Lump Sum to be provided in accordance with this Rule 96:

- (a) shall be of such amount (consistent with the Finance Act) as the Member may specify and as the Trustees may agree; and
- (b) shall be paid within the period of three months beginning when this Rule 96 applies.

**97. Income Withdrawal**

97.1. Where this Rule applies to an individual's Drawdown Fund, the Trustees shall pay out of that Drawdown Fund to the individual such amounts and at such times as the individual may specify, provided that:

- (a) no payment shall be made if it would not qualify as Income Withdrawal; and
- (b) the Trustees may impose such restrictions as to timing and amounts of payment as they reasonably consider necessary.

**98. Lump Sum Death Benefits**

98.1. On the death of an individual who is a Member or Dependant, any part of his Uncrystallised Fund or Drawdown Fund to be applied in accordance with this Rule 98.1 shall be paid to or for the benefit of (or by way of settlement or otherwise to trustees, including trustees of any discretionary trust, for the benefit of) such one or more of the following and in such proportions as the Trustees in their absolute discretion may determine:

- (a) the individual's Relatives;
- (b) any person for whom Income Withdrawal may be provided on that death (whether actually provided or not);
- (c) (on the death of a Member) any person or body nominated for this purpose by the Member;
- (d) (on the death of a Dependant) any person or body nominated for this purpose by the Member (or if the Member made no nomination, the Dependant);
- (e) any person entitled under the individual's will to any interest in the individual's estate; and
- (f) the individual's Personal Representative (but not if the payment would then pass as bona vacantia).

98.2. Without prejudice to the generality of the forgoing power the Trustees shall have power to declare in respect of any sum or any part thereof to be applied in accordance with this Rule such trusts terms and limitations including such provisions for maintenance education or advancement of for accumulation of income during a minority and including such discretionary trusts and powers as the Trustees shall from time to time by deed or deeds revocable or irrevocable appoint and the Trustees shall have power to appoint as trustees of such fund any two persons or a Trust Corporation as the Trustees shall in their discretion decide and shall have power in their discretion to remove any of such trustees and appoint any other trustee in place of any trustee so removed.



98.3. Any payment out of an Uncrystallised Fund in accordance with this Rule must be made before the end of the period of two years beginning with the date that the Trustees are notified of the Member's death, or any earlier date they could reasonably have been expected to know of his death.

98.4. Any payment out of a Drawdown Fund in accordance with this Rule shall be subject to deduction of such amount as the Trustees may determine in respect of a liability to tax under section 206 of the Finance Act.

**99. Alternative Application of Individual Fund Share**

The Trustees may at any time at the request of a Member or Dependant (or, where the Member or Dependant is deceased, his personal representatives) apply all or any part of his Fund Share to provide any one or more of the benefits permitted by the pension rules, lump sum rule, pension death benefit rules or lump sum death benefit rule provided for in the Finance Act and not otherwise permitted by the Rules.

**100. Payment of benefits**

100.1. Any Benefit shall be paid by bank transfer or otherwise as may be agreed with the recipient.

100.2. If the Trustees have taken out an insurance policy with an Insurance Company to meet any obligations to pay benefits then those benefits shall be payable only if and to the extent that the Trustees are able to recover payment under the terms of the insurance policy.

100.3. If and for so long as a person entitled to a benefit is a minor, or in the opinion of the Trustees unable to act by reason of mental disorder or otherwise, the Trustees may pay or direct the payment of the benefit to any one or more of his parents, guardians, spouse or other person legally appointed or authorised to receive it on his behalf to be applied for his benefit.

100.4. Any payment made under Rule 100.2 shall operate as a complete discharge to the Trustees and they shall not be under any liability to enquire into its application.

**101. Application of the General Fund**

The Trustees may at any time apply all or any part of the General Fund to:

- (a) meet any such other costs that are not directly attributable to any individual Member's Fund Share;
- (b) augment any Fund Share;
- (c) create a Fund Share for a person to be admitted at that time as a Member;
- (d) provide new, additional or increased benefits for any person;

- (e) (subject to any restrictions imposed by the Finance Act or by sections 37 or 76 of the 1995 Act), make payments to one or more Participating Employers; or
- (f) in any other way which in the opinion of the Trustees is consistent with the status of the Scheme as a Registered Pension Scheme.

**102. Preservation Requirements**

Any preservation requirements (within the meaning of section 132 of the PSA) which apply to the Scheme shall be deemed to form part of the Rules and shall override any other provision of the Rules with which they conflict.

**103. Taxation and overpayments**

- 103.1. Without prejudice to any other provision of the Rules, the Trustees shall be entitled to deduct from any payment made to any person or body a sum equal to any tax to which the Trustees or Scheme Administrator are, or may become liable as a result of the payment and shall remit the tax to the appropriate office of HMRC. Where the Trustees are uncertain of the extent of any tax liability, they may at their absolute discretion deduct such amount as they may determine or postpone the payment.
- 103.2. The Trustees shall have absolute discretion as to whether to seek to recover any overpayment of benefits.

## **Pension Sharing on Divorce**

### **104. Creation of Pension Debits and Credits**

- 104.1. On the date that a Pension Sharing Order takes effect:
- (a) the Member's, Deferred Pensioner's, Pensioner's or Postponed Pensioner's benefits under the Scheme (except those specified in the Valuation Regulations) become subject to a Pension Debit of an appropriate amount; and
  - (b) the Ex-Spouse becomes entitled to a Pension Credit of that amount under the Scheme.
- 104.2. The "**appropriate amount**" referred to at Rule 104.1 above means the amount specified in the Pension Sharing Order either:
- (a) as a percentage value of the Member's transfer value as valued under the Valuation Regulations on such day during the implementation period of the Pension Sharing Order as the Trustees shall specify by notice in writing to the Member and the Ex-Spouse; or
  - (b) as a monetary sum to be transferred for the Ex-Spouse's benefit.
- 104.3. On the effective date of the Pension Sharing Order each benefit or future benefit under the plan of a Pension Debit Member:
- (a) to which he is entitled under the Scheme by virtue of his Scheme membership; and
  - (b) which is taken into account in the calculation of the transfer value by reference to which the Pension Debit is determined;
- which is reduced by an amount equal to the appropriate percentage as calculated under section 31 of the WRPA.
- 104.4. The Trustees are responsible for discharging liability for the Pension Credit within the prescribed timescales in accordance with the terms of the Pension Sharing Order and relevant legislation and in accordance with the policy adopted by the Trustees from time to time.
- 104.5. Having regard to the provisions of the WRPA the Trustees may discharge their liability for the Pension Credit by:
- (a) the provision of benefits under the Scheme; or
  - (b) the transfer of the Pension Credit to the person responsible for an indemnifying agreement which is not disqualified as a distinction for the Pension Credit and the person responsible is able and willing to accept the Pension Credit,

provided that in general the consent of the Ex-Spouse must be obtained by the Trustees before they discharge liability under Rule 104.3(a) above unless regulations otherwise permit the transfer to be made without consent.

- 104.6. Where the Trustees have discharged their liability for the Pension Credit in accordance with this Rule and with the provisions of the WRPA and the Trustees' policy as adopted from time to time, they shall not be responsible for the provision of any further benefit in respect of the Pension Credit either under the Scheme or by means of a transfer payment to the person responsible for a qualifying arrangement and shall be fully discharged of all liability in respect of the Pension Credit under the legislation and under the provisions of the Scheme.

**105. Benefits and Options Available to Ex-Spouse Participant**

- 105.1. The Trustees shall have the power to credit any Ex-Spouse Participant with such benefits as the Trustees in their absolute discretion think fit in order to give proper effect to Rule 104.3 above in accordance with the terms of the PSA, the WRPA and any Pension Sharing Order.
- 105.2. For the avoidance of doubt any provisions of the Scheme not specifically referred to in Rules 104 - 113 will apply to any Ex-Spouse Participant only so far as is necessary in the opinion of the Trustees to give proper effect to the benefits credited to the Ex-Spouse Participant under Rules 104 - 113 or to the operation of the Fund generally.
- 105.3. Any benefits must be provided subject to the applicable HMRC limits and the following HMRC requirements:
- (a) A pension can be paid at the request of the Ex-Spouse Participant at any time after Normal Minimum Pension Age or earlier if the Ill-Health Condition is satisfied where he is simultaneously taking benefits if the Ill-Health Condition is satisfied arising from Pensionable Service. Additionally a pension not yet in payment may be fully commuted at any age on the grounds of exceptional circumstances of serious ill-health. There is no limit on the amount of the pension. Such a pension should not be commuted surrendered or assigned except in accordance with the Deed. Such a pension must be payable for life unless it is fully commuted and may be guaranteed;
  - (b) No lump sum may be paid to the Ex-Spouse Participant where the Member (who was formerly married to the Ex-Spouse Participant) has already received a lump sum retirement benefit from the Fund before the date of implementation by the Fund of the Pension Sharing Order agreement or equivalent provision;
  - (c) No lump sum may be paid to the Ex-Spouse Participant where all of the Pension Credit Rights under the Fund have been transferred into the Fund with a lump sum nil certificate, otherwise the Ex-Spouse Participant may choose to take a lump sum in commutation for part of the pension at the time the pension first becomes payable;

- (d) Where the Ex-Spouse Participant dies before benefits come into payment a lump sum death benefit may be paid by the Trustees under Discretionary Trusts;
- (e) Where the Ex-Spouse Participant dies after a pension has come into payment a non-commutable pension may be payable to a Dependant of the Ex-Spouse Participant:
  - (i) where subject to this option being made available by the Trustees the Ex-Spouse Participant selected a pension guarantee not exceeding 5 years and the guarantee period has not expired the remaining balance of the pension instalments can be paid as a lump sum. This lump sum can be paid to any person at the discretion of the Trustees; or
  - (ii) where subject to this option being made available by the Trustees the Ex-Spouse Participant selected a guarantee exceeding 5 years and the guarantee period has not expired the remaining balance of the pension instalments must be paid in pension form to an individual or individuals at the discretion of the Trustees;
- (f) On the date the Ex-Spouse Participant's pension becomes payable part of this pension may be surrendered for the provision on the death of the Ex-Spouse Participant of a pension payable to a Dependant of the Ex-Spouse Participant. The amount of pension surrendered should not exceed the reduced pension that the Ex-Spouse Participant retains;
- (g) Full commutation of the Pension Credit Rights on the grounds of triviality or exceptional circumstances of serious ill-health is permitted when the pension first becomes payable. Where the Ex-Spouse Participant is also entitled to benefits under the Fund arising from Pensionable Service as an employee for the purposes of determining the aggregate value of the total benefits payable to the Member on grounds of triviality benefits from Pension Credit Rights must be included. Where the Ex-Spouse Participant is also entitled to benefits under the Fund arising from Pensionable Service as an employee full commutation of the Pension Credit Rights on the grounds of triviality will only be permitted where benefits arising from Pensionable Service as an employee are simultaneously commuted; and
- (h) Where a pension is paid to a Dependant of the Ex-Spouse Participant under the terms of Rules 104 - 113 such pension must be payable for life except that pensions paid to children must cease on the attainment of age 23. Such pensions may be fully commuted however for a lump sum on the grounds of triviality at the time such a pension becomes payable.

#### **106. Death of Ex-Spouse Before the Pension Sharing Order is Implemented**

Subject to HMRC limits if the Ex-Spouse dies after a Pension Sharing Order agreement or equivalent provision is made but before it is acted upon by the Trustees, the Trustees may

at their discretion use the Pension Credit to secure benefits under the Scheme as permitted by Regulation 6 of the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 (SI 2000/1053). The following benefits may be paid:

- (a) a lump sum death benefit may be paid by the Trustees under Discretionary Trusts; or
- (b) the balance of the Pension Credit may be used to provide non-commutable pensions to any one or more Dependants of the Ex-Spouse.

## **107. Transfer Payments**

107.1. Right of the ex-spouse participant to transfer his pension credit rights to a relevant Scheme:

- (a) The Ex-Spouse Participant may request that the Trustees arrange a transfer of his Pension Credit Rights to:
  - (i) a Receiving Scheme if he is already a member of that scheme or an ex-spouse participant in that scheme; or
  - (ii) to any other scheme or arrangement if HMRC's requirements are satisfied in relation to a transfer to that scheme or arrangement.
- (b) The Trustees must confirm to the receiving scheme or arrangement that the transfer value consists wholly or partly of Pension Credit Rights for the benefit of an Ex-Spouse Participant.

107.2. Right of Trustee to transfer the pension credit rights of an ex-spouse participant to a receiving scheme:

- (a) Having regard to the provisions of the WRPA the Trustees instead of providing an Ex-Spouse Participant with Pension Credit Benefits under the Scheme may arrange for his Pension Credit Rights to be transferred with the consent of the Ex-Spouse Participant to another occupational pension scheme or a Registered Pension Scheme with a view to acquiring rights for him under the rules of that scheme.
- (b) The consent of the Ex-Spouse Participant to the transfer is not required in such circumstances as are specified in the Pension Credit Regulations.

107.3. Transfer-in of pension credit rights:

- (a) Where the Trustees accept a transfer payment for an individual who is already a Member or Deferred Pensioner or Postponed Pensioner and/or is already an Ex-Spouse Participant and are informed by the Transferring Scheme that the transfer value consists wholly or partly of Pension Credit Rights in the former scheme or arrangement then the Trustees must separately identify the transfer payment relating to the Pension Credit Rights or the part of the transfer payment relating to the

Pension Credit Rights from other funds held for the benefit of the Member or Deferred Pensioner or Postponed Pensioner.

- (b) The Trustees must make provision for the Pension Credit Benefits under the Fund to be treated as provided separately from any benefit provided under the Scheme for the same individual as a Member Deferred Pensioner Postponed Pensioner or Pensioner or as a Dependant of a Member Deferred Pensioner Postponed Pensioner or Pensioner.
- (c) The individual will then acquire the status of an Ex-Spouse Participant in the Scheme in relation to his transferred-in Pension Credit Benefits. Such Pension Credit Benefits will not count towards any limit on benefits for that Member.

**107.4. Transfer of Pension Debit Member's fund:**

The Trustees must give full details of the Pension Debit and a lump sum certificate specifying the maximum permissible lump sum to the receiving scheme/arrangement where the fund underlying the benefits for a Pension Debit Member is transferred to another Registered Pension Scheme or Registered Pension Scheme.

**107.5. Transfer-in with related pension debit:**

- (a) Where the Trustees accept a transfer payment into the Fund under Rule 83 or Rule 85 and are informed by the Trustees or Managers of the Transferring Scheme of any Pension Debit(s) relating to the transfer payment the Trustees must take account of the Pension Debit(s) if appropriate in the calculation of any limit on benefits for any Member Deferred Pensioner Postponed Pensioner or Pensioner in respect of whom there is a Pension Debit.
- (b) If a transfer of the fund underlying the benefits for any such Member Deferred Pensioner Postponed Pensioner or Pensioner is subsequently made to a Receiving Scheme the Trustees must give full details of the Pension Debit to the trustees or managers of the Receiving Scheme.

**108. Annuity Purchase**

Having regard to the requirements of the WRPA and applicable regulations when the pension becomes payable the Ex-Spouse Participant may request that the Trustees arrange for the purchase of an annuity from an Insurance Company.

**109. Disclosure of Information**

The Trustees shall comply with the requirements to provide such information and within such timescales as is required under the Pensions on Divorce etc. (Provision of Information) Regulations 2000 (SI 2000/1048) and the Charging Regulations.

**110. Charges**

The Trustees may charge the relevant Member and the Ex-Spouse for the costs incurred in connection with the provision of information and/or the costs of implementing the Pension Sharing Order at such amounts at such intervals and by such means as is in accordance with the requirements of the Charging Regulations.

**111. Time Limits**

111.1. The Trustees must implement the Pension Credit within 4 months beginning with the later of:

- (a) the effective date of the Pension Sharing Order or provision; and
- (b) the first date when the Trustees are in receipt of a copy of the Pension Sharing Order and the order decree or declarator relating to the relevant divorce or annulment and such other information relating to the Pension Debit Member and the Ex-Spouse as may be prescribed by Regulations.

111.2. Where the Pension Credit is created under the terms of a “**qualifying arrangement**” under section 28(1)(f) of the WRPA documentary evidence must be provided that it fulfils prescribed conditions.

**112. Trustees’ Policy**

The provisions of Rules 104 - 113 are without prejudice to the Trustees’ absolute discretion to decide upon and to implement a policy in relation to the discharge of liability for a Pension Credit provided for in a Pension Sharing Order.

**113. Earmarking Orders**

113.1. When an order specified in section 24 of the WRPA has been made in respect of the benefits of a Member Deferred Pensioner Postponed Pensioner or Pensioner the Trustees shall use all reasonable endeavours to ensure that the order is complied with to the extent that it remains in force.

113.2. The Trustees may recover costs incurred in connection with the provision of information and/or the costs of complying with such an order in accordance with the requirements of the Charging Regulations.



## Interpretation

### In the construction of the Scheme:

The expressions defined in this section shall bear the respective meanings attributed to them in this section unless there is something inconsistent in the subject matter or the context.

In this Deed and the Rules brought into force hereunder and in amendments made to this Deed and the Rules except insofar as the context otherwise requires:

- (a) pronouns and adjectival pronouns denoting the masculine gender shall be construed as including the feminine;
- (b) words in the singular shall be construed as including the plural and words in the plural as including the singular; and
- (c) references to any enactment include reference to that enactment as amended or extended by or under any other enactment.

The headings are for convenience of reference only and are not to be construed as part of this Deed or the Rules brought into force hereunder and the following expressions have the meanings hereby respectively assigned to them that is to say:

**“1995 Act”** means the Pensions Act 1995.

**“2004 Act”** means the Pensions Act 2004.

**“Annual Allowance”** shall have the meaning as in section 228 of the Finance Act.

**“Auditor”** means an auditor appointed under Rule 8.

**“Beneficiary”** means:

- (a) a Scheme Member;
- (b) a Pensioner; or
- (c) a person who has been a Member.

**“Benefit Crystallisation Event”** means, in relation to a Member or other person, a benefit crystallisation event referred to in section 216 of the Finance Act.

**“Charging Regulations”** means the Pensions on Divorce etc (Charging) Regulations 2000 (SI 2000/1049).

**“Default Event”** means:

- (a) the Principal Employer enters into liquidation receivership administration; or

- (b) the Principal Employer's directors enter into a Voluntary Arrangement pursuant to sections 1-7 of the Insolvency Act 1986 in their capacity as directors of the Principal Employer; or
- (c) if the Trustees certify that in their opinion there has been a significant change in control of the Principal Employer.

**"Deferred Member"** means a person who is entitled to a Short Service Benefit or deferred pension under the Scheme but who is not yet a Postponed Pensioner or a Pensioner or a person who is treated as such a person by reason of a transfer payment received by the Trustees.

**"Dependant"** has the same meaning as in paragraph 15 of schedule 28 to the FA 2004.

**"Disclosure Regulations"** means regulations made under section 113 of the PSA and section 41 of the 2004 Act.

**"Discretionary Trusts"** means that in regard to any sum directed to be held thereon in respect of a deceased Member Deferred Pensioner Postponed Pensioner or Pensioner (the **"deceased"**):

- (a) the Trustees shall have power to pay or apply the whole or any part of that sum to or for the benefit of all or any of the Relatives and Dependants living or en ventre sa mere at the date of death of the deceased or any other individual or other organisation whose name has been notified to the Trustees in writing by the deceased in such shares and proportions as the Trustees shall in their absolute discretion decide and shall not be bound by any nomination or request of the Member Deferred Pensioner Postponed Pensioner or Pensioner to them by him so that in connection with the application of any part of such sum for the benefit of any one or more of the Relatives and Dependants of the deceased the Trustees shall have power to declare trusts and constitute separate trustees thereof and provide for their remuneration; and
- (b) if or to the extent that the Trustees shall not exercise such power within twenty-four months of the death of the individual the Trustees shall hold such sum on Trust for the personal representatives of the deceased absolutely provided that if there are no Relatives and Dependants or notified names as aforesaid at the date of death of the deceased the amount held on Discretionary Trusts will revert to the general capital of the Fund and be used for the purposes of the Scheme.

**"Drawdown"** means:

- (a) in the case of a Member, Drawdown Pension; and
- (b) in the case of a Dependant, dependants' Drawdown Pension.

**"Drawdown Fund"** means funds (whether sums or assets) held under a money purchase arrangement that have been designated to provide a scheme member with a Drawdown Pension, in accordance with paragraphs 8 to 8D of Schedule 28 to the Finance Act. Once sums or assets have been designated as part of a 'drawdown pension fund' any capital growth or income generated from such sums or assets are equally treated as being part of the 'drawdown pension fund'. Similarly where

assets are purchased at a later date from such funds, or 'sums' generated by the sale of assets held in such funds, those replacement assets or sums also fall as part of the 'drawdown pension fund' (as do any future growth or income generated by those assets or sums).

**“Drawdown Pension”** means payment of income withdrawals direct from a money purchase arrangement, or income paid from a short-term annuity contract purchased from such an arrangement, to the member of the arrangement and that meet the conditions laid down in paragraphs 4 to 7 of Schedule 28 to the Finance Act.

**“Employee”** means a person in the Pensionable Service of the Employer and includes a director.

**“Employer”** means the Principal Employer and any other company which participates in the Scheme in accordance with the provisions of the Deed.

**“ERA”** means the Employment Rights Act 1996.

**“Ex-Spouse”** means an individual to whom Pension Credit Rights have been or are to be allocated following a Pension Sharing Order agreement or equivalent provision.

**“Ex-Spouse Participant”** means an Ex-Spouse who participates in the Scheme. For this purpose, the Ex-Spouse Participant must participate in the Scheme either:

- (a) solely for the provision of a Pension Credit Benefit; or
- (b) for the wholly provisions of a Pension Credit Benefit where benefits accrue or have accrued to that individual under the Scheme for any other reason.

**“Finance Act”** means the Finance Act 2004.

**“Fund”** means the assets for the time being held by the Trustees for the purposes of the Scheme.

**“Fund Share”** means in relation to a Member, Deferred Member or Pensioner the part of the value of the fund that the Trustees shall determine as being appropriate for that individual, based on the contributions and transfer payments (if any) received the benefits and transfer payments (if any) paid and such part of the investment income and capital gains or losses (realised or unrealised) as the Trustees determine to be appropriate provided that nothing in this definition shall confer on the individual any right to specific assets of the fund which are attributable to him on a notional basis solely for benefit calculation purposes.

**“General Fund”** means any part of the Fund which is not a Fund Share.

**“HMRC”** means Her Majesty’s Revenue and Customs.

**“Ill-Health Condition”** means receipt by the Scheme Administrator of evidence from a registered medical practitioner that the relevant Member is (and will continue to be) incapable of carrying on the

Member's occupation because of physical or mental impairment and the Member has in fact ceased to carry on the Member's occupation.

**"Insurance Company"** means an insurance company as described in section 275 of the Finance Act.

**"Income Withdrawal"** means income withdrawal as described in paragraph 7 of Schedule 28 to the Finance Act.

**"Linked Qualifying Service"** means periods of employment in respect of which rights in a Transferring Scheme have been transferred to the Scheme.

**"Long Service Benefit"** shall have the meaning as in section 70(1) of the PSA.

**"Lump Sum Retirement Benefit"** means the total value of all retirement benefits payable in any form other than non-commutable pension under this and any associated scheme.

**"Member"** means such individual Employee, Director or other person admitted to the Scheme in accordance with the provisions of Rule 42 and in respect of whom contributions are still receivable.

**"Member's Credit"** means that part of a Transfer Credit attributable to the Member's own contributions to a previous scheme of which he was a member.

**"Member's Lifetime Allowance"** means the standard lifetime allowance for the time being specified in accordance with section 218 of the Finance Act.

**"Normal Minimum Pension Age"** means age 55.

**"Normal Retirement Date"** means in relation to a Member or Deferred Member the date stated to be his normal retirement date in an announcement letter or such other date as shall subsequently be agreed by the Trustees and the Employer in writing subject to the maintenance of the Scheme as a Registered Pension Scheme.

**"Pension Commencement Lump Sum"** means a lump sum benefit paid to a member of a registered pension scheme (who is aged under 75) in connection with an arising entitlement to a pension benefit (other than a short-term annuity contract), and which meets the conditions detailed in paragraphs 1 to 3A of Schedule 29 to the Finance Act.

**"Pension Credit"** means a credit under section 29(1)(b) of the WRPA.

**"Pension Credit Benefits"** in relation to the Scheme means the benefits payable under the Scheme to or in respect of a person by virtue of rights under the Scheme attributable (directly or indirectly) to a Pension Credit.

**"Pension Credit Regulations"** means the Pension Sharing (Pension Credit Benefit) Regulations 2000 (SI 2000/1054).

**“Pension Credit Rights”** means rights to future benefits under a scheme which are attributable (directly or indirectly) to a Pension Credit.

**“Pension Debit”** means a debit under section 29(1)(a) of the WRPA.

**“Pension Debit Member”** means a Member Deferred Pensioner Postponed Pensioner or Pensioner whose benefits have been permanently reduced by a pension debt.

**“Pension Scheme”** shall have the meaning as in section 150(1) of the Finance Act.

**“Pension Sharing Order”** means any order or provision mentioned in section 28(1) of the WRPA.

**“Pensionable Service”** means a Member’s period of active membership of the Scheme.

**“Pensioner”** (except in the expressions **“Deferred Pensioner”** and **“Postponed Pensioner”**) means a person in receipt of a pension from the Scheme by reason of his past employment with an Employer or its predecessor in business.

**“Personal Representatives”** means, in relation to a person who has died (in the UK), persons responsible for administering the estate of the deceased. In a country or territory outside the UK, it means the persons having functions under its law equivalent to those administering the estate of the deceased.

**“Postponed Pensioner”** means a person who is entitled to a pension in respect of Pensionable Service with an Employer prior to Normal Retirement Date and by reason only of his continuing in employment is not a Pensioner.

**“Preservation Requirements”** means the provisions of Chapter 1 of Part 4 of the PSA.

**“PSA”** means the Pension Schemes Act 1993.

**“Qualifying Recognised Overseas Pension Scheme”** means a Recognised Overseas Pension Scheme which qualifies as a qualifying overseas pension scheme for the purposes of Part 4 of the Finance Act.

**“Qualifying Service”** means (except in the expression **“Linked Qualifying Service”**) those periods of employment calculated on the termination of Pensionable Service (which for this purpose shall be treated as not having been terminated if it is resumed within one calendar month) as the total of:

- (a) periods of Pensionable Service to the date of termination;
- (b) periods of Linked Qualifying Service; and
- (c) periods of employment during which the individual was a Member of one or more Registered Pension Schemes (other than the Scheme) of any of the Employers or their predecessors in business immediately prior to the periods mentioned in (a),

provided that no account will be taken of any period in respect of which:

- (i) a refund of contributions has been made;
- (ii) a transfer payment has been made to one or more Receiving Schemes;
- (iii) a lump sum has been paid in full satisfaction of the benefits due; or
- (iv) benefits are in payment,

provided that:

- (1) the calculation shall not take any period into account more than once; and
- (2) any period during which a Member is absent (but still employed) due to pregnancy or confinement, adoption or paternity leave which is not paid may, at the discretion of the Trustees, be included.

**“Receiving Scheme”** means any other Registered Pension Scheme or other scheme seeking registered status.

**“Recognised Overseas Pension Scheme”** means a pension scheme which qualifies as a recognised overseas pension scheme for the purposes of Part 4 of the Finance Act.

**“Registered Pension Scheme”** means a pension scheme that is registered with HMRC under section 153 of the Finance Act or deemed to be registered under Part 1 of Schedule 36 to the Finance Act and **“Registration”** shall be construed accordingly.

**“Regulator”** means the Pensions Regulator.

**“Relatives”** in relation to a deceased Member, Deferred Pensioner, Postponed Pensioner, Pensioner, Ex-Spouse or Ex-Spouse Participant means:

- (a) his spouse;
- (b) his or his spouse’s grandparents;
- (c) his or his spouse’s parents;
- (d) his or his spouse’s uncles and aunts (including half-uncles and half-aunts) and the children or remoter issue of any of them;
- (e) his or his spouse’s brothers and sisters (including half-brothers and half-sisters) and the children or remoter issue of any of them;
- (f) his or his spouse’s children or remoter issue;
- (g) the spouse of any person within (b) to (f) above; and

(h) the term **“children”** in this definition shall include a natural child or adopted child or stepchild.

**“Relevant Scheme”** means any other scheme which is a Registered Pension Scheme or a Recognised Overseas Pension Scheme.

**“Scheme Administrator”** means the Trustees or the person or company for the time being appointed under Rule 39 in accordance with section 270 of the Finance Act having the management of the Scheme.

**“Scheme Pension”** means a pension entitlement which meets the conditions laid down in paragraph 2 of Schedule 28 to the Finance Act.

**“Short Service Benefit”** shall have the meaning as in section 71 of the PSA.

**“Small Pot Lump Sum”** means a lump sum paid in accordance with paragraph 7A of Schedule 29 of the Finance Act 2004.

**“Transfer Credit”** means benefits and rights accorded to a Member by reference to a transfer payment received from another scheme.

**“Trivial Commutation Lump Sum Death Benefit”** has the meaning given by paragraph 20 of Schedule 29 to the Finance Act.

**“Uncrystallised Funds”** means funds held in respect of the Member under a money purchase arrangement that have not as yet been used to provide that Member with a benefit under the Scheme (so have not crystallised). These are defined differently for cash balance arrangements. The meaning here is the funds there would be if the Member decided to draw benefits on a particular date and not the funds actually held in the cash balance arrangement at that time.

**“Uncrystallised Funds Pension Lump Sum”** has the meaning given by paragraph 4A of Schedule 29 to the Finance Act.

**“Valuation Regulations”** means the Pension Sharing (Valuation) Regulations 2000 (SI 2000/1052).

**“WRPA”** means the Welfare Reform and Pensions Act 1999.

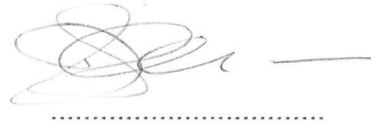
**IN WITNESS** whereof the parties hereto have executed this instrument as a deed on the date first before written:

EXECUTED as a DEED by )

HYP Investment Limited )

acting by: )

Director



.....

WITNESS:

Name: MRS C. HEWELLYN

Signature: C. Hewellyn

Address: WESTLEIGH

FARM LANE

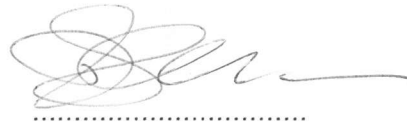
ASHTON

Occupation: NONE RETIRED

SIGNED as a DEED by )

David Frederick Allan Hamer )

in the presence of: )



.....

WITNESS:

Name: MRS C. HEWELLYN

Signature: C. Hewellyn

Address: WESTLEIGH

FARM LANE

ASHTON

Occupation: RETIRED