

THE EMPLOYMENT LAW PRACTICE

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9 January 2003

Dear Member,

First, please may I apologise if your details are incorrect or I have addressed this letter to you incorrectly.


I am a solicitor advising Benrache Limited, the new trustee of your Pension Scheme. The old trustee, Balfour Group Limited and its solicitors, Brooke North, will not give me up-to-date contact details for Scheme members and I have had to rely upon a list of addresses kindly supplied by another member.

I know that you are all very concerned about what is going on. There is a lot to tell you but in this first letter, I will keep to simple facts. If you are unhappy with anything in this letter, you, your solicitor or someone else on your behalf should feel free to write to me at this address and I will do my best to help you.

In mid-2002, I was asked by the CPAG to investigate the affairs of the Scheme. The CPAG has around 40 members who wanted to ensure that the interests of all 210 (current plus deferred) members were properly looked after.

As a result of my investigations, the following has emerged. This is not the whole story of mismanagement, corruption and destruction of your pension Scheme, but gives you some of the flavour of what has happened:

1. In 1994, £2.135 million was taken out of your pension scheme in an investment deal. Whether that deal was a sham or whether it went wrong by misfortune is a matter for the jury to decide in the criminal trial of the deal's instigator, Bjorn Stiedl (one of the group of Danes who acquired control of the Scheme in 1994). Six years later, Brian Smyth and BTL issued the "Petersen Proceedings" - which relate to this 1994 transaction. The claim was made against 9 Defendants, including Stiedl's Danish lawyer - a man called Iversen. However, the Danes and their Malaysian business partners had long since spent the money taken from the pension fund.
2. Smyth was appointed in November 1994. Between then and 1997, Smyth kept Iversen informed about all his dealings with the Scheme. For example, Smyth took Iversen to a meeting with the OPB (now OPRA) on 5 January 1996. Smyth gave Iversen complete access to the Scheme's confidential affairs.
3. Smyth had other business dealings with Iversen in 1995 and 1996. Smyth charged the Scheme for some of the time he spent discussing those business ventures.

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4. When Smyth was appointed, the Scheme had around £1.1 million in cash. He did not take reasonable steps to safeguard that money. He did exactly the opposite. He took over £250,000 as fees for his IFP company over the next 5 years. He paid the pensions for 6 years. He spent the rest of the Scheme money on legal fees in pursuit of the Petersen litigation. Smyth delayed the litigation for 6 years, by which time all the money was gone.
5. Smyth told you legal advisers were involved at a time when they were not: Smyth was simply acting with Iversen. He told you the £2.135 million was "secure but not in a readily realisable form". It was not secure. Iversen and the Danes were busy spending it. Smyth knew as early as January 1996 that Stiedl had the majority of the £2.135 million in a bank account under Stiedl's control. Smyth continued to work with Iversen which gave Stiedl the time to spend that money.
6. James Bisset is a qualified chartered accountant. His family firm was the auditor to your old employer, Balfron Group Limited, and to the Scheme from 1975 to 1993. You of course know that Bisset was the owner and managing director of Clarion Group plc (as Balfron used to be called). Bisset was a trustee of the Scheme from 1977 to 1994. In 1989, Bisset's family firm drew up fictitious accounts increasing the company's assets from approximately £500,000 to approximately £2 million. The trick used was to pretend that your pension scheme has paid a cash surplus of £1.819 million to Clarion Group plc, when no such transaction took place. Independent expert accountants issued a detailed report to the Court in 2001 confirming this false accounting.
7. In 1993, Bisset then used these false accounts to sell Balfron in a complicated deal which resulted in £2.7 million of loans being made by Balfron to the purchaser. None of these "loans" was ever repaid. As part of the deal, Bisset allowed the individuals helping him to take £600,000 of the company's money – and just keep it. Many of you Scheme members were also small shareholders in the company. It was your £600,000 that Bisset gave away.
8. Balfron Group Limited (which the Scots Court restored to life in 2001, thanks to the CPAG) now intends to sue Bisset (and others involved) for these and for a host of other matters. Balfron has instructed eminent Scottish solicitors – Biggart Baillie – and I am sure they will keep you all informed. It is important for you to understand that Balfron is going to use the damages it will get from Bisset and others to put real money back into the Scheme. If Balfron is successful in its legal actions, it will in fact get enough in damages as is necessary to make the Scheme 200% funded. And these legal actions are financed by Balfron – not the Scheme.
9. In 1996, Smyth then set up Balfron Trustees Limited ("BTL") as a new trustee company. He said in correspondence at that time that he did this to prevent an Independent Trustee being appointed. He and Bisset then arranged for the appointment of BTL as sole trustee of the Scheme on 1 April 1997. They then made sure that Balfron Group Limited was dissolved in August 1997, so that there was no possibility of Bisset being sued (for the false accounting and other matters) and so that there would be no independent supervision of what BTL and Smyth were up to.

10. Smyth arranged for Bisset and Iain Veitch to pretend to be "member nominated directors" of the Scheme. However, there were no elections for member nominated directors as there should have been. This means that BTL has been unlawfully acting as sole trustee - without member nominated directors - since 1997 and had no right to spend your pension fund on any legal or administration costs at all.
11. In the 5 years from 1997 to 2002, Smyth and BTL never complied with any of the statutory requirements designed by Parliament to ensure that Scheme members are given annually updated financial and other information on their pension schemes. Instead, Smyth sent you occasional bulletins, which included a combination of inaccuracies, deliberate misrepresentations and outright lies. Smyth has already been forced to admit in legal proceedings brought by CPAG members that he has deliberately lied in writing to all Scheme members.
12. In 2001, Smyth invited you to meetings but insisted on forms being filled out, identification being brought and told members that they could not bring relatives, lawyers, accountants or indeed anyone. In April 1997 the Scheme fund had stood at around £1 million. In October 2001, BTL terminated the payment of all Scheme pensions and benefits, announcing that the Scheme fund had been reduced to around £150,000.
13. On 30 January 2002 Smyth claimed *major success*. The 7th, 8th and 9th Defendants settled upon the payment of £1 million to BTL. But that sum was spent on legal fees (around £650,000) and payments of over £250,000 to Smyth's business. None of it was used to provide pension benefits.
14. The trial continued against the remaining defendants. It had already been stated in open Court in those proceedings that one defendant was broke, one defendant was in Denmark and could not even afford a lawyer, the defendant company was in winding up, and the defendant solicitor was uninsured. The CPAG wrote to Smyth/BTL asking for an explanation of why the Court case was continuing against worthless defendants and what was going to happen with the £1 million. No answer was ever received. Smyth told you that this was *junk mail*.
15. Smyth has since November 1994 extracted from the Scheme for his company IFP sums totalling £551,545.
16. Of that £551,545, an amount of £211,000 was subject to an express agreement between IFP and BTL that it would become payable to IFP only if BTL achieved success in the Petersen case. On 6 February 2002, Smyth gave testimony on oath of this express "no win no fee agreement". Judgment was given on 17 April 2002. Yet, on 20 February 2002, Smyth had a payment out of Scheme funds of that success fee of £211,000 plus a further amount (totalling together £264,375). Smyth took his "success fee" before the trial had even concluded and 2 months before the judgment. As Smyth admitted in his letters to you after the trial, BTL did not succeed in its claim for £2.135 million against all 4 trial defendants.
17. On 6 November 2002, Smyth was held liable for criminal contempt of court and was ordered to pay costs of approximately £14,000. BTL then attempted

to use Scheme assets to pay Smyth's costs, despite an express Order of the Judge that this not be done. They and Brooke North were still trying to do this when Benrache was appointed on 29 November 2002. We stopped them immediately.

18. The Scheme funds have stood at approximately £3,600 since May 2002. In short, the Scheme has suffered a loss in funds of £2 million over the time that Smyth, BTL and Bisset – advised by Brooke North – have been responsible for the Scheme's affairs. So far, there has been no benefit to you.
19. BTL and Smyth did not get the consent of the Court to go to the Court of Appeal in the Petersen case. They have run up another legal bill of £165,000 since May 2002. They were not permitted to do this and as the Scheme only had £3,600 left, you can be certain that they would have used any further settlements to pay their lawyers first. In fact, Brooke North have just written to me saying that they will release the Scheme files to me and the new trustee – but only if we took hold onto the settlement monies presumably to pay Brooke North's £165,000 fees first.

Through the efforts of the CPAG, it became possible for a new Trustee to be appointed and on 29 November, Benrache Limited replaced BTL. Ray and Thelma Wyatt of 30, Rutland Road, Chelmsford, Essex, CM1 4BJ, both beneficiaries of the Scheme have kindly agreed to act on behalf of the pensioners through Benrache. Benrache is owned on trust for all the members of the CPAG. Any Scheme beneficiary is eligible to join the CPAG for free.

Since Benrache has taken over, a Settlement has been reached with one Defendant subject to the consent of the Court. The terms of the deal are essentially these: the Defendant will pay £200,000 plus costs to Benrache. The Scheme rules would then be amended so that an immediate tax free payment of £2,000 would be made to each current pensioner without delay i.e. £140,000 given to pensioners now. The pensioners now get their GMP from the State. The rest of the pension benefits total around £70,000 a year. So, with this settlement money, we can pay your pensions due since October 2001 and we can pay the November 2002 – October 2003 pensions in advance in a lump sum. And we will still have some money left over towards the following year's benefits.

We are meeting with OPRA (the government body) on Wednesday 15 January 2003. We hope that this will lead to Benrache and OPRA going before the court later this month to seek the approval of the Court about the Settlement. If the Court is happy, then Benrache will be paying this money to the pensioners straight away.

Obviously, we do not have enough money yet to pay pensions for ever. This is what we will do to try next :-

1. With some money in the bank, we can now ask a big firm of lawyers to pursue the former trustee, its solicitors, Smyth and others. The professional defendants are insured. So this means that we may be able to have the cases against them run on a "no win no fee" basis. We and OPRA can also try and obtain Settlements from the last two Petersen Defendants.

2. I will ask OPRA to keep a close eye on how matters proceed: Ray and Thelma will also keep me up to date so we can be sure that in future, your interests come first, as they should have done in the past.
3. Balfour Group Limited has appointed Scots lawyers to recover the money taken out of the company under Bisset's 1993 arrangements. If it gets this - and other - money back, then this extra money will be given to you. This is possible because all the shares in Balfour are owned by Mike McKenzie on trust for the CPAG.

I hope that this will come as welcome news. The CPAG will continue to keep an independent watching brief over events and if there is any more trouble, then it could, as it has done in the past, step in to protect the people who matter. The CPAG bulletins had to cease following the Petersen trial because a contempt of court act order stringently prevented any publicity about the case - and that order is still in place. Hopefully with good professionals in charge, there will no longer be any need for the CPAG to remain active, but I am sure you will be pleased to know that there is a 'back up' in place if necessary.

In summary, I believe that the efforts of the CPAG - so bravely pursued by Ray and Thelma - have turned this situation around. Without them, I do not believe that you would ever have seen any money again. I think it is also important to note that Ray and Thelma have never asked for or received a penny for their efforts. Now that some funds can be returned to you - rather than the lawyers - and new claims (that the previous advisers would not of course pursue - against themselves) are being made, not only do you have the prospect of Settlement money from the Petersen case, you also stand to gain additional compensation against the professionals who have let you down in the past and further compensation through the cases against Bisset which Balfour will pursue.

I would like to close by emphasising that, unlike the former trustee, administrator and their solicitors, we welcome your questions and involvement. You can have as much information as you wish. All the files of my firm are open to you - and any of your relatives or advisors - at any time and without charge. The detailed history of the previous Scheme custodians is set out in Letters of Claim. They are long and much is in "legalese" but any of you are welcome to have a copy. I wish that I did not have to burden you at all with all this information and that you could simply enjoy a happy retirement. Your trust and confidence has been abused so damagingly that I and the new Trustee well understand that you may feel reluctant to trust anyone. We hope to earn your trust by continuing to work to achieve the justice and financial compensation that you deserve.

Yours sincerely,

Susan Glover

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cc OPRA