

## Formation of a Halcrow Pensioners Association (HPA)

### Summary

The takeover of Halcrow by CH2M Hill has illustrated the need for Halcrow Pensioners to have a forum for action other than the Q&A facility offered by the Pensions Team, in order to deal with upcoming issues related to protecting our common interests. There are several reasons why a pensioners' association might be needed, as summarised below:

- eyes and ears to keep in touch with moves by CH2MH and HPS
- a communication forum that is not restricted by non-disclosure agreements that may be applied to HPS
- a coordinated approach to questioning the activities of CH2MH and HPS
- a coordinated approach to getting the best deal for pensioners from the Halcrow Trust's share of sale proceeds
- a coordinated approach to dealing with the Pensions Regulator and, if the worst comes to the worst, the Pension Protection fund
- the formation of a Halcrow pensioners association has been suggested by a leading pensions lawyer (who acted on behalf of pensioners in the Maxwell case)

If anyone agrees with the idea a Halcrow pensioners association, please let me know by email at [stephen.synaquanon@gmail.com](mailto:stephen.synaquanon@gmail.com).

I have asked Derek Pollock to advise all the 3,300 members of the existence of our website, so they can register their email addresses to be notified automatically of updates, and he has kindly agreed to do this.

If we are to make it effective, it will be important for all of us to reach out to as many members of the HPS to inform them of the proposal and give them a chance to join.

We may have to meet some legal costs later, to protect our interests, and ask members to contribute. The wider the net, the lower the per capita cost.

### Eyes and ears

In the bid document, it is stated CH2M Hill Europe is an indirect wholly-owned subsidiary of CH2M HILL and its sole purpose is to act as the vehicle which will acquire the Halcrow Shares. A check at Companies House shows that the company was created on 21st May 2010, 16 months before the acquisition was announced. Yet according to a letter introduced as evidence in the High Court only as a result of direct intervention by the pensioners, the HPS was not informed until August 2011. The earliest reference to discussion with HPS we have been able to find so far is to a conference call on 5<sup>th</sup> September 2011 with CH2M Hill Europe and HHL.

Peter Gammie wrote to Derek Pollock on 13 September 2011 in response to a direct question from the HPS trustees and advised that the board had received an offer from Charlotte (the code used in negotiations for CH2M Hill Europe) on 8th August 2011, which it considered on the same day. The final offer was agreed through Rothschild on 17th August, subject to detailed due diligence. In the same letter, Peter Gammie recalled that he had rung Derek Pollock on Monday, 15th August, to notify him of this potential transaction.

In a later letter, dated 20<sup>th</sup> September, Derek Pollock stated that the HPS trustees "*had it from the Charlotte's CFO on the afternoon of the 12th [September] that the deficit had been a matter of discussion since June.*" Whether this refers to June 2010 or 2011 is not stated, but in principle it could have been either.

Clearly, the HPS was kept in the dark about the sale of Halcrow, and there is every reason to believe it will be kept in the dark about decisions relating to the disposal of funds by the Halcrow Trust. The HPA would enable more people to keep eyes and ears open about information of interest to members.

### **Non-Disclosure Agreement**

In the letter of 13<sup>th</sup> September 2011, Peter Gammie refers to a non-disclosure agreement which Derek Pollock had signed, and in later letters referred to this to prevent Derek Pollock from revealing information to HPS members.

The HPS trustees are our only official channel of communication with official channels like the Pension Regulator and the Pension protection Fund. If they accept to be bound by Non Disclosure Agreements, we risk being kept incommunicado. We need a parallel channel of communications.

### **Unanswered questions and requests for information**

Although members asked many questions and made many requests for information, only three Q&A circulars were issued, and these generally by post rather than by electronic means. Members' communications with each other were stifled, and they were unable to ascertain whether their concerns were widespread. The Pensions Team responded only to the questions they chose, and decided arbitrarily which requests for information would be met, and which denied. Only when, thanks to Dominic McNamara, the members had a website where they could access all available information, did the Pensions team use it. Even the Head of Communications in Halcrow refused to cooperate in facilitating dissemination of information.

### **Preparedness for future events: payout from the Halcrow Trust**

We need to be prepared for the situation when the Halcrow Trust decides to distribute its funds. If it nominates beneficiaries within six months of receiving funds, the amounts distributed become taxable. Whether any will come directly to the HPS seems unlikely.

In a letter dated 17<sup>th</sup> October, Derek Pollock wrote to John Theakston, a trustee of the Halcrow Trust saying:

*"In the Company announcement of 3<sup>rd</sup> Oct I assume that the Trust approved the answer to the tenth and final question which was about the Trust. This says that it would be "inappropriate" to pay anything to a minority of beneficiaries", which is presumed to mean HPS members."*

He then argues against this idea, but we do not have a copy of the answer. The indications are, however, that the Halcrow Trust does not consider the HPS to be a potential beneficiary. If we are going to contest this, we should be prepared.

### **Preparedness for future events: Pension Protection Fund**

In the unhappy event that our worst fears are realized, and the HPS was orphaned, we will need to communicate to give advice and tips to each other, and provide a focus to coordinate action.

### **Dealings with the Pension Regulator**

Again, from Court Documents, we know that Derek Pollock wrote to the Pensions Regulator on 28<sup>th</sup> September 2011 to advise of the sale. In it he stated:

*"Over recent weeks, the trustees of HPS have engaged with directors of HHL as well as with representatives of CH2M HILL. We have had sight of a covenant analysis report, prepared by Ernst & Young for CH2M Hill and on which our own covenant adviser, Lane Clark & Peacock LLP, has commented. The report looks at the covenant of HHL before and after the transaction and concludes that the overall impact on the covenant available to HPS is expected to be positive, particularly since, as part of the transaction, Halcrow's secured debt is to be repaid [and replaced with inter-company loans]."*

*Therefore, we understand that the transaction is not a "Type A" event which would require immediate mitigation."*

He went on to list the demands that had been made by the HPS for something more legally binding, but failed to inform the PR that all of them had been rejected. It was only when Peter Gammie wrote to the Pensions Regulator on 1<sup>st</sup> November that the PR confirmed the following day that he had received over 50 letters from members expressing their concern, and stating that *“We have requested that the trustees keep us updated on the progress of their discussions with CH2M Hill”*. Neither HHL nor the HPS trustees bothered to reply before the Court Hearing on 7<sup>th</sup> November.

As a result of being in court, I have seen the executive summary of the covenant analysis report, although I am not yet allowed to disclose its contents. In a written submission I commented to the Court that: *“The Covenant Review appears to have been prepared sometime in the 13 working-day period between 14<sup>th</sup> August and 11<sup>th</sup> September 2011. It lists 11 points of comparison between the pre proposed-transaction situation, and the post proposed-transaction situation, for Halcrow.”*

I pointed out that in December 2010, according to an article in the New York Times, dated 26<sup>th</sup> August 2011, New York Attorney General Andrew M. Cuomo sued Ernst & Young, accusing the accounting firm of helping its client Lehman Brothers *“engage in a massive accounting fraud”* by misleading investors about the investment bank’s financial health. I concluded my own review by saying:

*“None of the above lends confidence to the assertion that the Ernst & Young report in any way substantiates the claim that the Halcrow covenant will be strengthened. We do not claim the covenant is weakened, merely that the report provides no substantive evidence one way or the other on the subject.”*

The point is that there are many Contract Engineers among us who could have reviewed the covenant and provided a substantive analysis if given time ( My review was done between 2 and 3 am, a few hours before the Court verdict was submitted).

### **Advice from Martin Jenkins**

Martin is a Partner of DFW (a business law firm with offices in London, the midlands and the north of UK) and Head of Pensions with extensive experience of advising on a variety of pension funds both in the public and private sectors on a full range of issues and holds a number of pension trustee appointments. He is Chairman of the National Association of Pension Funds – Northern Counties Group and serves on a committee for the Pensions Management Institute which helps run the trustee knowledge examination “the Award in Pension Trusteeship”, and author of “Pensions Act 2004” for the Oxford University Press as well as a number of other works for legal publishers including Butterworths and Sweet & Maxwell.

He was involved in representing the Association of Mirror Pensioners where even before the full details of the theft and fraud had emerged, the pensioners were raising concerns of governance, investment decision making, independence of the trustee board etc. He also acted for a group of British Steel Pensioners and created for them an association body which following litigation in relation to the pension scheme became adopted as the recognised pensioner body for the scheme and nominated a pensioner trustee to the board with the association being financed by the employer.

Martin gave the following advice to Robert Every at a meeting at 13:00 on 9<sup>th</sup> November in London.

- Halcrow pensioners can come together to form a group comprising any number, in the form of a loose unincorporated association, for the purposes of taking future action.
- Further action may involve Court action or the threat of it, or of lobbying to put pressure on the Regulator or the HPS Trustees. The Group may wish to publish the results of the above in the Press or to take a Court Action to hold the Trustees to account.
- The Regulator has a duty of care and can be asked to explain his actions. The Regulator has the power to bring the whole of the CH2M group in the USA into accountability for restoring funding to the HPS if the funding is insufficient.
- The test is to look at the position of the HPS before and after take-over to see if CH2M obtained an advantage from the Halcrow Group at the expense of the HPS. The banks

will not continue to lend money to the Halcrow Group in circumstances in which the trade is conducted with an advantage to CH2M rather than to Halcrow and the HPS stands as a creditor along with the bank. It was noted that the Trustees say that part of the transaction is for CH2M to repay the bank. If Halcrow staff and Offices were transferred to CH2M at no cost this would be an advantage to CH2M and disadvantage to the HPS.

- We should try to get a copy of the Trustee's Rules for the HPS to see if it gives any guidance on how the trustees are to manage any Conflicts of Interest. Did the trustees take advice on all matters? The trustees have a duty to act solely in the interests of the HPS and this becomes more difficult if trustees have an interest in the outcome. If all directors have a stake in the outcome they cannot make decisions. In these circumstances the trustees would need to form a sub-committee or appoint temporary trustees to prove they had acted solely in the interests of HPS. A lawyer could be commissioned to find out whether the rules had been breached. The possibility that a lawyer may give instructions to a QC to take an action for breach of trust can be a powerful influence on getting the Trustee's on side. If the trustees of the HPS are unhappy with some of the events the Regulator can take action more easily and with less risk. The Regulator has a duty to protect the government Pension Protection Fund.

- If the trustees have taken Legal Advice we should ask to have sight of the advice, what is the legal case preventing the trustees from asking for a contribution to be made to the HPS?

- The Association needs to find a single person with the tenacity to ask questions and get answers or take matters further. The Association should communicate and attract support from members (Facebook, Google+?). MJ said he could provide sample questions to give the Trustee's. MJ would like us to refer back once replies to questions are received.

Since then, we have updated him on the outcome of the hearing and he has come back with further useful advice. Robert Every and Stephen Brichieri-Colombi will be meeting with him again on 16<sup>th</sup> December to see how he could help us.

Stephen-Brichieri-Colombi  
27<sup>th</sup> November 2011