

## Important Announcement to members and potential members of the following Pension Schemes (“The Schemes”)

### Mendip RBS Pennines RBS

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#### **Background**

This is a second Announcement further to our Announcement of 2<sup>nd</sup> April 2012, which set out some initial background to Dalriada’s appointment. In this Announcement we look to provide further background information and an update as to what has happened to date since Dalriada’s appointment.

On 28<sup>th</sup> March 2012 Dalriada Trustees Limited (“Dalriada”) was appointed as an Independent Trustee of the Schemes.

The Schemes have been used, principally, as vehicles to facilitate loans to members, albeit by investing funds through companies, on the face of it, unconnected to the Schemes.

Monies invested in pension schemes enjoy significant tax advantages – tax relief is given on contributions paid in and investments grow largely tax free.

Because of the favourable tax position, there are rules that govern when monies can be taken out of pension schemes and how much. Generally, the earliest age at which an individual can draw benefits is 55 and, then, the maximum amount of cash that can be taken is 25% of the value of a member’s fund.

The Pensions Regulator (and other regulatory bodies such as the Financial Services Authority and HMRC) will look to prevent any abuse of the use of pension fund assets which should be used, primarily, to ensure, as far as possible, the adequate provision of benefits once members reach retirement age or stop working thereafter. The Pensions Regulator will look to take action where there appears to be an attempt by schemes to allow early access to pension funds – so called ‘Pensions Liberation’.

This may entail the appointment of a professional trustee company to take control of the management of the pension schemes at issue. This was the case with the Pennines and Mendip Schemes.

The Pensions Regulator has put up a warning on its website with regard to ‘Pensions Liberation’ schemes:

<http://www.thepensionsregulator.gov.uk/regulate-and-enforce/pension-liberation.aspx>

### **How did it work?**

Broadly, when members transferred funds into the Schemes, these monies were 'invested' in Hedge Capital Investment Group plc (HCIG).

HCIG loaned money to Hedge Capital Investments Limited (HCIL) who managed the investments that underpinned the value of HCIG. A major part of these investments was a further loan by HCIL to Hedge Capital Limited (HCL) who, in turn, arranged for the individual loans to members.

Dalriada has been advised by a leading barrister (a Queen's Counsel or 'QC') who specialises in pensions and trust law matters.

In broad terms, the advice Dalriada has received is:

- There is a strong possibility that the investments made in HCIG were 'void' because they were made, in part at least, to allow the loans to members to be made. In this context 'void' is a technical legal term and, if it is decided that the investments in HCIG were 'void', they would not be recognised in law as ever having taken effect.
- The investments made by the previous trustees in HCIG were in breach of the Investments Regulations governing pension scheme investments and so were, arguably, made in breach of trust.
- Finally, that the loans to members resulting from the investment in HCIG were unauthorised payments in the hands of members and, as such, potentially liable to tax charges.

### **What action have we taken?**

As was confirmed in our Announcement dated 2<sup>nd</sup> April, we have taken control of the existing trustee bank accounts.

We have also taken possession of the Preference Share Certificates in respect of the investments in HCIG.

In addition, because the assets of the Hedge companies were largely made up of monies from the Schemes, we have sought, and obtained, a freezing injunction over the assets of:

- The previous trustees
- HCIG
- HCIL
- HCL.

Dalriada is also carrying out some due diligence with regard to the investments made by HCIL that underpin, ultimately, the value in HCIG and likelihood or otherwise of HCIG being able to support the promised 3% return to holders of the Preference Shares.

It would appear that a significant amount of money is still retained in cash.

Dalriada has lodged a claim with the High Court for the monies currently held in the various Hedge companies to be returned to the Schemes.

This claim is a necessary first step to enable Dalriada to start to manage the Schemes in a manner more appropriate to protecting the interests of members by ensuring the best chance of maximising benefits on retirement.

This claim has been vigorously denied by the previous trustees and the Hedge companies and the claim has been responded to by way of defences.

The freezing injunction was obtained without notice and, as such, the previous trustees and the Hedge companies had the right to a return hearing to argue their case.

This hearing was heard on the 29<sup>th</sup> and 30<sup>th</sup> May.

The previous trustees and the Hedge companies opposed the freezing injunction and also applied to Court for what is called 'summary judgment' with regard to Dalriada's claim (i.e. effectively have the claim thrown out without it going to a full trial) arguing that the operation of the Schemes and the associated loan payments were legitimate, that Dalriada ought not to be able to pursue a claim of this nature and, as such, there was no case to answer. In addition, they sought a 'security of costs' order against Dalriada, effectively seeking that Dalriada be held liable for the legal costs associated with the claim, rather than these being met from the assets of the Schemes.

The judgment with regard to the application for 'summary judgment' was handed down on Friday 15<sup>th</sup> June. The Chancellor of the High Court dismissed the application commenting that Dalriada had an arguable case with real prospects of success in respect of all points of the claim.

A copy of the judgment can be seen from the following link:

<http://www.bailii.org/ew/cases/EWHC/Ch/2012/21626.html>

Going forward, Dalriada needs to make an application to the Court to seek approval of the continuation of the proceedings. This is an absolutely standard step for a trustee to take when pursuing Court proceedings on behalf of members. It is to enable the trustee to obtain sanction from the Court that its costs can be met from the assets of the Schemes. Without taking this essential step, Dalriada will not be able to continue with the proceedings, which it considers are in the best interests of members of the Schemes. This step is taken by Dalriada issuing what is called a Beddoe application. Also standard is that the application includes the involvement of a Representative Beneficiary who has an opportunity to air opposing arguments on behalf of any members of the Schemes who dispute the benefit of the proceedings being pursued. This is, therefore, the members' opportunity to argue that the proceedings should not be continued.

Dalriada is in the process of identifying a suitable individual to act as Representative Beneficiary. Details of that individual and the means to contact his or her legal representatives will be provided as soon as possible by way of further announcement.

Given the Chancellor's comments in the judgment handed down with regard to the 'summary judgment' application, there is a strong basis for Dalriada proceeding with its action.

Given this, a decision on the 'security of costs' application was deferred by agreement, until the outcome of the Beddoe application is known.

Dalriada was awarded costs of opposing the summary judgment application and of defeating the attempt to have the freezing injunction removed. This is because the Court has effectively ruled that Dalriada's approach was justified. Those costs need to be assessed but the Hedge entities are required to make an interim payment of £140,000. This will be held on account by Dalriada's solicitors, subject to the direction of the judge hearing the Beddoe application, but ultimately Dalriada expects to be able to pay that sum into the scheme accounts.

Significant legal costs have been incurred by both sides, Dalriada in taking the legal action it considered necessary and appropriate and the Hedge companies in defending their position on the freezing injunction and, also, arguing against Dalriada's claim. Given that those legal costs are currently being met from assets that originated from the Schemes, Dalriada is keen to ensure the extent of those costs is closely monitored. As part of the hearing on 15th June, the Court has ordered that further legal expenses incurred by the Hedge entities will be subject to the review of Dalriada before they can be met from funds that have been frozen by the Court. The same applies to business expenses that the Hedge entities claim need to be met.

### **What does this mean for members?**

At this time it is appreciated that members of the Schemes will be concerned about the security of their pension and any implications that may affect them personally.

Subject to a successful Beddoe application, Dalriada will continue its claim against the previous trustees and the Hedge companies with the aim of taking control of the monies transferred to the Hedge companies from the Schemes as they are, in effect, assets of the Schemes. Dalriada considers that, absent the Hedge companies providing it with sufficient control voluntarily, this is the approach that is in the best interests of members and the only means by which it can be satisfied that scheme assets are being looked after properly and being invested in a way that is legal and appropriate for scheme members.

Dalriada might require direction from the Court thereafter as to how to apportion assets of the Schemes (and any losses suffered by investments) between members.

Dalriada will also need to establish both through the Court and in discussion with HMRC as to whether any loan payments to members were unauthorised payments and, as such, if tax penalties are to apply.

Unfortunately, this means it may be a long time before Dalriada is in any position of clarity as to how the Scheme should be managed going forward and how to calculate and settle members' benefits.

### **Interest payments on loans**

If you have received a loan from HCL, this will be as a result of an agreement between you and HCL. Dalriada is not able to comment on those Agreements and any queries should be raised with HCL. However, Dalriada would make clear that the action it has taken to date does not impact directly on the individual loan agreements or the obligation to make any contractual interest payments. Again, any questions with regard to the interest payments should be directed to HCL.

## **Forensic Review**

Dalriada understands that a number of members have arranged transfers into the Schemes through a company called Forensic Review. We understand that, in return, for investment in products promoted by Sustainable Wealth Group, members were to receive what were described as 'cash gifts'.

These members have been told to contact Dalriada.

Dalriada has tried unsuccessfully to speak to Forensic Review to properly understand what the role of the trustees is (as the trustees' investment was into HCIG). Certainly, Dalriada cannot see what role they have to play in what is effectively an arrangement between Forensic Review and the individual member.

Unfortunately, despite attempts by Dalriada to contact Forensic Review by phone and, thereafter, putting questions to them in writing, Dalriada has had no response.

Sustainable Wealth Group themselves are under investigation by the Serious Fraud Office and, indeed, have taken unauthorised actions with the monies invested in them by HCIL which has resulted in separate legal action. As such, it is unlikely that any further monies will be invested with them at this time.

We will continue to update members as matters progress.

We have set up a dedicated page on Dalriada's website <http://www.dalriadatrustees.co.uk/pennines-and-mendip> which will include all the Announcements and some 'Frequently Asked Questions'.

## **You can contact us as follows:**

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**Issued by Dalriada Trustees Limited**

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