



IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CLAIM NO: HC-2016-002391 04 Jul 2017

**IN THE MATTER OF (1) THE LANCASTER PENSION SCHEME (2) CRANBORNE
STAR PENSION SCHEME (3) GROSVENOR PARADE PENSION SCHEME (4) TALLTON
PLACE PENSION SCHEME (5) WOODCROFT HOUSE PENSION SCHEME (6) THE HC-2016-002391
PORTMAN PENSION SCHEME**

BEFORE MRS JUSTICE ASPLIN DBE
22nd June 2017

BETWEEN:

DALRIADA TRUSTEES LIMITED
(as trustee of the above named pension schemes)

Claimant

-and-

KIM ANNETTE GOLDSMITH
(as representative beneficiary)

Defendant

ORDER

UPON the trial of this matter

AND UPON hearing Leading Counsel for the Claimant (Mr F Moeran QC) and
Leading Counsel for the Defendant (Mr K Bryant QC)

AND UPON the Claimant's application to amend the Claim Form (Brief Details
of Claim) and make consequential amendments to the representation order of
1st December 2016

IT IS ORDERED that:

1. The Claim Form (Brief Details of Claim) is amended in the form annexed
to the Claimant's application notice dated 22nd May 2017.
2. The representation order made in paragraph 6 of the order of 1st
December 2016 is amended by way of the table annexed to the said order
being replaced with the table annexed to this order.
3. Pursuant to CPR 39.2(3)(a), (c) and (g) the hearing of the Claimant's
confidential submissions on Tuesday 20th June 2017, and the Defendant's
confidential submissions on Wednesday 21st June 2017, are in private.

For the avoidance of doubt:

- (i) The Claimant is at liberty to obtain a transcript of the hearing on
Tuesday 20th June, and the Defendant has permission to obtain a
transcript of the hearing and judgment on Wednesday 21st June 2017,

and each can provide copies of the same with the confidential portions of the hearing redacted to the other party and their legal advisers, which such redacted copies can thereafter be published to third parties, but save as aforesaid such transcripts of the hearing and judgment on 20th and 21st June 2017 shall not be published or provided (by any person) to any third party save with the permission of the Court.

- (ii) The hearing on Thursday 22nd June 2017 was entirely in open court, and transcripts of the hearing and judgment on that day can be obtained in the usual way.

AND IT IS ADJUDGED AND ORDERED that:

4. Save as set out at sub-paragraph (iv) below, in relation to the recovery of sums paid out of the above-named pension schemes (“**the Schemes**”) pursuant to purported Maximising Pension Value Arrangements (“**MPVAs**”):

- (i) The Claimant has permission as trustee of the Schemes is at liberty to:
 - (a) Enter into standstill agreements and/or in the absence of or in the case of termination of such standstill agreements issue and serve claims;
 - (b) In relation to any issued and served claims, pursue the claims to the stage of defences being entered or at the Claimant’s discretion enter into stays of the claims with the defendants;
 - (c) Take other preliminary steps for the recovery of the MPVAs in particular issuing pre-action protocol letters (or equivalent letters where claims have been issued and served) to the relevant recipients of the MPVAs and engaging in further correspondence, investigations and/or negotiations. For the avoidance of doubt this shall not extend to issuing statutory demands, instituting bankruptcy proceedings or entering judgment in default.
- (ii) Thereafter the Claimant has permission to apply to the Judge, on paper at first instance, for further Beddoe type directions to issue, serve and prosecute and/or continue to prosecute such claims (including by way of the issue of statutory demands and bankruptcy proceedings) to recover such MPVAs as appear to it to be reasonable on the basis of

the said preliminary steps. Any such further application for further Beddoe relief shall, if possible, be heard by Asplin J subject to her availability.

- (iii) The Claimant shall be indemnified out of the funds of the Schemes in respect of:
 - (a) its costs properly incurred by it in connection with the above-mentioned steps in the recovery of the MPVAs referred to in paragraphs 4(i)(a-c); and
 - (b) any adverse costs orders awarded against it in any such recovery proceedings.
- (iv) The Claimant shall not pursue litigation to recover MPVAs from any member of the Schemes who was paid less than £5,000 in aggregate.
- (v) For the avoidance of doubt, the provisions of this paragraph 4 do not compel the Claimant to pursue recovery of any MPVA, in particular where it would be unreasonable or uneconomic to do so.

5. The Claimant be at liberty as trustee of the Schemes:

- (i) To initiate and/or continue its appeals to the First-Tier Tribunal and/or the Upper Tribunal against HMRC's assessments against the Schemes for taxation by way of 'scheme sanction charges' under the Finance Act 2004 part IV.
- (ii) The Claimant shall be indemnified out of the funds of the Schemes in respect of:
 - (a) Its costs properly incurred by it in connection with the above-mentioned appeals, to a maximum of £350,000 plus VAT (subject to further order); and
 - (b) Any adverse costs orders awarded against it in such appeals.

6. The relief sought under paragraph 9 of the Claim Form (Brief Details of Claim) (permission to pay sums towards legal representation of members of the Schemes in relation to their appeals against taxation for unauthorised member payments) is refused, without prejudice to any further application for equivalent relief.

7. In relation to the relief sought at paragraph 11 of the Claim Form (Brief Details of Claim), it is directed that in all of the circumstances of the case:
- (i) In relation to the costs of recovery of the MPVAs, the Claimant as trustee of the Schemes may apportion such costs:
 - (a) Pro rata between the Schemes by reference to the proportion of MPVAs made by each of the Schemes compared with the total amount of MPVAs made by all the Schemes;
 - (b) Pro rata between the Schemes by reference to the proportion of assets held by each of the Schemes compared with the total value of assets held by all the Schemes, such values to be assessed on an annual basis going forward using the trustees' reasonable endeavours and best estimates; or
 - (c) In relation to costs that have already been paid, pro rata between the Schemes by reference to the proportion of such sums transferred into each of the Schemes compared with the total sum transferred into all the Schemes from other pension schemes and held as assets of and pursuant to the terms of the Schemes.
 - (ii) In relation to the costs of pursuing and conducting the appeals against assessments of tax referred to above, the Claimant as trustee of the Schemes may apportion such costs:
 - (a) Pro rata between the Schemes by reference to the proportion of assets held by each of the Schemes compared with the total value of assets held by all the Schemes, such values to be assessed on an annual basis going forward using the trustees' reasonable endeavours and best estimates; or
 - (b) In relation to costs that have already been paid, pro rata between the Schemes by reference to the proportion of such sums transferred into each of the Schemes compared with the total sum transferred into all the Schemes from other pension schemes and held as assets of and pursuant to the terms of the Schemes.
 - (iii) In relation to the recovery and management of assets of the Schemes other than the MPVAs, the Claimant as trustee of the Schemes may:

- (a) Where an asset is held by one Scheme alone, allocate such costs on an individual basis, with each Scheme bearing its own costs in relation to such assets; and
 - (b) Where an asset is held jointly by the Schemes or some of them, apportion such costs pro rata between the relevant Schemes by reference to the proportion of that asset held by each of those Schemes.
 - (iv) In relation to the costs of administration of the Schemes other than those set out above, where there is a legal or administrative issue that applies or is common to all the Schemes, the Claimant as trustee of the Schemes may apportion such costs:
 - (a) Pro rata between the Schemes by reference to the proportion of assets held by each of the Schemes compared with the total value of assets held by all the Schemes, such values to be assessed on an annual basis going forward using the trustees' reasonable endeavours and best estimates; or
 - (b) In relation to costs that have already been paid, pro rata between the Schemes by reference to the proportion of such sums transferred into each of the Schemes compared with the total sum transferred into all the Schemes from other pension schemes and held as assets of and pursuant to the terms of the Schemes.
8. In relation to the relief sought at paragraph 12 of the Claim Form (Brief Details of Claim), it is directed that when determining or calculating the value of a Member's Account (as defined in the Schemes' deeds and rules) in all of the circumstances of the case:
- (i) The value of the Scheme's assets (including any gains or losses thereon) should be nominally apportioned to each of the Member's Accounts pro rata by reference to the value of funds transferred into the relevant Scheme by each individual member in proportion to the total sum of funds ever transferred into the said Scheme (subject to any transfers out or other determinations of members' interests under the Schemes);

- (ii) The Scheme's costs (including but not limited to those referred to above), save for any exceptional costs referable to individual members which are not referable to an ordinary administration step, such steps including but not limited to provision of a transfer request or services relating to such a request, may be:
 - (a) Borne by the fund generally; or
 - (b) Nominally apportioned between the Members' Accounts pro rata by reference to the value of funds transferred into the relevant Scheme by each individual member in proportion to the total sum of funds ever transferred into the said Scheme (subject to any transfers out or other determinations of members' interests under the Schemes).
- (iii) The purported 'Transfer Fees' paid by the Schemes, totalling £1,083,415, should be borne by the Schemes' generally.

9. In relation to the relief sought at paragraph 13 of the Claim Form (Brief Details of Claim) in all of the circumstances of the case:

- (i) It is directed that the Claimant as trustee of the Schemes should value the MPVAs as valueless (unless and until any specific MPVA is recovered); and
- (ii) The question of the direction sought at paragraph 13(ii)(b) of the Claim Form (Brief Details of Claim) is adjourned generally, with permission to the parties to renew the application on notice.

10. Pursuant to CPR 46.3, the costs of the Claimant of and incidental to this application shall be raised and paid out of the assets of the Schemes.

11. The costs of the Defendant, if not agreed with the Claimant, shall be assessed on the indemnity basis and raised and paid out of the assets of the Schemes.

12. This order shall be served by the Claimant on the Defendant.

Service of the order:

The court has provided a sealed copy of this order to the serving party:
Pinsent Masons LLP

30 Crown Place
Earl Street
EC2A 4ES
DX 157620 Broadgate