

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

CLAIM NO: _____

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 Portman Pension Scheme

BETWEEN:

DALRIADA TRUSTEES LIMITED
(as Trustee of the above named trusts)

Claimant

- and -

KIM ANNETTE GOLDSMITH

Defendant

AMENDED DETAILS OF CLAIM

APPLICATION OF PART 8

1. This is an application by trustees of six pension scheme trusts (“**the Schemes**”) for directions and declarations as to:
 - (i) The potential pursuit of litigation (“**the Beddoe Directions**”); and
 - (ii) The execution and administration of the Schemes (“**the Administration Directions**”).

2. Pursuant to CPR Part 64.3, Part 8 applies to this claim.

BACKGROUND TO THE CLAIM

3. The Claimant is the trustee of six HMRC Registered, defined contribution, occupational pension schemes, namely (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 Portman Pension Scheme (“**the Schemes**”). The Claimant was appointed as trustee of the Schemes by the Pensions Regulator pursuant to Pensions Act 1995 s.7 on 31st May 2011, with all powers and duties exercisable by a trustee to be exercisable by the Claimant to the exclusion of all other trustees pursuant to Pensions Act 1995 s.8.

4. The Defendant is a member of one of the Schemes (namely the Lancaster Pension Scheme), who received a Maximising Pension Value Arrangement (“MPVA”) (see below).
5. Prior to the Claimant’s appointment as trustee the Schemes operated a scheme, the ‘Pensions Reciprocation Plan’ or ‘PRP’, whereby one Scheme would lend money to members of another of the Schemes. These loans were known as Maximising Pension Value Arrangements (“MPVAs”). Pursuant to a judgment of Bean J in the case of Dalriada Trustees Ltd -v- Faulds [2012] Pens. L.R. 15 the MPVAs were determined to be in breach of trust and void in equity.

DOCUMENTARY EVIDENCE

6. The documentary evidence in support of this application and the grounds upon which the Claimant asks for relief are set out in the witness statements of Mr Ian Richard Hyde dated 6 June 2016 and the three witness statements (including two witness statements containing confidential information) of Mr Benjamin Allen Fairhead dated 6 June 2016.

RELIEF SOUGHT

Beddoe Directions:

7. The Claimant seeks directions that:
 - (i) The Claimant has permission as the trustee of the Schemes to:
 - (a) where limitation periods have passed or are approaching, enter into standstill agreements or issue claims and in relation to such issued claims pursue the litigation to the stage of defences being entered or enter into stays with the defendants at the Claimant’s discretion; and/or
 - (b) take other preliminary steps for the recovery of the MPVAs including in particular issuing pre-action protocol letters (or an equivalent letter where an action has been commenced) and/or statutory demands to the relevant recipients of the MPVAs, as well as issuing bankruptcy petitions and attending bankruptcy hearings where claims are uncontested;
 - (ii) Thereafter the Claimant has permission to apply to the Master, on paper at first instance, for further Beddoe type directions to institute and/or prosecute and/or

- continue to prosecute such claims to recover MPVAs as appears to it to be reasonable on the basis of the results of the said preliminary steps; and
- (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 recovery of the MPVAs; and
 - (b) Any adverse costs orders awarded against it in such recovery proceedings.
8. The Claimant further seeks directions that:
- (i) The Claimant has permission as the trustee of the Schemes to initiate and/or continue in 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; and
 - (b) Any adverse costs orders awarded against it in such appeals.
9. The Claimant further seeks a direction that it has permission, as the trustee of the Schemes, to pay at its discretion sums up to a total of £50,000 plus VAT towards funding legal representation of members of the Schemes in relation to appeals against any tax assessments by HMRC against the said members for taxation by way of 'unauthorised member payments' under the Finance Act 2004 in relation to the MPVAs.

Administration Directions:

10. The Claimant seeks the determination of the following questions and/or relief:
11. Whether the costs of administering the Schemes, both to date and in future:
- (i) In relation to recovery of the MPVAs referred to above should or may be:
 - (a) Apportioned equally between the Schemes;

- (b) Apportioned between the Schemes pro-rata by reference to the respective values of assets held by each of the Schemes, and if so with the assets' values determined by reference to;
 - (1) The total sums transferred into the Schemes by members prior to the Claimant's appointment;
 - (2) Annual assessments by the trustees of the Schemes of the value of their assets (using the trustees' reasonable endeavours and best estimates);
 - or
 - (3) On some other basis, and if so what basis;
 - (c) Apportioned between the Schemes pro-rata by reference to:
 - (i) the respective amounts of MPVAs made by each of the Schemes; or
 - (ii) the respective amounts of recoveries of MPVAs as made by each of the Schemes;
 - (d) Allocated on an individual basis, with each Scheme bearing their own costs; or
 - (e) On some other basis, and, if so, what basis.
- (ii) In relation to the pursuit and conduct of the aforesaid tax appeals, including any sums distributed under relief obtained pursuant to paragraph 9 above, should or may be:
- (a) Apportioned equally between the Schemes;
 - (b) Apportioned between the Schemes pro-rata by reference to the respective values of assets held by each of the Schemes, and if so with the assets' values determined by reference to;
 - (1) The total sums transferred into the Schemes by members prior to the Claimant's appointment;
 - (2) Annual assessments by the trustees of the Schemes of the value of their assets (using the trustees' reasonable endeavours and best estimates);
 - or
 - (3) On some other basis, and, if so, what basis;
 - or
 - (c) On some other basis, and, if so, what basis.

(iii) In relation to the recovery and management of assets of the Schemes other than the MPVAs:

- (a) Apportioned equally between the Schemes;
- (b) Allocated on an individual basis, with each Scheme bearing their own costs in relation to assets held by them (and where an asset is held jointly by the Schemes being apportioned pro rata between the relevant Schemes relative to the proportionate holdings of the asset in question); or
- (c) On some other basis, and, if so, what basis.

(iv) In relation to administration of the Schemes other than as set out in subparagraphs (i)-(iii) above, where there is a legal or administrative issue that applies to or is common to all the Schemes:

- (a) Apportioned equally between the Schemes;
 - (b) Apportioned between the Schemes pro-rata by reference to the respective values of assets held by each of the Schemes, and if so with the assets' values determined by reference to:
 - (1) The total sums transferred into the Schemes by members prior to the Claimant's appointment;
 - (2) Annual assessments by the trustees of the Schemes of the value of their assets (using the trustees' reasonable endeavours and best estimates);or
 - (3) On some other basis, and, if so, what basis;
- or
- (c) On some other basis, and if so what basis.

12. Whether in determining and calculating the value of a member's Member Account (as defined in the Schemes' deeds and rules):

- (i) The Schemes' assets (including any gains or losses thereon) should or may be attributed to the Member Accounts:
 - (a) 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);

- (b) Pro-rata by reference to the value of funds transferred into the relevant Scheme by each individual member in proportion to the total value of funds in the said Scheme at the date of the said transfer in (subject to any transfers out or other determinations of members' interests under the Schemes), and, if so, how and on what basis the Schemes' assets should be valued (including in particular but not limited to the valuation of the MPVAs) (subject to any transfers out or other determinations of members' interests under the Schemes);
 - (c) By means of specific assets (including therein, for the avoidance of doubt, the MPVAs as 'assets') being attributed to specific members' Member Accounts, determined by reference to the Member Account's (nominal) share of the Scheme's uninvested 'cash' at the date of the purchase or other acquisition of each such specific asset (subject to any transfers out or other determinations of members' interests under the Schemes),
 - (d) On some other basis, and, if so, what basis.
- (ii) The Schemes' costs (including but not limited to those identified in paragraph 11 above) should or may be attributed to the Member Accounts:
- (a) Equally between all the Scheme's Member Accounts;
 - (b) Pro-rata by reference to the value of the Member Account in proportion to the total value of all the Scheme's Member Accounts;
 - (c) 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);
 - (d) In relation to costs which are general to the Scheme, on one of the bases set out above (or otherwise, and, if so, on what basis), and in relation to:
 - (1) Costs specific to a particular asset which is attributed to specific Member Accounts, such costs to be borne by the said Member Accounts;
 - (2) Costs specific to a particular member, such costs are to be borne by the said Member Account.
 - (e) On some other basis, and, if so, what basis.
- (iii) The purported 'Transfer Fees' paid by the Schemes, totalling £1,083,415, should or may be attributed to the Member Accounts:

- (a) Pro-rata by reference to the value of the Member Account in proportion to the total value of all the Scheme's Member Accounts; or
- (b) On the basis of which members the 'Transfer Fee' were purportedly paid in relation to (in so far as possible); or
- (c) On some other basis and, if so, what basis.

13. The Claimant seeks a direction that pending:

- (a) The final recovery of the Schemes' assets or the determination that recovery is impossible and the asset in question is valueless including, but not limited to, the MPVAs, and
 - (b) The final determination of the Schemes' tax liabilities as are subject to the tax appeal referred to above,
- (ii) It should be at liberty as trustee of the Schemes:
- (a) To value the MPVAs as valueless (unless and until any specific MPVA is recovered); and
 - (b) Where a member has requested a transfer of his/her benefits to another pension scheme, to make partial transfers of the said member's benefits, subject to such reasonable terms as it determines.

14. A representation order that:

- (i) The Claimant be appointed pursuant to CPR 19.7(2) to represent for the purposes of these proceedings all members of the Schemes (whether current active members or persons entitled or prospectively entitled to retirement benefits under the Schemes) and all persons claiming under or through such members in whose interests it is to argue in favour of
 - (a) The relief being sought in paragraphs 7, 8, 9 and 13 being granted;
 - (b) The answers to the questions set out in and relief sought in paragraphs 11 and 12 being as set out in the table annexed to Mr Fairhead's First Witness Statement, or otherwise as ordered;
- (ii) The Defendant be appointed pursuant to CPR 19.7(2) to represent for the purposes of these proceedings all members of the Schemes (whether current active members or persons entitled or prospectively entitled to retirement benefits under the Schemes) and all persons claiming under or through such members in whose interests it is to argue in favour of

- (a) The relief being sought in paragraphs 7, 8, 9 and 13 **not** being granted;
- (b) The answers to the questions set out in and relief sought in paragraphs 11 and 12 being as set out in the table annexed to Mr Fairhead's First Witness Statement, or otherwise as ordered.

15. That provision be made for the Claimant's and Defendant's costs of this application.