

## **Ochil Birch Retirement Benefits Scheme**

### **Annual Governance Statement by the Chair of the Trustee for the Scheme Year Ending on 30 June 2021**

#### **Introduction and background**

This statement has been prepared in accordance with Regulation 23 of the Occupational Pension Scheme (Scheme Administration) Regulations 1996, as amended (the "Administration Regulations") and related guidance from The Pensions Regulator ("TPR").

It relates to the Ochil Birch Retirement Benefits Scheme ("the Scheme").

The statement will be published on a website made available to members.

Consideration has also been given to TPR's 'A quick guide to the chair's statement' and to the Department for Work and Pensions guide on 'Reporting of costs, charges and other information', both published in September 2018.

Matters in relation to the Scheme are considered by a dedicated subcommittee of the Dalriada Board which meets at least four times a year. However, issues are also considered on an ad hoc basis between committee meetings and the Scheme has a dedicated client manager, alongside a project manager, who ensures anything requiring attention by the subcommittee is communicated, and acted upon, in a timely manner.

This statement covers the period from 1 July 2020 to 30 June 2021.

As you are aware from the Announcements issued to members since its appointment, Dalriada Trustees Limited ("Dalriada") was appointed on 13 June 2013 as sole Independent Trustee of the Scheme (and other schemes, collectively known as "the Milton Schemes") by TPR amid concerns as to how the Scheme was being run, the investments made by the original trustees and, principally, that the Scheme was being used as a vehicle for pension liberation. This has presented Dalriada with several challenges around governance. Nevertheless, this statement is a legal requirement and, as such, can serve as a useful reminder of the issues faced by Dalriada and, where it cannot meet certain governance obligations, I have explained why this is the case.

The powers and duties exercisable by Dalriada in its capacity as trustee are to the exclusion of all other trustees of the Scheme.

As an independent trustee, Dalriada is not linked in any way with the original trustees of the Scheme. Dalriada replaced the original trustees, Timothy Walker and Macalister Lindsay, and was given exclusive powers to deal with the Scheme. The original trustees have had no involvement in running the Scheme since our appointment. On 23 August 2017, TPR prohibited Timothy Walker and Macalister Lindsay from acting as pension scheme trustees because of their links to the Scheme.

Dalriada will shortly communicate by way of an Announcement an update to members on the ongoing actions being taken to recover Scheme funds. However, by way of a brief reminder it has been reported the previous trustees invested £7.7m of the Milton Schemes' monies into Advalorem Value Asset Fund Limited ("Advalorem"), a Gibraltar based investment company. We had also

advised that £6.6m of the money had then been used by Advalorem for the purchase of land in Scotland. Unfortunately, this land was purchased at a grossly inflated price and subsequently resold for £89,000 at auction, thereby representing a huge loss to funds.

However, as a result of civil legal action taken by CVR Global (the Administrators of Advalorem) a total of £1,860,000 was recovered into the Milton Schemes. We continue to liaise with CVR Global regarding any further possible recoveries that might be made through the liquidation of Advalorem.

The Milton Schemes also invested £1.1m into Swan Holding PCC Limited ("Swan"), a company based in the Isle of Man. The Milton Schemes purportedly bought shares in a 'sub-fund' of Swan (called 'Cell A'). It is Dalriada's understanding that the purpose of this fund was to invest in UK commercial and residential properties and land.

However, the shares in Swan are non-redeemable and the time horizon of the funds was at least ten years. This means that this purported investment is 'highly illiquid' and as such, cannot be readily recovered into cash for the Scheme. It remains unclear what realisable value, if any, the purported investment in Swan holds.

Dalriada will ultimately focus on the pursuit of further recovery of funds by way of a claim on the Fraud Compensation Fund ("FCF"). Dalriada has been working, and will continue to work, with the PPF with regard to a potential claim by the Scheme. However, at this time, we do not know whether any claim will ultimately be successful. Ultimately, it is Dalriada's intention that the Scheme will be wound up and members will be offered the option to transfer any remaining benefits to alternative pension arrangements.

All of this has presented Dalriada with challenges around governance. Nevertheless, this statement is a legal requirement and, as such, can serve as a useful reminder of the issues faced by Dalriada and, where it cannot meet certain governance obligations, I have explained why that is the case.

## **Default arrangement**

A number of requirements of the Administration Regulations relate only to a "default arrangement", as defined in the Occupational Pension Schemes (Charges and Governance) Regulations 2015.

The Scheme does not have a default fund for ongoing accrual, and it is not a qualifying scheme within the meaning given by section 99 of the Pensions Act 2008.

It is not, nor ever has been, used to meet any auto-enrolment obligations and no regular contributions are being, or ever have been, paid into the Scheme. The Scheme's assets are made up solely by way of member transfer payments into the Scheme.

The Scheme does not offer a Default Lifestyle Strategy.

The Scheme did not offer members any choice as to how their funds were invested. Besides those investments detailed above, Dalriada understands that no further investments were made and at no point did members actively select how their funds would be invested.

As such, in Dalriada's view, there has never been an appropriate default investment arrangement. There has also never been a life-styling option available.

The purported investments were made by the previous trustee without seeking, or acting upon, the recommendation of any appropriately qualified investment advisor.

## **Statement of Investment Principles**

Ordinarily, trustees should prepare a Statement of Investment Principles ("SIP") governing decisions about investments (although it is not a legal requirement for schemes with less than 100 members, such as the Scheme).

No serviceable SIP existed for the Scheme prior to Dalriada's appointment.

However, where assets have been recovered Dalriada has taken appropriate and professional investment advice and has in place a suitable SIP. The SIP was prepared in September 2020 and will be reviewed by Dalriada every three years.

Subject to any FCF application for compensation, it is Dalriada's ultimate intention to wind up the Scheme as soon as it is able, giving members the opportunity to transfer any remaining funds to a more suitable arrangement of their choice.

Copies of the Scheme's Report and Accounts and SIP are published on the members' website. The Scheme's Report and Accounts include the latest Chair Statement.

## **Review of default strategy and default arrangements**

As noted above, there is no default arrangement or default strategy in place for the Scheme. As such, there has been no review of the default arrangement or default strategy in the year in question and no previous review for which a date can be given.

## **Core Financial Transactions**

Trustees have a specific duty to ensure that core financial transactions relating to DC schemes are processed promptly and accurately. These include the following:

- investing contributions in the Scheme
- transferring assets related to members into or out of the Scheme
- transferring the assets between different investments within the Scheme
- making payments from the Scheme to or on behalf of the members.

The Scheme does not currently accept contributions or transfers in and, for the Scheme year ending 30 June 2021, was unable to pay any level of benefit, including transfers values, to members.

This is due to a number of factors, not least the uncertainty (to date) as to the value of the Scheme's investments and the position with regard to potential tax charges that may be levied against the Scheme should it be deemed any unauthorised payments to members occurred. More information on this has been provided in Dalriada's Announcements to members.

The financial transactions the Scheme does make are, in the main, in relation to costs. These are reported in the Scheme's Report and Financial Statements.

Unsurprisingly, Dalriada has been unable to carry out routine administrative actions for the Scheme over the reporting period. Therefore, there have been no material administration service issues which need to be reported here.

Notwithstanding this, Dalriada, as a professional independent trustee, has processes and controls in place that are suitably designed to ensure any service objectives can be achieved once the Scheme is in a position to operate in the manner of a normal scheme. Dalriada's administration processes are independently audited and accredited under AAF 01/06 and AAF 02/07.

In addition, acknowledging that we need accurate member data for the processing of member benefits, Dalriada will carry out an analysis of 'common data' and 'scheme specific data' (as defined by TPR). This helps us to ensure the integrity of member data that is processed.

We perform monthly bank reconciliations for all the schemes to which Dalriada is appointed. The purpose of these reconciliations is to ensure that all transactions processed through the bank accounts (money in and out) can be accounted for. Any transactions which cannot be accounted for are investigated and corrected if required.

## **Charges and Transaction Costs**

Governance rules require trustees to make an assessment of investment management charges and transactions costs borne by Scheme members and the extent to which those charges and costs represent good value for money for members.

The Trustee has calculated the charges and, so far as they were able to do so, the transaction costs, borne by Scheme members for the Scheme Year.

In this context, "charges" means (subject to some specific exceptions, such as charges relating to pension sharing orders) all administration charges other than transaction costs. "Transaction costs" are costs incurred as a result of the buying, selling, lending or borrowing of investments.

Dalriada has deviated from the approach set out in the statutory guidance for the reasons set out below.

Since Dalriada's appointment, there have been no transactions, as no payments into the Scheme have been accepted, either by way of contributions or transfers-in. As a result, there have been no transaction costs.

Under the terms of its appointment, the fees of Dalriada and its advisers are met from Scheme funds. Whilst these charges fall as debt due from the employer (or sponsor), in this case the sponsor was dissolved in 2016.

Due to the mismanagement of the Scheme by its previous trustees and the subsequent actions taken by Dalriada since appointment, it is inevitable that the Scheme has incurred, and will continue to incur, significantly higher ongoing costs than would be the case for a similarly sized but conventional scheme.

Dalriada assumed trusteeship of the Scheme via a bulk appointment by TPR, when Dalriada was also appointed to three other schemes. All schemes shared (and continue to share) similar characteristics, such as the previous trustees, administration records and, on occasions, investments. Where work is carried out that has a mutual benefit to all schemes collectively, the

costs will be shared across all schemes. If one or more of the schemes has no assets, the costs will be met by the other schemes.

The costs for the year ending 30 June 2021 (including trustee fees and legal and other professional fees) are set in the Report and Accounts and total: £39,878 (incl. VAT).

Dalriada has set out in its various Announcements to members the actions it has taken to realise, where possible, the investments made by the previous trustees. Generally, actions undertaken by Dalriada, beyond those considered necessary for the appropriate management of the Scheme, have been centred on legal advice and action around the realisation/recovery of funds.

Dalriada will continue to confirm to members the amount of costs incurred in subsequent Chair Statements. In addition, a full set of Report and Accounts has been prepared which have been audited by an independent auditor, which includes an audit of any core financial transactions that have taken place.

## **“Good value” assessment of charges and transactions**

Generally, trustees should assess the extent to which the charges described above represent “good value” for members during the scheme year, by considering the level of member borne charges against the benefits attributable to such charges.

Whether something represents good value is not capable of being precisely defined. However, for these purposes, trustees should consider that charges may be viewed as representing good value for members where an optimum combination of cost and quality is achieved for the whole membership, relative to other options available in the market.

The characteristics of the Scheme are unusual and there are no readily available comparators to determine whether the costs incurred represent good value.

However, the actions undertaken by Dalriada, beyond those considered necessary for the appropriate management of the Scheme, are centred on action around recovery of funds. Such actions are considered using a cost-benefit analysis. Where necessary, Court approval would be sought for the use of Scheme funds to pay for any legal action.

Dalriada was appointed following a TPR tender exercise and is subject to ongoing oversight by TPR.

Dalriada’s costs (both for ongoing management and with regard to action around recovery of funds) are calculated using a blended charging rate. This rate is set well below Dalriada’s standard market rates. The Trustee’s legal advisers operate on a similar basis (albeit on a different charging rate).

As commented above, Dalriada, as a professional independent trustee, has processes and controls in place that are suitably designed to ensure any service objectives can be achieved once the Scheme is in a position to operate in the manner of a normal scheme. Dalriada’s administration processes are independently audited and accredited under AAF 01/06 and AAF 02/07.

Once Dalriada is in a position to process member benefit requests these will be managed and monitored in line with Dalriada’s standard SLA levels and targets and formally reported on, on a quarterly basis.

Dalriada is required to advise members of the cumulative effect over time of the application of charges and costs on the value of a member's accrued rights to money purchase benefits. However, due to the nature of Dalriada's appointment and the uncertainty as to both Dalriada's and its adviser's fees, this is not possible to do at this time. When Dalriada is in a position to do so, it will advise members.

## **Trustee knowledge and understanding**

The Trustee has considered the latest guidance in relation to Chair's Statements from TPR and has ensured that its practices reflect the requirements set out. I have set out below how the Trustee ensures it currently meets the knowledge and understanding requirements of trustees.

### ***Dalriada Trustees Limited (Dalriada)***

Dalriada is an independent professional trustee, established in 2003, which has been appointed by TPR under Section 7 of the Pensions Act 1995 to a significant number of schemes. These appointments have been as a result of TPR having concerns about the nature and operation of the schemes and the extent to which the then trustees understood their statutory and fiduciary duties and responsibilities. Dalriada refers to such schemes as "Regulatory Appointments". The Scheme is a Regulatory Appointment.

Dalriada has established a specialist team, drawn from various relevant disciplines within Dalriada to manage the governance of these Regulatory Appointments, which we have called the Irregular Schemes Team.

A dedicated committee (the Irregular Schemes Committee - "the Committee") has been established by the Board of Directors of Dalriada to oversee the activities of the Irregular Schemes Team in its governance of this Scheme and other Regulatory Appointments. Care has been taken to ensure that the membership of the Committee is such that there is sufficient knowledge and understanding to meet the requirements set out in Sections 247 and 248 of the Pensions Act 2004 and TPR's Code of Practice 7 on Trustee Knowledge and Understanding.

I have set out below the membership of the Committee, along with a short summary of their skill set and experience. In addition, it is worth noting that three members of the Committee are directors of Dalriada Trustees Limited.

Dalriada operates a team-based approach, which gives the Irregular Schemes Team access to over 120 pensions and support personnel, with a broad skill set suited to identifying and implementing the variety of tasks required to successfully manage the Scheme. This includes pension administration experts, an in-house legal team, fund accountants and investment experts. Whilst the core Irregular Schemes Team deals with the majority of matters arising on the Scheme on a day-to-day basis (in conjunction with its appointed advisers), it can access the specialist expertise of the wider Dalriada team as and when required.

As far as we are aware, no other professional independent trustee firm has established and developed a specialist team in this difficult and challenging area of trusteeship. The relevant experience developed by the Irregular Schemes Team on such cases is unmatched and unrivalled.

## THE COMMITTEE

### **Sean Browes**

Sean has been working in the pensions industry since he graduated in 1988. He worked for two major benefit consultancies in both administration management and consultancy roles, before joining Dalriada in 2003. Sean has a broad range of skills and experience suited to all areas of pension scheme management.

Sean leads the Irregular Schemes Team, dealing with Dalriada's appointments by TPR to schemes suspected of being involved in pension liberation or thought to be scams. He now has a wealth of experience and knowledge with regard to the unique characteristics associated with the administration and management of these types of schemes and the challenges they present.

Sean is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Certificate in DC Governance and Award in Pension Trusteeship (DC and DB). Sean has met all required CPD requirements.

### **Neil Copeland**

Neil is a co-founder and director of Dalriada. He acts as an Accredited Professional Trustee on some of our most complex and challenging cases, including our Regulatory Appointments. Neil specialises in schemes with technically challenging governance and covenant issues, as well as having over 25 years of experience in relation to defined benefit, hybrid, defined contribution, multi-employer and sectionalised arrangements.

Neil is the Dalriada Board representative for the Irregular Schemes Team and spends a significant proportion of his time working on Regulatory Appointments. Like Sean, Neil has developed considerable experience of the complex and non-standard issues faced by the Dalriada team in managing the Regulatory Appointments. This has included acting as a witness in high profile litigation in relation to Regulatory Appointments in support of TPR and representing Dalriada in oral hearings before the Determinations Panel, where Dalriada's appointment by TPR has been challenged by the incumbent trustees or other directly affected parties.

Neil is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Neil has met all required CPD requirements.

### **Tom Lukic**

Tom is also a director of Dalriada and leads the Dalriada business across the Midlands. He has broad pensions experience with particular expertise in employer covenant and corporate transactions. He has worked with a range of trustee boards managing scheme assets from c.£5 million to more than £1 billion. Similarly, he is experienced in working with a broad spectrum of sponsoring employers from small, owner-managed businesses through to much larger and complex groups, being either privately owned or fully listed.

Tom's experience, both as an adviser and as an Accredited Professional Trustee, provides particular insight into corporate structures and insolvencies. Where the scheme's investments include shares and/or bonds in, or issued by, corporate entities, an understanding of the accounting and financial structures of these entities is essential and Tom provides a wealth of experience in this area.

Tom is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Tom has met all required CPD requirements.

### **Brian Spence**

Brian is a co-founder and director of Dalriada. He is now involved in the provision of a wide range of advice to pension scheme sponsors and trustees. Brian is well-known in the pensions industry for taking a strategic view in dealing with pension scheme matters and uses his experience to deliver practical solutions which satisfy the needs of trustees, employers and other stakeholders. Brian is recognised by TPR and the pensions industry as an expert in dealing with contentious and/or complex issues. He is a lead contact and "key person" for a number of high-profile trustee appointments.

In addition, Brian has practical experience of working as a Professional Trustee in all three major legal jurisdictions of the UK and as a Professional Trustee and advisor in Ireland. Brian has held a UK Scheme Actuary Practicing Certificate since inception of the role in 1997.

Brian has an in-depth knowledge of legal processes, particularly around testing points of legal principle related to the operation of pension schemes, often as a result of deficiencies in scheme documentation (a common issue with Regulatory Appointments). He also has experience in litigation involving pension schemes – where it is cost effective to do so, Dalriada will look to take legal action against the perpetrators of a scam with the aim to recover misappropriated assets.

Brian is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Brian has met all required CPD requirements.

### **Amanda Banister**

Amanda is a professional trustee with a wealth of experience in the pensions industry. Before joining Dalriada, Amanda was a pensions partner in a global law firm. She also spent three years in-house at the Pension Protection Fund in its early years, shaping its legal approach and gaining wide experience in pensions policy and insolvency/restructuring. After leaving, she continued to advise the PPF on some of its highest profile and most complex matters. Amanda's experience of working with and advising the PPF is a valuable asset to the Committee, as is her significant experience of contentious pensions issues, including Pensions Ombudsman disputes. Amanda also has a strong governance and risk management skillset, with an ability to solve testing problems, which are strongly aligned with the work of the Committee and Regulatory Appointments in general.

Amanda is a qualified solicitor, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship. Amanda has met all required CPD requirements.

### **Gino Rocco**

While not a voting member of the Committee, Gino has extensive involvement with the Regulatory Appointments. He performs the role of an Accredited Professional Trustee for Dalriada, focusing on all aspects of pension law for defined benefit and defined contribution pension schemes that range in size from the small to the very large.



A solicitor admitted to practice in England and Wales and a Member of the Association of Pension Lawyers, Gino has over 15 years' experience gained at City and National Firms, as well as a leading pension consultancy practice.

Gino's experience includes complex benefit interpretation issues, scheme equalisation and benefit rectifications. He has detailed experience of pensions issues arising under TUPE transfers and the Fair Deal protections, where employees are transferred from the public (in particular LGPS and NHSPS) to the private sector.

Gino is a fully accredited member of the Association of Professional Pension Trustees, has completed TPR's Trustee Toolkit and holds the Pensions Management Institute's Award in Pension Trusteeship (DC and DB). Gino has met all required CPD requirements.

***Knowledge of the trust deed and rules and all documents setting out the trustee's current policies***

The Scheme has a dedicated client manager who has an in-depth knowledge of the Scheme and its governing documentation.

At the point of Dalriada becoming Independent Trustee to the Scheme, a prescribed take-on process was followed. This included an assimilation and review of all the relevant scheme documentation, including the trust deed and rules. The Committee is made aware of any issues or risks in relation to the Scheme's trust deed and rules as and when they arise, with appropriate action agreed in relation to the issue or risk identified. In addition to the knowledge held by the client manager and the Irregular Schemes Team, the Trustee obtains legal advice in relation to the Scheme's documentation, where necessary.

There have been no new trustees introduced in this reporting period. However, there is an appropriate induction process in place to support new trustees.

***A working knowledge of the current Statement of Investment Principles***

As above, the Scheme has a dedicated client manager who has an in-depth knowledge of the Scheme and its governing documentation. The Committee is made aware of any issues or risks in relation to the Scheme's SIP as and when they arise, with appropriate action agreed in relation to the issue or risk identified. In addition to the knowledge held by the client manager and lead Professional Trustee, the trustees obtain independent expert advice in relation to the Scheme's documentation, where necessary.

There have been no new trustees introduced in this reporting period (there is an appropriate induction process in place to support the addition of new trustees).

***Sufficient knowledge and understanding of the law relating to pensions and trusts and understanding of the principles relating to the funding and investment of occupational schemes***

Those Dalriada staff working on the Scheme are obliged to self-evaluate their learning and development requirements on an annual basis as part of Dalriada's internal appraisal process. The process identifies how staff can develop their knowledge and understanding, as well as where they can share their expertise in order to best support the Scheme. Dalriada staff are also required to comply with their respective training requirements in order to maintain a required level of continuing professional education ("CPE") and to provide evidence of courses, seminars and other types of professional development to satisfy their respective professional bodies' CPE requirements.

Every Professional Trustee is required to undertake a minimum number of hours training each year. This is recorded centrally by Dalriada's Human Resources Team and, where appropriate, forms part of staff personal development plans. This training can include internal and external courses and attendance at industry events, as well as a degree of self-learning by way of subscriptions to professional publications and electronic information channels.

Further, every professional trustee is required to complete TPR's Trustee Toolkit and subscribes to the updates issued by TPR.

Professional Trustees belong to Dalriada's Knowledge Management network, which keeps them up to date with industry developments and thinking. They also have access to a team of in-house pensions experts who inform the team about changes to pensions legislation and practices.

The trustees have access to Pendragon Perspective and Aries - both industry-leading tools, giving access to pension legislation.

Dalriada has its own in-house legal specialists to provide support and guidance to trustees regarding legislation and interpretation of scheme documentation. This is further aided by advice from external legal advisers, which is obtained when the Trustee feels this reinforcement is necessary to support their own understanding.

***Combined knowledge and understanding, together with available advice, enables the trustees to properly exercise their function***

Dalriada has informally assessed the skill set and experience of each member of the Committee and the client team. It has taken into account the development activities already mentioned, along with the internal resources made available to staff, supplemented, where required, by professional external advice.

The Committee understands the need to more formally assess the skills of its members. This is done using a skills matrix developed for this purpose. Any areas for development flagged during this process will be addressed as part of the individual's personal development plan and reviewed throughout the year.

An evaluation of the effectiveness of the Committee as a whole is also carried out.

I consider that the combined knowledge and understanding of the Committee and the client team enables them to exercise properly their function as Trustee of the Scheme. In particular:

- Members of the Committee have the relevant financial knowledge and experience to enable the Trustee to comply with its duties in relation to investment of the Scheme's assets. Tom Lukic's experience (see above) is particularly advantageous in this area.
- There is a vast range of pensions experience and knowledge within the Committee and the client team. This is appropriate to deal with the governance of the Scheme in line with the trust deed and rules, along with other scheme documentation. There is also a great deal of experience relevant to dealing with issues that might be thrown up by the Scheme which require the amendment of scheme documentation. Amanda Banister's legal background and experience (see above) is of great benefit in this area.
- Sean Browes, Neil Copeland and Brian Spence have a great deal of knowledge and experience in relation to schemes of a complex nature, such as this Scheme. This includes

schemes with investments made by previous trustees that are deemed to be highly inappropriate, their administration has been poor and / or the previous trustees have not had the sufficient knowledge and understanding to be trustees of an occupational pension scheme.

- Sean Browes and Neil Copeland have many years of experience in the administration of pension schemes, allowing a keen oversight of the administration of the Scheme.

## **Member Representation**

Dalriada is aware that members of the Scheme are potential victims of a scam. As such, we look to keep members informed and to facilitate direct access for members to Dalriada by means of a:

- Dedicated member website
- Dedicated contact e-mail address
- Dedicated phone line.

Agreed as final version by the Chair of the  
Trustee of the Ochil Birch Retirement  
Benefits Scheme.

Dated: 28 January 2022