

## **Merseyside Care Retirement Benefits Scheme (“the 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 the Occupational Pension Scheme (Scheme Administration) Regulations 1996, as amended (the “Administration Regulations”), and guidance from the Pensions Regulator (“TPR”).

It relates to the Merseyside Care Retirement Benefits Scheme.

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.

This statement covers the period from 01 July 2020 to 30 June 2021.

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

Matters in relation to the Scheme are considered by a dedicated subcommittee of the Dalriada Board which meets quarterly. 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.

As we have communicated previously, Dalriada was appointed as Independent Trustee of the Scheme by Court Order on 19 September 2013. The powers and duties exercisable by Dalriada in its capacity as trustee are to the exclusion of any other trustees of the Scheme. Whilst the two previous individual trustees were not removed at the time, Dalriada Trustees Limited (“Dalriada”) was appointed with exclusive powers.

The Scheme was suspected of being used as a vehicle to allow members under the minimum retirement age of 55 to access their pension funds by way of a loan or some other form of cash inducement.

Dalriada established that of the funds paid into the Scheme, £1,390,000 was invested in a Guernsey-based company, Arterial Distribution Ltd. A further sum in excess of £251,000 was loaned to Innovation PS Limited, a company operated by one of the former trustees, Mr Mcauley. This was only later claimed by Mr Mcauley to be a loan and not made clear to Dalriada at the time it was appointed even though Mr Mcauley provided a sworn affidavit to Court.

A further sum of £34,670 was loaned to Mr S Simmons and, as a result of legal action taken by Dalriada, this amount has been recovered in full with interest.

The money paid to Arterial purported to relate to an investment in a company developing a pharmaceutical diagnostics tool. Dalriada and its legal advisers have been in communication with Arterial and their legal advisers (as well as two other Arterial companies, Arterial Capital Management Limited and Arterial HPV Limited, also based in Guernsey) to try and understand the investment better but have little understanding of the value of the investment, or even if it has any value at all. It appears that this is a very high risk investment and not appropriate for the Scheme. At best, it could take a long time before any money is paid back to the Scheme and, at worst, there may be significant losses.

Because there was no explanation for the loan payments to Innovation PS Limited and Mr S Simmons initially, Dalriada instructed its legal advisers to seek a freezing order from the Court against Innovation PS, Mr Mcauley, his wife and Formby Playsports Limited, another company operated by Mr Mcauley that had received some of the money paid to Innovation PS Limited. Dalriada did this on an urgent basis and without notice to any of the other parties in order to ensure that funds were protected if a freezing order was granted.

The freezing order was granted by the Court at a hearing on 14 February 2014 and the money loaned to Innovation PS Limited was ultimately repaid in full, with a further payment as contribution towards the cost of the legal action and lost interest.

Subsequently, Dalriada concluded that there was a basis to pursue recovery of funds paid to Arterial as well, given Mr and Mrs Mcauley had not obtained any investment advice when entering into the agreements with that entity. Dalriada commenced further Court proceedings alleging that Mr and Mrs Mcauley had acted in breach of trust in making the payments to Arterial.

Dalriada sought summary judgment (i.e. that the Court considered the claim so strong as to not justify the need for full legal proceedings as any defence had little prospect of success) and obtained summary judgment in relation to about half the sum given a query over the liberated amount.

An initial settlement was reached in February 2018 for £373,496. This figure was increased to £381,136 by a variation to the settlement agreement made in May 2018, following Mr Mcauley's failure to pay the sum due. Whilst the Scheme received a payment of £142,301 it became clear that Mr Mcauley was not going to be able to pay the balance due. In June 2019, Dalriada reached a final settlement agreement for £212,214, to be payable immediately, this was received into the Scheme on 2 July 2019, plus a further £61,966 due to be paid before the end of 2019, on the sale of Mr Mcauley's buy to let portfolio. This final settlement was felt likely to generate a greater return to the Scheme than the alternative of looking to pursue Mr Mcauley into bankruptcy.

In April 2021, Dalriada received a further £21,221 in part payment of the amount due. There remains some uncertainty around the payment of the outstanding amount and Dalriada and its lawyers continue to be in negotiation with Mr Mcauley. It is expected that matters will be concluded early in 2022.

As is set out in our November 2020 Announcement to members, Dalriada has also been working with the Pension Protection Fund ("PPF") to seek clarification around the operation of the Fraud Compensation Fund ("FCF"). The FCF is open to claims by occupational pension schemes that have suffered a loss as a result of an act of dishonesty. It has been determined as a result of a court case brought the Board of the PPF in July 2020 that the Scheme is, in principle, eligible to make a claim on the 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 be wound up and members will be offered the option to transfer any remaining benefits to alternative pension arrangements.

This has presented Dalriada with a number of 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. 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, which are referred to in this statement, 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. 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 were 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 the investment detailed above, Dalriada understands no further investments were made. As such, in Dalriada's view, there has never been an appropriate default investment arrangement.

There is no life-styling option available.

The previous trustees directed investment decisions without seeking appropriate investment advice.

## **Statement of Investment Principles**

Ordinarily, trustees should prepare a statement of investment principles ("SIP") governing decisions about investments.

No serviceable SIP existed for the Scheme prior to Dalriada's appointment. As the Scheme has fewer than 100 members it is not a legal requirement to produce a SIP.

The Scheme currently holds a limited amount of liquid assets. In the event of material recoveries, Dalriada will take further advice to determine a suitable investment strategy.

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

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

There is no default investment arrangement or default investment strategy in place for the Scheme at the current time. 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 is unable to pay any level of benefit, including transfers values, to members at the present time.

This is due to a number of factors, not least uncertainty, to date, as to the prospects of their being any future recoveries and, ultimately, whether or not a claim on the FCF is likely to be successful.

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

Unsurprisingly, Dalriada has been unable to carry out routine administrative actions, subsequent to our appointment, for the Scheme, over the reporting period. Therefore, there have been no other 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.

Once Dalriada is able 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.

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 regular bank reconciliations for all scheme bank accounts. The purposes of these reconciliations are 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**

The governance rules require the Trustee to assess investment management charges and transactions costs borne by the 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 for 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.

There have been no transactions since Dalriada's appointment. Dalriada has not accepted any payments into the Scheme, either by way of contribution or transfers in meaning there have been no transaction costs.

However, under the terms of its appointment, the fees of Dalriada and its advisers are met from Scheme funds. Whilst these costs (or "charges") fall as debt due from the employer (or sponsor).

Due to the mismanagement of the Scheme by its previous trustee 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.

These costs for the year ending 30 June 2021 (including trustee fees and legal and other professional fees) are set in the Accounts and total: £48,670 (incl. VAT).

Dalriada has set out in its Announcements to members the actions it has taken to pursue recovery of the Scheme's assets. Generally, actions undertaken by Dalriada, beyond those considered necessary for the appropriate management of the Scheme, have centred on legal advice around the allocation and realisation/recovery of funds.

## **"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, but 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 collective 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, have been, as commented above, centred on potential recovery of funds.

Dalriada was appointed following a tender exercise by the Pensions Regulator (TPR) and Dalriada is subject to ongoing oversight by TPR.

Dalriada’s costs (both for ongoing management and action taken to recover funds) are calculated using a blended charging rate that sits well below its standard market rates. Its legal advisers operate on a similar basis.

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 able 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 able 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 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 members’ accrued rights to money purchase benefits. However, due to the nature of Dalriada’s appointment, the uncertainty as to the value of the Scheme’s assets and the uncertainty as to both Dalriada’s and its adviser’s fees this is not possible to do currently. 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 Chairman’s Statements from The Pensions Regulator 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 is an independent professional trustee, established in 2003, which has been appointed by The Pensions Regulator under section 7 of the Pensions Act 1995 to a number of schemes as a result of The Pensions Regulator having concerns about the nature and operation of those schemes and the extent to which the then current 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 within the Committee to meet the requirements set out in sections 247 and 248 of the Pensions Act 2004 and The Pensions Regulator’s Code of Practice 7 on Trustee Knowledge and Understanding.

I have set out below the membership of the Committee, along with a short note on 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 Regulatory Appointments 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, including 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 The Pensions Regulator 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 scheme and the challenges they present.

Sean is a fully accredited member of the Association of Professional Pension Trustees, has completed the Regulator'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 Trustees Limited. 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 The Pensions Regulator and representing Dalriada in oral hearings before the Determinations Panel where Dalriada's appointment by The Pensions Regulator 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 the Pensions Regulator'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 Trustees Limited 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 understanding 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 the Regulator'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 Trustees Limited. 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 the Trustees, the employers and other stakeholders. Brian is recognised by The Pensions Regulator 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 an Accredited 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 Practising 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) and, also, litigation – 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 the Pensions Regulator'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**

Gino performs the role of an Accredited Professional Trustee in relation to all aspects of pension law focusing in particular on 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 the Pensions Regulator'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 becoming an 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 and 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 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 (SIP)***

As is set out earlier, the Scheme does not have a SIP at this time due to the particular circumstances of the Scheme.

## ***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, including the lead Professional Trustee, 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 in a year. This is recorded centrally by Dalriada's HR 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 The Pensions Regulator's Trustee Toolkit and subscribes to the updates issued by The Pensions Regulator.

Professional Trustees belong to Dalriada's knowledge management network which keeps them up to date with industry 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 around legislation and interpretation of scheme documentation. This is further aided by advice from external legal advisers, which is obtained when the trustees feel the 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) in particular is 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 which might be thrown up by the Scheme which require the amendment of Scheme documentation.
- Sean Browes, Neil Copeland and Brian Spence have a great deal of knowledge and experience in relation to schemes of complex nature, such as this Scheme, where investments made by previous trustees are deemed to be highly inappropriate, their administration has been poor and / or the 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.

**Signed for and on behalf of Dalriada Trustees Limited (the trustee)**

Agreed as final version by the Chair of the  
Trustee of the Merseyside Care Retirement  
Benefits Scheme

Dated: 22 January 2022