
Dominator 2012 Pension Scheme
Commando 2012 Pension Scheme
Donington MC Pension Scheme
("the Schemes")



Dalriada. A better way

Important Announcement to Members of the Scheme

The purpose of this Announcement is to provide an update to members. The previous seven Announcements issued between August 2021 and March 2022 were issued on behalf of the Pensions Regulator ("TPR") and were specifically to do with the legal action being taken by TPR against the former trustee, Mr Stuart Garner.

However, the successful prosecution of Mr Garner by TPR does not have any direct impact on the recovery of funds for members and we now provide an update on the actions being taken by Dalriada in this regard.

Norton Motorcycles

Members will recall that the Schemes were set up as vehicles to provide funding for Norton Motorcycle Holdings Ltd ("Norton"). The funds were provided to Norton by way of the Schemes' assets being invested solely in preference shares in Norton.

We understand that members expected to receive an 'incentive' payment on joining one of the Schemes. Of the funds invested in Norton, it is our understanding that c. 40% were paid on to the introducer, Simon Colfer (also known as Simon Davies) by Mr Garner. A proportion of these funds were then paid on to members. The rest was retained by Mr Colfer as fees. The payments to members were made in most cases when those members were under the minimum retirement age of 55.

HMRC has already concluded that the payments to members were unauthorised payments and issued provisional assessments for significant tax charges against both the Schemes and its members. The tax charges against the Schemes were never paid (nor have the Schemes had sufficient funds to do so).

Following the Norton companies being placed into administration (and now liquidation), Dalriada submitted separate claims as an unsecured creditor (as well as a proprietary claim into Donington Hall Estates) into Norton and two other connected companies (Norton Motorcycles (UK) Ltd and Donington Hall Estates Ltd). Each claim was for an amount of £9.7m plus interest and costs on the basis that there was a certain level of inter-company indebtedness and it was unclear which particular Norton company ended up with the Schemes' funds.

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These claims were subject to adjudication and acceptance by BDO LLP ("BDO") who were the administrators (now liquidators) of the companies. BDO rejected our claims as an unsecured creditor but accepted the Schemes were preference shareholders in Norton Motorcycle Holdings Ltd ("NMHL"). BDO also rejected a proprietary claim Dalriada made on behalf of the Scheme into Donington Hall Estates Ltd.

As preference shareholders, we do not expect to see any significant return to the Schemes as they will rank behind the majority of the other creditors.

Our understanding from BDO is an initial dividend will be paid in June this year at the very earliest (in respect of NMHL). Whilst it is expected that the Schemes will receive some payment as a result, BDO are unable to say at this time how much that payment will be.

Any second dividend will depend on the outcome of Mr Garner's bankruptcy (see below), as BDO are also creditors in that in their capacity as liquidators to the Norton companies.

Mr Garner's bankruptcy (Interpath Advisory)

As a result of a determination made by the Pensions Ombudsman (which Dalriada supported) Mr Garner was ordered to repay to the Schemes a sum broadly equal to the sums invested into Norton, plus simple interest of 8%. As a result Mr Garner owes the Schemes in excess of £15m, payable from his own personal assets.

Dalriada pursued Mr Garner for payment of the sums due which resulted in his personal bankruptcy, albeit Dalriada supported an existing bankruptcy petition already lodged by Leicester City Council. Interpath Advisory ("Interpath") were appointed as Mr Garner's trustees in bankruptcy.

Interpath are undertaking enquiries and gathering information in order to review and investigate Mr Garner's financial affairs and to recover what funds they can. We are working with Interpath and assisting them where required. The Schemes are by far the largest of Mr Garner's creditors, however, as with the liquidations of the companies, we only expect to recover a small proportion of the funds owed.

Interpath has to do what it can to maximise recoveries, and follow the appropriate process, to ensure that they are acting in the interests of all creditors. Given that, it is still likely to take some months to conclude the matters related to Mr Garner's bankruptcy.

Fraud Compensation Fund

The best chance of making a material recovery of members' funds will be by way of successful claims on the Fraud Compensation Fund ("FCF"). The FCF is a fund, managed by the Pension Protection Fund ("PPF"), that provides compensation where schemes have suffered a loss as a result of fraud or offences involving dishonesty.

Dalriada has been working closely with the FCF with regard to potential claims. Whilst the Schemes have not yet met the necessary conditions for submitting claims, we have already provided initial evidence to the FCF that would allow them to gain an understanding of how the Schemes were set up and run. We did this last year, and are now pleased to confirm that the FCF has agreed that there are reasonable grounds for believing that the Schemes have suffered losses as a result of dishonesty. This is positive news for the Schemes and its members.

However, in order to proceed with the claims, the Schemes need to satisfy a number of requirements. The FCF is a compensation fund of last resort which means that the FCF will need to be satisfied that no further recoveries can be made from elsewhere, or else, that the costs and/or time likely to be incurred pursuing any recovery could outweigh any potential return. In short, this means both the liquidations of the Norton companies and Mr Garner's bankruptcy would need to be concluded. However we are exploring whether there is any scope for flexibility on this last resort point which would allow claims to be progressed more quickly.

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There are also other steps that need to be taken before applications can be submitted. For example, a formal application can only be made to the FCF once a 'Scheme Failure Notice' (SFN) is obtained in relation to the Schemes' employer, in this case Manorcrest Ltd. There will be a legal process to be followed to ensure we can obtain the necessary SFNs.

Given this and the need to resolve matters in relation to the liquidations and Mr Garner's bankruptcy, this means that the timing and/or outcome of any claims is uncertain at this time.

When claims are submitted it could be between six and eighteen months for those claims to be determined. However, to the extent that we have provided much of the necessary information to the FCF already, resulting, as commented earlier, in the decision from the FCF that the schemes have suffered losses as a result of dishonesty, we hope that, when it is possible to submit claims, these can be progressed as quickly and efficiently as possible.

We cannot, at this time, provide any indication as to the level of compensation payable. The FCF will determine the value of any compensation payable based on figures prepared by a reporting accountant appointed by Dalriada. The formula for FCF compensation is set out in legislation and can be subject to a number of adjustments. However, generally, investment losses, the tax charges levied on the Schemes (Scheme Sanction Charges) and the trustee's costs can all form part of the compensation paid, as long as they can be clearly attributable to dishonesty. Costs which the FCF consider 'business as usual' for a scheme, for example producing the annual Chair's statement, will not be compensatable as these are costs which must be borne by all pension schemes. However, we expect that the majority of Dalriada's costs incurred to date can be compensated.

Members should also be aware that any compensation payable will not cover the 5% 'coupon' (or interest) payments promised to members by Mr Garner. The amount of compensation the FCF can pay is dictated by legislation which makes no provision for 'lost' investment return. As such, the level of compensation would be tied to the amount members transferred in.

Similarly, the FCF will not compensate for the 8% interest that was set as a condition in the Pension Ombudsman's determination. We have already claimed for the 8% interest amount as calculated in accordance with that determination from Mr Garner which ultimately led to his personal bankruptcy. However, as commented above, the eventual recoveries from Mr Garner will only be a small proportion of the amount claimed.

Finally, any benefit payments made to members already, for instance tax-free cash payments or income drawdown, will also not be compensated for.

We have added a Frequently Asked Questions document on the Schemes' website which provides further information on the FCF. You can find a copy by accessing the Key Documents section of the Schemes' website at <https://www.dalriadatrustees.co.uk/scheme/norton-motorcycles-pension-schemes/> or by visiting the FCF's website at www.fraudcompensationfund.co.uk.

Finally, we would confirm that members **do not** need to do anything themselves with regard to claims on the FCF. As set out above, Dalriada is already working with the FCF and will submit claims when it is in a position to do so. Whilst members are able to submit an individual application, the FCF has confirmed that where there is already a claim in progress, or where they have been notified by the trustees that they intend to make a claim (as is the case for here), the FCF will direct any member back to the trustees. The same applies to individuals or organisations who may approach members offering 'assistance' to members to make FCF claims, or suggest to members that they can obtain more FCF compensation or obtain FCF compensation more quickly for members. Should you be approached by any individual or firm making such claims, particularly if they are looking to charge fees, you should exercise extreme caution for the reasons set out above.

What does this mean for members?

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As commented above, the fact that the FCF has confirmed that the Schemes have suffered losses as a result of dishonesty is positive news for members, as this means there will be compensation payable.

As the FCF is a compensation fund of last resort, we will need to work with the FCF on the extent to which the recovery actions should continue as well as ensure that all the other requirements for us to be able to submit formal claims are in place. Thereafter, the FCF will determine the level of compensation payable. When we are in a position to submit formal applications to the FCF we will do so, on behalf of all members collectively. We will update members further as the situation progresses.

Data Privacy Notice

Dalriada set out in its July 2021 Announcement how, in its capacity as Trustee, it handles personal information in compliance with data protection legislation. A copy of the Data Privacy Notice can also now be found on the website set up for members.

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What should I do if I have any further questions?

Should you have any queries in relation to this Announcement or your membership of the Scheme, please contact us.

You can contact us as follows:

By Telephone: 028 9041 2891

By Post: Dalriada Trustees Limited
Linen Loft
27-37 Adelaide Street
Belfast
BT2 8FE

By Email: nortonadmin@dalriadatrustees.co.uk

Other Useful contact details

If you have a complaint or dispute concerning your workplace or personal pension arrangements you should contact:

The Pensions Ombudsman Telephone: 0800 917 4487

Website: www.pensions-ombudsman.org.uk

If you have general requests for information or guidance concerning your pension arrangements contact the Money and Pension Service (MaPS).

Previously pensions guidance has been provided across the three consumer facing brands of MaPS: Pension Wise (PW), The Pensions Advisory Service (TPAS) and the Money Advice Service (MAS).

MaPS has now launched **MoneyHelper** where all retirement and pensions guidance has been brought together under one brand and one website: moneyhelper.org.uk.

Consumers can request an appointment by following the links, emailing virtual.appointments@maps.org.uk or by calling our the pensions helpline on 0800 011 3797.

These appointments are free and impartial.

The email address to the pensions guidance team for general pensions queries is pensions.enquiries@moneyhelper.org.uk

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