

Important Announcement to members of the following pension scheme (“the Scheme”)

TWM Pension Trust

Background

This is the latest Announcement to members of the Scheme providing an update on what actions have been taken to date.

As detailed in previous announcements, Dalriada Trustees Limited (“Dalriada”) is a professional independent trustee which was appointed by The Pensions Regulator to take over the running of the Scheme on 13 June 2013. Dalriada is experienced in dealing with pension schemes that have complex issues and / or have unusual investments.

Elysian Fuels No. 27 plc (“Elysian”)

As outlined previously, the Scheme paid approximately £2.7m to a company, based in Gibraltar, called Castle Trust which in turn arranged the purchase of preference shares in Elysian, a company based in England and Wales.

In November 2015 Dalriada, by way of an announcement, advised the Scheme membership that it was more likely than not that Elysian would not generate sufficient funds to make any return to investors. As such, the shares purchased by the Scheme were devalued to £0. Six months later, Dalriada was informed that Elysian, alongside a number of additional related companies, would be wound up as a result of unpaid VAT liability. Elysian entered liquidation and was ultimately dissolved on 27 February 2018. The liquidation process returned no funds to the Scheme.

Contractpod Technologies Limited (“Contractpod”)

Contractpod, a company registered in Scotland and formerly known as NewGalaxy Services Limited, historically received £125,000 from the Scheme in return for 125,000 5% preference shares. In November 2018, Contractpod permitted redemption of the entirety of the shares held by the Scheme. The capital invested, including any relevant interest, was returned to the Scheme totalling £159,983.65.

HMRC

Dalriada notes that HMRC has issued tax assessments to members of the Scheme within which HMRC outlines its view that members received unauthorised payments. As such, HMRC has calculated tax owed and requested payment.

As Trustee of the Scheme, Dalriada cannot comment or attempt to intervene in any manner on the individual tax affairs of members. Should you feel the need to do so, you may wish to consider seeking independent specialist advice regarding your own circumstances.

As a result of the unauthorised payment charges levied against members, an additional tax charge, known as a Scheme Sanction Charge, is also levied against the Scheme. The Scheme Sanction Charge may be as high as 40% of the collective unauthorised payment charges (depending on the value of the unauthorised payment charges paid). Dalriada continues to correspond with HMRC in respect of the tax charges levied against the Scheme.

Pensions Ombudsman Decision

A decision made by the Pensions Ombudsman in respect of a scam scheme where Dalriada has been appointed as Trustee by The Pensions Regulator is something that we feel should be brought to the attention of members who may wish to consider the facts pertaining to the case and consider whether there are grounds for making similar complaints to their previous schemes or providers. To assist members in considering whether they should take action we have attached an appendix to this Announcement that contains the main facts which led to the determination and other relevant points which members should consider.

In the case in question the member made a complaint to the scheme that transferred his benefits to the scam scheme. The grounds for his complaint were that the Authority that governed his scheme transferred his pension fund to the scam scheme without having conducted adequate due diligence checks on it and failed to provide him with a sufficient warning, as required by The Pensions Regulator, about the risks posed by pension scams. Having reviewed the particular facts of this case, the Ombudsman has ordered that the member should have his benefits reinstated to the transferring scheme (and increased for the period it was out of the transferring scheme), or, if reinstatement is not possible, that the member be provided with equivalent benefits. Any recoveries from the scam scheme should be offset against the cost of providing reinstatement or equivalent benefits in due course. The Ombudsman also awarded the member £1,000 damages for distress and inconvenience. The full determination can be found here.

<https://www.pensions-ombudsman.org.uk/determinations/2018/po-12763/the-police-pension-scheme/>

We will cover the point in the appendix, however, we should draw to members' attention that this decision will also be considered by claims management firms and lawyers who may offer their services to members with an ongoing, or considering making a, complaint. In this particular complaint the Ombudsman ruled that legal costs would not be awarded. As the outcome of the determination was that benefits should be reinstated (in other words, there was no significant cash award to the member other than the £1,000 distress and inconvenience payment) the member is obliged to meet these significant costs himself. This should be borne in mind by members if they are approached by organisations offering to act for them in such complaints.

We cannot advise members on the merits of making complaints against their previous schemes or providers or assist them in doing so as we are unlikely to have details of all correspondence between a member and their transferring scheme and the particular circumstances of their case.

It should also be noted, though, that if the transferring scheme can demonstrate that it had carried out appropriate due diligence and provided a member with adequate information about the risks posed by pension scams then the Pension Ombudsman's decision may differ from the decision in this case.

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. As above, please also supply copies of all correspondence or other communications which you may have received in relation to your membership of the Scheme. You can contact us as follows:

By Telephone: 028 9085 0934

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

Via e-mail: twmadmin@dalriadatrustees.co.uk

Scheme Website: www.dalriadatrustees.co.uk/twm

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Appendix

Pensions Ombudsman Determination

Facts

Mr N, as he is referred to in the determination, was a member of the Police Pension Scheme (the Police Scheme) which was run by the Northumbria Police Authority (the Authority). In August 2014 Mr N made a transfer from the Police Scheme to an occupational pension scheme called the London Quantum Retirement Benefit Scheme (the London Quantum Scheme).

In February 2013 The Pensions Regulator (the Regulator) began the Scorpion Campaign to highlight the dangers of pension liberation fraud to professional pension bodies. This included a member leaflet to highlight both the campaign and the risks. The Regulator recommended that this leaflet be issued by the transferring pension scheme to all members who were looking to transfer. Despite the member leaflet having been issued some eighteen months beforehand, the Authority did not issue this leaflet to Mr N. It considered it sufficient to place a copy on its intranet news feed, where it might be seen by employees.

The Regulator also recommended that checks be carried out on the receiving schemes in order to flag issues that might suggest they were scam schemes. There was no evidence that the Authority had carried out this due diligence. The Ombudsman noted that the London Quantum Scheme exhibited several features to indicate that it might be a pension liberation scam scheme which would have been picked up by this due diligence, such as:

- The London Quantum Scheme was sponsored by a dormant company.
- The employer company was registered in London, geographically far from the member.
- The sponsoring employer of the London Quantum Scheme did not employ Mr N.

The Ombudsman's view was that the Authority should have made these checks, should have found the areas of concern and should have flagged these to Mr N. If they had, then – having very carefully considered Mr N's personal circumstances - it was the Ombudsman's opinion that Mr N would have not gone ahead with the transfer and not suffered loss as a consequence.

The Ombudsman also noted that the start of the Scorpion Campaign in February 2013 was significant as, after that date, pension schemes and providers should have been more aware of the risks, as well as their obligations, and should have been more diligent. The Authority failed in this respect.

The Ombudsman considered that if the Authority had undertaken the correct due diligence and entered into a dialogue with Mr N himself (as opposed to communicating only with the firm involved in this matter) it would have uncovered other facts that would have raised concerns such as:

- The involvement of an unregulated introducer.
- The type of investments being made through the London Quantum Scheme - the fact that the forms signed by Mr N indicated that he was a sophisticated investor seeking a high-risk investment.
- It may also have revealed the names of some of the parties involved and their previous involvement in other schemes which have been publicly linked to pension scams.

Mr N had used the services of a lawyer to argue his case. This was on a fee basis, calculated as a percentage of the amount awarded. Mr N asked for his costs to be met by the Authority. The Ombudsman said that it was not appropriate for him to award costs for fees as Mr N could have

made his complaint to the Ombudsman without legal representation or incurring other advisory costs, or made use of the free help and guidance service offered by The Pensions Advisory Service (now the Money and Pensions Service).

Does this affect me? Points to consider

All cases are subject to the facts that apply to that case. The Ombudsman's determination was very specific to the facts that applied to Mr N, but there are some points arising from it that members may wish to think about in relation to their own situation:

- Did you transfer after the launch of The Pension Regulator's Scorpion Campaign in February 2013?
- Did you receive the Scorpion leaflet from your transferring scheme or provider?
- Did your transferring scheme or provider carry out due diligence on the scheme which you ultimately joined? If they did, what did it uncover and did they share this with you? If they did not, why not?
- Did your transferring scheme or provider flag any concerns to you about the scheme which you ultimately joined?
- Did your transferring scheme or provider ask you further questions about your reasons for joining the scheme? For example, about your relationship, if any, to the sponsoring linked employer, whether you had taken regulated advice, whether an unregulated introducer was involved or whether you were offered or received any payment even if this was described as an incentive or a loan?

If, having considered these points, you have a concern that your previous transferring scheme or provider might not have taken all the steps they should have at the time, then you may have grounds to complain. It should be noted, though, that if the transferring scheme can demonstrate that it had carried out appropriate due diligence and provided a member with adequate information about the risks posed by pension scams or if you received any payments by way of incentives, loans or payments made before you reached age 55 then the Pensions Ombudsman might be less likely to find in your favour than he was in this case.

Process for taking forward a complaint

Any complaint that you feel you have regarding how your transfer to your scheme was managed by your previous scheme or provider should be directed to your previous transferring scheme or provider, not to the scheme of which you are currently a member.

There are rules and procedures regarding how complaints should be made and progressed through the Pensions Ombudsman. Mr N's complaint was concluded after all due process had been followed and roughly took two years from start to finish, including a full oral hearing (similar to a Court hearing) at which witnesses were presented in relation to the circumstances of Mr N's complaint. That is not to say that all cases will take this long, but a complaint like this involves a lot of facts.

The first stage is to approach the transferring scheme or provider to make a complaint. This may be through the occupational pension scheme's internal dispute resolution procedure (IDRP) or a provider's own complaints procedure, if it is a personal pension scheme. The Pensions Ombudsman's Early Resolution Service may also be able to assist you in resolving the issue informally.

There are time limits for bringing complaints under a scheme's IDRP - a "reasonable period" as the legislation describes it. The Regulator has set out guidance about "reasonable periods". What this guidance says is that for complaints to be made by a person who has (or claims to have) ceased to have an interest in the scheme, trustees or managers:

- Should set the time limit for making the claim as six months after having (or claiming to have) ceased to have an interest (and the Regulator would not normally expect an application received within this time to be refused).
- May agree to accept an application received outside the time limit. The decision-makers should, for example, consider accepting late complaints where the applicant could not reasonably have been aware of the matters in dispute, or for exceptional reasons such as incapacity.

This second point is quite important as you will need to set out why you were not aware until lately of the matter about which you are complaining. It also means that if you believe you have grounds for making the complaint the clock is running now.

Any complaint that you make must be considered in line with each scheme's own IDRPs. Providers will consider complaints in line with their own agreed complaints procedures.

If your complaint is rejected then you will be told what options are available to you. Generally, this would be a referral to the Pensions Ombudsman, if you are not satisfied with the outcome. You can contact The Pensions Ombudsman direct if you do not receive a reply to your complaint within a reasonable time. You can also contact the Money and Pensions Service for general requests for information or guidance concerning your pensions arrangement.

You should be aware that the Pensions Ombudsman also has time limits for making complaints. A complainant must bring a complaint, or refer a dispute, to the Ombudsman within three years of the act or omission that is the subject of the complaint or referral.

However, again, where an individual was not aware of the act or omission causing the complaint, the Ombudsman may extend the limitation period so that the three-year period does not start to run until the earliest date that the person knew, or ought reasonably to have known, of the occurrence of the act or omission.

The Ombudsman has discretion to handle a complaint or dispute out of time, if he considers that it was reasonable for a complaint not to be made or a dispute not to be referred within the three-year period.

Help and costs

The complaints process (up to and including the Pensions Ombudsman) is designed to allow members to bring complaints and have them considered fairly and independently without the costs of taking the matter to Court. Often the process will seem complex, but free help is available through bodies such as the Money and Pensions Service and the Citizens Advice Bureau.

Many commercial organisations such as claims management firms and lawyers will seek to offer help and assistance to members and have various fee structures that they can apply. Whilst they may assist in formulating and presenting a case, the fee charged ultimately might be quite high. If the result of a successful complaint was reinstatement in the transferring scheme, no actual money will be paid directly to you. You would have your pension rights reinstated. The value of those rights would be the amount claimed. For example, if you entered into an agreement on a 'no win, no fee' basis which paid a fee of 20% of the successfully recovered claim and if the reinstatement value of your pension was £200,000, then the fee due to the organisation representing you would be £40,000. Depending on how the arrangement was structured, there might also be VAT payable on top of that too. In this example you would be personally liable to pay £40,000 (plus any VAT) to the organisation as it cannot be paid from the reinstatement value of your pension. Please consider how you would find such a fee if you were to decide to take up the offer of help on this basis.

It should be noted that if you pursue your claim via a Court it may agree to award costs. However, the costs and risks are higher going down this route. Determinations and directions by the Pensions Ombudsman are final and binding, subject to a right to appeal on a point of law only (you should also bear in mind that permission to appeal would first have to be granted by the Court).

We would emphasise the point that in this case the Pensions Ombudsman did not consider it appropriate to award costs as, in its opinion, the member could have pursued his complaint without instructing solicitors or other advisers. The Pensions Ombudsman highlighted free sources of advice for individuals in this area such as the Money and Pensions Service and the Citizens Advice Bureau.

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:

Money and Pensions Service

Telephone: 01159 659570

Website: <https://moneyandpensionsservice.org.uk>

Will Dalriada play a role in helping me to make a complaint?

Dalriada and the Scheme will not be party to, nor be involved in, any complaint that you bring against a previous scheme or provider. Our duty is to act as Trustee of the Scheme and to proceed as we have set out. We will seek to make recoveries on behalf of the Scheme to the extent possible. That said, we would hope that the above information is helpful to members in considering whether they have a basis for a potential complaint - which will not be without challenge - and also in contemplating whether it is truly necessary or in a member's interests to seek external help from third parties who will look to take a fee in the event of a successful outcome and, if you do use such a third party, how any fee would be paid.