

Important Announcement to members of the following pension schemes (“the Schemes”)

Gresham Investment Pension Scheme
Abbot Blake Pension Scheme
Callahan Consulting Pension Scheme
Western Cross Pension Scheme
Gresham (2012) Pension Scheme
Daycroft Pension Scheme
Daley & Kyle Pension Scheme
Itchy Feet Pension Scheme
Fort Bruce Pension Scheme
Abbey Mage Pension Scheme
Dellaney Gibbons Pension Scheme
Llewellyn and Jones Pension Scheme
Palace Houghton Pension Scheme
Probert and Joel Pension Scheme
Regency Pension Investments Pension Scheme
Williams Bell Pension Scheme
Friendly Pensions Retirement Fund

This is our third Announcement which gives members an update on the progress made to date in relation to the Scheme and, in particular, gives an update on the legal proceedings that were commenced by The Pensions Regulator and which we reported on in our last Announcement.

The Pensions Regulator's Legal Proceedings

The Pensions Regulator (TPR) brought a claim under s.16 of the Pensions Act 2004 ("PA04"), seeking to recover funds lost due to the misuse and misappropriation of pension scheme assets.

Although members received some money, the majority of the rest of the funds have been lost and members have been exposed to the possibility of having to pay significant tax penalties.

As we commented in our last Announcement, Dalriada might have been expected to bring the claims but it did not have sufficient assets. Consequently, Dalriada was joined to the proceedings by TPR, attended the trial together with its solicitors, but was not formally represented at the trial by Counsel.

The total sums claimed by TPR exceeded £13m.

TPR's claim was brought against a number of individuals, including the previous trustees, David Austin, Friendly Pensions Limited and companies under the control and ownership of Nick Ayton (PAYAE Limited and Estrella Confero Limited).

In our previous Announcement we reported that TPR had managed to freeze £400,000 of funds which were funds linked to these companies. We also commented that Friendly Pensions Limited was considering entering liquidation, which it ultimately did.

TPR reached a settlement with Nick Ayton and the liquidators of Friendly Pensions Limited in 2016 and TPR's claim continued against the remaining defendants, being the previous trustees and David Austin.

The claim was heard in the High Court on the 5 to 6 and 8 December last year. The judgment was handed down on 23 January.

The High Court ruled that the previous trustees (Sue Dalton, Alan Barratt and Julian Hanson who was a Director of Friendly Trustees Ltd, trustee to the Friendly Pension Retirement Fund) and David Austin should repay the money they took from the Schemes.

TPR had asked for the High Court to make a restitution order on the grounds that the defendants "dishonestly misused or misappropriated" pension scheme assets – the first time such an order has been obtained.

TPR's evidence set out that Mr. Austin organised the transfer of funds from the Schemes into his own bank account and accounts of family members in the UK, Switzerland and Andorra and through businesses both in the UK and overseas, including Friendly Pensions Limited. TPR showed how Mr. Austin and his family enjoyed a luxury lifestyle using the Schemes' money.

The judge ruled that Mr. Austin had been the "mastermind" behind the scam but found that all four of the defendants had acted dishonestly.

A copy of the full judgment can found here <http://www.bailii.org/ew/cases/EWHC/Ch/2018/36.html>

Dalriada is now able to pursue enforcement of the judgment for the benefit of members. Dalriada would make clear though, that, contrary to what has been reported in some media articles, it has not been given a 'confiscation order' to take the assets of the defendants.

However, positive as the judgment is, we would sound a note of caution. Dalriada has already pursued some of the companies Mr. Austin was linked to, with the result that they were placed into insolvency by their directors. The Insolvency Practitioners subsequently appointed by Dalriada to review the actions of those companies prior to insolvency have been seeking to, and continue to seek to, trace funds that were paid directly to Mr. Austin or members of his family and others through those companies.

Much of the money has gone into overseas accounts and it will not be straightforward to identify and recover. There is a very real prospect that the money taken from the schemes will have been spent and prove difficult to recover.

Notwithstanding this, Dalriada will continue to work with its advisers and TPR to investigate all avenues for recovery and will use the judgment as support for its claims.

Investments

As we commented in our previous Announcement the majority of the Schemes' funds were invested through Friendly Pensions Limited and/or Friendly Investments Limited. However, there were monies invested (approximately £2m) invested in largely illiquid property based investments (Freedom Bay, a fractional ownership (timeshare) in St Lucia and a property bond through Affinity Corporation).

Whilst repayment of these monies by Mr. Austin and the previous trustees forms part of the judgment sum in the TPR's claim, Dalriada has continued, and will to continue, to determine whether there is anything that can be recovered from these investments.

However, Dalriada is aware that the company behind the Freedom Bay development has been placed into receivership in St Lucia and Dalriada is not a secured creditor. Dalriada and its legal team are working with lawyers in St Lucia to protect its interests as far as it can but, in reality, it is unlikely that any funds will be recovered from the investment itself.

The funds invested with Affinity are not due to be repaid until June 2023. However, contractual interest payments have been received and Dalriada is currently in correspondence with Affinity seeking an early redemption of this investment, but to date this has not been forthcoming.

Friendly Pensions Retirement Fund (FPRF)

As we commented in our last Announcement, the entire investment made in respect of the FPRF (£120,000) was in the form of an unsecured loan to a company called Broadbridges Consulting

Limited. This company was also under the ownership and control of David Austin or members of his family.

Broadbridges Consulting was ordered to be wound up in 2016 and liquidators were appointed. Dalriada is working with the liquidators but there is little prospect of any recovery from the liquidation.

However, as a result of the TPR's claim, both the previous trustee (Julian Hanson) and David Austin are jointly and severally liable for the return of monies to the Scheme and Dalriada will fully explore this, albeit with the same concerns as expressed previously as to recoveries which might be made.

HMRC

We have flagged previously that members may be subject to tax charges to the extent that the payments members may have received from the Schemes were unauthorised payments. However, we have still not received any advice from HMRC with regard to their approach, if any, to taxation.

Dalriada is continuing to press HMRC for some guidance and would remind members that HMRC could decide to tax members on the full value of the amount transferred into the Schemes and not just on any payment received. Those members who received a payment as a result of joining the Schemes and had not yet reached the minimum retirement age (55) might want to think about raising the matter with HMRC.

HMRC may also seek to levy an additional tax charge against the Schemes.

Current Position

Since its appointment Dalriada has incurred significant costs in carrying out its investigations and there are no liquid funds remaining in the Schemes. However, Dalriada will continue, as far as it is able and practical to do so, to try and enforce the claim on the back of TPR's successful judgment.

Dalriada will also continue to work with its lawyers and the liquidator to the various companies connected to the Schemes' investments with a view to identifying any possible recoveries.

In the case that we cannot recover funds, Dalriada will also consider alternative options for recovery. For example, through the Fraud Compensation Fund. However, we cannot confirm at this stage that the Schemes will be eligible for compensation.

So, despite the positive judgment in the TPR's proceedings, Dalriada cannot currently say what, if anything, it may be able to recover.

Unfortunately, Dalriada is not in a position to value any member benefits at this stage as it is unclear what the ultimate level of recoveries will be and whether the Schemes will be subject to tax charges by HMRC.

Dalriada will continue to keep members updated with any significant progress.

What should I do if I have further questions?

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

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: dalriadaadmin@dalriadatrustees.co.uk

Issued by Dalriada Trustees Limited

January 2018