

Dalriada. A better way

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 (“the Schemes”)

This is our fourth Announcement issued to members of the Schemes.

The Pension Regulator’s Legal Proceedings

In our previous Announcement we explained events which culminated in total sums being claimed by The Pensions Regulator (TPR) in excess of £13m, covering the Schemes. The High Court ruled that the previous trustees and Mr David Austin, the purported creator of the schemes, should repay the money they took from the Schemes.

Whilst Dalriada was then able to pursue enforcement of the judgment for the benefit of members, it should be noted that Dalriada had already pursued some of the companies Mr Austin was linked to, with the result that they were placed into insolvency. 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.

We reiterate that 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 there will be few, if any, funds recovered.

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

Investments

As we commented in our previous Announcements the majority of the Schemes' funds were invested through Friendly Pensions Limited (FPL) and/or Friendly Investments Limited (FIL). There were a number of underlying investments which the liquidators are continuing to investigate. However, to date, there have been no monies paid back to the Schemes.

The underlying assets include a biofuel boiler and shares in a limited company which is now in liquidation. Confirming the estimated value of the boiler is subject to resolving a number of issues regarding its original contract. In respect of the limited company, the liquidators are continuing to pursue potential recoveries from the liquidation estate. Recovery from the underlying investments will also depend on the costs involved in pursuing recovery being justified.

Investigations are also being made into a connected company named Genlife Limited. This company has also entered liquidation.

There were also monies (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 Limited). With the assistance of our legal advisers, we continue to investigate the circumstances surrounding these investments.

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 continuing to work with the liquidators but remain of the view that there is little prospect of recovery. 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.

Dalriada understands that Mr Austin may now, in fact, be deceased. The liquidators are following up with the local council and registry so that we might have sight of the relevant documentation.

There is a claim recorded against Mr Austin's estate for the amount of c. £13m. However there are some limitations to this given that Mr Austin had previously been declared bankrupt. Dalriada will also consider a claim against the post-bankruptcy estate however it is not clear yet what assets there might be in the estate, and therefore how successful such a claim might be.

Mr Hanson has also been declared bankrupt. A claim has been registered in Mr Hanson's bankruptcy, and with the assistance of our legal advisers, Dalriada is liaising with the trustees in bankruptcy to assess the extent to which any recovery 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 might be classed as "unauthorised payments" under tax rules. HMRC made a formal request for information pertaining to scheme transactions in May 2019.

All information provided is currently being considered by HMRC, but we have not received any advice from HMRC with regards to their approach, if any, to taxation.

Current Position

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 has also incurred significant costs in carrying out its investigations, and the Schemes' funds remain significantly depleted. Any work Dalriada carries out, and costs incurred, is currently done at risk of not being recovered. However, despite that constraint, Dalriada has continued to take steps to try to aid recoveries being made to the Schemes.

Fraud Compensation Fund

In the case that we cannot recover funds, Dalriada will ultimately consider a claim through the Fraud Compensation Fund (FCF). The FCF is managed by the Pension Protection Fund (PPF) and looks to compensate schemes which have suffered losses as a result of fraud.

It is by no means guaranteed that any claim will be successful, nor that the Schemes will be eligible.

At this stage Court direction is required to address a number of key points and there is a Hearing listed for mid-July. However, given the current situation with Coronavirus (COVID-19), there is some uncertainty as to whether the Hearing will take place. This is however only one step in determining whether or not a claim is possible. It will be some time before we know if we are able to pursue a claim and, if so, if that claim is successful.

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

Financial Advice

The records provided by the previous trustee generally do not provide confirmation/clarification of any financial advice received by members. It is our understanding that transfer advice was not taken by the membership at large. Rather, members may have corresponded with unregulated introducers.

However, if members are unhappy with a financial product or service that may have been provided to them and that firm or individual was regulated by the Financial Conduct Authority then members are able to complain to the firm or individual directly. We have included below a link to the Financial Conduct Authority's guidelines on how to complain:

<https://www.fca.org.uk/consumers/how-complain>

Financial Services Compensation Scheme (FSCS)

The FSCS can consider claims against firms providing advice that have now failed.

To consider claims against a failed firm, the FSCS has to be satisfied that customers have first exhausted any right to claim against any connected firm still trading.

The FSCS may also need to be satisfied that the firm being claimed against was FCA or PRA authorised. You can check the status of your advisor on the FCA register.

<https://register.fca.org.uk/>

If your adviser was not FCA regulated when transferring your pension, we understand that the FSCS can't compensate you. This is because there is no FCA/PRA regulated firm to make a claim against. However, you may be able to make a claim directly to your previous pension provider as is explained in more detail below. You'd be claiming against the quality of the checks they carried out when transferring your pension.

If your advisor was FCA authorised, is still trading, and you believe you were misadvised to transfer your existing pension or to invest, you need to complain to them first. If they reject your complaint, you can take it to the Financial Ombudsman Service (FOS).

If your advisor was FCA authorised, is no longer trading, and you believe you were misadvised to transfer your existing pension or to invest, you might be able to submit a claim to FSCS against your financial adviser.

Dalriada cannot give an advice in relation to claims to the FSCS. However, this body exists to make it easy for individuals to make contact with it. It is anticipated that this can be done without the need for assistance or advice from third parties (for example, claims management companies, which will always look to take a share of any recovery you might make). The idea is to try to enable individuals to obtain compensation without additional assistance and without losing any of that compensation to other parties. The FSCS website can be found via the following link:

<https://www.fscs.org.uk>

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 companies 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 Pensions Ombudsman's decision may differ from the decision in this case. There have been other decisions of the Pensions Ombudsman where he has found in favour of the transferring scheme.

Scams

Dalriada shares the Pensions Regulator's fears that the impact of Coronavirus (COVID-19) on markets and personal finances may make members more vulnerable to scams.

We wish to make members aware as to the risk of scams and be able to spot scam warning signs.

We strongly advise members to visit the ScamSmart website for more information –

<https://www.fca.org.uk/scamsmart>

<https://www.fca.org.uk/scamsmart/how-avoid-investment-scams>

Member websites

Dalriada has set up dedicated member websites for the Schemes. Dalriada will make available through the websites copies of all Announcements, alongside any relevant governance documents.

Links to the individual Scheme websites can be found below.

<https://www.dalriadatrustees.co.uk/scheme/gresham-investment-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/callahan-consulting-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/western-cross-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/gresham-2012-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/daycroft-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/fort-bruce-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/abbey-mage-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/dellaney-gibbons-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/regency-pension-investments-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/williams-bell-pension-scheme/>

<https://www.dalriadatrustees.co.uk/scheme/friendly-pensions-retirement-fund/>

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

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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.

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? 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?
- 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 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 the Scheme was managed by your previous scheme or provider should be directed to your previous transferring scheme or provider, not to the Scheme.

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 IDRP. 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 Pensions Advisory 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 Pensions Advisory 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 Pensions Advisory 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 parties 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 and to be in a position to pay benefits as and when all the issues set out in the Announcement[s] have been resolved. 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.