

## Important Announcement to members of the following pension schemes

Cranborne Star Pension Scheme

Grosvenor Parade Pension Scheme

Tallton Place Pension Scheme

The Lancaster Pension Scheme

The Portman Pension Scheme

Woodcroft House Pension Scheme (“the Schemes”)

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Over the course of the last three years Dalriada has issued a number of Announcements to members. The Announcements contain a lot of information and we thought it would be useful if we put the key points into a single document.

### **Who is Dalriada and why did it get involved with the Schemes?**

Dalriada Trustees Limited (Dalriada) is a professional independent trustee. Dalriada was appointed by the Pensions Regulator (“tPR”) to take over the running of the Schemes on 31 May 2011. TPR is a public body which regulates work-based pension schemes in the UK. It can take action if it is concerned about the way a scheme is being run. This includes being able to appoint a professional independent trustee to take over the running of schemes if considered necessary.

TPR makes sure any professional trustee it appoints has the right skills to do the job. Dalriada is experienced in dealing with pension schemes that have complex issues and/or which have unusual investments.

Because it is an independent trustee Dalriada is not linked in anyway with the original trustees or promoters of the Schemes. The Schemes were originally marketed by Ark Business Consulting LLP. Dalriada effectively replaced the original Trustees – Athena Pension Services Limited (Athena) and Minerva Pension Services Limited (Minerva) – it was given exclusive powers to deal with the Schemes by tPR. Athena and Minerva have had no involvement in running the Schemes since Dalriada's appointment.

Dalriada was appointed because tPR was concerned that the Schemes were being used for **pension liberation**.

**Pension liberation** occurs where individuals are encouraged to transfer their existing pensions to new schemes in the expectation of getting money from their pension fund before the minimum retirement age of 55, either by way of a loan or some other form of cash inducement, often without being given the full facts about the risks and costs involved. **Pension liberation** can become fraudulent if members have not been made aware of the risk of tax payments, or the charges involved made by those setting up the schemes, or because of the way in which funds are being invested.

Schemes used for **pension liberation** generally have high charges and often invest whatever money is left after these charges in risky and unusual investments. They also put members at risk of having to pay large amounts of tax. Pension savings benefit from tax relief because they are

meant to provide benefits in old age. If individuals try and take money out of their pensions early, HMRC will charge tax on any payment at a rate of up to 55%.

The Pensions Regulator has been running a campaign warning of the dangers of pension liberation. Because schemes used for pension liberation are often just scams this campaign is now called "pension scams"–

[www.thepensionsregulator.gov.uk/pension-liberation-fraud.aspx](http://www.thepensionsregulator.gov.uk/pension-liberation-fraud.aspx)

### **Why do we need a trustee and what does a trustee do?**

Like most occupational pension schemes, the Schemes have been set up "under trust". This just means that the funds are held by "someone else" for the benefit of the members and the "someone else" is known as the trustee or trustees. So for any of the Schemes to operate at all they need to have a trustee in place.

Trustees of pension schemes have a lot of responsibilities, the main one being to act in the members' interests.

Pension scheme trustees can't just do what they want. They must run a scheme as set out in the scheme's trust deed and rules. Trustees must also know the laws and regulations which set out what pension schemes can and cannot do.

If something in a scheme's rules contradicts something in law, trustees must do what the law says.

If it is not clear how trustees should apply the rules or the law to their scheme, they must take legal advice, and sometimes ask for guidance from the Court.

### **What did Dalriada do when it was appointed?**

On appointment Dalriada took control of the Schemes' bank accounts and took what member files there were from Ark. Based on these, we created proper administration records on our computer systems.

This is something any company would need to do to be able to run and manage a pension scheme properly and be able to work out members' benefits and provide the necessary benefit statements.

Ark did not appear to use a proper pension administration system or keep the type of records we would normally expect to see. Also, neither the original trustees nor Ark could give Dalriada the necessary financial records. We obtained copy bank statements for the Schemes and reconciled these against the member files to create the necessary accounting and financial records.

This has enabled Dalriada to prepare annual Reports and Accounts for the Schemes, as we are required to do under pensions law. These have been audited and published on the website.

We would expect financial records to be readily available in the case of conventional pension schemes. The need to construct financial records from scratch has meant a significant amount of work for us.

Dalriada has also spent a significant amount of time in identifying and recovering, as far as it can, the various investments made by the Schemes.

Dalriada sought information from the previous trustees and the people responsible for the investments. Generally, with very few exceptions, they were unhelpful and uncooperative which has made it very difficult for us to properly understand how funds were held and what they are worth.

Dalriada reviewed the Schemes' documents. Dalriada's biggest concern was whether the loans paid out by the Schemes (Maximising Pension Value Arrangements or MPVAs) were allowed under both the rules of the Schemes and the law. An added complication was that not all of the members of the Schemes had received MPVA payments. Some members felt that they had "missed out" and/or that their pensions might be worth less as a result of other individuals receiving payments from Scheme funds.

It was to clarify these points that Dalriada made its first application to Court.

### **What happened in the Court case?**

Following its appointment on 31 May 2011, Dalriada persuaded the Court to hear the case more quickly than usual. The case was 'heard' between 28 November to 2 December 2011 (the case is referred to as *Dalriada v Faulds [2011] EWHC 3391*) by Mr Justice Bean and his judgment was delivered on 16 December 2011.

Mr Justice Bean decided that the MPVA payments were not allowed under the Scheme rules or the law which meant they were "**unauthorised payments**".

Pension schemes can make certain "authorised payments" as set out in law. For example, the cash sums paid when a member retires or the lump sum paid when a member dies. These lump sum "authorised payments" can usually be paid tax free.

"**Unauthorised payments**" are subject to tax charges.

The original trustees, Athena and Minerva, sought permission to appeal the judgment. This appeal process was the main reason for the delay in trying to finalise the Court case.

After having received a number of time extensions and changing legal adviser, the original trustees finally lodged their completed application for permission to appeal to the Court on 13 July 2012.

A Court hearing followed in October 2012 at which it was decided that, the original trustees had no legal right to pursue an appeal. Subsequently, a further hearing in February 2013 determined that a member who the original trustees put forward to pursue the appeal, effectively on their behalf, could not have her costs met by the Schemes. The appeal could not, however, be dismissed until the member decided not to pursue it. It was not until December 2013 that the application for permission to appeal was finally dismissed and the original judgment upheld. This meant that Mr Justice Bean's judgment stands and, in particular, that MPVAs paid out by the Schemes were confirmed to be "**unauthorised payments**".

Athena and Minerva were ordered to pay all costs associated with the appeal. These costs are due to be paid into the Schemes. To date, however, no payments have actually been made to the Schemes in respect of these costs.

### **What progress has been made in relation to the schemes' investments?**

Dalriada has been working to gain control of the investments made by the original trustees. These investments are considered high risk and unusual compared to those usually made by conventional pension schemes.

The current position with regard to the main investments is as follows:

1. **Entrepreneur Capital Holdings (ECH)** - £1,000,000 was invested in a British Virgin Islands company. There was a great deal of uncertainty about what this investment was and what money Dalriada might get back, if any. ECH was slow to respond to questions and the information it gave was not clear. However, Dalriada and its legal advisers continued to press ECH and, eventually, the money was repaid in full with interest of £112,777 in April 2014.
2. **Freedom Bay** – £700,000 was invested in return for the right to a number of timeshares in a villa development in St Lucia. Development was originally due to be completed in December 2013 but the date has now been extended to December 2014. Interest is due to be paid annually at 6% on these funds whilst the villa development is being built. However, no interest has been received for 2014. Dalriada has been told the interest will be paid later this year.

Dalriada does not know if and when it will be able to get the £700,000 back.

3. **South Horizon, Cyprus** – £4,000,000 was paid for an option to buy shares in a company that owned a plot of land with planning permission to build apartments near Larnaca. In January 2013 agreement was reached to cancel the investment and the £4,000,000 was returned to the Schemes, together with interest of £325,000.
4. **HYPER** – The Schemes had paid over £1,030,000 and Dalriada was told this would be invested in a property unit trust. However, we now know the money was used to buy shares in a company based in Guernsey (Hyper Active No. 1 Ltd) which owns properties in London and Derby. Dalriada has been asked to take ownership of the shares but is looking at what alternative options it might have before deciding what to do with this investment. This includes investigating if there is any way the investment can be repaid to the Scheme.

The MPVAs paid out to members and due to be repaid are also assets of the Schemes. Dalriada has said that members who have received an MPVA should be prepared to have to pay the money back. However, repayment of the MPVAs is something which Dalriada will be seeking guidance on in future Court proceedings (see below).

### How are Dalriada's costs met?

Usually, where a scheme is an occupational scheme, some, if not all, of the costs of running the scheme would be met by the employer. The employers linked to the Schemes do not appear to have ever actively traded nor do they appear to have any assets or means to contribute to the costs of running the Schemes. This means that the costs of the previous trustees and its administrators and advisers, as well as Dalriada's costs and legal costs, have been, and will continue to be, met from the Schemes' funds. The fact that there were no conventional employers behind the Schemes is further evidence that they were not conventional occupational pension schemes.

Dalriada recognises that its costs (including associated legal costs) affect members' funds. Significant costs were unavoidable given the difficult issues Dalriada needed to sort out, not least the work involved in setting up proper administration and financial records and trying to identify and recover investments made by the original trustees.

Whilst significant costs have been spent in getting money back from the investments, this is money that might otherwise have been lost. The actions taken by Dalriada and its legal advisers to recover these funds mean that the Schemes are in a better financial state, even taking into account the costs, than would have otherwise been the case.

Annual Reports and Accounts have been prepared for each Scheme as at 31 May each year which show, amongst other things, the costs incurred. These are available on our website [www.dalriadatrustees.co.uk/ark](http://www.dalriadatrustees.co.uk/ark). Report and Accounts to 31 May 2014 will be available shortly.

### **What is the current position with regard to future legal action?**

As it has been confirmed that the MPVAs are “**unauthorised payments**” Dalriada needs to return to Court to get direction on how to manage the Schemes going forward. For example, Dalriada will be seeking guidance as to how to divide costs and investment losses between the Schemes and the various categories of members (for example those members who received an MPVA and those who didn't).

As noted above, Dalriada will also look for guidance on the potential recovery of the MPVAs. It will do so by way of a **Beddoe application**. A **Beddoe application** is a way of seeking approval from the Court where actions proposed by the Schemes' trustees require the use of scheme funds. The Court will only make an order allowing a **Beddoe application** where it considers that the proposed use of scheme funds is necessary and reasonable.

Dalriada hopes to have the above matters determined at one Court hearing. Some of that hearing will be in public but the part concerning the **Beddoe application** will be held in private, as is normal for such applications.

### **What is the current position with HMRC on tax?**

HMRC, like the Court, considers that the MPVAs are “**unauthorised payments**”. It has therefore told Dalriada that it intends to ask members to pay the associated tax. Dalriada is aware that HMRC has already been in contact with some members about the tax due but not yet all.

HMRC has said that it is producing a “Frequently Asked Questions” document that Dalriada can forward on to members. We hope this will be available soon.

The Schemes may also be charged tax as the MPVA's are considered to be “**unauthorised payments**” made to members. This is called a **Scheme Sanction Charge**.

The amount to be charged would need to be confirmed by HMRC but could be up to 40% of the total “**unauthorised payments**”. HMRC would also need to confirm when they intend to make any **Scheme Sanction Charge**.

This charge will be levied on the Schemes rather than the individual members but, of course, this will reduce the funds left in members' pension pots.

The approach that HMRC takes will impact on the questions that Dalriada needs to put to the Court and this is one reason for the delay in making the applications to Court following the dismissal of the appeal.

### **What is the latest position with regard to transfer values and member benefit calculations?**

Because Dalriada still needs the guidance from Court referred to above and, due to the uncertainty around the amount of Scheme Sanction Charge, Dalriada is not able to determine the value of the Schemes' assets nor how those assets should be apportioned between the different categories of members or between individual members. As such it is not able to calculate the value of members' benefits, including transfer values.

Dalriada understands members' frustrations with the length of time being taken to resolve the issues. Whilst it will do all it can to get to a position of certainty quickly, once the next set of Court applications are made, timing will depend in part upon availability of the Court and also on how quickly HMRC proceeds. Dalriada will keep the members informed as to the timing of both applications.

Once Dalriada can put a value on the Schemes' assets and work out how those assets should be divided between the members as determined by the Court, it will give members the opportunity to

either draw benefits (if that is an option) or transfer their benefits to another scheme. Otherwise, Dalriada will secure policies in members' own names and the Schemes will be wound up. Further information will be provided about this before any steps are taken.

**Issued by Dalriada Trustees Limited**

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