

## Important Announcement to members of the following pension schemes {"the 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

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This is the sixteenth Announcement to members and is provided by way of an update to members.

This Announcement and copies of all previous Announcements can be accessed from the members' website - <http://dalriadatrustees.co.uk/ark/>

### Update on Beddoe Application

As a reminder, the Beddoe application has been made because Dalriada needs guidance from the Court on a number of matters:

- What approach it should take with regard to the recovery of the MPVA loans.
- To confirm it should challenge in the Tax Tribunal the scheme sanction charges levied by HMRC against the Schemes.
- How funds recovered from the various investments should be apportioned between members. Similarly, how costs incurred should be apportioned between members.
- Whether different categories of member should be treated differently, depending on whether they did or did not receive an MPVA loan and/or whether the timing of their joining one of the Schemes (i.e. the date their transfer was made) has any impact.

Whilst these Court proceedings and the resulting directions are important, they are largely independent of the tax issues covered in more detail below and which are subject to separate proceedings via the Tax Tribunal and, also, separate member representation.

In our 14<sup>th</sup> Announcement we sought nominations for the role of Representative Beneficiary. Initially, we felt we would need two Representative Beneficiaries. However, having discussed this further with our legal advisers, we are of the view that the arguments can be properly heard by using one Representative Beneficiary, which is more cost effective.

In that Announcement we set out some background on the role of the Representative Beneficiary. We received a number of nominations for the role and, from those nominations, after due

consideration, Dalriada has chosen Mrs Kim Goldsmith to act.

Following Dalriada's assessment of the those members nominated, it was felt that Mrs Goldsmith best met the criteria, being a member of one of the Schemes who had received an MPVA. She confirmed that she was willing to commit some time to the process and demonstrated an interest in the proceedings and a willingness to engage with legal representation constructively and effectively.

Dalriada appreciates that a number of members volunteered for the role and would thank those individuals for the time taken to put themselves forward. They and, indeed, all members are able to put any comments to the legal representatives via the contact details set out below.

Mrs Goldsmith has subsequently appointed Trowers & Hamlins LLP (Trowers) to act as her legal advisers. All Mrs Goldsmith's reasonable costs (including legal costs) will be met from the assets of the Schemes.

Dalriada has an agreement in place with Trowers regarding the payment of costs and Trowers are providing Dalriada with weekly updates of costs incurred and the work carried out such that Dalriada can monitor the position appropriately. Trowers have agreed to limit costs to £110,000 (ex VAT), including Counsel costs.

As we suggested in our last Announcement, should members wish to express their views they can do so through Trowers and, to that end, Trowers can be contacted as follows:

Post: Keith Mills  
Trowers & Hamlins LLP  
10 Colmore Row  
Birmingham  
B3 2QD

Email: [Beddoe@trowers.com](mailto:Beddoe@trowers.com)

Phone number: 0121 203 5640

Please appreciate, though, that Trowers will not be able to comment or advise on members' benefits or any aspect of their membership of the Schemes. They should be contacted in the event members have information they feel may be useful to bring to Mrs Goldsmith's attention for the purposes of the Court proceedings.

The Beddoe Application has now been lodged with the Court and the legal advisers have been liaising about the length of time required for a hearing so that steps can be taken to have a date set for it. Given Court availability, this is unlikely to be until next year, and we will notify members once timing has been confirmed.

As a first step, the parties are seeking a shorter hearing, which will be where some directions will be agreed or determined by the Court. This will include confirming which party will argue what in relation to each matter, ensuring that all issues are put to an appropriate test and interests of all members are therefore represented. The date of this hearing has now been confirmed as 1 December 2016 at 2.15 pm.

## Segregated Accounts

A number of members have asked if Dalriada is able to identify segregated accounts.

From the Schemes' Trust Deeds it is clear the Schemes are not sectionalised or segregated. The Trust Deeds say:

*"The Trustee will hold the Fund on the irrevocable trusts set out in this Deed and the Rules as amended from time to time. No person has any right to any particular assets of the Scheme."*

As such, the assets of each of the Schemes are held collectively by Dalriada for the benefit of the members of that Scheme.

Whilst Dalriada has identified the amount of money transferred in for each member, in determining the present value of each member's benefits, it has to take into account how that member should share in any investment losses and tax charges, if and how that might be impacted by when a member joined a scheme and/or whether (and when) a member received or 'made' an MPVA payment and, finally, how costs should be apportioned between members.

There are a number of approaches that could reasonably be taken in this regard which would leave different members better or worse off. This is an impossible position for Dalriada as it would be open to challenge by members whichever decision it took. Hence, Dalriada is seeking Court direction on these administrative matters. This is part of the application described above with Mrs Goldsmith acting as representative beneficiary.

As such, at this stage, it is not possible to determine clearly identifiable assets, attributable to individual members. We hope and expect this to become possible once we have directions from the Court and once we have resolved outstanding questions on tax and investments.

## Standstill Agreements

As mentioned above, one aim of the Court proceedings is for Dalriada to get direction on the approach it should take with regard to the recovery of the MPVA loans.

Even though we are waiting on the Court guidance, there is a very real possibility that the Court will expect Dalriada to recover the MPVA loans. Dalriada has always recommended that members prepare for the potential repayment of MPVAs where applicable. As trustee of the Schemes we are under a duty to recover any of the Schemes' assets paid out in breach of trust and this would include funds paid by way of MPVAs. Members may recall that the Court determined as a result of a previous application that the MPVAs were ruled not to be legally valid.

A copy of the final judgment handed down by Mr Justice Bean is accessible from the members' website ( <http://2ezgfro8kvw1q6xo01huzrqv.wpengine.netdna-cdn.com/files/20121216-DOCUMENT-Final-form-judgment-Ark-v-Dalriada-Trustees.pdf> ).

There is arguably a time limit approaching as to when we must take legal action to recover the MPVAs. This is a legal issue called 'limitation'. Dalriada's ability to take that legal action has been delayed for a variety of reasons including Dalriada's need to deal with other steps and other Court proceedings as a priority such as an appeal against the High Court's decision, recovery of certain of

the investments made by the Schemes, and awaiting the outcome of a separate Court case concerning the appointment of trustees to these types of schemes. Also, as we have explained in previous announcements, we have been liaising with HMRC regarding their approach to taxation of members and the Schemes. We had hoped this might have an impact on the way in which recovery of the MPVAs could be approached, for example had HMRC adopted a stance whereby taxation would be reduced if repayment was made. That has not been the case although might still be a factor the Tax Tribunal takes into account. As set out above, the Beddoe application is now underway but it will be some time before we know the outcome and certainly not before limitation becomes an issue for many members.

Dalriada does not want to start recovery action without direction from the Court and, as such, Dalriada's preference is to put things 'on hold' until that time. Given this, Dalriada is asking members to sign Standstill Agreements.

By signing a Standstill Agreement members are not committing to repay any money or otherwise accepting any liability. By entering into a Standstill Agreement it simply means Dalriada will not need to take any action or seek repayment at this time, pending direction from the Court.

If the Court direction is that Dalriada should look to recover the MPVAs, we would look to take the required action at that time but most probably by corresponding with members first to ask them to repay before any formal Court action is started.

If members do not sign Standstill Agreements, Dalriada will have no option but to issue legal proceedings against those members to recover payments, whereas, if members do sign a Standstill Agreement, they can wait and see what the outcome of the Beddoe application is. Also, if members do not sign a Standstill Agreement so Dalriada has to issue legal proceedings now, this will involve costs being incurred which, in fairness to others, Dalriada might have to seek to recover from those members not signing.

Even if members enter into a Standstill Agreement, there is provision for members to terminate the Agreement should they wish, by giving notice in writing.

Some members will already have received a letter from Dalriada explaining this position, and over time we would expect to be contacting all members who have received an MPVA. We understand that this could be a concerning document for members to receive and we have tried to ensure that the correspondence is as clear as possible. However, we appreciate that the matter might appear complex and we would be happy to discuss any questions or queries members may have about the Standstill Agreements.

We have attached an example Standstill Agreement and a copy can be found at the following link – <http://2ezgfro8kvw1q6xo01huzrqv.wpengine.netdna-cdn.com/files/20161006-DOCUMENT-Example-Standstill-documentation.pdf> .

## HMRC Update

As we set out in our previous Announcements, in particular our 14<sup>th</sup> Announcement, HMRC's view is that the 'loans' (i.e. the MPVAs) are unauthorised payments and, as such, subject to an unauthorised payment (tax) charge. It is HMRC's view that the tax charge falls on the member 'making' the loan so the tax charge is not dependent on the amount of MPVA you received

personally, rather how much a member notionally loaned to a member of another scheme (i.e. by way of 'reciprocation').

It is HMRC's view, irrespective of the circumstances and whether or not members were misled or mis-sold membership of the Schemes, that members remain liable for the tax, whether or not they repay whatever they received personally or, indeed, whether the individuals they notionally loaned to repay.

As a reminder, we would refer members, in the first instance, to HMRC's FAQs document that sets out HMRC's approach to taxing the MPVAs, a copy of which can be obtained from the members' website ( <http://dalriada.wpengine.com/files/HMRC-FAQs.pdf> ). We would be happy to discuss this further with members if necessary.

In our 14<sup>th</sup> Announcement we commented that, as a result of HMRC's proposed basis for taxing the MPVAs, the Schemes would also be subject to Scheme Sanction Charges (a tax charge on the Schemes themselves, separate to the members' tax charges). In total across the Schemes, Scheme Sanction charges have been levied totaling in excess of £3.9 million.

Dalriada has appealed these charges and has challenged HMRC's approach.

In summary, the grounds of Dalriada's appeal are:

- Mr Justice Bean found the MPVA loans to be void, so there was no payment for the purposes of tax.
- In any event, the MPVA loans do not meet the definition of an unauthorised payment under section 160(2)(a) of Finance Act 2004.
- If, alternatively, the MPVA loans were unauthorised payments under section 160(2)(b) and section 173 of Finance Act 2004 (consistent with Mr Justice Bean's judgment), then Scheme Sanction Charges would not apply.

Ultimately, both Dalriada's appeals against the Scheme Sanction Charges and members' appeals against the unauthorised payment charges will need to be heard in the Tax Tribunal. In our 15<sup>th</sup> Announcement we sought volunteers to act as test appellants and we are now working with HMRC to identify the most appropriate members to use from those who have volunteered and, also, to clearly identify the disputed points to be argued at the Tribunal such that, ultimately, any decisions made by the Tribunal can be applied across all categories of member, which should result in a more definitive decision, less open to challenge and further delay. We will also, where appropriate, work with representatives of members acting for them in any tax appeals such that, wherever possible, we can ensure both Dalriada's appeals against the Scheme Sanction Charges and the members' appeals are dealt with as efficiently as possible. One of the directions Dalriada is seeking as part of the Beddoe application is to have funds released in order to meet some costs of legal representation for the test case members in the Tax Tribunal.

HMRC's lack of involvement early on in the proceedings has undoubtedly caused some delay, not least in the making of the Beddoe application. It is likely to be still some time, possibly many months, before the tax matters are finally resolved. However Dalriada remains committed to seeing the process through as quickly and efficiently as possible and we will update members periodically as matters progress with HMRC.

## Investments

As a reminder, there were a number of high risk, illiquid investments that were entered into by the previous trustees and, through the actions of Dalriada and its legal team, we have achieved some good recoveries. In total, across all the Schemes, these include:

|                                | Sums invested | Amounts recovered |
|--------------------------------|---------------|-------------------|
| South Horizon                  | £4,000,000    | £4,325,041        |
| Entrepreneurs Capital Holdings | £1,000,000    | £1,112,777        |
| Air Parade                     | £500,000      | £530,000          |

There remains two investments where we continue to pursue recovery:

### *Freedom Bay*

In total, £700,000 was invested with Freedom Bay.

Interest at 6% per annum is payable on the amounts invested up to the point the development is completed.

Following protracted correspondence between ourselves, our legal advisers and Freedom Bay and, ultimately, the threat of legal action, interest payments are now up to date and total just over £200,000.

Dalriada understands that the development is due to be completed by the end of this year. At that point, Dalriada will consider what options it has with regard to this investment which will be either to sell the 'fractional shares' or to negotiate an exit deal with Freedom Bay. It is unlikely that we will be able to sell the 'shares' other than at a substantial loss. Consequently, pending completion, it remains difficult to put a reasonable value on this investment.

### *Hyper*

In total, £1,030,000 was invested with Hyper.

Dalriada is continuing to correspond with the company responsible for the investment. There has been significant correspondence since our last Announcement and Dalriada has now received the up to date accounts and property valuations.

We remain hopeful that agreement can be reached that will allow us to exit whilst still providing a fair value for members.

## Annual Trustee Report and Accounts

As members are aware, Annual Trustee Report and Accounts for each of the Schemes have been completed and audited for each year since our appointment on 31 May 2011. These are available to members on the members' website [www.dalriadatrustees.co.uk/ark](http://www.dalriadatrustees.co.uk/ark)

Trustee Report and Accounts for each of the Schemes for the year ending 31 May 2016 have been prepared and are currently being audited and will be uploaded to the members' website in the next few weeks.

What should I do if I have any further questions?

As always, should you have any queries in relation to this Announcement or your membership of the Schemes, please contact us.

You can contact us as follows:

By using the Get in Touch form on our website: [www.dalriadatrustees.co.uk/contact](http://www.dalriadatrustees.co.uk/contact)

By Telephone: 028 9041 2756

By Post:

Dalriada Trustees Limited  
22 Great Victoria Street  
Belfast  
BT2 7BA

Via e-mail: [suzanne\\_wilson@dalriadatrustees.co.uk](mailto:suzanne_wilson@dalriadatrustees.co.uk)

This Announcement has been uploaded onto our Frequently Asked Questions page available at [www.dalriadatrustees.co.uk/ark](http://www.dalriadatrustees.co.uk/ark)

Issued by Dalriada Trustees Limited  
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