

## 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 17th 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**

In our 16<sup>th</sup> Announcement we reminded members that Dalriada needed guidance from the Court on a number of matters and we confirmed that the Beddoe Application had been lodged with the Court and that our and the Representative Beneficiary's (Mrs Kim Goldsmith's) legal advisers had been liaising about the length of time required for a hearing. We also confirmed that, as a first step, a shorter hearing was to be held on 1<sup>st</sup> December 2016, at which some directions would be agreed or determined by the Court and it would be confirmed which party would argue what in relation to each matter, ensuring that all issues were put to an appropriate test and interests of all members therefore represented.

At the hearing on 1<sup>st</sup> December 2016 all of the proposed directions were agreed.

Separately, the main hearing of the Beddoe Application was listed before the Court next week (i.e. week beginning 19<sup>th</sup> June 2017). This is listed for two days and we have just been told it will commence 2.00pm on Tuesday 20<sup>th</sup> June at the Rolls Building, Fetter Lane, London EC4A 1NL. Further details about the start time and Court room will be available in the "Chancery Judges" section of the Court list, which will be updated from about 2pm on Monday and available via this link:

<http://www.justice.gov.uk/courts/court-lists/list-cause-rolls#Chancery-judges>

This application is essentially made up of three elements:

1. A Beddoe application to determine whether Dalriada should be pursuing recovery of the MPVA loans from members of the Schemes;

2. A Beddoe application to determine whether Dalriada should be proceeding to challenge the scheme sanction charges levied by HMRC against the Schemes in respect of the MPVA loans made to members and whether Dalriada can use some scheme funds to assist representative members challenging their own tax charges;
3. An application for directions in relation to various matters concerning the administration of the Schemes given they are unconventional and raise novel questions around the sharing of assets and costs between the Schemes and then between the members of each Scheme. This will assist Dalriada in apportioning costs and assets in due course.

A member of one of the Schemes has been appointed as a representative beneficiary for the purposes of the application, Mrs Kim Goldsmith. A representation order has been agreed such that both sides of the argument will be represented in relation to each element of the proceedings. As such, Mrs Goldsmith and her legal representatives, Trowers and Hamlins LLP and Keith Bryant QC, will argue that Beddoe relief should not be granted so Dalriada should not pursue recovery of the MPVA loans. Dalriada, by contrast, will argue in favour of obtaining Beddoe relief.

Various options will be put to the Court in relation to the administration directions, and Dalriada will argue with a preference for one option in each case, with Mrs Goldsmith preferring a different option. This approach addresses the fact that Dalriada itself does not necessarily have a preferred outcome or desire to proceed in a particular way but recognises the arguments in favour of certain action. Equally, there will be a split between different members such that a course of action might suit some but not others. It is important to understand that this approach is necessary to ensure the Court has the opportunity to consider all the relevant arguments and issues in relation to the case rather than because Dalriada favours one particular course of action over the other.

We recognise that pursuing recovery of the MPVA payments might not be popular with many members. However, it is in the interest of members who did not receive MPVAs to have the MPVAs which were made recovered by the Schemes. It is also arguable, for example, that it should be in the interests of all members that action should be taken to recover MPVA payments given the failure to do so will result in members' pensions being reduced. We are aware that some members have questioned whether the MPVAs could be deducted from the pensions of those individuals who received them. However, this is not legally possible. It would also be administratively impossible given the loan made to an individual will have been made from a scheme different to one of which the individual was himself/herself a member. However seemingly simple and attractive a solution such an approach might seem to some members, it is not viable given the way the Schemes were constituted.

If Dalriada, or its lawyers, could see a straightforward way of dealing with the MPVAs without going through recovery proceedings, they would have done so.

As noted above, by having a representation order, as described above, Dalriada is ensuring all interests are represented on all of the matters and that the arguments are properly explored before the Court.

A copy of the order setting out the directions made can be downloaded from the members' website along with details of the claim which sets out more fully what issues are before the Court; a table showing how the arguments break down and which party is arguing what; and the main witness statement in support of the application (but without the attachments, which run to many pages) – links as follow:

<http://2ezgfro8kvw1q6xo01huzrqv.wpengine.netdna-cdn.com/files/Order-dated-1-December-2016.pdf>

<http://2ezgfro8kvw1q6xo01huzrqv.wpengine.netdna-cdn.com/files/Details-of-Claim.pdf>

<http://2ezgfro8kvw1q6xo01huzrqv.wpengine.netdna-cdn.com/files/Table-of-Issues.pdf>

<http://2ezgfro8kvw1q6xo01huzrqv.wpengine.netdna-cdn.com/files/First-Witness-Statement-of-Ben-Fairhead.pdf>

Dalriada appreciates that these are lengthy documents and contain a lot of legal language, but it does provide much more detail on the specific areas where Dalriada is seeking direction from the Court and, as such, might be of interest to members.

Beddoe applications are normally heard in private but Dalriada is keen to see as much of the hearing as possible held in public. We do anticipate that a large part of it will be in public. It is likely that the part of the application in relation to recovery of the MPVA payments will be dealt with partially in public albeit probably with some elements in private. The part of the application in relation to challenging the tax charges is more likely to be dealt with largely in private as it would not be appropriate for arguments to be dealt with openly since that could cause prejudice to Dalriada's efforts to contest the scheme sanction charges if the Beddoe relief is granted. We would not, for example, want HMRC to be able to attend or be made aware of any points put before the Court. This will therefore be in the interests of the wider membership of the schemes. The part of the application dealing with how assets and costs should be allocated and divided will almost certainly be entirely in public.

When held in private, access to the hearing will be strictly limited to the parties and their representatives, and there will be no scope for sharing with members more widely what is discussed at those times.

The precise arrangements in terms of when members of the public will be allowed to attend will only become clear once the hearing has started. It might be the case that the hearing will alternate between being open and closed.

It is also unclear how quickly the Court will reach a decision. It is likely that judgment will be "reserved", such that it may be that a written judgment will be provided at a later date, but this depends entirely on the approach the Judge decides to take and, thereafter, the availability of the Judge to prepare a judgment.

As was advised in our 16<sup>th</sup> Announcement and commented above, Trowers & Hamlins LLP (Trowers) were appointed to act as legal advisers for the Representative Beneficiary. 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

We would remind members, though, that Trowers will not be able to comment or advise on members' benefits or any aspect of their membership of the Schemes.

One specific issue Dalriada has been approached on is with regard to individuals whose transfers came into the Schemes after Dalriada was appointed.

Having considered this, this issue will be the subject of a separate application. A different Representative Beneficiary will be required for these purposes, having to be someone from a much narrower class of individuals who specifically had their pension funds transferred into the Schemes after Dalriada's appointment. Dalriada has been in contact with members in this category and has identified an individual who we expect to act as Representative Beneficiary for these purposes. Once confirmed, we will update members.

## **Standstill Agreements and claims for recovery of MPVA payments**

As mentioned above and in our last Announcement, 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.

As we explained in our last Announcement, 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 and, in the meantime, there was arguably a time limit approaching as to when we had to take legal action to recover the MPVAs (an issue called "limitation").

Since our last Announcement, Dalriada has been in touch with all members asking them to sign Standstill Agreements. By signing Standstill Agreements, members were not committing to repay any money or otherwise accept any liability. It simply meant Dalriada would not need to take any action or seek repayment, pending direction from the Court.

As explained previously, 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.

A large number of Standstill Agreements have been returned signed, for which we are grateful, and that will ensure no further action is required until after the outcome of the Beddoe application is known.

However, for a variety of reasons, some members did not sign a Standstill Agreement. In these cases, Dalriada was left with no option but to issue claims against those members to recover MPVA payments.

A claim has to be served within a certain time after it has been issued with the Court. If the time limit extended beyond the date of the Beddoe hearing, even though claims had been issued with the Court, to minimise costs, Dalriada has not taken steps to 'serve' the claims on those members.

To serve the claim means that Dalriada's solicitors contact the member and explain that this step triggers a formal requirement for the member to decide whether to accept (admit) or reject (defend) the claim.

However, even where it has been necessary to serve claims, Dalriada has given those members a further opportunity to put the proceedings on hold until after the outcome of the Beddoe application is known by signing a consent order to extend the timescales for serving any defence to the claim until after the Beddoe application has been determined by the Court.

As a general point, though, Dalriada would emphasise, as it has done before, that members should be preparing for the **potential** requirement to repay the MPVA payments they have received. Once the Beddoe application has been concluded and a decision made, Dalriada will have no choice but to adhere to it.

It has come to our attention very recently that certain members are being encouraged to terminate their Standstill Agreements on the basis of seeking to insert extra obligations into them. This has been deliberately timed now in the hope we will not be able to address this before the Beddoe hearing.

Whilst we have no objection in principle to the Court being made aware of this, it is not relevant to the issues before the Court. The Court is not determining, for example, whether criminal action should be taken against parties or what obligations should be placed on Dalriada in terms of pursuing parties for recovery.

In any event, Dalriada is concerned that members are having their expectations raised unreasonably. It is not Dalriada's role to pursue criminal action.

## **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 members 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 totalling in excess of £3.9 million. These charges will be met from scheme assets and, as such, further reduce funds available for members.

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 the Finance Act 2004.
- If, alternatively, the MPVA loans were unauthorised payments under section 160(2)(b) and section 173 of the 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. Dalriada and HMRC have now identified the most appropriate members to use, bar one category for which there were no volunteers and where we have not been able to contact the member identified as the most appropriate test appellant. We now are considering alternative members and, once confirmed, we will update members generally on who the test appellants will be and the next steps in the proceedings.

HMRC and Dalriada have also now identified the disputed points to be argued at the Tribunal which means, as commented previously, 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.

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 engagement 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, and as we set out in our 16<sup>th</sup> Announcement, 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:

	<b>Sums invested</b>	<b>Amounts recovered</b>
South Horizon	£4,000,000	£4,325,041
Entrepreneurs Capital Holdings	£1,000,000	£1,112,777
Air Parade	£500,000	£530,000

There remain two investments where we continue to pursue recovery.

### ***Freedom Bay***

In total, £700,000 was invested with Freedom Bay. Under the terms of the contract, interest was payable at 6% per annum on the amounts invested up to the point the development was completed. Following protracted correspondence between Freedom Bay and ourselves/our legal advisers and, ultimately, having threatened legal action, interest payments amounting to just over £200,000 were received and we continued to pursue Freedom Bay for the interest due up to 31 December 2016.

Subsequently, Dalriada received a circular from the developer of the Freedom Bay site, Malgretoute Hotel Development Company Ltd, indicating that the site would not be completed for another two years, blaming delays on the previous government in St Lucia.

Thereafter, on the 7 April we were notified that the Malgretoute Hotel Development Company Ltd was placed into receivership.

Dalriada is now working with its legal advisers, both in the UK and in St Lucia, with regard to the next steps and will ensure that the necessary claims are lodged with the receiver.

Dalriada is aware of significant claims against Malgretoute Hotel Development Company Ltd and the prospect of any material recovery from this investment must now be severely limited.

### ***Affinity Commercial LLP/Hyper Residential Sub Trust (Hyper)***

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

Whilst this was originally intended to be an investment in a property fund, Dalriada established that the investment amounted to a direct interest in two properties in Hackney and Derby, by way of an equity interest in the company owning the properties (Hyper Active No. 1 Limited), managed by Affinity Commercial LLP.

Dalriada had sight of, and considered, valuations for both the Hackney and Derby properties and, thereafter, entered into negotiation with Affinity, through Mr Robert Whitton, to reach an agreement to exit the investment.

Following a lengthy period of negotiation, Mr Whitton offered to pay £1.5m to purchase any interest Dalriada has in Hyper Active No. 1 Limited and, in April, we entered into a legally binding agreement for funds to be paid by the end of May this year.

Subsequently, Mr Whitton sought an extension to the time to pay and we are in the process of discussing whether to allow an extension but, if so, only if a further sum is added to the purchase price as well as interest paid. Dalriada is reserving its right to take action for breach of contract if satisfactory terms are not agreed shortly.

## **Accounts**

Dalriada would remind members that the Accounts for the year ending May 2016 (along with previous years) are available for download from the members' website.

The Accounts for the year end May 2017 are in the process of being prepared and are due to be audited in August.

## **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)

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