

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

This is our 20th Announcement to members and is provided as an update following the paperwork issued by Pinsent Masons in September in respect of the repayment of MPVAs.

We are grateful to those members who have responded fully and provided the information asked for. A number of members have so far either repaid their MPVAs or set out how they intend to do so. The more members who do this, the better the position will be overall for the Schemes.

Following on from the responses and queries received in response to our 19th Announcement and the letter members received from Pinsent Masons dated 7th September 2017, we have set out below a number of key points which we would stress members should take the time to read. We have also appended a list of frequently asked questions (FAQs) for your information.

Returning Questionnaires

If you have not responded yet, or you have not provided full financial information, please make sure that you return your questionnaire and all supporting documentation by **30th November 2017**. Dalriada must stress that this is the **final** opportunity to respond. Failure to respond by this deadline will give Dalriada no other option than to seek approval from the Court to commence, or continue pursuing, Court proceedings to recover MPVAs.

Please note that responses should be sent to Pinsent Masons, in accordance with the details set out in their letters dated 7th September 2017. All queries relating to the questionnaires should be directed to Dalriada using the contact details at the end of this Announcement. This will be more cost-effective for the Schemes.

Please bear in mind also that neither Pinsent Masons nor Dalriada is necessarily able to respond to queries immediately and that neither of us is likely to acknowledge receipt of your emails.

Next Steps

Dalriada will certainly need to return to Court for further directions if members do not repay or do not make suitable proposals to repay their MPVA loans, either in the future or in instalments.

As commented above, many members have engaged constructively, completing the questionnaires in full and being completely open about their financial circumstances. In those cases, Dalriada will be able to inform the Court of the position and seek direction as to what approach to take. The Court is unlikely to encourage Dalriada to pursue claims where members have made reasonable proposals to repay MPVAs based on their financial circumstances.

However, where financial information has not been provided, and/or where proposed defences are not considered likely to succeed, it is more likely that the Court will consider it appropriate that

Dalriada does take steps to recover the MPVA payments. This is likely to be either through formal Court proceedings or by serving statutory demands seeking repayment.

This is not Dalriada's preferred course of action and, again, we urge members to engage and to provide the information requested.

To be clear, pending a return to Court and obtaining further directions, Dalriada will not take any action with Court claims where it does not need to.

The only steps it continues to take are to protect the position in relation to claims where members have either not signed standstill agreements or entered into consent orders to delay the continuation of Court proceedings once under way.

As mentioned in our last Announcement, Dalriada has obtained default judgments against some members where the date for a defence has been so delayed as to risk the proceedings otherwise being stayed by the Court. We have done this in the hope of saving costs, but are not taking steps to enforce any default judgments until we have returned to Court and doing so has been approved by the Court. Dalriada has been clear that it will consent to any application by a member to set aside a default judgment where that member intends to put forward a viable defence but has held off from doing so pending completion of the questionnaire or where repayment has been made (together with any Court fee incurred) or where an agreement has been reached about terms for repayment over a period of time.

Any members concerned that this is a risk for them and preferring not to have a default judgment in place have the option of serving a defence in the proceedings.

Members should note that this applies also to those who previously signed a consent order extending time for service of a defence. If the deadline in the order you have signed has since expired or is due to expire shortly, members should give urgent consideration to whether they wish to admit or defend the claim. Otherwise, there will be a risk that Dalriada will obtain default judgments in order to save costs.

Action against the individuals who set up these Schemes

Dalriada has been appointed as trustee to the Scheme of which you are a member. The pursuit of any individual other than, where possible, to reclaim funds that are due to the pension scheme, is not Dalriada's responsibility nor would it be an appropriate use of Scheme funds to take action or pursue an individual unless this was likely to be of benefit to the Scheme.

Dalriada did take action to recover sums from the Ark LLPs, but it would not have been cost effective to continue with Court proceedings because there was very little money left in the bank accounts of the Ark LLPs.

Dalriada has assessed the prospect of action against other parties in relation to the Schemes, but has to consider the financial benefits of such action. When considering whether to pursue Court claims, it is not always simple to establish a basis for a claim (a cause of action as the lawyers refer to it). Also, as was the case for the Ark LLPs, we need to identify that there is a good prospect of being able to recover money, therefore we need to understand what assets a potential defendant might have, otherwise it would be a case of 'throwing good money after bad'.

It has also been suggested to Dalriada that we should have taken action against the ceding pensions providers and trustees who allowed transfers into the Schemes.

There is not, and never has been, any basis for such action, which would, as such, have been a waste of Scheme funds.

Dalriada has been in touch with numerous authorities regarding the Schemes and other liberation schemes in recent years. Where appropriate and where there is likely to be benefit for the members, it has passed on information and assisted with investigations.

It is not, however, for Dalriada to dictate whether criminal proceedings are pursued. This was expressly stated by the Court in the recent Beddoe application hearing, and the point was made that it would not necessarily follow in any event that further assets would be recovered.

Should members believe (or are being led to believe) that there has been fraudulent or criminal conduct in relation to the Schemes that would assist with criminal or civil proceedings, if this is brought to Dalriada's attention and evidenced properly, Dalriada will consider it and ensure it is passed on to the relevant authorities, where appropriate. It is essential, though, that claims are backed with full documentary evidence.

Equally, it may be that such conduct, if evidenced, gives a basis for members to take their own individual action against those who introduced them to the Schemes or advised them to transfer their pensions into it. Members will need to take their own advice about this.

Dalriada is sympathetic to the plight of members of the Schemes but it would be wrong of it to mislead members or raise hopes of recoveries that are not ever likely to be achieved.

Questions raised by members in recent months have been set out in the appended FAQ section.

As stated above, further queries should be directed to Dalriada. You will find our contact details at the end of the FAQs.

Frequently Asked Questions

A number of common queries have arisen regarding the questionnaire. We have set these out below, together with our responses.

If I repay the MPVA , will this money be returned to my pension pot?

No, not directly.

When you transfer into an Occupational Pension Scheme, your transfer is held collectively with all other member transfers, and the total is known as the 'Scheme Funds'. The Schemes were set up in such a way that the MPVA that you received did not come from your Scheme, but it was instead paid from the Scheme Funds of one or more of the other Schemes outlined at the start of this Announcement. The money that you pay back will be returned to the Scheme that it was paid from.

In turn, those members who received MPVA payments from your Scheme are also being asked to pay these funds back. Please be aware that any repayment to your Scheme will form part of the overall assets held for the benefit of all members of that Scheme.

As many members are aware, one member was generally "matched" with another member, according to a spreadsheet compiled by the Ark LLPs when the Schemes were set up. For the avoidance of any doubt, this spreadsheet has no legal impact and is irrelevant for the purposes of looking at the assets of the Schemes. Therefore, you are not dependent on one particular individual repaying an MPVA in order to take the benefit of repayments being made to the Scheme of which you are a member. Generally, the more people who were lent money by the Scheme of which you are member pay that money back, the more Scheme Funds there will be to provide you with benefits ultimately.

What happens if a member, who received their MPVA from my Scheme, does not pay their money back?

Dalriada has an obligation to recover as many of each Scheme's assets as possible.

Where members have not responded, Dalriada will have no option other than to return to Court and seek further guidance. As already emphasised, in order for the Court and Dalriada to make an informed decision as to how to proceed, it is vital that members complete the questionnaire from Pinsent Masons with as much information as possible. Absent any response at all, Dalriada is likely to seek approval to take steps to recover MPVAs from members, given that it will clearly be unfair on all those members who have repaid or made proposals to repay if it does not do so.

It is also important to emphasise again that a failure to recover the MPVAs will be unfair towards those members who did not receive an MPVA. There were 138 members who did not receive MPVAs, representing approximately 28% of the overall membership of the Schemes.

As per above, any returned funds will be paid directly into the Scheme from which your MPVA was paid and thus make up part of that Scheme's assets.

If members who received an MPVA from your Scheme do not pay it back, this will mean less in the way of Scheme Funds which can be used to provide benefits.

However, it is extremely unlikely that one scheme would recover all, or substantially all, MPVAs paid out from it and that another would recover none or hardly any at all. Dalriada is taking the same approach across the board for all Schemes to ensure a fair approach. Generally, the more MPVAs that are paid back, the more funds there will be to provide benefits across all of the Schemes.

Do I have a defence to a claim against me for repayment of the MPVA ?

Dalriada cannot advise individual members on the strengths of potential defences to claims against them. However, it would emphasise that the merits of the claims were carefully considered by the Court during the Beddoe hearing including during a private section of the hearing at which a confidential opinion from Dalriada's Counsel was discussed. That opinion was specifically intended to highlight to the Court any weaknesses in claims for repayment. The Court also heard from Counsel for a Representative Beneficiary who had the role of testing Dalriada's position. The Court would not have approved the steps being taken by Dalriada to recover the MPVAs if it had not considered the merits to be strong.

For example, it will not be a good defence to a claim that the MPVAs were due for repayment at a later date. They have already been specifically declared legally invalid, so the claim for repayment is based on the fact that the MPVA payments should never have been made in the first place.

Dalriada is also aware that some members are being encouraged to run a defence based on representations made to them by people who introduced them to the Schemes. However, the actual written MPVAs were between the original trustees of the Schemes and the individual members. The written MPVAs expressly stated that repayment was required. Members have not referred to representations from the trustees themselves but by other parties. We cannot see how a defence that relies on what someone who was not a direct party to the MPVA said has a real prospect of succeeding.

It may well be that misleading or false representations made to members by other parties such as introducers or accountants who have suggested that members should transfer their pensions to the Schemes could give rise to a basis for claims against those parties. However, as stated above, members should take their own legal advice. Also, that would be a claim by the members rather than Dalriada. In any event, such representations do not provide a defence to a need to repay the MPVA funds received to the relevant Scheme.

Dalriada appreciates this might appear complex. Members considering any defence would be well advised to take their own legal advice and ensure whoever is giving advice to them is both independent and appropriately legally qualified. We emphasise this as Dalriada will have to look to recover the costs incurred in having to pursue any claims against members who put forward unsuccessful defences from those members concerned. This is only fair to all the other members of the Schemes.

I have been approached by a third party who has encouraged me to file a defence in return for a fee. Will following the advice of this third party improve my chances of not having to repay my MPVA ?

Dalriada does not know precisely what arrangements have been put in place between members and any third parties who have offered to represent them. In some cases, Dalriada is aware that members have instructed their own solicitors, and that is perfectly reasonable and a matter of individual choice. Those solicitors will be able to represent members in formal Court proceedings if the need arises. However, someone who is not legally qualified will not be able to do so. In addition, if members are relying on the advice or support of someone not legally qualified, Dalriada would encourage extra caution and, if fees are being charged, encourage members to ask on what basis they are being paid and for what precise purpose.

In some cases, Dalriada considers that members' use of non-legally qualified "advisers" has caused members to have expectations unduly raised about the prospects of defences succeeding where those prospects are very limited.

Dalriada has already seen similar issues where members were being encouraged at an earlier stage not to enter into standstill agreements, or to terminate standstill agreements where they had been signed. The result of that has been to cause the Schemes to incur unnecessary costs in

commencing certain Court claims in order to protect the position of members more generally. These attempts to terminate the standstill agreements were expressly considered by the Court at the Beddoe hearing in June this year, and the Judge made it clear that the points raised were not relevant.

Equally, whilst some members might consider their response to Pinsent Masons' questionnaire has had the effect of submitting a formal defence to their Court case, this is **not** the case. The completed questionnaires only set out what defence each member is saying they **would** be entering **if** Court proceedings were pursued. However, if Dalriada is left with no choice but to pursue claims then there will be a need in due course to prepare and enter a formal defence. This will involve further work as well as place those members at risk of being required to meet Dalriada's costs of pursuing their Court claim.

To date, Dalriada has not asked or required anyone to enter a formal defence to claims. Members were first asked to sign standstill agreements. Those who did not sign the agreements had claims commenced against them, but were given a further opportunity to put proceedings on hold by being offered the chance to sign consent orders extending time for preparation of a defence. Members should be aware that the responses to Pinsent Masons' questionnaire do not constitute a formal defence against any existing or future claim which may be made against a member.

If, however, members have not engaged appropriately at either of those stages and do therefore already have Court proceedings served against them, and have not subsequently either repaid their MPVAs or made an appropriate proposal for repayment, they will be at risk of needing to prepare a formal defence in order to avoid a judgment being obtained.

In addition, if members have been served with Court claims and have now indicated in their questionnaires that they intend to formally defend the claims, they should consider whether they need to prepare formal defences in response to those claims in order to protect their position in the Court proceedings.

If members do take advice in relation to these matters, Dalriada would encourage them to:

- establish the legal qualifications of those representing them
- ensure they see copies of any representations made
- ensure they are clear about how any fees paid are being utilised
- ensure they receive appropriate advice about the likelihood of defences succeeding as well as the risks of legal costs being ordered against them if they do not.

A re there not other options available to resolve this other than repayment by members?

It remains the case that the best outcome is if all members either repay the MPVAs or explain why they are unable to do so immediately and, if so, clarify what their financial position is and whether they will be able to repay in the future or in instalments. This will ultimately result in much less cost being incurred by the Schemes as well as being fairer to all members.

To confirm, this is the only viable approach open to Dalriada. It has considered numerous other options, but anything else would either not be practically or legally possible.

So, for example, it is not possible for members to repay or offset their MPVA payments from their own pension funds – the MPVAs have not been taken from members' own pension funds. In addition, it is not legally possible to merge the pension schemes into one scheme in order to achieve that or to segregate those members who did receive MPVAs from those who did not.

Dalriada is aware that some members are being given false hope by third party advisers about these types of possibilities, but it is unlikely that anyone will have received any legal advice that such ideas could actually work.

The Ark schemes have been considered by numerous different Counsel and judges. If there were a simple way of resolving the problems they have given rise to, it would have been identified by now.

Can I pay my MPVA using the remainder of my pension within the Scheme?

No. Firstly, you must be 55 or over to access your money in any pension scheme.

Secondly, even if members are 55 or over, in order to place a value on your benefits within the Scheme we need to understand:

- the final value of the remaining investments. The latest position with regards to the recovery of the Scheme's investments is outlined in our 17th Announcement. A copy of this Announcement can be found on our website: www.dalriadatrustees.co.uk/ark
- the recovery of the MPVAs for the Scheme of which you are a member
- HMRC's intention regarding the Scheme Sanction Charge and the outcome of Tax Tribunal proceedings
- Scheme costs.

Until we have clarity on all of the above, we are unable to place a value on your benefits within the Scheme and, therefore, are unable to calculate the 25% cash payment that you would be entitled to.

Once the MPVA s have been repaid, will I have a pension?

You are entitled to a benefit within the Scheme. However, as per above, we are currently unable to place a value on this. The value of your pension will ultimately depend on a number of matters, including those set out above.

We do expect, however, that, ultimately, there will be Scheme Funds remaining to provide members with benefits from the Schemes.

Will repayment help me contest the tax charge levied by HMRC?

Dalriada does not contend that repayment of the MPVA is by any means guaranteed to enable a member to contest the tax charges levied by HMRC. However, if members do repay the MPVAs, there is a chance that members will at least face much reduced tax charges.

First, irrespective of HMRC's approach, what ultimately matters is the view taken by the Tax Tribunal, and it might conclude that repayment should result in no, or at least reduced, tax.

Secondly, based on HMRC's own secondary argument in the Tax Tribunal proceedings, members would stand to pay much less tax but very probably only on the basis of them having repaid the MPVAs.

Members will need to take their own legal advice in relation to the tax charges, but they might take some encouragement from the fact that Dalriada itself intends to contest the Scheme Sanction Charges levied against the Schemes.

A ffinity Commercial LLP/Hyper Residential Sub Trust (Hyper)

As we have reported in previous Announcements, latterly our 18th Announcement issued in the Summer, a total of £1,030,000 was invested with Hyper.

We reported then that we had been in negotiation with Mr Robert Whitton and that Mr Whitton had offered to pay £1.5m to purchase any interest Dalriada had in Hyper Active No. 1 Limited, funds to be paid by the end of May this year.

We agreed to subsequent extensions subject to a further sum being added to the purchase price as well as interest being paid.

We are pleased to advise that a total of £1,552,946.13 has now been received from Affinity in settlement of the funds invested.

When will we hear further about the next steps Dalriada are taking?

As set out above, Dalriada is giving members a final opportunity to get their questionnaire responses to Pinsent Masons by 30th November 2017. This is also a chance for those members who have decided to defend Dalriada's entitlement to recover MPVAs (or been led to believe they might have good prospects of doing so) to reflect on what has been set out above and to at least provide the financial information requested or preferably decide to repay their MPVAs.

The more members repay or engage properly with provision of financial information, the fairer and less costly the process going forward is likely to be.

Dalriada will not return to Court until after the above deadline has passed and it has had an opportunity to consider further responses. We will update members again on the process after that date and once those further responses have been considered.

What should you do if you have any questions?

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

You can contact us as follows:

Online: Use our Get in Touch form on our website: www.dalriadatrustees.co.uk/contact

Email: ArkAdmin@dalriadatrustees.co.uk

Telephone: 028 9041 2756

Post: please note that **our address has recently changed to:**

Dalriada Trustees Limited, Linen Loft, 27-37 Adelaide Street, Belfast, BT2 8FE

Issued by Dalriada Trustees Limited

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