

**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**

Background

In our announcement issued on 28th November we advised that Court proceedings would commence on Tuesday 29th November 2011.

The Court hearing was held between the 29th November and 2nd December 2011 in London, before Mr Justice Bean. Today, Friday 16th December, his judgment was handed down.

Dalriada Trustees Limited ("Dalriada") asked the Court to provide directions regarding the status of the MPVA loans so that it could begin to establish the correct basis on which the Schemes must be administered.

This announcement summarises the judgment, what it means for members of the Schemes, what actions Dalriada intends to take and a timetable for those actions.

We will also provide an update on the separate proceedings taken out by Dalriada against the Ark Companies, looking to recover funds paid to Ark and other introducing companies.

The judgment

A full transcript of the judgment can be downloaded from the dedicated Ark page on our website (<http://www.dalriadatrustees.co.uk/ark>).

The main question to be addressed was whether MPVA 'loans' were validly or not validly made.

Dalriada recognises that the legal status of the MPVA loans is vitally important for members of the Schemes. We commenced the proceedings because we had to be sure that we could operate the Schemes within the law.

The particular Court process required that parties make representations on either side of the legal argument.

Strictly, as trustee, Dalriada approached the proceedings in a neutral manner. However, to ensure that all arguments were properly heard, Dalriada instructed its legal team to make various arguments that the MPVA loans were not validly made.



On the other hand, Mr David Faulds, a member of one of the Schemes was referred to as the First Defendant and his legal team put forward opposing arguments that the MPVA loans were validly made.

The Second and Third Defendants were the original trustees of the Schemes (Athena and Minerva) and were the trustees who made the MPVA loans. They were joined to the proceedings as trustees and they chose to positively support the argument that the MPVA loans were validly made.

Mr Andrew Spink QC, Counsel for Dalriada, submitted the following arguments as to why the MPVA loans were not validly made:

1. That MPVA loans were 'unauthorised payments' under the Finance Act 2004 and, thus, were expressly prevented from being made under the terms of the Schemes' Trust Deeds and Rules.
2. That MPVA loans were not 'investments' and were outside the scope of the powers of the trustees.
3. That making MPVA loans represented a 'fraud' on the (trustees') powers of investment by the original trustees. (The term 'fraud' here is used in a technical sense and does not imply dishonesty).

Mr Nicholas Stallworthy QC, for the First Defendant and Mr James Clifford, for the Second and Third Defendants, argued against these points.

In his judgment, Mr Justice Bean concluded, as regards point 1., that the MPVA loans **were unauthorised member payments**, as defined by s.160 (2) of the Finance Act 2004. As a result of this, he held that the MPVA loans were not validly made.

Notwithstanding this, as regards point 2., Mr Justice Bean went on further to say that MPVA loans were not 'investments'. Rather, he held that they were made to a member of another Scheme for the purpose of obtaining a reciprocal long-term loan from that Scheme. He characterised the purpose of the Pension Reciprocity Plan (PRP) as being not investment but 'disinvestment'. The MPVA loans were, accordingly, outside the scope of the trustees' powers of investment in the Schemes. As a result of this, he held that the MPVA loans were, again, not validly made.

As regards point 3., Mr Justice Bean held that the purpose of the Schemes must be determined from their Trust Deed and Rules, which did not provide for or refer to the PRP concept. He also held that the purpose of the Schemes was to provide retirement benefits, in accordance with the s.150 of the Finance Act 2004. As such, the MPVA loans were beyond the scope of the powers contained in the Trust Deeds and Rules, and were made for an ulterior purpose. (i.e. was a 'fraud on the power') and, again, the MPVA loans were not validly made. The fact that everyone involved with the transactions wished to validate MPVA loans did not prevent the loans from being a fraud on the trustees' powers.



The Defendants may look to appeal Mr Justice Bean's decision. Should this be the case, we will update members.

What does the judgment mean for members?

Recovery of MPVA loans paid to date

Because MPVA loans are adjudged to have not been validly made, Dalriada needs to consider how to go about recovering the MPVA loans already made.

In our announcement dated 14th June 2011, we strongly recommended that members arrange their financial affairs on the basis that they might be required to repay any MPVA loan they had already received. However, Dalriada is aware that individual members' financial circumstances differ and we need to consider how best to recover the MPVA loans to maximise benefits for all members of each Scheme.

Dalriada is currently considering its options and will advise members of the action it intends to take in January 2012, subject to any application to appeal by the Defendants.

Unauthorised payments

Because MPVA loans made to date have been adjudged 'unauthorised payments', HMRC **may** look to impose 'unauthorised payment charges' on those members who have received an MPVA loan.

Dalriada cannot comment at this stage on the action HMRC might take. However, we will liaise with HMRC and advise members further in due course if we are able to.

Further MPVA loans

Clearly, as MPVA loans are adjudged to have not been validly made, no further MPVA loans will be made, irrespective of any documentation previously completed in respect of an MPVA Agreement.

Transfer values

Dalriada is still unable to calculate a reasonable value of members' benefits under the Schemes. There are additional questions to be put before the Court in relation to specific member categories and how the judgment impacts on the calculation of the value of individual member funds.

Member categories and further questions to Court

There are two main categories of members across all Schemes.

- Those members who transferred in funds and entered into an Agreement for, and received, an MPVA loan.
- Those members who transferred in funds but did not receive an MPVA loan.



In relation to each of those categories, Dalriada will put supplementary questions to the Court as to how costs and investment losses should be allocated. We will put these questions to the Court in early 2012 and seek expedition for a hearing as soon as possible.

Proceedings against Ark in relation to fees taken by Ark

The £1m in charges taken by Ark has been distributed across a number of introducers and we are looking to bring some of these introducers into the current proceedings. It will be some time (over a year) before these proceedings are considered in Court.

Dalriada Trustees – 16 December 2011