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 22nd Announcement to members.

Dalriada has received a number of queries from members with regards to the value of their benefits within the Schemes. Unfortunately, we are not able to place a value on any members’ benefits at this time and are therefore unable to make payments to members. The main issues preventing us from making member payments are as follows:

- **Recovery of the MPVAs.** While Dalriada has achieved good recoveries on a number of the high risk, illiquid investments entered into by the previous Trustee, the MPVA loans made by the Schemes make up a significant part of the Schemes’ assets. However, to date, there have been limited repayments of these MPVA loans by the individuals to whom the loans were made. We do not know ultimately how much or how little will be recovered from the MPVA loans.

- **HMRC’s intention regarding the Scheme Sanction Charges (SSCs) and the outcome of the Tax Tribunal proceedings.** Dalriada has appealed the SSCs and, should Dalriada’s appeal be successful (and so the threat of SSCs against the Schemes be removed) this would make a material difference to the funds ultimately available for members. As it stands, the SSCs are direct liabilities of the Schemes. We discuss this in further detail later in this Announcement. The SSCs applicable to each Scheme are as follows:

Cranborne Star Pension Scheme	£695,086
Grosvenor Parade Pension Scheme	£190,080
Lancaster Pension Scheme	£1,102,060
Portman Pension Scheme	£1,045,756
Tallton Place Pension Scheme	£637,538

Woodcroft House Pension Scheme	£236,438

- **Scheme costs.** While we understand that the costs being charged to the Schemes are frustrating, the appointment of a professional trustee by The Pensions Regulator to these types of scheme means, in the vast majority of cases, that the only way to pay for the necessary work and the actions that the professional trustee has to undertake is from scheme funds. Dalriada had no part in the setting up of the Schemes or their running prior to our appointment. The sponsoring employers are either not trading companies and have no assets or are dissolved, which means they are not in a position to pick up scheme costs.

Until we have clarity on all of the above, we are unable to place a value on members' benefits.

Tax Tribunal Proceedings

As commented above, HMRC contend that tax is due following the MPVA payments made to members. These payments resulted in tax assessments (unauthorised payment charges) being made on you as members and, as set out above, on Dalriada as current trustee of the pension schemes.

As outlined in our 21st Announcement (and as noted above), these charges have been appealed and both Dalriada's and members' appeals are to be heard together in the Tax Tribunal (referred to in this update as the "Dalriada/Member Appeal").

The membership of the Schemes is complex but can be broken down into a number of "categories".

It had been hoped that sufficient suitable test members (and that HMRC agreed could stand as a test member) would come forward to represent each category of member but not enough members came forward.

For those categories where no member came forward as a test member or no test member could be agreed with HMRC, Dalriada intends to ask the Tribunal to consider that category on a hypothetical basis, based on a unnamed 'example' member with the characteristics of the category.

It is expected that the decision of the Tribunal will apply to all members so the tax treatment determined for the Test Members should guide how HMRC then deal with all other members in the relevant category.

As we have reported previously, one of the arguments Dalriada intended to make was that the MPVA loans were void as a result of the decision in Dalriada Trustees Ltd v Faulds [2011] EWHC 3391.

At its simplest, the argument was that if the loans were void then they could not be unauthorised payments and, so, give rise to tax charges.

Recently the Court of Appeal published its decision in the case of Clark (link below):

https://www.bailii.org/ew/cases/EWCA/Civ/2020/204.pdf

By way of brief summary and to show the relevance to Dalriada / the Ark Schemes; Mr Clark had set up two Self-invested Personal Pension Schemes (SIPPs). Mr Clark grew concerned at the lack of returns being produced by the SIPPs and wished to become more involved in the management of the funds and also to be able to borrow from the funds in order to invest in his own capacity. As the returns produced by the SIPPs were low, Mr Clark decided to transfer the funds held in one of them under a 'pension transfer plan'. Unfortunately, it later transpired that the trusts of the receiving scheme were 'void for uncertainty'.

The agreed consequence of this was that the transfer was void and effective only to transfer the bare legal title to the money (in other words, the funds were held under trust but not within a recognised pension scheme).

HMRC raised assessments on the basis that the transfers were unauthorised payments. However, Mr Clark argued that, as his transfers were void, there could be no unauthorised payment and, so, no tax charges.

This was the same argument that Dalriada was intending to run, that is because the MPVA loans were void, they could be not be unauthorised payments and, so, there could be no tax charges.

Mr Clark took his appeal to the High Court ultimately. However, he was not successful, the judge finding that *"the questions must in my view be answered from the perspective of a practical person of business, not an equity lawyer versed in the law of resulting and constructive trusts.".*

We have taken advice from both our solicitors (Pinsent Masons LLP) and our Counsel (Michael Jones, who was also the Counsel for Mr Clark) and have been advised, on the basis of the findings in Clark, to not pursue the "void" argument and we will amend our Grounds of Appeal in the Tax Tribunal.

This does, however, mean Dalriada's case is now simplified as essentially the arguments to be put to the Tribunal reflect the decision reached in Dalriada v Faulds. To confirm, this means that Dalriada will accept that the MPVAs are unauthorised payments but only under sections 160(2)(B) and 173 Finance Act 2004 with the result that, if successful, there would be no SSCs levied on the Schemes and members would only be taxed on the benefit in kind value of the MPVA loan received and not repaid. Whilst this would mean there would be some tax payable, it would be significantly less that the tax charge that HMRC has sought to levy on members to date (see 'Annual Assessments' section below).

However, for the avoidance of doubt, this change to Dalriada's case does not prevent members, and significantly test members, from running the void argument in the Tribunal if they wish.

ANNUAL ASSESSMENTS:

Dalriada is aware that HMRC is currently issuing annual tax assessments to members. These assessments are protective and reflect the basis of tax due on the section 173 basis (as commented above, this being the basis that Dalriada will argue in the Tribunal is the correct method of taxation). There is further information on this taxation method in our 14th Announcement which included HMRC's Frequently Asked Questions (specifically answer A.1).

However, as a brief reminder, if this basis were to apply then members who received a loan would be subject to an unauthorised payment charge for each year they were in receipt of a loan and for each year they are in receipt of the loan going forward until such time as it is repaid or written off. The amount of the unauthorised payment is calculated by reference to the beneficial rate of interest (currently 2.5%) in place for each individual tax year until the loan is repaid. As commented above, while this means that there is still an element of tax due from members, tax payable on this basis would be significantly less than the tax payable on the basis argued by HMRC.

As above, Dalriada understands that the annual tax assessments are currently being issued and should all be received by March. If you have already received or receive an assessment in the coming months, there is no need to involve a third party to appeal on your behalf. Please simply send an email using the following wording (amended to included your personal information) to this dedicated email address: **pensions.compliance@hmrc.gsi.gov.uk** , remembering to include 'Ark Tax Appeals' as the email subject header.

'Name:
Tax reference:

I have received an annual assessment and / or a further self-assessment statement for the tax year XXXX showing an amount of £XXXX (including interest).

I understand that this assessment relates to a potential unauthorised payment from one of the Ark Pension Schemes and I would like to appeal this assessment and ask that it (and any subsequent interest charges) is suspended pending the outcome of the appeal proceedings in respect of the Ark Pension Schemes to be heard in the Tax Tribunal'.

Please feel free to contact Dalriada on the telephone number provided should you require further clarification on this matter.

TEST MEMBERS:

You will be informed if you are a Test Member. If you have not heard anything from HMRC, then you are NOT a Test Member.

It is necessary to ensure that the selected Test Members progress both their substantive appeals and their good faith discharge applications with the tax Tribunal. The majority of Test Members have done this to some extent and have been joined into the Dalriada / Member Appeal.

ALL OTHER MEMBERS

Your unauthorised payment charge includes a 'surcharge' element (typically 15% of the claimed unauthorised payment amount i.e. your MPVA payment). As you may know, you can make a "good faith discharge" application in respect of any unauthorised payment surcharge you received. This is separate from your substantive appeal of the unauthorised payment (which would include the surcharge element) which considers whether the MPVA payments are unauthorised payments.

In making a “good faith discharge” application, you would ask HMRC to discharge your liability for the surcharge element only if you can show that it “would not be just and reasonable”, in other words unfair, for you to be liable for the unauthorised payment surcharge.

Again a short email to HMRC (using the email address noted above) stating you are making a good faith discharge in respect of the unauthorised payment surcharge(s), together with why you consider it would not be just and reasonable for you incur this charge, should be sufficient to protect your position.

We would expect, if the good faith discharge is made in time, HMRC’s consideration of your application will be stayed (so put on hold) pending the decision in the Dalriada / Member Appeal. If you have already made a good faith discharge application and these applications remain with HMRC, then you need take no further action for now.

If HMRC indicate (or have indicated) that your good faith discharge is out of time then you should discuss with HMRC what your options are in relation to your good faith discharge.

In the unlikely event that HMRC have erroneously progressed your appeal or good faith discharge application and issued you with a decision in relation to that appeal or application, you should contact HMRC in the first instance.

If despite the above, you do take further action by either:

- seeking to progress that appeal with HMRC or
- appealing directly to the tax Tribunal

the Tribunal is highly likely to postpone that appeal until the Dalriada/Test Member Appeal has been dealt with. As such, seeking to progress any appeal outside of the Dalriada/Test Member appeal at this time will NOT materially progress your appeal and you will likely incur further costs. Dalriada suggests that members do not progress their appeals in this way and instead await the Tribunal’s decision in the Dalriada / Test Member Appeal before taking any further action.

Contact Details

In order to ensure that members receive a copy of this Announcement, we have issued it by both post and email to the address/email address we hold on file for you. If you have only received this Announcement by post, please contact us to ensure your email address is up to date. Similarly, if you have only received this Announcement by email, please contact us to ensure we hold the correct postal address. You can contact us using the details outlined below.

What should you do if you have any 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:

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

Issued by Dalriada Trustees Limited
November 2020