

# Dalriada. A better way

## Important Announcement to members of the following pension schemes (“the Schemes”)

Dominator 2012 Pension Scheme  
Commando 2012 Pension Scheme  
Donington MC Pension Scheme

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### Introduction

Further to our Announcement issued in November last year regarding the Fraud Compensation Fund, this Announcement now looks to update members on a number of significant developments with regard to the Schemes. We apologise for the slight delay in issuing this Announcement, however, some of these developments have occurred in the last few weeks, and we wanted to provide as full an update as possible.

As a reminder, Dalriada Trustees Limited (“Dalriada”) was appointed as independent trustee with exclusive powers to the Schemes, effective from 21 May 2019, by Order of the Pensions Regulator. All powers and rights have been held exclusively by Dalriada since that date.

The Schemes were set up as vehicles to provide funding for Norton Motorcycle Holdings Ltd (“Norton”). Norton was a UK based motorcycle manufacturing company and the funding was provided by way of the Schemes’ assets (over £10m) being invested solely in preference shares in Norton.

Scheme assets being invested in this way is not permitted under the Regulations that govern the way pensions schemes should be run. Dalriada also established that Mr Garner had not obtained written investment advice as he was required to do by legislation. This was a significant concern for The Pensions Regulator. Stuart Garner was CEO of Norton, and the main shareholder, as well as acting as trustee to the Schemes. This created a clear conflict of interest for Mr Garner. There were a number of other governance failings, including the fact that annual Reports and Accounts had not been prepared for the Schemes.

We believe that a significant proportion of the funds invested were, ultimately, used to fund commission payments to introducing companies and that part of those monies were used to make ‘unauthorised’ payments to members, resulting in tax charges being levied by HMRC against the members and the Schemes themselves.

Dalriada’s aim in the first instance was to regularise the position with regard to the Schemes’ investments. However, this was dependent on the ability of Norton to ‘redeem’ the Schemes’ preference shareholding in Norton. It was, and remains, the case that the Schemes held minimal liquid funds.

Norton indicated to Dalriada that it intended to fully redeem the preference shares, including the interest due. Furthermore, it would meet the costs associated with the running of the Schemes, including those associated with Dalriada’s appointment. However,

to achieve this, Norton would need to undergo a series of funding projects to put the business in a position to be able to repay the Schemes. Further details on this were set out in our previous Announcements.

Whilst it could never be sure that Norton's attempts to raise funds would be successful, Dalriada considered that this represented the best chance of the Schemes recovering their investments in full and so was in the best interests of the members. Any alternative course of action would not have resulted in the Schemes receiving anything close to full recovery of the funds invested.

If and when funds are recovered, Dalriada will look to wind up the Schemes and offer members the opportunity to move their funds to more appropriate arrangements. However, for reasons set out later in this Announcement, we do not expect to be in this position in the short to medium term, nor is it clear what the ultimate value of members' benefits might be.

### **Administration of Norton Motorcycle Holdings Limited**

As has been already communicated to members, the situation as described above materially changed last year when BDO LLP ("BDO") were appointed on 29 January 2020 as Administrators of Norton Motorcycle Holdings Limited, Norton Motorcycles (UK) Limited and Donington Hall Estates Limited, as well as an associated company Priest House Hotel Limited. The administrations resulted from action taken by a secured creditor (Metro Bank).

Since their appointment as Administrators, Dalriada has been in regular contact with BDO.

During the course of the administrations there have been two key developments in that BDO have agreed the sale of the Norton Motorcycles (UK) Limited business to TVS Motor Company Limited. They have also agreed the sale of Donington Hall.

On the 15 January 2021 both Norton Motorcycles (UK) Limited (now NMUL Realisations Limited) and Norton Motorcycle Holdings Limited (now NMHL Realisations Limited) were moved to creditor voluntary liquidations. This is the next step towards seeing both entities wound up and any remaining assets distributed to creditors.

To confirm, the Schemes investments are preference shareholdings in Norton Motorcycle Holdings Limited (NMHL Realisations Limited). Given this, our interest is principally in the liquidation of NMHL Realisations. As preference shareholders, the Schemes rank ahead of ordinary shareholders but behind secured and unsecured creditors. Dalriada has lodged a claim with BDO as an unsecured creditor. As above, an unsecured creditor claim would rank the Schemes ahead of where they would otherwise be as a preference shareholder but, at this stage, that claim is yet to be accepted by BDO.

The position is complicated, however, as there is 'inter-company debt' between the various companies associated with Norton. Therefore what will ultimately be payable to creditors of NMHL Realisations will depend, to a large extent, on the outcome of the administration/liquidations of the other Norton entities.

Whilst the sale of the Norton Motorcycles (UK) Limited business to TVS Motor Company was positive, there are significant secured creditor claims to be met as well as costs and potential tax charges arising from the asset sales. As noted above these will all have priority over the claims the Schemes have as a result of having invested in preference shares. Secured creditors would also rank ahead of unsecured creditors.

How much money the Schemes might eventually receive from the liquidation of NMHL

Realisations, and when, is not known at this time but it is likely to be only a small proportion of the net total sum invested by the Schemes. When we have further information, we will update members accordingly.

Progress reports are filed by BDO with Companies House and can be accessed online.

## **The Pension Ombudsman's Determination**

The Pensions Ombudsman ("TPO") received a number of individual complaints from members of the Schemes with regard to Mr Garner's failure to comply with requests to settle benefits, principally requests for transfer value payments.

TPO held an oral hearing in February 2020 to hear evidence. Mr Garner was invited to attend but did not do so.

Dalriada made its own complaint to TPO, in the interests of all members of the Schemes, and was, ultimately, included as a respondent to the members' complaints for the purposes of carrying out TPO's directions. TPO made his determination in June 2020 and a link to that determination is provided below:

<https://www.pensions-ombudsman.org.uk/decision/2020/cas-30918-m4p3/dominator-2012-pension-scheme-dominator-scheme-donington-mc-pension>

The Applicants' and Dalriada's complaints were upheld. Mr Garner was found to have breached his investment duties and to have committed multiple breaches of trust. Both he and the Schemes' administrators (Liddell Dunbar) had failed to provide adequate administration services, all of which had resulted in members' benefits and rights in the Schemes being lost.

TPO directed:

- Dalriada should calculate a "Restorative Payment" that Mr Garner would be required to pay to restore funds paid in breach of trust, to include interest to reflect the investment return that might have reasonably been achieved.
- Mr Garner should pay Distress and Inconvenience payments to the individual applicants.
- To the extent that any payment was received, Dalriada should determine the proportion due to each of the Schemes and, thereafter, the allocation between members or other beneficiaries.

Mr Garner made an application to the High Court to appeal the Pension Ombudsman's determination. He sought three grounds for appeal:

- 1) the rate of interest applied in the calculation of the amount he was due to pay back to the Norton schemes was wrong in law
- 2) that the calculation of the amount he was due to pay back was disproportionate and
- 3) the Pensions Ombudsman erred in his decision that he was due to make payments for non-financial injustice to the claimants (the Distress and Inconvenience payments).

This appeal application was refused on grounds 1) and 2) but allowed to proceed in relation to 3). Thereafter, Mr Garner sought and was granted an Oral Hearing, the first part of which was heard on 9 February 2021 where he was, again, refused the right to appeal on ground 1) but given limited scope to appeal on ground 2) to the extent that he was allowed to argue that the Pensions Ombudsman should have made some allowance for any value in the preference shares in which the schemes invested, when calculating the

amount he was due to pay.

In making his original appeal application, Mr Garner sought and obtained a 'stay' with regard to the payment of the amount due to be repaid to the schemes. When the application to appeal was refused, Dalriada issued a demand (in December 2020) for the amount due, a sum in excess of £15m.

The sum due was calculated based on the sums paid to Norton by the Schemes to acquire the investment in preference shares, less an amount to reflect the preference shares surrendered to meet benefit payments that had been paid to members plus simple interest at 8% per annum from the date of each investment until the date of the determination. Interest continues to accrue on this amount from the date of notification to the date that any payment is ultimately made.

However, the Court confirmed that the stay remained in force, pending the outcome of Mr Garner's oral hearing so, at that time, Dalriada was unable to pursue Mr Garner for payment.

A one-day hearing was listed in April 2021 to hear the remaining elements of Mr Garner's application to appeal (so the amended ground 2) and ground 3)). However, not least due to pressure from Dalriada, Mr Garner ultimately dropped his appeal.

### **Mr Garner's bankruptcy**

Following Mr Garner's decision to withdraw his appeal against the TPO's determination Dalriada was then able to look to enforce the terms of TPO's determination.

However, it was always the case that Mr Garner would not have the funds to make repayment in full (or, in fact, payment to any other material creditor). Mr Garner had made clear in his appeal against TPO's determination that payment of the funds he was due to make in accordance with the determination (both the Distress and Inconvenience payments to members and the restorative payment) were enough to make him personally bankrupt.

An alternative to bankruptcy was for Mr Garner to enter into an Individual Voluntary Arrangement ("IVA") with his creditors. This would have allowed Mr Garner to avoid bankruptcy, and reach agreement with his creditors as to the amounts that would be repaid. For an IVA to be attractive there would need to have been some clear indication that creditors would receive more from the IVA than through bankruptcy. Whilst Mr Garner did make an IVA proposal, the terms were not sufficiently attractive and, given the uncertainty as regards what assets Mr Garner had available to meet creditors' claims, it was Dalriada's view that the best way to ensure the position with regard to Mr Garner's assets was thoroughly investigated was for Mr Garner to be made bankrupt.

Mr Garner was declared bankrupt on the morning of Wednesday 26 May 2021 as a result of a petition made by Leicester City Council ("LCC"), another creditor. Dalriada attended this hearing and supported the petition.

As the Schemes are Mr Garner's largest creditors, Dalriada was able to nominate the appointment of Mr Garner's Trustee in Bankruptcy. Following a tender exercise, Interpath Advisory ("Interpath") was identified as Dalriada's preferred firm.

An expedited Secretary of State appointment was effected once Dalriada provided the necessary evidence to show that Dalriada, on behalf of the Schemes, was the majority creditor. David Standish and Kristina Kicks of Interpath were appointed as joint trustees in bankruptcy ("TiBs") with effect from 8 July 2021.

The TiBs will now take control of Mr Garner's assets and have statutory duties and significant powers to investigate Mr Garner's financial affairs. The TiBs will also be aware of the various claims made on social media as regards Mr Garner's affairs.

We will update members as to the TiBs' progress and, ultimately, what assets they are able to recover for the benefit of creditors (including the Norton schemes). In the meantime, should members wish to direct any queries with regard to Mr Garner's bankruptcy or if they have information they feel might assist the TiBs, please email:

[TIBofStuartJamesGarner@interpathadvisory.com](mailto:TIBofStuartJamesGarner@interpathadvisory.com).

## Costs incurred

Over the period of our involvement (which goes back to 2018, predating our formal appointment by The Pensions Regulator), the Schemes have incurred significant costs, as is typical when dealing with schemes of this nature that have not been managed appropriately and where The Pensions Regulator has seen fit to intervene and appoint a professional trustee.

The total costs incurred, across all three schemes to 30 June 2021, amount to c. **£496,800** (incl. VAT).

This breaks down into £327,000 in respect of services provided by Dalriada and £169,800 in respect of legal costs.

However, as we have advised previously, the Schemes have minimal liquid funds (and have never had funds during the time of our involvement). As such, neither Dalriada nor its legal advisers have been paid for any of the work carried out to date.

If and when the Schemes make some recoveries (not least from the liquidations of the Norton entities and from Mr Garner's bankruptcy) it is likely that those recoveries will be used, in the first instance, to meet outstanding costs.

However, in the event of a successful claim on the Fraud Compensation Fund (see below) we hope to include the majority of the costs incurred as part of that claim. Some of those costs will be considered to be normal management and administration charges, incurred in the running of pension schemes (and, so, wouldn't be able to be compensated) but the majority of the costs, we will argue, are directly attributable to the fraudulent nature of the Schemes and, so, will form part of the claim. Given this, we hope that, in the event of a successful claim, the impact of costs on members' benefits will be significantly mitigated.

Dalriada reports annually on the costs incurred in its Chair Statements which are published on the members' website (see link at the end of this Announcement).

## Fraud Compensation Fund (FCF)

As we set out in our last Announcement, Dalriada participated in legal proceedings with the Pension Protection Fund ("PPF") to determine a number of issues around eligibility for suspected fraudulent schemes (like the Norton schemes) to make claims on the FCF.

The judgment was handed down on 06 November 2020. Our last Announcement (posted on the members' website, <https://www.dalriadatrustees.co.uk/wp-content/uploads/2020/11/Norton-Fraud-Compensation-Fund-Ruling.pdf>) provides information about the case and what the judgment means for members.

The court action was a necessary first step to determine if the Schemes were eligible to

make claims on the FCF in the first instance. The subsequent judgment found that schemes (like the Norton schemes) **are** able to make a claim and we are now working with the PPF with regard to the information they require to determine if the Schemes are eligible for compensation and, if so, how much that compensation will be.

We will update members as matters progress with the PPF but it will likely be some time before there is clarity as to whether a claim will be successful and, if so, how much compensation the Schemes might receive, not least as The FCF is a fund of last resort and, so, will require that all other avenues for pursuing recovery have been exhausted. This means we will need to know how much money the Schemes will receive, both from the liquidation of the Norton entities and Mr Garner's bankruptcy before the FCF can pay compensation to the Schemes. The Schemes will also have to meet the other requirements of FCF eligibility to qualify for compensation.

Our focus remains to achieve the best financial outcome for members and a successful claim on the FCF represents the best chance of the Schemes making any meaningful recovery and members seeing the majority of their pensions restored.

### **Alternative methods of compensation**

As commented above, Dalriada is looking to act in the interests of all members to recover what funds it can such that, ultimately, any impact on members' benefits is kept to a minimum.

However, members may wish to think about taking action themselves to obtain compensation and we have set out below some potential options to consider.

We would highlight, however, that members won't be able to be compensated more than once so, if you do pursue the options set out below, any compensation you receive will likely be offset from any compensation that might ultimately be payable from the FCF.

### ***Complaints against regulated financial advisers***

The records handed over by the previous trustee and/or the administrators do not usually include details about regulated financial advice received by members. A regulated independent financial adviser (or IFA) is one regulated by the Financial Conduct Authority (or its predecessor, the Financial Services Authority) and this should be stated in any communication you received from them.

We believe that the majority of members did not take regulated advice when considering transferring their benefits to one of the Norton schemes. However, if you did take regulated financial advice and your adviser is still trading, you can complain to them directly, if you believe you were misadvised to transfer. If they reject your complaint, you can take it to the Financial Ombudsman Service (FOS).

We have included below a link to the Financial Conduct Authority's guidelines on how to complain:

<https://www.fca.org.uk/consumers/how-complain>

### ***Financial Services Compensation Scheme (FSCS)***

If you took regulated financial advice and that firm (or individual) is no longer trading, you may be able to claim on the FSCS. The FSCS has to be satisfied that you have first exhausted any right to claim against any connected firm still trading.

The FSCS may also need to be satisfied that the firm being claimed against was regulated at the time the advice was given. You can check the status history of your adviser on the FCA register.

<https://register.fca.org.uk/>

If your adviser was not regulated when the advice was provided, we understand the FSCS cannot compensate you.

Dalriada cannot give any advice in relation to claims made through FOS or to the FSCS. However, these bodies exist to make it easy for individuals to pursue complaints. It is expected that this can be done without the need for assistance or advice from third parties (for example, claims management companies), who will always look to take a share of any recovery you might make (see later in this Announcement). The aim is to try to enable individuals to obtain compensation without additional assistance and without losing any of that compensation to other parties. The FSCS website can be found via the following link:

<https://www.fscs.org.uk>

### ***Complaints against transferring arrangements***

Another potential avenue for compensation that members may consider is against the trustees or managers of the scheme they transferred from. You may wish to challenge them as to what checks they carried out before they allowed your benefits to be transferred and if there was sufficient 'due diligence' performed to ensure the scheme you were looking to transfer to (i.e. one of the Norton schemes) was appropriate and not possibly a 'scam' and, if it was, that you were warned of the risks of doing so.

If you believe that there were not sufficient checks carried out and/or that you were not warned about the risks of transferring to a scam by your previous scheme, you can complain through that scheme's Internal Dispute Resolution Procedure (or the providers complaints procedure if you transferred from an insured arrangement). If you are not satisfied with the response you can then escalate the complaint about your former scheme to the Pensions Ombudsman. Any such complaint would be distinct from and in addition to any complaint you may have about Mr Garner and/or the Norton Schemes

### ***Pensions Ombudsman Decision***

By way of further information, The Pensions Ombudsman made a significant determination in one such case in 2018, related to a claim made against the trustees of a transferring scheme and we have set out the details below. Dalriada had been appointed by the Pensions Regulator to the 'scam' scheme to which the member had transferred.

You may wish to consider the facts of this case and whether there are grounds for you to make a similar complaint to the trustees or managers of the scheme your transferred from. We have attached an appendix to this Announcement that contains the key facts which led to the determination and other relevant points which members should consider.

However, in summary, the member made a complaint to the scheme that transferred his benefits to the scam scheme. The grounds for his complaint were that the Authority that governed his scheme transferred his pension fund to the scam scheme without having conducted adequate due diligence checks on it and failed to provide him with a sufficient warning, as required by The Pensions Regulator, about the risks posed by pension scams. Having reviewed the particular facts of this case, the Ombudsman ordered that the member should have his benefits reinstated to the transferring scheme (and increased for the period it was out of the transferring scheme), or, if reinstatement was not possible, that the member be provided with equivalent benefits. Any recoveries eventually made

from the scam scheme should be offset against the cost of providing reinstatement or equivalent benefits in due course. The Ombudsman also awarded the member £1,000 damages for distress and inconvenience. The full determination can be found here.

<https://www.pensions-ombudsman.org.uk/determinations/2018/po-12763/the-police-pension-scheme/>

We would highlight that claims management companies and lawyers are alive to this route for compensation and those companies may offer their services to members who have, or are considering making a, complaint.

In this particular complaint the Ombudsman ruled that legal costs would not be awarded. As the outcome of the determination was that benefits should be reinstated (in other words, there was no significant cash award to the member other than the £1,000 distress and inconvenience payment) the member (who had used the services of claims management company) was obliged to meet those significant costs personally. This should be borne in mind by members if they are approached by companies offering to act for them in such complaints.

We cannot advise members on the merits of making complaints against their previous schemes or providers or assist them in doing so, as we are unlikely to have details of all correspondence between a member and their transferring scheme and the particular circumstances of their case.

It should also be noted that if the transferring scheme can demonstrate that it had carried out appropriate due diligence and provided adequate information about the risks posed by pension scams then, even if you escalate the complaint to the Pensions Ombudsman, the Pensions Ombudsman's decision may differ from the decision in this case. There have been other cases where the Pensions Ombudsman has found in favour of the transferring scheme.

## **Cold Calling**

Unsolicited calls about your pension became illegal on 9 January 2019. Companies that make unwanted, unsolicited phone calls to people about their pensions may face enforcement action, including fines.

The ban prohibits cold calling in relation to pensions, except where the caller is authorised by the FCA or is the trustee or manager of an occupational or personal pension scheme, and the recipient of the call consents to calls, or has an existing relationship with the caller.

We have been made aware of members being targeted by cold callers, often being ultimately introduced to, or called by, claims management companies (CMCs) looking to assist members in individual applications to the FSCS for compensation, or other forms of redress. Members have on occasion been asked to make payment up front in exchange for assistance in recovering their pension funds. Such cold callers have on at least one occasion even claimed to be representing Dalriada.

To be clear, Dalriada would never make such a request and, if you receive a cold call about your pension, get any information you can, such as the company name or phone number and report it to the Information Commissioner's Office via their website or on 0303 123 1113.



## Claims Management Companies (CMCs)

As noted above, Dalriada has become aware that a number of CMCs have made contact, or have indicated to us that they want to make contact, with members in order to assist with individual applications to the FSCS for compensation, or other forms of redress.

CMCs should be regulated by the FCA, however entities such as the FSCS make it easy for claimants to make claims themselves. The procedure is free, and the guidance from the FSCS on its own website specifically encourages individuals to make their own claims without incurring costs or offering a share of compensation to another party in return for assistance.

If compensation is awarded, that compensation should be for the benefit of the claimant. A CMC will always want to enter into a contract for their services with a fee structure based on success. This fee is often set at 20% to 40% of compensation paid. To put this into cash terms, if the FSCS made an award of £50,000 then, based on a 20% fee agreement, a CMC would be entitled to £10,000 of that compensation. This is regardless of how much work is done and often this would be just filling in a simple online form.

Members should proceed very cautiously if approached by either a CMC or financial adviser where there is no existing relationship. As noted above, there is now a ban on cold calling in relation to pensions so such approaches might be in breach of that and, as a result, liable for criminal action.

## Fraudulent Letter

We have been made aware of a fraudulent letter sent to members of another pension scheme to which Dalriada was appointed independent trustee by The Pensions Regulator. The letter claims to be from David Copeland, as a Director of Dalriada, and asks members to call a telephone number provided in the letter to discuss claims. Please note this letter did not come from Dalriada and the telephone number is not a Dalriada telephone number.

If you have received recent correspondence which appears to be from Dalriada, asking you to 'make a claim' in a limited timeframe, this letter is bogus. **PLEASE DO NOT CALL THE NUMBER.** If you do call the number, you will likely be asked to make a payment or asked to provide personal information. Again, please **DO NOT DO THIS.**

Dalriada has taken this matter very seriously and has filed a report with Action Fraud and the police (Police Service of Northern Ireland (PSNI)).

If you have received the letter and/or have called the number, please get in contact with Dalriada and report the matter to Action Fraud as soon as possible. You can contact Action Fraud on:

Telephone number: 0300 123 2040

Crime Number: NFRC210504481800 (please include this if you make contact).

PSNI has advised that the matter should also be reported to your local police and the same crime number should be used when reporting to them.

Dalriada's legitimate contact details can be verified on our website. In light of this recent fraudulent letter, for your security, we would prefer members to contact us by e-mail in the first instance and, if necessary, we will call you back. If you do contact us by telephone, you should use the number shown in the 'What Should I Do If I Have Further Questions?' section below or, otherwise, a number that you can find and verify on the Dalriada website or on the schemes' website page.

To be absolutely clear, Dalriada will **NOT** ask you to make any payment and/or to disclose sensitive personal information. If you receive a call from (or make a call to) someone saying they are from Dalriada and who asks you for money or to disclose personal information, this is a scam and you should hang up and report the call to us and Action Fraud, as set out above.

Whilst we would ask that contact is initially made by email where possible, should you have any specific personal queries in relation to this Announcement, your membership of the Schemes, or should you wish to provide us with further information, please note that you can still contact us as set out in the 'What Should I Do If I Have Further Questions?' section below.

## **Data Privacy Notice**

### ***Background***

This statement sets out how Dalriada Trustees Limited ("Dalriada") in its capacity as Trustee handles personal information in compliance with Data Protection Legislation.

"Data Protection Legislation" means all applicable data protection and privacy legislation in force from time to time in the UK including, to the extent the EU GDPR applies, the General Data Protection Regulation ((EU) 2016/679); to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom, which relates to the protection of personal data, including the Data Protection Act 2018; any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to Dalriada relating to the use of Personal Data.

For the purposes of this statement, the term "Personal Data" means personal data and sensitive personal data.

We recognise that the correct and lawful processing of personal data is important and integral to our successful operations and to maintaining the trust of the people we deal with. We fully endorse and adhere to the principles set out under Data Protection Legislation.

If you are an individual or part of an organisation that we deal with in our capacity as Trustee, Dalriada may act as Data Controller and a Data Processor in relation to the handling of your personal data.

### ***Purpose and legal basis for processing the personal data***

The personal data that Dalriada may hold includes, but is not limited to, your name, address, date of birth, National Insurance details and marital status, as well as details of nominated beneficiaries. Where we have it, we may also hold details of your salary history, membership dates and any contributions to your pension scheme. In addition, we may retain your medical history, as this may affect your pension entitlement.

The reason we need to hold and process this data is so that we can properly administer your benefits and pay your pension and other benefits when they are able to come into payment.

Dalriada may from time to time share this data with a regulatory body or a professional adviser to a pension scheme, in order to manage the scheme and your benefits.

Dalriada may also share the personal data with insurers to ensure that we provide your benefits in the most cost-effective way.

As Data Controller, Dalriada has a legal obligation to administer and pay your benefits from your scheme when it is able to do so. We will therefore hold and process your data on this legal basis. Dalriada and our advisers have each our own legitimate interests for processing your data. You may object to the processing of your personal data on this basis, but your objection may be rejected by Dalriada if there are compelling reasons to do so.

Dalriada will hold and process your data: for as long as we are legally required to do so; for as long as we are responsible for payment benefits; for the protection of our legitimate interests and in line with regulatory requirements. As pension benefits are a long-term undertaking and queries can arise many years into the future, it is not possible to give a specific period for which the data will be stored.

### **Individual Rights**

Dalriada will fully respect your rights under Data Protection Legislation including:

- the right to make a subject access request for free, which can be made electronically (we will respond to your subject access request within one month of you making it);
- the right to make a subject access request to verify the lawfulness of the processing we are carrying out;
- the right to request the correction of your personal data if it is inaccurate, incomplete or out of date, or to request the deletion of your personal data;
- the right to obtain a copy of your personal information from us, except in limited circumstances;
- the right to complain to the supervisory authority whose contact details are set out below.

More information may be obtained at <https://ico.org.uk/>

### **Complaints**

Complaints relating to breaches of the Data Protection Legislation and/or complaints that an individual's personal data is not being processed in line with the Data Protection Principles will be managed and processed by Dalriada, as trustee.

All complaints of dissatisfaction will also be processed in accordance with your scheme's Internal Dispute Resolution Procedure (IDRP) and should be sent to:

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

Without prejudice to any administrative or judicial remedy, you have the right to lodge a complaint with the supervisory authority, the Information Commissioner's Office (ICO), if you consider that the processing of your personal data infringes the principles of the Regulations. Their address is as follows:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **What Should I Do If I Have Further Questions?**

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 Telephone: **028 9041 2891**

By Post:

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

Via e-mail:

[nortonadmin@dalriadatrustees.co.uk](mailto:nortonadmin@dalriadatrustees.co.uk)

More information and copies of previous Announcements and important scheme documents can be found on the members' website at:

<https://www.dalriadatrustees.co.uk/scheme/norton-motorcycles-pension-schemes/>

**Issued by Dalriada Trustees Limited  
July 2021**

## Appendix

### Pensions Ombudsman Determination

#### Facts

Mr N, as he is referred to in the determination, was a member of the Police Pension Scheme (the Police Scheme) which was run by the Northumbria Police Authority (the Authority). In August 2014 Mr N made a transfer from the Police Scheme to an occupational pension scheme called the London Quantum Retirement Benefit Scheme (the London Quantum Scheme).

In February 2013 The Pensions Regulator (the Regulator) began the Scorpion Campaign to highlight the dangers of pension liberation fraud to professional pension bodies. This included a member leaflet to highlight both the campaign and the risks. The Regulator recommended that this leaflet be issued by the transferring pension scheme to all members who were looking to transfer. Despite the member leaflet having been issued some eighteen months beforehand, the Authority did not issue this leaflet to Mr N. It considered it sufficient to place a copy on its intranet news feed, where it might be seen by employees.

The Regulator also recommended that checks be carried out on the receiving schemes in order to flag issues that might suggest they were scam schemes. There was no evidence that the Authority had carried out this due diligence. The Ombudsman noted that the London Quantum Scheme exhibited several features to indicate that it might be a pension liberation scam scheme which would have been picked up by this due diligence, such as:

The London Quantum Scheme was sponsored by a dormant company.  
The employer company was registered in London, geographically far from the member.  
The sponsoring employer of the London Quantum Scheme did not employ Mr N.

The Ombudsman's view was that the Authority should have made these checks, should have found the areas of concern and should have flagged these to Mr N. If they had, then – having very carefully considered Mr N's personal circumstances - it was the Ombudsman's opinion that Mr N would have not gone ahead with the transfer and not suffered loss as a consequence.

The Ombudsman also noted that the start of the Scorpion Campaign in February 2013 was significant as, after that date, pension schemes and providers should have been more aware of the risks, as well as their obligations, and should have been more diligent. The Authority failed in this respect.

The Ombudsman considered that if the Authority had undertaken the correct due diligence and entered into a dialogue with Mr N himself (as opposed to communicating only with the firm involved in this matter) it would have uncovered other facts that would have raised concerns such as:

The involvement of an unregulated introducer.  
The type of investments being made through the London Quantum Scheme - the fact that the forms signed by Mr N indicated that he was a sophisticated investor seeking a high-risk investment.  
It may also have revealed the names of some of the parties involved and their previous involvement in other schemes which have been publicly linked to pension scams.

Mr N had used the services of a lawyer to argue his case. This was on a fee basis, calculated as a percentage of the amount awarded. Mr N asked for his costs to be met by the Authority. The Ombudsman said that it was not appropriate for him to award costs for fees as Mr N could have made his complaint to the Ombudsman without legal representation or incurring other advisory costs,

or made use of the free help and guidance service offered by The Pensions Advisory Service (now the Money and Pensions Service).

### **Does this affect me? Points to consider**

All cases are subject to the facts that apply to that case. The Ombudsman's determination was very specific to the facts that applied to Mr N, but there are some points arising from it that members may wish to think about in relation to their own situation:

- Did you transfer after the launch of The Pension Regulator's Scorpion Campaign in February 2013?
- Did you receive the Scorpion leaflet from your transferring scheme or provider?
- Did your transferring scheme or provider carry out due diligence on the scheme which you ultimately joined? If they did, what did it uncover and did they share this with you? If they did not, why not?
- Did your transferring scheme or provider flag any concerns to you about the scheme which you ultimately joined?
- Did your transferring scheme or provider ask you further questions about your reasons for joining the scheme? For example, about your relationship, if any, to the sponsoring linked employer, whether you had taken regulated advice, whether an unregulated introducer was involved or whether you were offered or received any payment even if this was described as an incentive or a loan?

If, having considered these points, you have a concern that your previous transferring scheme or provider might not have taken all the steps they should have at the time, then you may have grounds to complain. It should be noted, though, that if the transferring scheme can demonstrate that it had carried out appropriate due diligence and provided a member with adequate information about the risks posed by pension scams or if you received any payments by way of incentives, loans or payments made before you reached age 55 then the Pensions Ombudsman might be less likely to find in your favour than he was in this case.

### **Process for taking forward a complaint**

Any complaint that you feel you have regarding how your transfer to your scheme was managed by your previous scheme or provider should be directed to your previous transferring scheme or provider, not to the scheme of which you are currently a member.

There are rules and procedures regarding how complaints should be made and progressed through the Pensions Ombudsman. Mr N's complaint was concluded after all due process had been followed and roughly took two years from start to finish, including a full oral hearing (similar to a Court hearing) at which witnesses were presented in relation to the circumstances of Mr N's complaint. That is not to say that all cases will take this long, but a complaint like this involves a lot of facts.

The first stage is to approach the transferring scheme or provider to make a complaint. This may be through the occupational pension scheme's internal dispute resolution procedure (IDRP) or a provider's own complaints procedure, if it is a personal pension scheme. The Pensions Ombudsman's Early Resolution Service may also be able to assist you in resolving the issue informally.

There are time limits for bringing complaints under a scheme's IDRP - a "reasonable period" as the legislation describes it. The Regulator has set out guidance about "reasonable periods". What this guidance says is that for complaints to be made by a person who has (or claims to have) ceased to have an interest in the scheme, trustees or managers:

- Should set the time limit for making the claim as six months after having (or claiming to have) ceased to have an interest (and the Regulator would not normally expect an application received within this time to be refused).
- May agree to accept an application received outside the time limit. The decision-makers should, for example, consider accepting late complaints where the applicant could not reasonably have been aware of the matters in dispute, or for exceptional reasons such as incapacity.

This second point is quite important as you will need to set out why you were not aware until lately of the matter about which you are complaining. It also means that if you believe you have grounds for making the complaint the clock is running now.

Any complaint that you make must be considered in line with each scheme's own IDRPs. Providers will consider complaints in line with their own agreed complaints procedures.

If your complaint is rejected then you will be told what options are available to you. Generally, this would be a referral to the Pensions Ombudsman, if you are not satisfied with the outcome. You can contact The Pensions Ombudsman direct if you do not receive a reply to your complaint within a reasonable time. You can also contact the Money and Pensions Service for general requests for information or guidance concerning your pensions arrangement.

You should be aware that the Pensions Ombudsman also has time limits for making complaints. A complainant must bring a complaint, or refer a dispute, to the Ombudsman within three years of the act or omission that is the subject of the complaint or referral.

However, again, where an individual was not aware of the act or omission causing the complaint, the Ombudsman may extend the limitation period so that the three-year period does not start to run until the earliest date that the person knew, or ought reasonably to have known, of the occurrence of the act or omission.

The Ombudsman has discretion to handle a complaint or dispute out of time, if he considers that it was reasonable for a complaint not to be made or a dispute not to be referred within the three-year period.

### **Help and costs**

The complaints process (up to and including the Pensions Ombudsman) is designed to allow members to bring complaints and have them considered fairly and independently without the costs of taking the matter to Court. Often the process will seem complex, but free help is available through bodies such as the Money and Pensions Service and the Citizens Advice Bureau.

Many commercial organisations such as claims management firms and lawyers will seek to offer help and assistance to members and have various fee structures that they can apply. Whilst they may assist in formulating and presenting a case, the fee charged ultimately might be quite high. If the result of a successful complaint was reinstatement in the transferring scheme, no actual money will be paid directly to you. You would have your pension rights reinstated. The value of those rights would be the amount claimed. For example, if you entered into an agreement on a 'no win, no fee' basis which paid a fee of 20% of the successfully recovered claim and if the reinstatement value of your pension was £200,000, then the fee due to the organisation representing you would be £40,000. Depending on how the arrangement was structured, there might also be VAT payable on top of that too. In this example you would be personally liable to pay £40,000 (plus any VAT) to the organisation as it cannot be paid from the reinstatement value of your pension. Please consider how you would find such a fee if you were to decide to take up the offer of help on this basis.

It should be noted that if you pursue your claim via a Court it may agree to award costs. However, the costs and risks are higher going down this route. Determinations and directions by the Pensions Ombudsman are final and binding, subject to a right to appeal on a point of law only (you should also bear in mind that permission to appeal would first have to be granted by the Court).

We would emphasise the point that in this case the Pensions Ombudsman did not consider it appropriate to award costs as, in its opinion, the member could have pursued his complaint without instructing solicitors or other advisers. The Pensions Ombudsman highlighted free sources of advice for individuals in this area such as the Money and Pensions Service and the Citizens Advice Bureau.

### **Useful contact details**

If you have a complaint or dispute concerning your workplace or personal pension arrangements you should contact:

The Pensions Ombudsman

Telephone: 0800 917 4487

Website: [www.pensions-ombudsman.org.uk](http://www.pensions-ombudsman.org.uk)

If you have general requests for information or guidance concerning your pension arrangements contact the Money and Pension Service (MaPS).

Previously pensions guidance has been provided across the three consumer facing brands of MaPS: Pension Wise (PW), The Pensions Advisory Service (TPAS) and the Money Advice Service (MAS).

MaPS has now launched **MoneyHelper** where all retirement and pensions guidance has been brought together under one brand and one website: [moneyhelper.org.uk](http://moneyhelper.org.uk).

Consumers can request an appointment by following the links, emailing [virtual.appointments@maps.org.uk](mailto:virtual.appointments@maps.org.uk) or by calling our the pensions helpline on 0800 011 3797.

These appointments are free and impartial.

The email address to the pensions guidance team for general pensions queries is [pensions.enquiries@moneyhelper.org.uk](mailto:pensions.enquiries@moneyhelper.org.uk)

### **Will Dalriada play a role in helping me to make a complaint?**

Dalriada and the Schemes will not be parties to, nor be involved in, any complaint that you bring against a previous scheme or provider. Our duty is to act as Trustee of the Schemes and to proceed as we have set out. We will seek to make recoveries on behalf of the Scheme to the extent possible. That said, we would hope that the above information is helpful to members in considering whether they have a basis for a potential complaint - which will not be without challenge - and also in contemplating whether it is truly necessary or in a member's interests to seek external help from third parties who will look to take a fee in the event of a successful outcome and, if you do use such a third party, how any fee would be paid.