

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 23rd Announcement to members.

Tax Tribunal Proceedings

As a reminder, HMRC’s view is that the loans (MPVAs) are unauthorised payments. An unauthorised payment generates two separate tax charges:

1. Individual Tax Assessments

Irrespective of their circumstances and whether or not members felt they were misled as regards their membership of the Schemes, it is HMRC’s view that members remain liable for the tax, by way of unauthorised payment charges, whether or not they repay the monies they received personally or whether the individuals they notionally loaned to repay those loans.

Dalriada has commented previously that, ultimately, it has no influence on individual tax assessments made by HMRC. Dalriada provided members with guidance on how to appeal their tax charges and, in our 14th Announcement, we included a FAQ document to assist with any queries. Whilst Dalriada cannot advise members on their personal tax affairs, if you have any queries with regard to appealing your individual tax assessments or have recently received correspondence from HMRC in respect of any tax payable, please contact Dalriada in the first instance.

2. Scheme Sanction Charge

As a result of HMRC’s proposed basis for taxing the MPVAs, the Schemes are subject to Scheme Sanction Charges (a tax charge on the Schemes themselves, separate to the members’ tax charges). In total across the Schemes, Scheme Sanction Charges have been levied totaling in excess of £3.9 million. These charges would be met from scheme assets and, as such, further reduce funds available for members.

Dalriada has appealed the Scheme Sanction Charges and has challenged HMRC’s approach. The grounds of Dalriada’s appeal are outlined in our 17th Announcement.

Whilst members could run their own appeals, given their and Dalriada’s appeals were closely linked, it was agreed between HMRC and Dalriada that it would be more efficient for the member and Dalriada appeals to be heard together and for the members’ appeals to be made in respect of the different categories of member, with one member being used as a ‘test appellant’ for each category (all other member appeals being ‘stayed’ (or put on hold), pending the outcome of the Tribunal proceedings.

As a reminder, there are a number of categories of member within the Schemes. The categories being considered at the tribunal are as follows:

- Members who have made and received loans
- Members who have only made loans
- Members who have only received loans
- Members who have neither made nor received loans
- Members who have repaid their loans

A Case Management Hearing was held virtually on 30th March 2021. This was a procedural requirement in order for all parties to agree on both the facts of the case and the next steps.

In our 15th Announcement, we advised that Dalriada and HMRC were looking for test appellants to ensure that each category was represented and that the decision issued by the Tax Tribunal covers the tax consequences which flow from each fact pattern.

Whilst some members did volunteer, not all categories were represented and, further, some members who had volunteered to be a test appellant subsequently withdrew. It was agreed at the Case Management Hearing that no further Test Case members would be considered. Where a category of member is unrepresented, the Tribunal will consider that category on a hypothetical basis, based on an 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.

Dalriada has received a draft Hearing timetable and it has been confirmed that the 11 day hearing is due to begin on 2 December 2022. Further information will be provided to members, nearer the time. Due to the complexity of the hearing, we may not know the outcome for a number of months.

Dalriada has been advised that it is required to share member names as part of the disclosure to the proceedings. Dalriada would emphasise that this is the only personal information that will be shared and only those involved in the Tribunal proceedings will have access to it. Further, those parties to the proceedings must comply with the General Data Protection Regulations and Data Protection Act and must not use any member data in breach of the legislation.

Third Party Representation

In some cases, Dalriada is aware that members have, for example, instructed their own solicitors, and that is perfectly reasonable and a matter of individual choice. Solicitors will be able to represent members in formal legal proceedings if the need arises. 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.

If members do take third party advice, Dalriada would encourage them to:

- Establish the qualifications of those representing them
- Ensure they see copies of any representations made
- Ensure they are clear about how any fees paid are being used.

Fraud Compensation Fund

In November 2020 we published an Announcement on the Ark schemes' website about an important development for members of occupational pension schemes that have suffered a loss as a result of an act of dishonesty.

This relates to the Fraud Compensation Fund (FCF) which is a compensation fund managed by the Pension Protection Fund (PPF). There was some uncertainty in the legislation governing the eligibility of schemes such as the Ark schemes to apply to the FCF for compensation.

To resolve this uncertainty Dalriada worked with the Board of the PPF to have a court hearing in July 2020 to consider the issues that the PPF had identified. The Secretary of State for Work and Pensions was joined to the proceedings as an interested party.

On 6th November 2020, Mr Justice Trower handed down his judgment in relation to the case. The judgment deals with a number of important legal issues concerning the operation of the FCF. In making his judgment, Mr Justice Trower has determined that a significant number of pension schemes like the Ark schemes can, in principle, make applications for compensation to the FCF, subject to meeting the other conditions set for the FCF.

Dalriada is working closely with the PPF to agree the precise steps needed to allow applications to be submitted but this will include collating and submitting evidence to show where dishonesty has taken place. The FCF is a compensation fund of last resort and therefore we are required to have completed any possible asset recoveries before the FCF will pay compensation to the schemes.

There are also certain technical steps that will need to be taken in order to qualify schemes for compensation. It is important to note that this judgment does not mean that the Ark schemes will automatically be successful in their claims, but it is an avenue that we will explore for members.

The judgment clarified that, as well as investment losses, as a result of an act of dishonesty, schemes (and by extension their members) can be compensated for costs incurred by the trustees which are attributable to dealing with any act of dishonesty.

The outcome is a positive development for members of schemes which have suffered losses, and incurred costs, as the result of acts of dishonesty, however, the requirement for any claim on the FCF to be a claim of last resort means that it may be some further time before we are in a position to make a claim, receive compensation if successful and then complete the wind up and distribution of the assets of the Ark schemes.

As noted, we are working closely with the PPF on prospective claims and would hope to be able to provide members with an indicative timescale as to when the claims process may be finalised.

Fraudulent Letter Communication

We have issued a communication regarding a letter purporting to be from David Copeland, a Director of Dalriada Trustees Limited. Dalriada is taking this very seriously and is working with the relevant authorities.

At this time, we are only aware of members of one particular set of schemes being targeted however we posted warnings on all our schemes' websites and issued emails to those members we hold email addresses for in order to warn members of this scam and establish if the problem is more widespread.

We are confident that there has been no breach of our data and the member details are likely to have originated from the perpetrators of the set of schemes in question.

Dalriada. A better way

To date we have not received notification from any Ark members that they have received the letter mentioned above, however please let us know as soon as possible if you are contacted by someone purportedly from Dalriada asking you to make a payment to “secure a share of proceeds of a company liquidation” or similar.

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

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