**Current Fund Position**

As at 31 March 2015, the net asset value of the scheme amounts to £1,140,715.

Part of the fund has been crystallised to pay lump sum benefits to the members, the amount I have calculated this to be is 54.65% of the fund, leaving 45.45% uncrystallised. On this presumption, the remaining tax free sum payable amounts to £129,613.

I consider the following options should be explored in respect of this transaction.

**Proposed Loan**

The maximum that the scheme can lend at this time is 50% of the value of the fund and the minimum interest charged is 1.5% to the company receiving the loan. There is no maximum interest that is chargeable. Please confirm whether it is Valindry or Landing that will receive the loan?

The company receiving the loan must be admitted to the pension scheme as a sponsoring employer and director employment contracts must also be in place confirming that the company has provided a pension scheme for the directors.

Where a loan is used to fund an interest in residential property, the property must have as it's purpose a trade, profession or vocation carried on by employer, or the employer’s administration or management. The property cannot be occupied or used by a member or a connected person of such a member.

**Transfer of the Property to the Company**

The regulations state that pensions and benefits can be paid as monies worth. Under this option, the property for the sum of £285,000 is paid in the form of a tax free cash payment and pension as monies worth.

This would split as £129613 tax free and balance paid of £155387, would be taxed at income tax marginal rate. Both members could hold the property in their personal names or credit the Directors/Shareholders loan account for £285,000.

The benefit of this is that the pension scheme cash account is not being used to fund the purchase at outset and it would allow a credit to the Directors loan account or shareholders funds to the value of £285,000.

**Develop the property in the scheme**

If it is intended to sell the property prior to NHBC certificate being issued, then the development of the property within the scheme could be very tax efficient.

The definition of residential property is a building or structure that is used or suitable for use as a dwelling. The building may become residential property whilst owned by the pension scheme as a result of being subsequently subject to development.

Whilst in the course of construction, conversion or adaptation such land and property is not residential property because during that period it is not suitable for use as a dwelling. Land and buildings being converted are treated as residential property from the point when they become suitable for use as a dwelling.

Essentially the question to be answered is: would a person normally live in that dwelling? The point at which this occurs will normally be when the works are substantially completed. In the case of UK property this is likely to be when the certificate of habitation is issued.

A property that is sold before the development or conversion is substantially completed never becomes residential property.

The benefit of this route is that as capital gains tax are exempt in the pension scheme the uplift in value can be sheltered in the pension scheme. Whilst much of the pension fund has been crystallised, we could apportion the property in the uncrystallised fund, therefore if the property's value was sold for say 3 times the current market value, the available tax free sum payable would increase from £71,250 to £213,750.

The downside to this route is that the property must be disposed of prior to the certificate of habitation being issued and from my experience this could affect the sale enquiries as the certificate of habitation could only be issued on completion. I would suggest that this is explored further with a conveyancer.

**Profit Share Agreement**

Under this option, the pension scheme sells the property to the Ccompany but within that agreement is entitled to a share of proceeds arising from redevelopment of the property to residential use.

The problem with this option is that the pension scheme would receive income or have an interest in residential property and as such would be required to pay tax at least 40% on that income.

If the sale proceeds sit in the company, then the company could make pension contributions to the scheme but there are of course new restrictions on the contribution amounts for high earners and you will therefore be affected after 5 April 2016. We would have some difficulty supporting a substantial part of the capital gain as a contribution to the pension fund. I would estimate under carry forward provisions this would amount to around £80,000 for each member.

**The Scheme holding shares in the employer**

The company could issue a new class of preference share to the pension scheme, this would be subscribed to by the pension for say £285,000 which would be sufficient to allow the company to purchase the property from the pension scheme.

The pension scheme would in this instance be entitled to dividend distributions from the company however there would need to be a clause in the preference share agreement for the pension scheme to redeem it's shareholding before a certificate of habitation is issued and receive a dividend distribution equal to the discounted value of the preference share pre certificate of habitation.

The benefit of this route is that the pension scheme receives a dividend distribution that does not count towards the annual allowance. The drawback to this route is that the value of the interest could not exceed 50% of the value of the scheme fund.

**Follow Up**

I have spoken with Nikki this morning and ran through the options available. Perhaps the best option would be to make a commercial loan to Valindry/Landing with an interest rate commensurate with the commercial risk of the investment. Valindary would obtain tax relief on the interest payment which would mitigate some of the capital gains tax from the disposal.

We would also suggest, that to the extent possible, the sale of the property should be at the upper level, reflecting the fact that there is a high possibility of planning consent.