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HMRC Pension Scheme Services
Fitzroy House
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By First Class Recorded Delivery

15 August 2016

Dear Sirs,

**WHITEMOORE SSAS RETIREMENT SCHEME
REFERENCE: 00830975RJ/R**

I refer to your letter in connection with the Rules of the Scheme.

The scheme rules do not, either directly or indirectly entitle any scheme member to an unauthorised payment as to do so would prejudice the tax registered status of the Scheme.

This declaration is covered by **Rule 31** in which the Scheme Administrator states that "in making any decision or in giving or withholding their agreement or consent or in exercising or not exercising any power in relation to the Scheme, shall: ***"act consistently with the requirements to maintain the Scheme as a Registered Scheme; and act in accordance with any other applicable overriding legislation affecting the Scheme"***.

As you are aware, there are circumstances where an unauthorised payment could arise. The scheme rule provision that you refer to in 31.2 specifically states that "The Principal Employer, the Trustee, Independent Trustee and the Administrator shall exercise their powers in a manner which they are satisfied will not give rise to an Unauthorised Payment, or to any Unauthorised Payment being treated as having been made, except where this has been specifically requested by a Member in the knowledge that it would constitute an Unauthorised Payment and the Administrator is satisfied that this would **not prejudice the Scheme's status as a Registered Scheme**".

Pension liberation would, of course, prejudice the tax registered status of the Scheme. However, a member circumstance can arise, such as the member giving incorrect information to the Administrator in respect of a test against the lifetime allowance or in respect of death benefit. Further examples include:

A member on retirement is in receipt of pension and on death, the scheme administrator is not notified of that death; which would give rise to an unauthorised payments charge on the member. The unauthorised payments charge arose as the member could not have known of the date of their death; but the unauthorised payments charge arose as a consequence of the member's



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death. This protects the Administrator from a claim against, say a spouse, who could otherwise hold the Administrator liable for the tax charge.

A second example, which we would say is more common and is where the member has provided incorrect information to the Scheme Administrator, which means that pension benefits paid are subject to an unauthorised payments charge e.g. failure to provide correct information relating to the lifetime allowance. We may argue that the member "knowingly" did not provide the correct information to the Scheme Administrator. If a "knowingly" provision is not allowed for then the Scheme Administrator could be held liable by the member.

It is important, that this protection is given to the Scheme Administrator, however if you are not satisfied by it's wording, then we will arrange for a Trustee Resolution for it's removal and Rule 31.2 shall read *"The Principal Employer, the Trustee, Independent Trustee and the Administrator shall exercise their powers in a manner which they are satisfied will not give rise to an Unauthorised Payment, or to any Unauthorised Payment being treated as having been made"*.

Yours sincerely

Emily McAlister
For Pension Practitioner .Com