

Pension Trustee claims notice to Second Lien Creditors

This notice is issued by GLAS Trust Corporation Limited (“**GLAS**”), in its capacity as Security Agent appointed under and in connection with the intercreditor agreement originally dated 29 March 2019 (as amended by supplemental agreement dated 9 April 2019 and second supplemental agreement dated 10 February 2020) (the “**Intercreditor Agreement**”).

This notice is issued by GLAS in its capacity as Security Agent to the Second Lien Creditors.

A dispute has arisen between the Security Agent and:

- (i) Debenhams Pension Trust Limited as the current trustee (the “**Debenhams Retail Pension Trustee**”) of the pensions scheme operated in respect of Department Stores Realisations Limited (formerly Debenhams Retail Limited) (the “**Debenhams Retail Pension Scheme**”); and
- (ii) Debenhams (No. 2) Pension Trust Limited as the current trustee (“**Debenhams Executive Pension Trustee**”) of the pension scheme operated in respect of Department Stores Realisations (Properties) Limited (formerly Debenhams Properties Limited) (the “**Debenhams Executive Pension Scheme**”)

(together, the “**Pension Trustees**”)

As the Second Lien Creditors will be aware, certain distributions have been made by the Security Agent in accordance with the Security Agent’s interpretation of the Intercreditor Agreement, namely:

1. a distribution on 13 October 2021 (the “**First Distribution**”); and
2. a distribution on 19 November 2021 (the “**Second Distribution**”)

The Pension Trustees argue that due to a misinterpretation of the Intercreditor Agreement an amount has been underpaid to them in connection with the previous distributions of proceeds, and that they are now entitled to an amount equal to such underpayment.

In summary, the Pension Trustees have asserted that the underpayment totals £4,906,838.70 in the case of the Debenhams Retail Pension Trustee and £28,585.71 in the case of the Debenhams Executive Pension Trustee. If that is the case, certain other beneficiaries of the Intercreditor Agreement will have received an over allocation of such proceeds from the First Distribution and the Second Distribution, which would need to be reallocated to the Pension Trustees by virtue of the Pension Trustee receiving a greater proportionate allocation of future distributions, including a forthcoming third distribution (see below).

A third distribution is expected to be made in the near term, subject to the resolution of the dispute between the Security Agent and the Pension Trustees. A spreadsheet detailing the alternate calculation methodologies of the Security Agent and the Pensions Trustees in respect of the relevant payments is included as Annex 1 to this note. The spreadsheet further details the purported under and over-payments in respect of the same, and the estimated amount of the third upcoming distribution due to each group of creditors, using the Security Agent and the Pension Trustees’ alternate methodologies (subject to assumptions in both cases). This spreadsheet has been shared with the Pension Trustees.

The basis of the Pension Trustees' claims are, in broad terms, summarised below:

First Issue - Agreed Drift Payments

- Drift Payments are additional contributions to address the potential increase over time of the exposure of the Protected Pension Fund (PPF) as a result of a delay in a pension scheme entering a PPF assessment period.
- The Debenhams Retail Pension Trustee asserts that the Drift Payments (prior to the Administration) were treated as “Agreed Drift Payments” by the Security Agent. Pursuant to the terms of the Intercreditor Agreement, it argues they should not have been treated as “Agreed Drift Payments” but instead as “Mitigation Contribution Payments”, which, as a result, should not have been deductions for the purposes of the calculation of the Elevated Pension Liabilities Cap Deductions, and that the amount of the Elevated Pensions Liabilities paid to it was incorrectly reduced.

Note this issue is only relevant to the claim of the Debenhams Retail Pension Trustee.

Second Issue - Special Contributions

- Special Contributions are amounts paid in addition to Agreed Drift Payments, Mitigation Contribution Payments or payments under an agreed schedule of contributions.
- The Pension Trustees take issue with the interpretation of the “Special Contributions” as included in the Intercreditor Agreement and the effect of this on the calculation of the cap amounts for the Elevated Pension Liabilities. In summary, the Pension Trustees assert that:
 - (i) the First Retail ICA Distribution should not have been characterised as a Special Contribution, and in particular for the amount of £16,516,058.23 where only £16,224,710.78 was distributed; and
 - (ii) the First Executive ICA Distribution should not have been characterised as a Special Contribution, and in particular where that amount was never actually distributed.
- It is claimed that such payments should not have been characterised as Special Contributions because, among other arguments:
 - a. the First Retail ICA Distribution was not “made available” for payment, rather it was “payable” under the terms of the Intercreditor Agreement;
 - b. clause 16 of the Intercreditor Agreement has its own mechanism for distributing between the Elevated Pension Liabilities (in contrast to the definition of Special Contributions, which applies a *pro rata* allocation between the Elevated Pension Liabilities); and
 - c. the approach taken leads to a commercially odd result.
- The Pension Trustees have also raised an argument that a distribution under the Intercreditor Agreement (such as the First Distribution) could only discharge the principal amount of

indebtedness due to the relevant recipients, and not the interest accrued thereon. When calculating the Second Distribution, the methodology adopted by the Security Agent assumed that the First Distribution paid down the principal and interest outstanding to the relevant creditors, rather than just the outstanding principal. This position was adopted on the basis that the definition of Elevated Second Lien Liabilities in the Intercreditor Agreement specifically includes interest in addition to principal.

Third Issue - Treatment of undistributed sums

- Certain amounts have not been, or were only recently, distributed to the Pensions Trustees as the result of either (i) distributions being declared at a time when information was not available to the Security Agent to fully confirm the relevant distribution payable to one or more Pension Trustees at that time, and/or (ii) it was considered that the relevant payments should not be distributed until the ongoing disputes were resolved.
- The Pension Trustees have asserted that they are being kept out of funds to which they are entitled under the Pensions Deed and the Intercreditor Agreement, and that the Pension Trustees are therefore suffering loss as a result of the funds not being able to be invested to assist securing members' benefits. Notwithstanding the above, the Pension Trustees have requested to receive the calculation methodology used by the Security Agent for the calculation of Special Contributions.
- Although the Third Issue ultimately depends on the successful resolution of the Second Issue, the Security Agent has been and remains willing to (and is in a position to) transfer the undistributed sums to the Pension Trustees.
- The Pension Trustees have requested that the Security Agent holds off from making the payments listed above until the dispute about the treatment of such distributions is resolved.

Next steps

The Security Agent confirms the availability of £29,722,584.79¹ for a third distribution pending the resolution of the dispute.

The Pension Trustees have notified the Security Agent that they assume that the Security Agent will not make any distributions to the Second Lien Creditors without sufficient prior notice to the Pension Trustees to raise any issues arising from their review of the Security Agent's calculations.

The Security Agent awaits the Pension Trustees' assessment of the Security Agent's calculations as contained in Annex 1 and will send a further update to the Second Lien Creditors in due course, including as to proposed next steps.

¹ This figure has been slightly updated since the spreadsheet was exchanged with the Pension Trustees on 16 August 2023.

Annex 1

Spreadsheet: Methodology calculations (dated 16 August 2023)