HMRC Pension Scheme Services

Fitzroy House

Castle Meadow Road

Notts

NW2 1BG

By First Class Recorded Delivery

15 Aug 2016 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 therefore does not conflict with the declarations made as Scheme Administrator.

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. This is explained in more detail as follows:

A member on retirement is in receipt of pension and on death, the scheme administrator is not notified of that death; the continued payment of pension 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 drawdown request, which subsequently transpired as an unauthorised payments charge. The use of this Rule, 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 results in pension benefits paid being subject to an unauthorised payments charge e.g. failure to provide correct information relating to the lifetime allowance. We would 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 and therefore we need to rely on the Rule provision to protect ourselves.

Whilst it is important, that this protection is given to the Scheme Administrator, 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*".

I look forward to hearing from you.

Yours sincerely

Emily McAlister

**For Pension Practitioner .Com**