



Guardian Pension Consultants

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22 November 2013

Dear Sir

Thank you for your letter of 11 November 2013.

On Wednesday 20 November representatives from Guardian Pensions Consultants Ltd attended a meeting in London at which David Ames was present, along with Harlequin's lawyer Daniel Abrams. Messrs Ames and Abrams, who were subject to close questioning, revealed the nature of their understanding of the proposed Investor Trust. Here in summary is what they said.

1. Investors joining the Trust will give up their right for five years to take action against Harlequin for failing to construct their properties.
2. This will enable Harlequin to raise funds from private financiers to facilitate the construction of the properties.
3. On completion investors will be required to pay the 70% balance necessary to take possession of their properties, in accordance with their original contracts.

Please confirm that this is an accurate summary of the scheme. If it is not an accurate summary, then it would appear that Regulatory Legal and Harlequin have different understandings of the nature of the Trust.

Assuming it is an accurate summary, it raises a number of concerns and questions, on which we should appreciate your comments.

1. It appears to assume that Harlequin possesses the management skills to undertake the construction. Until now they have not displayed such skills. Do you have reason to believe it now has them?

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2. The scheme appears to require a very high proportion of investors to join the Trust, even as high as 100%. Is this realistic?

3. Investors may be unable or unwilling to provide from their own resources or through their SIPPs the 70% balance. Harlequin has in the past made positive comments about the availability of mortgages for this balance, but never succeeded in demonstrating such availability; is there any evidence that these would now be available?

(Our advisors tell us that non-recourse mortgages on split ownership are rarely available. They also cast doubt on whether the likely income from the properties would service the mortgages.)

4. It would appear that the Trust could be an unlawful Collective Investment Scheme. Although Mr Abrams confirmed that the trust instrument has not yet been drafted, it would appear unlikely that members would have day-to-day control over the management. Indeed, such control appears to be impossible in accordance with *Brown v InnovatorOne* (2012).

5. Alternatively joining the Trust is not a genuine investment. If so, a SIPP operator could not sanction use of funds within the SIPP to pay the fees, nor could it sanction the giving up of contractual rights in regard to the properties. Indeed, if the SIPP operator did so, Investors could find themselves paying a 40% tax charge.

6. There appears to be no assurance that the initial £240 fee would be the sole fee. Is it not possible, even likely, that the Trust would need further fees to continue its work?

7. In the event of the Trust succeeding, and in the event of this proving advantageous to investors, then would not the benefits accrue to all investors, regardless of whether they belonged to the Trust? If so, the most advantageous course for any individual investor is not to incur the costs or bear the risks of joining the Trust, yet still stand to enjoy such benefits as it may bring.

These concerns and questions point to two fundamental issues.

1. It is impossible to avoid the suspicion that the Investor Trust is primarily designed to save Harlequin (and in the process provide fees for legal and other advisors), rather than protect and promote the interests of investors.

2. At least two other schemes have been proposed which on the face of things seem more realistic, do not necessarily require upfront fees from investors, and will better protect and promote the interests of investors. Sadly the Investor Trust shuts off these alternatives.

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Surely it would be preferable for all interested parties to explore all the options, before making a commitment to a particular option. Do you, or Harlequin, or any other relevant party have any plans to make investors aware of these alternatives?

There is one further point to make. In previous correspondence you have mentioned deadlines. At the meeting Mr Ames said that these deadlines are arbitrary. While it is manifestly desirable for all parties to proceed expeditiously, it would appear wise to act with careful and due consideration.

Yours faithfully

PP 

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