

ALPHA DEVELOPMENT SCHEMES
INFORMATION DOCUMENT
AND
FREQUENTLY ASKED QUESTIONS

This note relates to a potential claim for professional negligence that you may have against the solicitor who advised you in respect of a property investment scheme ("**Scheme**") devised by the Alpha Developments group ("**Alpha**").

In brief the Scheme involved you purchasing a long leasehold interest in a student pod, hotel room or holiday apartment from Alpha together with the immediate sub-letting of the property to another company connected to Alpha. The Scheme was marketed as "guaranteed rent" and a "hands off investment". Unfortunately the Scheme failed in that the sub-tenant failed to make payments to you under the sub-lease and has since entered into administration.

The basis of your claim against your solicitor is likely to be, amongst any other issues, the failure to advise that such Scheme potentially constituted an unregulated collective investment scheme ("**UCIS**") and the consequences of that. Any claim would be brought in the English High Court.

In arriving at the funding structure proposed below Addleshaw Goddard and Orchard Global Asset Management have considered carefully a sample case and the potential defences and other barriers to recovery of damages (such as aggregation under the solicitor's professional indemnity insurance policy) that might apply. Unfortunately due to reasons of legal privilege we are not able to go into any further detail at this stage but further information and advice will be provided in due course should you decide to pursue the claim.

This note aims to answer a number of questions which you may have in respect of the team and process. This note is not intended to be and does not constitute legal or financial advice.

1. Who is Addleshaw Goddard LLP?

Addleshaw Goddard LLP ("**AG**") is a market leading international law firm which can trace its history back to 1775. It has offices across the UK and also in Germany, Dubai, Doha, Muscat, Singapore and Hong Kong.

AG has specialists in over 50 different areas of business law. We advise a wide range of clients from individuals, SME's, FTSE 100 clients and government organisations.

AG prides itself on delivering solutions to problems and in helping clients to navigate the legal maze with plain English and innovative legal technology.

The team at AG for this matter would be led by Louisa Caswell, Chris Perrin and Sarah Thomas.

Louisa is a Partner in our commercial litigation team specialising in, amongst other things, professional negligence and group actions. Louisa is described by clients as "extraordinarily impressive". For further information please see <https://www.addleshawgoddard.com/en/our-people/c/louisa-caswell/>

Chris is a Partner in our real estate dispute team specialising in a wide range of property related disputes including fraud and professional negligence. Chris is described as "delightful to work with" and "bright,

hands on, assiduous and not afraid of taking the big decisions in a case". For further information please see <https://www.addleshawgoddard.com/en/our-people/p/chris-perrin/>

Sarah is a Partner in our global investigations team specialising in financial regulatory investigations. For further information please see <https://www.addleshawgoddard.com/en/our-people/t/sarah-thomas/>

For further information generally please visit <https://www.addleshawgoddard.com/en/>

2. Who are Orchard Global Asset Management?

Orchard Global Asset Management and affiliated funds ("**Orchard**") launched its Litigation Funding strategy in 2015 and has a strong track record of success in providing tailored litigation funding solutions. As set out further below, Orchard has agreed a funding structure with AG which means that you will not need to pay any of the legal costs associated with your claim, including disbursements, during the course of the proceedings. The structure includes the arrangement of an ATE insurance policy (see below). In return Orchard will participate in a share of the proceeds in the event that your claim is successful. If your claim is not successful, Orchard will lose the money it has invested in the claim.

3. What is the impact of a UCIS?

In the event that the Court consider the Scheme to be a UCIS then the lease and sub-lease would be void and unenforceable. This will crystallise your loss and the Court will likely order that you be relieved of your obligation to pay ground rent and service charge under the lease. Equally the sub-tenant will not be obliged to pay you the rent that was payable under the sub-lease. The effect will be to put you in the position you would have been had you not entered into the Scheme.

4. Litigation Process

Subject to a thorough review of your documentation by AG and your investment in the Scheme being considered a UCIS, the claims will become part of a two stage process with the two stages being run concurrently. The main stage of the process will be a claim against the solicitor who advised you in relation to the Scheme.

Claims of this nature can, unfortunately, take a long time to resolve.

The process starts with a thorough review by AG of your documentation (see below). The team will analyse the documentation and confirm whether or not you have a prima facie case.

With regard to the negligence action if you do have a prima facie case then the first formal step is a detailed letter before claim to your solicitor in accordance with the pre-action protocol for professional negligence set out in the Civil Procedure Rules which govern litigation in England & Wales.

The solicitor (or their insurer) should acknowledge receipt of the letter of claim within 21 days of receipt. The solicitor (or their insurer) then has a minimum of 3 months to provide a substantive response.

Where matters do not settle through correspondence or alternative dispute resolution, court proceedings may be required.

In the event that proceedings are required the first step is preparation of the claim form and particulars of claim. Once the proceedings have been issued in Court and served on the solicitor and their insurer they have a maximum (unless extended by agreement or court order) of 28 days to file a defence.

Once a defence is filed the Court will list the matter for directions which will set a timetable for the matter to proceed towards trial. Standard directions will include disclosure (the provision of documents); witness statements from the parties and expert reports (if required).

Ultimately if the matter is not resolved the matter will proceed to a trial in court before a Judge who will determine the matter and provide a written judgment. This may, in certain circumstances, be capable of appeal to a higher court from the losing party.

If the claim is successful you will be entitled to a financial sum by way of damages. The precise amount of damages will vary between investors and will be subject to deductions as set out below in the Litigation Funding section. If the claim is successful, you will usually be entitled to recover a portion of your legal costs from the losing party, in addition to damages.

5. Group Claims

Given the similarities between the claims it is likely (although this will be considered further with Counsel in due course) that the claims may be grouped together by the Court under a Group Litigation Order ("GLO").

If the matter does form a GLO, a small number of lead/test cases will be selected to proceed through the litigation process with all other claims being stayed pending the outcome of the lead/test cases.

AG will provide further advice on this in due course.

Whichever process the claims take AG would propose to establish a steering committee which would contain a limited number of investors from whom AG would seek and receive instructions on the claim. The steering committee would take instructions from all investors and provide those instructions to AG. Each investor would have to agree to be bound by the instructions which the steering committee provide to AG.

6. Damages

Whilst the amount of damages will differ between investors a broad brush approach to the calculation of your loss would be the purchase price plus incidental costs (solicitors etc.) minus any rent received. In addition you will be able to claim interest on that sum.

7. The Funding Structure

The funding structure that has been put together by Orchard and AG will allow your claim to be brought at no cost to you during the course of the legal proceedings in return for a share of your damages. It will also include the arrangement of an ATE insurance policy explained below, also at no cost to you.

The percentage share of damages you will retain will vary depending on what stage the claims reach and on the number of claimants in the group. The claims may proceed all the way to trial which may take over 2 years. However the claims may be resolved before then, perhaps through a mediation process (an alternative dispute resolution procedure) or through other settlement discussions.

The funding structure enabling the claims to proceed is conditional upon a minimum number of claimants participating in the group and/or total damages threshold being reached. Unless the minimum threshold is reached, the funding structure for these claims will not be viable and cannot proceed.

Assuming we reach the minimum threshold and depending on what stage in the proceedings the claims succeed, you will retain between 60% and 75% of your damages.

As noted above, in addition to your share of damages, if the claims are successful the Court may order the defendant to pay a portion of your legal costs. This will usually be in the range of 60-70% of your legal costs. Under the funding structure, any costs recovered from the losing defendant will reduce AG's share of the damages by an equivalent amount. Which means you would receive more compensation.

8. How will the ATE Insurance work?

In the event that the claims are unsuccessful, the court may order you as claimant to pay a portion of the defendant's legal costs in relation to the claim, known as adverse costs.

As part of the funding structure, Orchard will also fund the purchase of an ATE insurance policy in relation to the claims. This is to protect you against the risk of an adverse costs order being made against you if the claim is unsuccessful.

If that happens, you will be able to claim under the ATE policy in relation to those adverse costs. While an ATE policy, like any other insurance policy, can never guarantee a payment out, it will substantially lower your risk of facing a bill for adverse costs and will have done so at no cost to you. Further information will be provided in any engagement documentation.

9. Signing Up

If you would like to proceed with this process then AG will need to establish you as a client. In order to do this they will need the following:

- (a) a piece of photographic ID providing your full name and date of birth such as passport or photocard driving licence; and
- (b) a piece of address ID providing your name and correspondence address.

In the event that you purchased the investment in joint or multiple names then ID will be required from each purchaser. At this stage ID does not need to be certified although AG reserves the right to request certified ID in due course.

AG will undertake standard database searches against your details.

Please email the above documents to UCIS@addleshawgoddard.com. You will receive an automatic response which confirms receipt.

For information about how AG will deal with personal data processed as a result of acting for you and our respective obligations please see <https://www.addleshawgoddard.com/globalassets/legal-notices/ag-group-legal-notices.pdf>

Once we have received and verified your ID we will send you a client engagement suite of documents which will include the funding structure agreement. This is likely to be within 2 weeks of your initial email.

As set out above the funding structure and AG/Orchard's involvement in this matter is conditional upon a minimum number of investors and/or quantum of damages being achieved. If the minimum numbers are not reached, AG will inform you as soon as possible.

10. Documents

AG will also require copies of all documents in relation to your investment. In the first instance this will include:

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- (a) Any marketing material you relied upon when entering into the investment;
- (b) The Solicitors Letter of Engagement/Terms of Business;
- (c) Head lease between Alpha and you;
- (d) Sub-lease between you and Alpha;
- (e) Any management agreement between you and Alpha;
- (f) All correspondence between you and the developer/marketing agent;
- (g) All correspondence between you and the solicitor.

30 June 2020

(Updated 8 August 2020)