CAS-53044-T5K7
CAS-55238-T3N4
CAS-57583-H5G0

The Pensions Ombudsman

Ombudsman's Determination

Applicants	Those listed at Appendix 1 (the **Applicants**)
Scheme	AJC2 Pension Scheme (the **Scheme**)
Respondent	Mr Christopher Hoole, Trustee of the AJC2 Pension Scheme

Complaint Summary

1. The Applicants' complaints are that:

   1.1. they are unable to access their pension fund;

   1.2. the Trustee failed to properly administer the Scheme; and

   1.3. they are concerned that their pension fund has been lost or misappropriated.

2. Throughout this Determination, I have referred to Mr Hoole, in his role as the trustee of the Scheme, as the "Trustee." Where I have referred to Mr Hoole in any other capacity, for example as a director of Hoole (Liverpool) Limited, I have referred to him as "Mr Hoole."

Oral Hearing

3. I held an oral hearing on 7 December 2022 (the **Oral Hearing**), as part of my investigation. I considered it necessary to do so because it appeared to me, from the evidence that I had reviewed, that the Trustee might be personally liable for the losses caused by his acts and omissions.

4. The Oral Hearing was attended by Mr N's widow and Mr O's representative. Mr Hoole and Mr R, one of the Applicants, did not attend.

Summary of the Ombudsman's Determination and reasons

5. Having fully considered the evidence and submissions presented in writing and at the Oral Hearing, I uphold the Applicants' complaints. In summary, I have found that the Trustee has committed various breaches of trust and fiduciary duty by:

    5.1. failing to take steps to manage the various conflicts of interest that existed, in breach of section 249A of the Pensions Act 2004 (Section D.2 below);

    5.2. failing to act in accordance with the investment requirements and duties imposed on him by Part 1 of the Pensions Act 1995, the Investment Regulations and case law (Section D.3 below);

    5.3. acting outside the scope of his powers under the Trust Deed in making payments to himself out of Scheme funds (Section D.4.1 below);

    5.4. acting outside the scope of his powers under the Trust Deed in making payments to Introducers (Section D.4.2 below); and

    5.5. failing to put in place internal controls, in breach of section 249A of the Pensions Act 2004 (Section D.6 below).

6. There has also been maladministration by the Trustee in relation to:

    6.1. providing inaccurate information to members (Section D.7 below); and

    6.2. Failing to have due regard for the 2013 Code and the 2016 Code (Sections D.2 and D.6 below).

7. I have concluded that the Trustee acted dishonestly and is not excused from liability by the terms of any exoneration or indemnity clause in the Scheme's paperwork (section D.9.2 below), or by section 61 of the Trustee Act 1925 (Section D.9.3 below). I have further concluded that the Trustee's liability is not reduced or extinguished by any defence of member consent or contributory negligence (Section D.8 below).

Jurisdiction

8. Under general trust law principles, any individual beneficiary has locus standi (standing) to require trustees to account for breaches of trust.

9. I have the power to direct the Trustee to restore, or pay, to the Scheme, any assets which have been lost by reason of the breach of trust, or appropriate funds for such breach. If specific restitution is not possible, the liability of the Trustee to the Scheme is to put it back into funds as if there had been no breach of trust.

10. Any money recovered by the Scheme as a result of my directions is available for the general benefits of any member, including the Applicants, to the extent that they have been adversely affected. In Hillsdown Holdings plc v Pensions Ombudsman [1997] 1

All ER 862, Knox J quoted Lord Browne-Wilkinson at p 434 (House of Lords) in Target Holdings v Redferns [1996] 1 AC 421, who said that:

> *"…the basic right of a beneficiary…is to have the whole fund vested in the trustees so as to be available to satisfy his equitable interest when, and if, it falls into possession. Accordingly, in the case of a breach of such a trust involving the wrongful paying away of trust assets, the liability of the trustee is to restore to the trust fund…what ought to have been there."*

11. In an action to have a breach of trust redressed, it has been confirmed that no issues usually arise between one beneficiary and another, or as between a beneficiary and the current trustees. The object is to secure the return of the trust property for the benefit of all the beneficiaries according to their respective interests (Young v Murphy [1996] VR19).

Detailed Determination

A Material facts

A.1 Background

A.1.1 The Scheme's establishment

12. On 3 December 2009, AJC2 Limited was incorporated with company number 07094723. Mr Hoole was the sole director until Mr Andrew Sweeney was appointed as a director on 16 December 2009. AJC2's share capital was one ordinary share, held by Argus Nominee Directors Limited.

13. The nature of AJC2 Limited's business was stated to be 'other service activities not elsewhere classified' at Companies House. Between May 2011 and February 2013, it received three notices for compulsory strike off.

14. On 4 December 2009, the Scheme was established by Trust Deed. This listed AJC2 Limited as the 'Provider', Mr Hoole as a Trustee and Tudor Capital Management, which on occasion was referred to as Tudor Capital Management Limited (**TCML**) in other Scheme-related paperwork, as the 'Managing Trustee'. On the same date, the Scheme was registered with HM Revenue & Customs (**HMRC**). The Trust Deed I have received from the Trustee is incomplete and omits clauses 6 to 14.1, and 22 to 26 inclusive.

15. Members were admitted to the Scheme between January 2010 and February 2014 inclusive. Mr Hoole has stated the Scheme had a total of 88 members. Contemporary correspondence between the Scheme and members also refers to 94 members. However, based on the bank account statements received from Mr Hoole, it appears that there were or are approximately 109 members of the Scheme, who appear to have transferred in a total of £3,922,916.85.

16. On 15 April 2010, the Pensions Regulator (**TPR**) issued a Determination Notice against TCML. The Notice suspended TCML from acting as a trustee, stating that the Financial Services Authority (as it then was), HMRC and TPR, were investigating its actions. It stated:

    "This order has the effect of prohibiting Tudor Capital Management Limited, during the period of the suspension, from exercising any functions as a trustee of any trust scheme in general..."

17. It appears that the Applicants had their funds transferred to the Scheme on the following dates, some of which were contracted-out pension rights:

    17.1. Mr R: £51,972 on 27 July 2010

    17.2. Mr N: £32,475.52 on 29 June 2012

    17.3. Mr O: £13,256.08 on 21 June 2012

    £524.46 on 22 June 2012

£24,646.38 on 27 June 2012

£25,866.17 on 11 July 2012

18. In October 2010, TCML's company directors, Andrew Meeson and Peter Bradley were arrested on suspicion of fraud, cheating the public revenue and money laundering.

19. On 4 October 2011, The Pensions Regulator issued a suspension order, which suspended TCML from acting as a trustee of trust schemes in general. This prohibited TCML from exercising any functions as a trustee of trust schemes during the period of suspension, pursuant to section 4(3) of the Pensions Act 1995.

20. On 1 January 2012, Andrew Sweeney resigned as a director of AJC2 Limited.

21. On 4 December 2012, the one ordinary share in AJC2 Limited was transferred from Argus Nominee Directors Limited to Mr Hoole.

22. In March 2013, both Andrew Meeson and Peter Bradley were convicted of pension scheme tax fraud in relation to two pension schemes administered by TCML.

23. It appears that between 2014 and 2019, Mr N contacted the Trustee on a number of occasions, attempting to access his pension. Mr N stated that he had reported his concerns to Action Fraud on 29 July 2014, and that he would be contacting HMRC and TPR regarding the Trustee's "lack of cooperation in establishing the whereabouts of [his] pension", on 19 August 2014.

24. At some point in 2016, according to records at Companies House, it appears that AJC2 Limited became a dormant company and remained so up to the latest accounts made up to 31 December 2020, filed at Companies House on 15 September 2021.

25. TCML was dissolved via voluntary strike-off on 6 December 2016.

26. On 12 July 2022, a resolution was filed at Companies House changing the name of AJC2 Limited to Algorithm Trader Limited. A further resolution was filed on 2 November 2022, changing the name to Family Protection Services Limited. Despite these changes, the company name was AJC2 Limited at all material times in relation to the complaints and I will continue to refer to AJC2 Limited throughout this Preliminary Decision.

A.1.2 Use of Introducers

27. Based on the information provided, it appears that some of the Scheme's members, including the Applicants, were persuaded to transfer into the Scheme by a company called EBS Financial Solutions. It appears that EBS Financial Solutions persuaded members to accept them as their financial "practitioner", despite being unregulated.

28. According to the Scheme's bank account statements, EBS Financial Solutions were paid for these introductions (see Appendix 5 and section D.4.2 below).

29. Based on correspondence that The Pensions Ombudsman (**TPO**) has received, it appears that at least some members were given incorrect information and paperwork concerning the nature of the Scheme. For example, Mr R has provided paperwork that indicated he was applying to join a 'Self Invested Personal Pension Scheme' (see Appendix 2). He has stated that he thought he was joining a pension scheme linked to the employer he worked for at the time.

30. The Trustee has stated, in his response to the complaints made against him, that Transglobe Independent Financial Advisors Limited (**Transglobe**) also "sourced clients" to join the Scheme and that Transglobe "approached us to house their smaller clients who were not suitable for a SIPP."

A.2 Investment of the Scheme's funds

31. A total of £5,003,944.21 was transferred into the Scheme's bank account between 13 January 2010 and 5 October 2018 (the **Total Transferred Sum**).

32. The Trustee has submitted that the Scheme made the following investments:

- Quantum Leben
- Hoole (Liverpool) Ltd.
- Gambling Insight
- "Insurance Co."
- A "Claims and Loan" Investment

33. With the exception of Quantum Leben, the Trustee has not provided documentation that confirms the investments with these entities. However, the Trustee has provided the Scheme's bank account statements, which demonstrate a number of payments to and from these entities, and a number of further apparent investments not referred to by the Trustee.

A.2.1 Quantum Leben

34. It appears that at some point in May 2012, the Scheme entered into a life assurance policy with Quantum Leben, a Liechtenstein based life insurer, referred to as the Quantum Global Bond. Based on the Scheme's bank accounts and correspondence from Transglobe, it appears that the Scheme purchased premiums totalling £2,635,240:

Date	**Premium**
8 May 2012	£600,030
18 May 2012	£200,030
25 May 2012	£230,030

15 June 2012	£275,030
20 June 2012	£400,030
25 June 2012	£180,030
11 July 2012	£600,030
22 August 2012	£150,030
Total	**£2,635,240**

35. However, records provided by Quantum Leben to the Trustee in 2017, refer to the following premiums purchased by the Scheme, totalling £2,835,000:

Date	**Premium**
21 May 2012	£600,000.00
30 May 2012	£430,000.00
15 June 2012	£275,000.00
25 June 2012	£180,000.00
28 June 2012	£200,000.00
29 June 2012	£400,000.00
11 July 2012	£600,000.00
29 August 2012	£150,000.00
Total	**£2,835,000**

36. Aside from the sum of £240, which appear to be bank transfer fees, it is not possible to reconcile the remaining discrepancy of £200,000 between the figures in the Scheme bank account and the premiums recorded by Quantum Leben. Based on the figures in the valuation statement provided by Quantum Leben in March 2013, (set out in paragraph 39 below) and the payments recorded in the Scheme's bank account, the figure of £2,635,240 (including the bank transfer fees) appears to be the total sum invested in the Quantum Global Bond (the **Quantum Investment**).

37. On 22 June 2012, Transglobe emailed the Scheme and provided a policy endorsement document for the most recent premium paid to the Quantum Bond, incorrectly dated 21 May 2012. It contained the following information:

37.1. The encashment value of the policy would be the disposal value of the assets in the Investment Account, less any outstanding Policy Establishment Charges.

37.2. The initial charges were £2,750, with a 2% annual management charge, payable on the total value of the Investment Account.

37.3. The initial investment allocation was as follows:

37.3.1. 11% in the Quantum Cash Fund GBP (**Cash Fund**);

37.3.2. 77% in the Fidelis Opportunity Fund PCC – Focus Cell 1 (**Fidelis Fund**); and

37.3.3. 12% in the JPT Capital Agrifund (**Agrifund**).

38. Records from Quantum Leben provided to the Trustee in 2017 show that between 21 May and 29 August 2012, premiums were applied to the three funds in the proportions set out in paragraph 37.3, totalling the same amount as the Quantum Investment:

38.1. a total of 264.49772 Units in the Cash Fund were purchased for £311,850.00 at a unit cost of between £1,103.7165 and £1,105.2257 per unit;

38.2. a total of 238.24010 Units in the Fidelis Fund were purchased for £2,182,950.00 at a unit cost of between £10,000 and £8,169.1836 per unit; and

38.3. a total of 3310.63369 Units in the Agrifund were purchased for £340,200 at a unit cost of between £100 and £104.63 per unit. On 29 June 2013, 205.85179 units held in the cash fund were redeemed for £228,459.74 and a corresponding sum used to purchase 2183.39069 additional units in the Agrifund at a unit cost of £100.77. A further 'JPT Bonus' of 255.67417 units was applied to the policy on 18 September 2013.

39. On 1 March 2013, Quantum Leben issued a valuation statement which listed the total value of the assets held within the policy as £2,678,883.18.

40. It appears that from July 2014, the Trustee attempted to encash the Quantum Global Bond and experienced difficulty in obtaining updated information from Quantum Leben:-

40.1. Quantum Leben had, at some point before 22 July 2014, started an administration system upgrade.

40.2. The Trustee wrote to Cindy Julie at Transglobe on 7 August 2014 to request a partial encashment of the Quantum Bond. On 3 September 2014, Joy Grainge, personal assistant to the Trustee, wrote to Cindy Julie stating, "it would be really helpful if you could keep the pressure up on [Quantum Leben] regardinig [sic] the encashment of the Bond."

40.3. On 3 September 2014, Quantum Leben wrote to Richard Cook at Transglobe providing an update to its administration migration project and explained that Quantum Leben was not able to produce policy valuation statements until the system had been migrated, which was expected to complete in October 2014.

40.4. On 3 October 2014, an email from Cindy Julie at Transglobe to Joy Grainge, confirmed that no requests to encash or valuations could be completed by Quantum Leben until the administration upgrade had completed.

40.5. On 2 September 2015, the Trustee wrote to Quantum Leben requesting full encashment of the Quantum Global Bond.

40.6. On the same date, Quantum Leben replied to the Trustee to confirm receipt of an encashment request. Quantum Leben informed the Trustee that the Agrifund was suspended and in liquidation. The email stated that, "we will get back to you as soon as we have had feedback from Fidelis Focus Cell 1 as to the expected time frame for the encashment."

40.7. On 4 November 2015, all 5,749.71855 units held in the Agrifund were redeemed at a unit price of £1.2417, a total of £7,139.68. A corresponding sum was used to purchase 6.35817 units in the Cash Fund. It is unclear who instructed the redemption at this point.

40.8. On 26 November 2015, Quantum Leben emailed Joy Grainge stating that it was unable to fulfil the Trustee's request to wire £65,000 by 1 December 2015 owing to the negative cash balance in the policy. The email confirmed that the trade date for the 238.24 units held in the Fidelis Fund would be 30 November 2015 and "we are to expect the payment out of the sale of the units by approx. 22 January 2016."

40.9. On 26 January 2016, Quantum Leben emailed the Trustee:

> "regarding the transaction requested, we gave the execution order to the bank beginning of September 2015. I had already sent you their reply regarding trade date and when payment was to be expected.
>
> However, beginning of December 2015 we received information from the [Fidelis] fund… that the [Fidelis] fund had been delisted from the Mauritius Stock Exchange. This resulted in a suspension of the [Fidelis] fund. Therefore, no trades were executed anymore.
>
> We now have to wait for the finalization of the liquidation of the [Fidelis] fund which should he in April 2016, according to the information from the [Fidelis] fund."

40.10. On 17 April 2016, the Trustee wrote to Quantum Leben requesting an update about the liquidation of the Fidelis Fund. Further correspondence between Trustee and Quantum Leben took place between April and August 2016.

40.11. On 19 August 2016, Quantum Leben sent to the Trustee an update it had received on 16 August 2016 from UBS, its custodian bank, regarding the Fidelis Fund. The update from UBS stated:

> "the Board of Directors of the Company [Fidelis] has resolved on 29 July 2016 to approve the NAV [Net Asset Value] of the Assets. You will be receiving the NAV Statement in the coming week.
>
> The Company is currently in the process of realising its investments.
>
> Given the illiquid nature of the investments, their realisation is taking longer than expected. The Company has therefore resolved to continue with the suspension of any issue or redemption of shares until further notice."

40.12. A NAV statement was sent to the Trustee on 19 September 2016, dated 31 July 2016. This set out a NAV of £540.25 per unit in the Fidelis Fund.

40.13. Following further correspondence between the Trustee and Quantum Leben, Quantum Leben emailed the Trustee on 8 March 2017 attaching a valuation statement and stated that, "we still have no update on the [Fidelis] fund's status. The last information received was that the fund was suspended and no redemptions, sales or any other mutation is currently possible."

40.14. This valuation statement showed a total value of the Fidelis Fund of £128,709.21, a total value of the Cash Fund of -£1,114.93, and a total portfolio value within the Quantum Global Bond of £127,594.29. The valuation statement also stated that there had been premium payments amounting to £2,035,000 between 21 May 2012 and 8 March 2017. It appears that this total premium figure is a typographical error as the individual premiums listed in the statement's detailed list of transactions add up to £2,835,000.

40.15. A further investment statement valuing the Scheme's portfolio in the Quantum Global Bond as at 31 December 2016, was sent to the Trustee on 31 March 2017. This showed a slightly adjusted total portfolio value of £127,595.12 attributable to a slight decrease in the unit price of the Cash Fund.

40.16. On 20 April 2018, Quantum Leben sent to the Trustee an investment statement valuing the Scheme's portfolio in the Quantum Global Bond as at 31 December 2017. This showed a slightly adjusted total portfolio value of £129,598.56 attributable to a slightly increased NAV of the Fidelis Fund to £548.68 per unit and a slight increase in the unit price of the Cash Fund.

41. On 10 January 2018, Mr Hoole submitted a claim to the Financial Services Compensation Scheme (**FSCS**) regarding the advice received from Transglobe about the Quantum Global Bond. The claim was made in his own name, not the Scheme. In the claim, he submitted the following:

41.1. He had not received any money from this investment or fund.

41.2. He had invested £2,700,000.

41.3. He realised he might have a claim against Quantum Leben on 11 November 2014.

41.4. In the description of why he was making a claim, he stated:

"I requested advice from Transglobe to help me make investment decisions for my occupational pension scheme AJC2 LTD.

Since making several investments I have not been able to encash any of the fund invested, the money has gone in my opinion and Transglobe were culpable as such a high risk overseas insurance company they recomended [sic] was not suitable."

41.5. He wanted any compensation due to be paid to a Lloyds Bank account[1].

41.6. He included details of his own income, assets and liabilities rather than those of the Scheme.

41.7. Under the question "what was your attitude to investment risk at the time you received the advice?" he ticked three boxes marked "low risk", "medium risk" and "high risk."

41.8. No explicit reference was made to the fact that the money was invested by him on behalf of the Scheme and its members.

42. Between 16 July and 5 October 2018 inclusive, five payments totalling £120,000, were made to the Scheme with the reference "C Hoole Quantum" (the **Quantum Return**).

43. On 27 February 2019, the FSCS wrote to Mr Hoole, informing him that he did not qualify under its rules for his claim. It stated that Mr Hoole was an experienced investor who understood the investment in the Quantum Global Bond and the risks involved. As a result, it thought Mr Hoole was able to make an informed decision before investing based on his experience and controlled functions he held prior to the investment. So, he did not have a valid claim against Transglobe.

A.2.1.1 Quantum Investment Advice

44. In response to TPO's request for copies of the advice received in respect of the Scheme's investments, the Trustee provided advice[2] solely relating to Quantum Leben. Relevant excerpts from the advice are set out in Appendix 3.

[1] the Scheme's bank account was held with the Bank of Scotland, not Lloyds. Mr Hoole has confirmed that this is his personal bank account.

[2] When asked to provide copies of the investment advice relating to the Scheme's investments, the Trustee provided a copy of a letter dated 14 June 2012. Copies of other letters issued by Transglobe were shared by the Applicants.

45. On 15 April 2012, the Trustee met with Richard Cook of Transglobe to review the financial circumstances and objectives regarding the Scheme.

46. On 21 May 2012, Transglobe wrote to the Trustee with recommendations following this review, enclosing a Global Bond Illustration dated 8 May 2012 and a Key Features Document (the **21 May 2012 Letter**). The letter confirmed that the advice being provided was solely in relation to investments made on behalf of the Scheme, and stated that Mr Hoole was the sole trustee.

47. The Global Bond Illustration suggested that the policy was intended for an individual rather than a pension scheme, as it asked for a gender and a date of birth for the policyholder. It also provided projected figures based on a term of 45 years. In addition, the Key Features document provided 'main points' about the Quantum Global Bond if the investor was planning on investing via a "Self Invested Personal Pension Scheme".

48. On 14 and 19 June and 11 July 2012, Transglobe issued letters in the same format as the 21 May 2012 Letter, referring to the meeting on 15 April 2012. In each case, the only difference between the letters was a different summary of the amount held in cash in the Scheme and a different recommended investment in the Quantum Global Bond:

    48.1. 21 May 2012: £520,000 held in cash, and a recommended investment of £430,000;

    48.2. 14 June 2012: £365,000 held in cash, and a recommended investment of £275,000;

    48.3. 19 June 2012: £490,000 held in cash, and a recommended investment of £400,000; and

    48.4. 11 July 2012: £690,000 held in cash, and a recommended investment of £600,000.

49. It appears that alongside the letter dated 11 July 2012, Transglobe issued a further Global Bond Illustration with a £600,000 premium. However, this named the Policyholder as Mr Chris Hoole. In total, the amount Transglobe advised the Trustee to invest in the Quantum Global Bond was £1,705,000 (the **Total Recommended Quantum Investment**).

A.2.2 Hoole (Liverpool) Limited (**Hoole Liverpool**)

50. Hoole Liverpool was incorporated on 18 December 2009, under the name "BJ No.26 Limited" with Mr Matthew Bradley as the sole director and shareholder (of one ordinary share). Its SIC Code is recorded on Companies House as: "92000 - Gambling and betting activities."

51. On 22 February 2010, Mr Bradley resigned, and Mr Hoole was appointed as sole director. A day later, the company changed its name to Hoole (Liverpool) Limited. Mr Hoole remained the sole director of Hoole Liverpool from 22 February 2010 until the company was dissolved on 31 July 2018. Filings at Companies House record Mr Hoole

as the sole holder of the company's ordinary share capital from, at the latest, 18 December 2010 onwards.

52. Between 14 May 2010 and 2 September 2011, the following sums were transferred from the Scheme to Hoole Liverpool:

Date	**Sum**
14 May 2010	£85,025.00
14 June 2010	£65,025.00
4 August 2010	£110,025.00
22 September 2010	£106,025.00[3]
06 October 2010	£60,025.00
28 February 2011	£4,655.00
16 March 2011	£17,025.00
8 April 2011	£57,025.00
15 April 2011	£35,025.00
27 April 2011	£44,000.00
30 June 2011	£37,025.00
14 July 2011	£20,025.00
2 September 2011	£114,025.00
Total	**£754,930** (the **Hoole Liverpool Investment**)

53. Following the payments listed in paragraph 52, records at Companies House show the following allotments of preference shares with a nominal value of £1 per share by Hoole Liverpool to AJC2 Limited:

Date	**Share allotment**
14 May 2010	85,000
14 June 2010	65,000
4 August 2010	110,000

[3] the payment reference refers to "Christopher J H" but for the reasons set out below it appears that this was transferred to Hoole Liverpool

22 September 2010	106,000
21 November 2011	76,000
3 March 2016	75,000
Total	**517,000** (the **Hoole Liverpool Preference Shares**)

54. The following payments were made into the Scheme by Hoole Liverpool:

    54.1. 11 January 2011: £47,500 (reference "R Morris transfer");

    54.2. 5 July 2011: £50,000 (reference "R Morris TFR return of capital"); and

    54.3. 24 May 2012: £110,000 (reference "Pref share return"); totalling £207,500 (the **Hoole Liverpool Returned Sum**).

55. Accounts filed at Companies House on 20 December 2011, for the period up to 31 March 2011, show the company had net liabilities in the period 18 December 2009 to 31 March 2011 of £215,514. In the period ending 31 March 2011, a director loan of £87,080 was made to Mr Hoole.

56. Accounts filed at Companies House on 22 December 2015, for the period up to March 2015, show a profit and loss account of -£454,644 and net liabilities of £12,544. There was an outstanding director loan of £7,778.

57. Accounts filed at Companies House on 31 January 2017, for the period up to March 2016, show a profit and loss account of -£459,750 and net liabilities of £17,650. There was an outstanding director loan of £3,320.

A.2.3 Gambling Insight Limited (**Gambling Insight**)

58. Gambling Insight was incorporated on 26 January 2004 under the name Estate Options Limited. On 10 January 2010, the company's name was changed to Gambling Insight Limited. Its SIC Code is recorded on Companies House as: "92000 – Gambling and betting activities."

59. According to Insider Media Limited[4], Gambling Insight was an investment vehicle for arbitrage gambling, a system under which (if carried out correctly) bets are placed with different companies covering all possible outcomes to seek guaranteed profit for the gambler.

60. Based on the annual return dated 26 January 2010 filed at Companies House, the company had a share capital of 1000 ordinary shares, all held by Andrew Hosie. Mr

[4] https://www.insidermedia.com/news/midlands/all-bets-off-for-former-birmingham-gambling-boss

Hosie was sole director of Gambling Insight from 1 January 2005 until the company's dissolution on 30 April 2018.

61. Accounts filed at Companies House on 13 January 2011 show that the company made a loss of £100,197 in the year ended 31 March 2010. It appears that no accounts for Gambling Insight Limited were filed after 13 January 2011.

62. On 24 May 2011, the company received its first notice for compulsory strike-off. This was suspended on 23 June 2011, and discontinued on 30 July 2011. Further compulsory strike-off notices were issued on 10 April 2012, 8 January 2013, and 15 July 2014.

63. On 3 February 2012, the Scheme made a payment of £105,025 to Gambling Insight Ltd (the **Gambling Insight Investment**). The nature of this payment is unclear. No loan documentation has been provided and the Scheme does not appear as a shareholder of the company.

64. The following payments were made into the Scheme from Gambling Insight:

    64.1. 23 May 2012: Three payments of £10,000 (£30,000);

    64.2. 24 May 2012: £10,000; and

    64.3. 12 April 2013: £28,000, a total of £68,000 (the **Gambling Insight Returned Sum**).

65. On 3 November 2016, Mr Andrew Hosie was disqualified from being a director for 12 years, following an Insolvency Service investigation into Gambling Insight Ltd.

66. The Trustee has stated that Gambling Insight paid commissions, but has provided no further information as to whom commissions were paid.

A.2.4 Reid Fotheringham Investment Strategies Limited (**Reid Fotheringham**)

67. Mr Hoole has referred to an investment in an "insurance co." It is not clear what investment this refers to. However, the Scheme's bank records show a payment of £97,644.56 to Reid Fotheringham, whose SIC record on Companies House is listed as "66290 – Other activities auxiliary to insurance and pension funding." It appears on the basis of the evidence I have seen that the investment in an "insurance co" was in Reid Fotheringham.

68. Reid Fotheringham was incorporated on 13 April 2010. Its sole director and ordinary shareholder was William Brian Murphy. Accounts filed at Companies House show Reid Fotheringham was dormant in the year up to 30 April 2011, with net assets of £1. On 24 July 2018, Reid Fotheringham was dissolved by compulsory strike off.

69. The following payments were made from the Scheme's bank account to Reid Fotheringham. The nature of these payments is unclear and no loan documentation has been provided. An annual return dated 13 April 2016 states that 647,667 4.5%

redeemable cumulative preference shares were held by “additional shareholders” but no further details are included:

Date	Sum
31 January 2012	£13,759.79
29 February 2012	£9,834.77
16 March 2012	£35,025
5 April 2012	£39,025
Total	**£97,644.56** (the **Reid Fotheringham Investment**)

70. The following payments were made into the Scheme’s bank account, reference ‘Reid Fotheringham R-FIS Ltd’:

    70.1. 14 January 2013: £397.80;

    70.2. 23 July 2013: £232.05; and

    70.3. 6 May 2014: £364.65, totalling £994.50 (the **Reid Fotheringham Returned Sum**).

71. I note that Matthew Bradley was the original director of Hoole Liverpool and Reid Fotheringham, when they were originally known as BJ No.26 Limited and BJ No. 40 Limited, respectively. He was also a director of BJ No. 16 Limited, alongside Alison and Peter Bradley, who were directors of Tudor Capital Management Limited.

A.2.5. Claims and Loan Investment

72. In support of his reference to a “Claims and Loan Investment” (the **Claims and Loan Investment**) of £119,000 in the 16 April 2020 Letter[5], Mr Hoole has submitted that this sum related to the purchase of “leads” from a lead generation company, Lead Spark, which were sent to a firm of solicitors, Barings Law. Mr Hoole has provided a spreadsheet listing 19,468 records of individuals who appear to have taken short term “pay day” loans from various credit providers, and an email chain between representatives of Barings Law and Lead Spark. It appears that the spreadsheet records the leads Mr Hoole states was purchased by the Scheme. The email chain suggests that Barings Law submitted claims to the Financial Ombudsman Service (**FOS**) on behalf of the leads, but that a large number of such applications were rejected by FOS on the basis that the claims had not been submitted with the consent or knowledge of the affected individual.

[5] Defined in paragraph 114 below

73. As set out below, in paragraphs 238 and 239, it is unclear what sum was invested in the Claims and Loan Investment.

A.2.6 Other Investments

74. In addition to the investments identified by the Trustee, TPO has identified the following additional investments from the Scheme's bank records.

A.2.6.1 J M Limited

75. J M Limited was incorporated on 14 May 2004. Its directors were Jeremy John Drysdale Marsh and Emma Marsh. As at 14 May 2011, JM Limited had a share capital of 100 ordinary shares, of which Jeremy Marsh held 80 shares and Emma Marsh 20 shares.

76. On 28 March 2012, the Scheme received a payment of £225,500.93, reference 'Standard Life Jeremy Marsh'.

77. On 11 April 2012, a payment of £9,820.77, reference 'Jeremy Marsh', was made to the Scheme and a further payment of £83,426.42 with the same reference was made to the Scheme on 18 June 2012.

78. On 29 March 2012, the Scheme transferred £176,025.00 to J M Limited (the **JM Investment**). An annual return filed at Companies House on 4 July 2012 shows an allotment of 100,000 redeemable preference shares held by the Scheme.

79. Accounts filed at Companies House for the year ended 31 March 2011 show called up share capital of £100, as JM Limited's only asset, and a profit and loss account showing a loss of £24,674. Accounts for the year ended 31 March 2012, show total cash at bank of £106,450 but shareholders' funds of minus £28,188. The accounts state that during the year ended 31 March 2012, J M Limited advanced to each of the directors £35,000 as 'short term interest free loans' (£70,000 in total). The accounts state that 'it is the intention of the directors to repay any loans before 31 December 2012.'

80. JM Limited was dissolved by compulsory strike off on 9 September 2014.

A.2.6.2 Local Loans Limited

81. Local Loans Limited was incorporated on 11 February 2010, with Mr Neil Melton as a director. According to the annual return record at Companies House, dated 11 February 2011, Mr Melton was the sole shareholder, of one ordinary share. On 27 October 2011, Mr Raymond Smith became a director of the company.

82. On 2 December 2011, the Scheme made a single payment of £100,025 to Local Loans (the **Local Loans Investment**).

83. A return of allotment of shares was filed at Companies House on 7 December 2011, showing an allotment of 100,000 4.5% redeemable cumulative preference shares. On

31 January 2012, a further 60,000 4.5% redeemable cumulative preference shares were allotted. It is unclear from the returns whether shares were allotted to the Scheme.

A.2.6.3 Unidentified Investments

84. The Scheme's bank records show payments to the following entities, which appear to be investments. However, these were not identified by the Trustee in his formal response and no further information has been provided:

84.1. 24 March 2011: £30,000, reference 'Trading.com';

84.2. 26 January 2012: £60,025, reference 'IA Agency Ltd';

84.3. 30 July 2012: £100,025.00, reference 'JML Partnership'; and

84.4. 3 August 2012: £48,025, reference 'Innovation Prop', together totalling £238,075 (the **Unidentified Investments**).

85. There are no identifiable returns in relation to these investments and TPO has received no explanation for these payments.

86. I note that Raymond Smith was a director of both Local Loans Ltd., and IA Agency Ltd. Through 'Fresh Development (Manchester) Limited, Mr Smith is linked to David Webster, who is a director of Innovation Property Solutions (UK) Limited. These appear to correspond to the 'IA Agency Ltd.' and 'Innovation Prop' payments referred to in 84.2 and 84.4 above.

A.3 Other identifiable payments from the Scheme

A.3.1 Payments to companies and individuals

87. The Scheme's bank records show payments to the following companies and individuals:

87.1. 4 March 2011: £1,765 to Bradley & Jefferies, reference 'Bradlet Jefferi';

87.2. between 5 April 2011 and 28 June 2012: payments totalling £89,636.40 set out in Appendix 7, to EBS Financial Solutions Limited (the **EBS Financial Solutions Payments**);

87.3. 21 December 2011: £8,025 to MSB Law LLP;

87.4. between 4 May 2012 and 3 September 2012: payments totalling £26,550 from the Scheme to Transglobe, references 'TransGlobe Inve' and 'The Transglobe';

87.5. 16 March 2011: Mr A Sweeney: £4,590.52;

87.6. 24 September 2015: 'Joyce Benne' £7,500; and

87.7. 15 January 2019: 'TPR' £509

88. It appears that the payments made to 'Bradlet and Jefferi' were payments to Bradley and Jefferies Solicitors Limited, of which Matthew Bradley is a director. It appears that the payment to 'Joyce Benne' might be a reference to Joyce Bennett, a director of a company that shared the same address in Wirral as the Scheme. It is unclear what services were provided by the parties detailed in paragraphs 87.1 to 87.6.

89. The Scheme's bank records show several payments that appear, in context, to be payments to members. These are set out at Appendix 10.

A.3.2 Payments to Mr Hoole

90. The Scheme's bank records show payments totalling £119,750 to Mr Hoole (the **Total Mr Hoole Payment Sum**). These are set out in Appendix 6.

91. The Total Mr Hoole Payment Sum does not include the sum of £106,025 paid from the Scheme on 22 September 2010, reference 'Christopher J H', for the reasons set out above in paragraph 52.

92. TPO has received no satisfactory explanation of why these payments were made to Mr Hoole.

A.4 Unidentifiable Payments from the Scheme

93. There are a large number of payments from the Scheme's bank account that are not readily identifiable. Between 7 April 2011 and 23 June 2015, a large number of payments totalling £97,212.58 were paid out of the Scheme (they are set out in Appendix 8), for which the only reference is a five or six digit number.

94. Between 26 October 2012 and 29 August 2018, seven payments were made from the Scheme totalling £177,650.98, which appear to be to foreign transferees, but which do not appear to be payments to Quantum Leben. These are set out at Appendix 9.

95. I have received no explanation from the Trustee for what these payments relate to.

A.5 Relevant provisions of Scheme documents

96. I have set out below, in sections A.5.1 to A.5.3, a summary of the provisions of the Scheme's documents that I consider relevant to my investigation into the following:

    96.1. whether the Trustee acted in breach of trust in his investment of the Scheme's funds and the extent, if any, to which he might rely on any exoneration or indemnity contain in any of those documents; and

    96.2. whether there have been conflicts of interest.

A.5.1 Relevant provisions of the Trust Deed

97. The Scheme's trustees' investment powers are set out in clauses 16 and 17 of the Trust Deed:

"16. The Trustees shall have and be entitled to exercise all powers, rights, privileges necessary or proper to enable the Trustees to carry out all or any transaction, act, deed or matter arising under or in connection with the Scheme but the Trustees shall, subject to the restrictions contained in this Deed and any requirements of the Board of Revenue & Customs at the time, take into account any specific written wishes of a Member (or of any person acting on a Member's behalf with the Member's prior written authorisation) as to the manner in which such Member's Fund is invested.

17. The Trustees may, with the consent of the Provider, engage in any lawful transaction not specifically authorised by the other provisions of this Deed which would, in the opinion of the Trustees, benefit the Scheme or any Arrangements under the Scheme. This is however subject to the status of the Scheme as a Registered Scheme under Part 4 of the Finance Act 2004 not being prejudiced whether by reason of a breach of the requirements and restrictions concerning permitted investment issued by the Board of Revenue & Customs in respect of personal pension schemes or otherwise."

A.5.2 The Scheme Rules

98. TPO has not received a copy of the Scheme Rules.

A.5.3 Members' Scheme application forms/paperwork

99. Mr R and Mr O completed application forms that contained the following statements:

99.1. "I wish to apply to become a Member of the Occupational Pension Scheme of which you are Trustees. I acknowledge that I have had notice of and agree to be bound by the rules of the Scheme."

99.2. "I fully understand and agree that the Trustees of the Scheme are solely responsible for all decisions relating to the purchase, retention and sale of the investments forming part of the Scheme. I agree to hold the Trustees fully indemnified against any claim in respect of such decisions."

99.3. "I understand and agree that the Trustees will not permit any investments or payments by the scheme which would result in the loss of HM Revenue & Customs registered status, and that any such decision by a Managing Trustee (if one is appointed) shall be binding upon the trustees as a whole."

99.4. "I understand and agree that the funds will be included in appropriate arrangements, details of which are available on request. I request the Scheme Administrator to arrange provision of the appropriate benefits as may be due from time to time."

100. It appears that a number of members, including Mr R, received a letter from the Scheme stating:

> *"Thank you for your decision to join AJC2 Pension Scheme, transfer your existing arrangements to the arrangement and invest subsequently into Hoole (Liverpool) Ltd, in order to achieve capital growth on your funds and / or your pension income.*
>
> *Whilst EBS Financial Solutions has made certain facts known to you, we would like to take this opportunity to be clear that the firm is not regulated to give financial advice and as such we stress here that you have not received any advice from EBS Financial Solutions, but that any decision you have taken has been contemplated by you, decided by you and we have only acted out your instruction.*
>
> *If you wish to receive financial advice, we would recommend you approach a suitably qualified IFA who would be in a position to help."*

101. It appears that some members, including Mr R, were also sent a document entitled, "Private Equity Investments – Explanation of Investment and conflict of Interest," which is set out at Appendix 5. Mr R signed a declaration stating:

> "I confirm I have read and understand the risk attached to investing into single company shares. I have also been made aware EBS Financial Solutions and its advisers [sic] conflict of interest."

102. Mr R also signed an "Additional Member Declaration", the contents of which are outlined in Appendix 2.

A.6 Communications with Scheme members

103. On 31 July 2012, the Trustee wrote to Mr N and Mr O regarding the Scheme's Statement of Investment Principles (**SIP**) (the **31 July 2012 Letter**). The letter contained the following statements:-

    103.1. When the Trustees prepared the SIP, it obtained written investment advice from Mr Richard Cook of Transglobe.

    103.2. Before buying or selling investments, the Trustees would take into account the contents of the SIP, as they had to consider the suitability for each member and the need for diversification of investments.

    103.3. The Scheme was relatively small, so it had no need to have a large amount self-invested. Given the market conditions, the Trustees felt investments into unquoted Company stock via Preference Shares, and an Offshore Bond, operated by an FSA-regulated [Financial Services Authority] Insurance Company, were appropriate for the needs of the Trustees.

    103.4. The Trustees had invested in unquoted Company Stock via a Preference Share, backed in most cases with a personal guarantee from the Directors and an Insurance Policy with Quantum Leben. These returns were on a pooled

fund basis, and were directly or indirectly related to a wide range of individual investments. By using pooled funds, the Trustees could also invest in a range of asset classes in the overseas market. The Trustees can diversify their risks and investments in a cost effective way.

103.5. Before making or changing a fund selection from the range available, the Trustees would obtain and consider advice from the advisor.

104. It is not clear whether this letter represented the Scheme's SIP itself or refers to a separate SIP document. The Trustee has subsequently submitted to TPO that no SIP was prepared in respect of the Scheme.

105. On 1 July 2014, the Scheme wrote to Mr O (the **1 July 2014 Letter**) stating:

"*In accordance with our earlier telephone conversation, I have to advise that the value of your Pension Scheme is made up of the redemption value of shares held in Local Loans Limited and the value held in the trading fund. A Fee is paid out to the Introducer and needs to be taken into consideration when assessing the transfer value.*

We do not offer financial advice and should you be considering transferring away from the AJC2 Pension Scheme, we do strongly recommend that you seek the advice of a qualified financial adviser.

Please note, we have no information or knowledge of the reasons why you chose to join the AJC2 Pension Scheme, and any questions or queries you may have regarding your decision to do so should be taken up with the person who advised you to transfer."

106. On 7 July 2014, the Trustee wrote to Mr N and stated the following (the **7 July 2014 Letter**):-

"Your application to join the [Scheme] came from a third party introducer, and the reasons for joining the Scheme were your own. I suggest the nature of the type of investments AJC2 used were attractive to you. They must have been or yiou [sic] wouldn't have transferred. The [Scheme] is an Occupational Pension Scheme. This means that the Trustees make investment decisions on behalf of its members. You became a member on 1 June 2012 and, subsequently, two transfers were received from Aegon […]. The Trustees then took advice from a qualified Independent Financial Advisor, who advised the Trustees to invest the funds in a Bond issued by Quantum Insurance Company Limited.

I can only speculate as to why you were keen to do this, so if you have any concerns about information given to you about the [Scheme], I suggest you contact the person(s) who introduced you to the [Scheme].

The Quantum Bond is not due for encashment for a further two years, and your holdings are a percentage share equivalent to the monetary value held within Quantum. Again, may I remind you that, as Trustees of the Scheme, we have not, and cannot, give regulated advice. Indeed, we have never even met.

I am more than happy to forward any information you require to any Third Party providing I have your written authority to do so. I recommend you seek help from a fully qualified Independent Financial Adviser."

107. On the same date, the Scheme wrote to Mr O:

"Thank you for your original enquiry. The Transfer Value from your Pension Fund with AJC2 is £24,952.00. If you wish to transfer away from the AJC2 Scheme, we suggest you contact your Independent Financial Adviser, as indicated in our previous correspondence. Please let us know if we can be of any further assistance."

108. On 29 July 2014, the Trustee issued a further letter to Mr N, stating the following (**the 29 July 2014 Letter**):

"It was your decision to go to the Authorities. We have no issue with this at all and, certainly, are not concerned because everything regarding your Pension is in order. I empathise with you but can state categorically that we have not received ten letters!

You have been given documentation showing the Pension Scheme's HMRC approval letter You have also been advised of the investments made by the Trustee of the Scheme to Quantum Leben. You say there is no telephone number and yet contact details are on the email forwarded to you from TransGlobe. This is attached again below.

Quantum are an insurance Company and you can Google them. You have had all this information. What more can we give? Tell us exactly what you require and we will do it but I genuinely don't know what else to tell you, other than repeating myself.

Your Pension is invested via AJC2 Limited Pension Scheme into a Quantum Insurance Company Bond, the value of which will depend on the performance of the Bond. You must have known this when you transferred to AJC2, or why did you transfer? What were you told by the person who introduced you?

Believe it or not, we wish to help, but what more can I say? I reiterate, an Independent Financial Adviser could help you as we cannot give advice.

Again, I am sorry that you felt so strongly that you feared you needed to report this Pension to regulators, but this would only be of concern if something was amiss.

We want to help. Please be specific about what other information you feel we should be telling you, and we will do it.”

109. On 20 November 2014, the Trustee wrote to Mr N with the following information:

“We have still not received a positive response to our request for partial encashment of our Investment Bond with Quantum Leben and have now placed this in the hands of the Pension Regulator with full details of our efforts to obtain satisfactory information.

We have already placed all relevant correspondence in the hands of our Solicitors and will keep you advised of progress.

We attach hereto the latest Valuation Statement received from Quantum for your information.”

110. On 30 April 2015, the Trustee wrote to Mr R with an update regarding the Scheme (the **30 April 2015 Letter**). The letter contained the following information:-

110.1. It appeared that an ongoing investment ‘made by the UK unquoted Company’ into the Sports Arbitrage Fun [Gambling Insight] had failed, leaving a loss in investment return for the Scheme.

110.2. The Scheme was waiting for a report from its appointed Liquidators to finalise the actual position. However, it had reported the matter to TPR, the Liquidators and the police.

110.3. The largest investment made by the Scheme was with Quantum Leben Insurance Company, and it had begun assessing valuations from it.

110.4. In the interests of being fair and as transparent as possible, the Scheme had appointed a separate, independent Trustee to oversee and manage investment returns to protect members’ interests.

110.5. The independent Trustee would manage the Scheme until it had a clear and settled outcome. Following this, it would inform each Scheme member of the options available.

111. Between late 2015 and June 2018, the Trustee corresponded with Mr O and Mr N to forward updates from Quantum Leben.

112. On 22 June 2018, the Scheme wrote to Mr O with the following (the **22 June 2018 Letter**): “As advised, please find attached the latest documentation relating to Quantum, sent to the FSCS who are dealing with a claim made by Mr Hoole against Quantum and Transglobe. We will continue to keep you updated as information is received.”

113. On 14 June 2019, the Trustee wrote to Mr R explaining that it had written to the FSCS regarding its “unsuccessful attempts to obtain a satisfactory response to our requests for return of our investment from Quantum on behalf of our 94 members” (the **14 June 2019 Letter**). It appears that Mr N received an identical letter dated 20 June 2019. The information contained in these letters was, in summary:-

    113.1. The FSCS could not give consideration to the claim.

    113.2. All other efforts made to recover the monies invested, apart from one return of £129,000, had proved unsuccessful too.

    113.3. As a result of the above, the Trustee was faced with no alternative but to wind up the Scheme, which could take some time. However, the Trustee endeavoured to allocate assets of the Scheme as fairly as possible.

    113.4. One Scheme asset was ‘Pay Day Loan Claims’, the returns for which were due in approximately six to nine months.

    113.5. The Scheme bank account had been closed by the Bank of Scotland. So, as a temporary measure, the Trustee’s personal bank account would be used as an ‘Agency’ account until a new one could be opened.

114. On 16 April 2020, the Trustee wrote to the Applicants (the **16 April 2020 Letter**) and said, in summary:-

    114.1. It was now clear that the Scheme had no significant value, despite efforts by the Trustees pursuing enquiries with TPR and the FSCS, which had proved unsuccessful.

    114.2. With regret, the Trustees had no option but to advise members that the Scheme would be wound up.

    114.3. There was £119,000 in a ‘Claims and Loan Investment’ which would be distributed fairly.

    114.4. It felt this action was prudent as some members may have received unauthorised payments.

    114.5. It apologised to its members for the need to take this action, but it was “entirely beyond [their] control.”

115. On 26 November 2021, the Trustee wrote to the applicants, confirming the winding-up of the Scheme (the **26 November 2021 Letter**). The letter stated that the Scheme had been reported as wound up to TPR.

B The Trustee’s submissions

116. The Trustee confirmed that the Scheme was set up by TCML.

117. Transglobe operated a team of introducers who approached the Trustee to ‘house’ their smaller clients who were not suitable for a SIPP. The first point of contact with members

was completed transfer paperwork from Transglobe. Transglobe has subsequently been investigated for a pensions loan back scheme. He assumes that Transglobe paid commissions to introducers.

118. At no point did the Trustee approach any of the Applicants. Transglobe sourced “clients” to join the Scheme and it was the clients’ decision to do so. The Trustee had no influence over their decisions as he did not meet them nor did he give them advice, which is noted on the initial correspondence sent to Scheme members.

119. Once members had decided to join the Scheme, the Trustee’s role was to be responsible for “servicing the members, and administrative purposes.”

120. The Scheme invested in Quantum Leben, ‘Hoole Ltd.’, Gambling Insight and ‘Insurance Co.’ Gambling Insight paid commissions.

121. Regarding the Claims and Loan Investment, leads were purchased from a company called Lead spark. The leads were sent to a firm of solicitors, Barings Law, and, despite attempts, he never achieved a proper explanation for what happened with the leads.

122. He did not offer to pay Mr O £1,500 a month to abandon his complaint and does not remember discussing any payment to him.

123. He did not appoint the independent trustee mentioned in the 30 April 2015 Letter, or a liquidator, due to costs. No Statement of Investment Principles was produced.

124. In an email dated 7 December 2022, the Trustee confirmed that he would not be attending the Oral Hearing that day on the grounds that “I genuinely feel that the pre decision is unalterable.” He stated that his failure to attend should not be interpreted as contempt or due to a lack of respect for the process.

125. In the same email, he made the following comments regarding the Scheme:

> *“As a result of “A” day legislation where the government of the day tried to simplify the pension regime one could become a trustee and create a pension scheme online in fifteen minutes.*
>
> *A key change was allowing occupational schemes to have non employee members.*
>
> *There was a very very different dynamic about what was possible under the brand new legislation.*
>
> *I believe this lead [sic] to a very innocent attitude to the role of pension trustee, the regulator toolkit consisted of only a 10 minute test.*
>
> *Accordingly there was a sector created where investments not normally available via traditional pension companies were opened up to clients and pension fund holders many of these clients took advantage of the new options, willingly so.*

Regarding AJC2 2 [sic] rightly or wrongly clients were attracted to join the scheme because it suited their personal circumstances, they knew the investment options and were satisfied and willingly transferred.

They had been through a due diligence process with their introductory people and were satisfied. All information was open for inspection.

The IFA sourced most clients through his network and i felt that the advice given offered both regulatory protection and diversification.

It also was attractive to members as they were successful in finding clients who were completely aware of the scheme was very likely to do for investments and they willingly transferred."

126. He speculated that the "clients" were being encouraged to complain opportunistically by claims management companies.

127. The Trustee's written submissions, received from the date of the Oral Hearing to date, are summarised below:

127.1. "Clients" were attracted to join the Scheme because it suited their personal circumstances. They knew the investment options, were satisfied with these and willingly transferred into the Scheme. They had been through a due diligence process with their "introductory people" and were satisfied. "All information was open for inspection."

127.2. He felt that the advice given by Transglobe offered both regulatory protection and diversification.

127.3. Had the Scheme not operated as it did, the people now complaining would have complained much earlier, which is supported by the small number of complaints received.

127.4. He has no evidence from TPR that the Scheme has been wound up. He states that the Scheme was wound up on "the exchange" and all clients were informed by registered post.

127.5. He was introduced to Quantum Leben by Dale Greenland who was in a partnership with Transglobe. Keystone was the administration centre that worked for Mr Greenland and Mr Cook.

127.6. RCTGI was not an investment, it was a reference to Mr Cook at Transglobe. All of Mr N's funds were sent to Quantum Leben.

127.7. The Claims and Loan Investment in paragraph 114.3 above, were leads purchased from a company called "Lead Spark". They produced leads that were sent to a firm of solicitors called Barings Manchester. However, the firm did not explain what went on with the leads, despite him asking.

127.8. The bank account details submitted in the FSCS application was his personal account. This was disclosed to members and was not dishonest.

127.9. He was unaware of any advertisements for the Scheme. If there were any, they were not organised by the Scheme. He believes that Richard Cook and Dale Greenland, alongside David Worrow, must have informed introducers about the Scheme.

127.10. He assumes that “AJC2” took over the administration after TCML and T12 Pension Services ceased to act as the Scheme’s administrator. “AJC2” dealt with the administration through “the exchange” until the Scheme was wound up. At that point, he was no longer able to access it.

127.11. He does not know or recall anyone called Ian McShane (see paragraph 146.2 below), nor does it appear that he had any emails to or from this person.

127.12. Mr David Worrow worked for the administration centre for Dale Greenland. However, he had no involvement with the Scheme.

127.13. He does not believe he made any offers to the Applicants in exchange for them abandoning their complaints.

127.14. He believes that a number of the Applicants may have received money from the introducers.

127.15. Upon Mr N’s insistence for a face to face meeting, he drove to Mr N’s house. However, upon arrival Mr N asked him to leave, accused him of refusing to leave and threatened to call the police. He was not refusing to leave and did so as Mr N was trying to provoke an angry reaction from him.

127.16. EBS Financial Solutions did not have a bank account. The Scheme did not pay commission to introducers.

127.17. Bradley and Jeffries were a firm of lawyers for the Scheme and assisted in the investment set up. It was not an investment.

127.18. Regarding payments made to him from the Scheme bank account, the Trustee stated: “£110000 payments from scheme [sic] to myself over the period are not excessive in regards to reasonable expenses”.

127.19. The Scheme was wound up via the “Exchange” prior to TPO’s involvement. Each client was informed by special delivery letter. He received no negative responses. This is not evidence of dishonesty.

127.20. Applicants relied on representations by introducers.

127.21. He queried why the Applicants had read the risk warnings and then proceeded anyway. Particularly as they knew what the Scheme invested in.

127.22. He was not enriched by the Quantum Investment or the "LTD companies." He queried what allowance had been given for reasonable expenses for management of the Scheme.

127.23. The "LTD company" became the trustee of the Scheme in 2013. This was before the three complaints were made and so was not a "precautionary measure."

C The Applicants' submissions

C.1 Mr R

128. He transferred his pension to the Scheme after hearing about it from a friend. He was later told that the company had gone into liquidation. Although attempts had been made to contact Mr Hoole, none had been acknowledged for a number of months.

129. He did not know how the investments were selected, and he was led to believe that there would only be a small risk. However, his pension was invested in Quantum Leben Insurance Co, Global Bond and Quantum Leben Investments. These had now 'gone' or appeared to have 'gone'.

130. He has been financially affected by this as he now has no pension fund. So, he would like an award, plus interest, to put right the losses and for Mr Hoole to "give back [his] pension fund."

131. He received no paperwork regarding the Scheme prior to his transfer, nor did he carry out independent research into the Scheme. The reason for the transfer was so that he could obtain his 25% tax free cash lump sum.

132. After I held the Oral Hearing, I asked Mr R a series of questions as he had not attended the Hearing. His written submissions are summarised in paragraphs 132.1 to 132.7 below.

132.1. He had no prior experience of making investments nor did he have any knowledge or experience of pensions, other than being a member of a pension scheme.

132.2. He had first heard about the Scheme in early 2010. His transfer was processed via the friend who had informed him about the Scheme, who had also transferred his pension with Mr Hoole.

132.3. With regard to the letter dated 11 June 2010, he did not fully understand what this meant. He has not heard of EBS Financial Solutions, it had not sent him information, nor was it explained that his funds were going to be invested in Hoole (Liverpool) Limited. He was sent paperwork with signature requests, but he received no verbal explanations of what was happening.

132.4. He has stated that the investments, described in the document outlined in Appendix 5, were not explained to him, that he did not receive an Investment memorandum, that he was not aware of any commission being paid to EBS

Financial Solutions, but that he had received contact from the Trustee at that point.

132.5. He confirmed that a SIPP had been mentioned in the paperwork he received, but he had no idea what it meant, and it was not explained to him.

132.6. He has not heard of TCML, nor did he receive contact from a company called Transglobe.

132.7. In relation to the 30 April 2015 Letter:-

132.7.1. He had not received any previous correspondence from the Scheme informing him where his funds had been invested.

132.7.2. He had not received any previous correspondence referring to Gambling Insight or the Sports Arbitrage fund.

132.7.3. He had previously received correspondence to a Scheme investment in Quantum Pharmaceuticals.

132.7.4. He confirmed that he received a tax free lump sum of £13,378.75 on 24 December 2012, at which point he was age 55. He has not received anything further from the Scheme.

132.7.5. He complained to the Trustee on 26 August 2018 because he was concerned about his money, after not receiving any statements.

133. Mr R also shared further written submissions, which were, in summary:

133.1. Nothing was explained to him regarding high-risk investments and the risk analysis wasn't explained to him. He would never choose for his pension to be invested in high-risk funds.

133.2. While he has not needed medical help to manage his distress and inconvenience, he has worried and continues to worry about money in retirement.

133.3. He was relying on his pension from the Scheme to top up his retirement income as he suffers from health problems.

C.2 Mr N

134. He attempted to gain access to his pension fund but he had no response. He received approximately four letters over a six-year period regarding investments, but he believed that these were an attempt to delay repayment/access to his fund.

135. He received no recent communications from the Scheme as it ignored his information requests. His emails, letters and telephone calls remain unanswered.

136. As a result of this, he and his family have suffered a financial loss, and he had to return to work to remain "financially afloat".

137. During the Oral Hearing, Mrs N made the following additional points, on behalf of Mr N:

137.1. He did not have any prior experience of making investments before he transferred into the Scheme. He was not the type of person to take risks, nor did he really have any money aside from his pension pot. The only reason he took part in this Scheme was because he desperately needed money to help their son who was doing a foundation year at a university that did not offer student funding.

137.2. He did not discuss the decision to transfer his pension to the Scheme with her, but she believes he saw it advertised. She also believes that he would have sought reassurance that it was safe, as he would not have wanted to risk his pension pot.

137.3. He had already accessed some of his pension with his previous pension provider when he reached age 55. So, she did not think he was able to take anymore at that point in time.

137.4. He did not really have any knowledge about pensions, he relied on others for advice about money matters.

137.5. She recalled the introducer being named 'David', who had reassured Mr N about the safety of the transfer.

137.6. Mr Hoole only seemed to become involved after the money had gone, when Mr N tried to contact the Scheme about his pension. She believes that Mr Hoole had visited their home on two occasions, with approximately a year or two in between the visits. On both occasions she recalls that Mr Hoole had insisted to Mr N that no one else be there, including Mr N's family. She recalls that Mr N had described Mr Hoole as quite aggressive in his demeanour, and during the second visit, only settled down after Mr N had mentioned telephoning the police. She does not believe that Mr N and Mr Hoole had any meaningful discussion.

137.7. Mr Hoole had not offered Mr N any money during these visits, nor had he provided an explanation as to what had happened with the pension funds. She believes that Mr Hoole visited a second time as a result of the frequency and effort Mr N had put into contacting Mr Hoole about his pension funds. However, she suspected that the relationship between Mr N and Mr Hoole was not very friendly and so Mr Hoole may have visited a second time with the intention of being a bit threatening.

137.8. These circumstances had affected Mr N a lot, he felt very guilty for investing and losing everything. He felt worried about his son and it forced him to continue to work in order to have a bit of financial stability. She believes he felt sad and bitter that the person he saw responsible, would not communicate with him in any meaningful way.

137.9. Mr N did not receive any money from Mr Hoole, despite requesting £7,500 by letter dated 23 July 2019.

138. Mrs N also shared further written submissions on behalf of Mr N, which were, in summary:

138.1. The funds in the Scheme were the only pension provision Mr N had, other than his state pension. So, as a result of the events he complained about, he continued to work after retirement age as he was afraid that he could not afford to stop working.

138.2. Mr N was unwell when he joined the Scheme and had to undergo critical surgery. For a period of time after this, he was unable to work and constantly worried that his family would not have enough money to survive on, and that he would not be able to support his son through university. As a result, Mr N lived a frugal lifestyle, foregoing holidays, new clothes and socialising.

138.3. The events Mr N complained about made the last years of his life “thoroughly miserable”. Instead of being able to relax and enjoy life post-surgery, he was severely affected by anxiety and worry that he has lost his pension in the Scheme. So, he compromised his physical health by working for extra income.

138.4. Mrs N believes that Mr N likely caught the illness that caused his death at work. In her opinion, had Mr N not transferred his pension to the Scheme, he would have been able to enjoy his retirement without constantly worrying about finances. In addition, he would not have felt the need to put himself at risk by working after retirement.

C.3 Mr O

139. The Scheme was advertised in his daily newspaper and after making an enquiry, he was visited by an agent. The agent advised that his pension would grow substantially (a minimum of 5-8% return), and as Mr O was not a sophisticated investor, he did not see the need to conduct research himself.

140. Prior to his transfer, he received several leaflets and a large amount of promotional material regarding the Scheme. At this point, Mr O believed his funds were due to be placed into stocks and shares. He was later informed that the investment had been made into property in Liechtenstein.

141. He believes that the Scheme carried out inadequate due diligence in relation to its underlying investments, and it had already decided that this is where Mr O’s funds would be invested prior to Mr O’s transfer. Although the Scheme did not provide financial advice, it had a duty of care to ensure that the recommended product met the members’ needs and that the underlying asset was a suitable investment for the pension funds.

142. The Scheme was made aware at the time of making the investment that this was a very high risk investment. Mr O’s risk factor was not taken into account when he was

invited to become a Scheme member. He believes that the Scheme ought to have made him aware that the investment was unregulated and high-risk.

143. He does not think the Scheme complied with the Conduct Of Business Sourcebook (COBS) rules:

143.1. COBS 2.1.1R – A firm must act honestly, fairly and professionally in accordance with the best interests of its client.

143.2. COBS 4.2.1R – A firm must ensure that communications are fair, clear and not misleading.

143.3. COBS 9.2.1R(2) – when determining suitability, a firm must obtain the relevant information concerning clients: knowledge and experience in the investment field relevant to the type of investment, financial situation and investment objectives.

144. Despite numerous requests for an updated valuation of the underlying investment, this has not been provided by the Scheme. It was only after he made a data subject access request that he found that Mr Hoole had submitted a claim to the FSCS, which indicated that the underlying investment had failed.

145. As a result, he has experienced a financial loss, and would like to be put back into the position he would have been in had the Trustee's mismanagement and lack of due diligence not occurred.

146. During the Oral Hearing, Mr O's representative made the following additional points, on his behalf:

146.1. According to Mr O, he had no pension or investment experience prior to the transfer into the Scheme.

146.2. He thinks he was in contact with TCML when discussing the possibility of transferring to the Scheme, but cannot say this for certain. He was contacted by the entity and visited at home by a Mr Ian McShane, in 2012.

146.3. He did not recognise EBS Financial Solutions as an entity involved in his transfer nor the Scheme. However, he recognised Transglobe, as this had been mentioned in correspondence he had received from the Trustee, in 2018.

146.4. It does not seem that Mr O has the promotional material received from the Scheme in his possession.

146.5. He believed that his pension funds would be put into low to medium risk stocks and shares, as a result of the 31 July 2012 Letter (see paragraph 103 above), after his transfers had completed. He did not realise that unquoted company stock via preference shares and offshore bonds were unusual, as he was not an investor.

146.6. Further, despite the 31 July 2012 Letter mentioning an investment into Quantum Leben, it does not appear that Mr O understood that this was the case.

146.7. Mr O had not mentioned being aware of any commissions being paid to any party.

146.8. Until the 1 July 2014 Letter, Mr O was unaware of any investment into Local Loans Ltd.

146.9. Mr O had emailed Mr Hoole in 2014, asking if he could transfer away from the Scheme. As a result, Mr Hoole had issued a letter dated 7 July 2014 (see paragraph 107 above). However, it does not appear that his was progressed any further.

146.10. Mr O has not received any payments from the Scheme. However, after Mr O had submitted a complaint, Mr Hoole visited Mr O at his home in 2019/20, and offered to pay him lump sum payments out of his own pocket. He offered to pay him £1,500 a month, which he had considered taking, but he received nothing despite accepting this offer.

147. Mr O later confirmed, in an email dated 6 January 2023, that these statements were correct and accurate. Additionally, he had since found the newspaper article (see Appendix 11), which suggested that members could loan up to 50% of their pension fund prior to its maturity and referred to a company called Pension Release Express. He also noted that the meeting with Mr Hoole took place in Liverpool, after Mr O had received "nasty" text messages and voicemails from him. He recalled that Mr Hoole was keen that the matter did not go to Court. He also added that at one point, after asking Mr Hoole's PA for a letter, when he contacted her again after not receiving anything, she stated that she could not post anything out as she had been paying for it all. This was because Mr Hoole was "skint" and couldn't afford to give her money for postage.

148. Mr O also shared further written submissions, which were, in summary:

148.1. He never received a yearly statement from the Scheme, which had been promised by AJC2 Ltd.

148.2. He regularly tried to contact Mr Hoole by telephone and spoke to Mr Hoole's PA, who informed him that Mr Hoole would 'sort it'.

148.3. After the meeting in Liverpool, Mr Hoole had promised to send paperwork, which did not surface. A couple of weeks later, Mr Hoole messaged him to say that he was due some money back from payday loans. According to Mr Hoole's PA, Mr Hoole had made these investments with Scheme funds, but had not informed the members that he had done this.

148.4. Following this, he had received a couple of telephone calls from Mr Hoole asking him again to drop his complaint.

148.5. He had contacted Pension Release Express, as he had been made redundant and he needed money to maintain his mortgage and bank loans. When he contacted them, he was told that his pension would be invested in stocks and shares and would achieve growth of 4-5% per annum.

148.6. He had not received any of the updates regarding Quantum Leben and/or the Scheme, that Mr Hoole had shared with TPO, as part of his response to the complaint made against him. Namely, the emails or letters dated:-

7 January 2016
28 January 2016
20 June 2016
12 July 2016
10 April 2016
10 April 2017
11 June 2018
22 June 2018
26 November 2021

148.7. He believes he first learned about Quantum Leben in 2018, when he tried accessing his pension and had requested all of his documents from his file. Upon receipt of this, he saw the documents referencing Quantum Leben.

148.8. He had no other pension provision and, as a result of the events he has complained about, he is not going to be able to retire at age 65. It has caused him a lot of worry about how he will manage.

148.9. He enrolled into another occupational pension scheme two years ago but knows this will not achieve much. He is suffering from health problems but is still trying to continue to work.

148.10. He believes that the Trustee had "more or less ruined any chance" of him having an early retirement, which he had worked towards for the past 44 years.

D Conclusions

149. I will consider the Applicants' complaints under the following headings to determine whether the Trustee has committed any breach of trust and/or maladministered the Scheme:

D.1 The Scheme's status
D.2 Conflict of interest

D.3 Investment of the Scheme's funds
D.4 Other payments out of the Scheme
D.5 Scheme assets not accounted for
D.6 Administration and governance of the Scheme
D.7 Information provided to members
D.8 Member consent
D.9 The Trustee's liability

D.1 The Scheme's status

D.1.1 The Scheme's status as an occupational pension scheme

150. It is not disputed that the Scheme is an occupational pension scheme.

D.1.2 The Scheme's trustees

151. The Trust Deed appointed both Mr Hoole and TCML as Trustees. However, TCML was initially suspended from acting as a trustee of any trust-based pension scheme from 15 April 2010. The Scheme's bank records show that on 14 May 2010, the first Scheme investment was made, into Hoole Liverpool. Consequently, I am satisfied, on the available evidence, that the Trustee was the sole trustee of the Scheme at all material times.

D.1.3 Structure of the Scheme's funds

152. I have seen no evidence that the Scheme's assets were segregated, and the Scheme's SIP refers to the pooling of investments and returns. It is clear from the Scheme's bank account that money was banked collectively and the proceeds from investments paid into the same account. Therefore, I shall proceed on the basis that the Scheme's assets were pooled among its members.

D.1.4 Scheme wind up

153. The Trustee has stated that the Scheme has been wound up but has presented no evidence that this process was completed with TPR. Instead, he has made brief reference to the "exchange" but has provided no explanation as to what this is. A payment of £509 appears to have been made to TPR on 15 January 2019, but it is unclear to what this payment relates. It may be that the reference to the "exchange" is a reference to TPR's online service through which trustees can provide scheme information to TPR. However, a pension scheme cannot be wound up simply by informing TPR via the Exchange. This is merely the final step in the process to inform TPR that a wind up process has completed. If a Scheme has been properly wound up, I would expect to see documentary evidence of that process. Typically this would include, not only member correspondence, but also the formal wind up documentation including a Deed of Termination and final Scheme accounts, which the Trustee has not provided. In the absence of such evidence, I consider that the Scheme is still in existence.

154. In any event, in *Hillsdown Holdings plc v Pensions Ombudsman* [1997] 1 All ER 862, Knox J rejected counsel's submission that, where a scheme had been wound up, each complainant would individually have to bring a claim for damages:

> *"Bringing the scheme to an end cannot be allowed to obscure the fact that what has happened and what calls for an appropriate remedy is that assets have improperly been taken out of a trust fund which had at the time continuing trusts to be performed. To suggest that those responsible for that improper act can mitigate or alter the quantum of their liability by determining the scheme is a startling proposition which I am quite unable to accept. I appreciate that with a pension fund events keep on happening, members retire and die, so there is no permanence at all in entitlement out of the fund. That no doubt complicates the issues regarding appropriate remedies, but it does nothing to persuade me that the appropriate remedy, even for a single complainant who shows that assets have been improperly taken out of a pension trust with continuing trusts, is not an order or determination that they should be put back."*

155. So, even if the Scheme has been wound up by the Trustee, I do not consider that this prevents me from awarding a remedy where I identify that Scheme funds were distributed in breach of trust.

D.2 Conflicts of interest

156. Under the Pensions Act 2004, Section 249A, pension scheme trustees are required to have in place an effective system of governance. Paragraph 143 of the Pensions Regulator's Code of Practice No.13 (the **2013 Code**), states that this includes a requirement for pension scheme trustees to ensure that they have processes in place to manage any conflicts of interest. Paragraphs 61 and 62 of the Second issue of the 2013 Code, which came into effect on 28 July 2016 (the **2016 Code**), confirm that TPR expects controls to identify and manage conflict of interests to include, as a minimum:

    156.1. a written policy setting out the trustee board's approach to dealing with conflicts;

    156.2. a register of interests (which should be reviewed at every regular board meeting);

    156.3. declarations of interests and conflicts made at the appointment of all trustees and advisers; and

    156.4. contracts and terms of appointment to require advisers and service providers to operate their own conflicts policy and disclose all conflicts to the trustee board.

157. Pension scheme trustees are also subject to the fiduciary duty not to be in a position where their interests' conflict with those of Scheme members, or where there is a real possibility that this might happen.

158. In the case of the Scheme, there are two conflicts of interest:

D.2.1 Hoole Liverpool Limited

159. The Trustee's investment in Hoole Liverpool placed him in a fundamental conflict between his fiduciary duties to the Scheme and his duties towards, and economic interest in, Hoole Liverpool as sole director and sole ordinary shareholder.

160. As set out in paragraph 55 above, a substantial director loan of £87,080 was made by Hoole Liverpool to the Trustee. It appears from the accounts of Hoole Liverpool filed at Companies House that the only substantial source of funding for the company was the Hoole Liverpool Investment. So, the effect of this transaction is that Scheme funds were paid to Hoole Liverpool by the Trustee, and then advanced to Mr Hoole as director of Hoole Liverpool. Subsequent accounts report that the majority of the loan was apparently repaid by Mr Hoole to Hoole Liverpool, but I have seen no evidence that Mr Hoole, as Trustee, sought to mitigate the risk of the loan not being repaid. I note in this context that Hoole Liverpool was consistently loss making. It is clear from the accounts that the sum could not have been loaned to Mr Hoole (in his capacity as director of Hoole Liverpool) without the investment from the Scheme, made as Trustee.

161. This conflict of interest is made more acute by the fact that the preference shares allotted to the Scheme were not recorded at Companies House as having been allotted to the Scheme, but to AJC2 Limited, of which Mr Hoole was also the sole director and, after 4 December 2012, sole shareholder. I have seen no evidence that Mr Hoole sought to manage this conflict of interest. Indeed, I cannot see how such a fundamental conflict of interest could be appropriately managed.

D.2.2 Payments to the Trustee

162. As set out in paragraph 90 above and Appendix 6, between 3 February 2014 and 15 January 2019, Mr Hoole received the Total Mr Hoole Payment Sum. I note the following in relation to the payments comprising this sum:

    162.1. Mr Hoole received a payment of £64,000 on 24 September 2015. Immediately before this payment, the total cash in the Scheme's bank account was only £75,709.65, and the Trustee had already been contacted by Mr N regarding non-payment of benefits from the Scheme.

    162.2. Mr Hoole received a payment of £10,000 on 7 November 2018 and appears to have received a payment of £8,500 on 15 January 2019. These payments were made shortly after a payment of £20,000 had been paid into the Scheme by Quantum Leben on 5 October 2018. The Trustee had informed members that any recovery from Quantum Leben would be distributed fairly among members.

163. The nature of these payments is unclear, and it is concerning that the Trustee appears to have paid himself large sums from the Scheme rather than paying those sums to members as benefits. I have received no explanation from the Trustee as to what these payments represented, and I consider whether these were payments represented remuneration paid to the Trustee in section D.4.1 below.

164. I have seen no evidence that the conflicts of interest set out in sections D.2.1 and D.2.2 above, were managed in any way. So, I consider that the Trustee has acted in breach of his fiduciary duty to avoid being in positions of conflicting interest and has failed to meet the statutory requirements of the Pensions Act 2004, section 249A. The Trustee has also committed maladministration by failing to have regard to the 2013 Code (in respect of the period between 2013 and 28 July 2016) and the 2016 Code (from 28 July 2016 onwards) in this respect.

D.3 Investment of the Scheme's funds

165. The duties imposed on pension scheme trustees in relation to investments are contained in: the pension scheme's documents, such as the scheme's trust deed and rules; Part I of the Pensions Act 1995 (the **1995 Act**); and case law, as set out below.

D.3.1 Investment powers and duties under the Trust Deed and Rules

166. The relevant provisions of the Scheme Rules, which set out the Trustee's investment powers, are contained in clauses 16 and 17 of the Trust Deed, set out at paragraph 97 above. Under Clause 16 the Trustee had full power of investment but was required to take into account any written wishes of a member as to where their funds were invested.

167. I note that Mr N's and Mr R's applications to become a member of the Scheme did not specify any investments, and I have seen no evidence of any specific instructions from the applicants as to how each wished his fund to be invested. In any event, the Trustee would not have been bound by any such instructions but only required to consider those requests within the framework of the Trustee's wider duties, which I shall discuss below in section D.3.2 to D.3.6.

D.3.2 Statutory investment duties under the 1995 Act

168. Section 34(1) of the 1995 Act, provides the Trustee with a wide-ranging power "to make an investment of any kind as if they were absolutely entitled to the assets of the scheme", subject to: section 36(1) of the 1995 Act; and any restrictions imposed by the Scheme Rules.

169. Section 36(1) of the 1995 Act, requires the Trustee to exercise his powers of investment in accordance with: (i) The Occupational Pension Schemes (Investment) Regulations 2005 (the **Investment Regulations**); and (ii) subsections 36(3) and 36(4), to the extent that the trustees have not delegated the exercise of such powers to a fund manager in accordance with section 34 of the 1995 Act.

D.3.3 The Investment Regulations

170. The Investment Regulations set out specific requirements in relation to pension scheme trustees' exercise of their investment powers under Section 36(1) of the 1995 Act. Under Regulation 4 of the Investment Regulations, the Trustee, or any fund manager to whom any investment discretion had been delegated under section 34 of

the 1995 Act (see section D.3.5 below), was required to exercise the discretion in accordance with the provisions listed in Regulation 4.

171. Of particular relevance to the Scheme and its investments are the following provisions listed in Regulation 4:

> *"(2) The assets must be invested—*
>
> > *(a) in the best interests of members and beneficiaries; and*
> >
> > *(b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries.*
>
> *(3) The powers of investment, or the discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole.*
>
> *…*
>
> *(5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets.*
>
> *(6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level.*
>
> *(7) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration."*

172. The Hoole Liverpool, Gambling Insight and JM Investments were all in loss making, unlisted companies. The Local Loans and Reid Fotheringham Investments were in recently incorporated unlisted companies and, at the time of the Scheme's investment, Reid Fotheringham was listed as dormant at Companies House.

173. These investments were all unregulated, high risk and illiquid, consisting of preference shares. Mr Hoole has referred to personal guarantees given by directors but I have seen no evidence that any security or guarantees were put in place.

174. The Hoole Liverpool Investment was into a company controlled by the Trustee, and appears to have been the only source of funds for the company.

175. The Hoole Liverpool and Gambling Insight Investments, were in companies whose main business was listed at Companies House as gambling and betting activities. I also note in this context the payment from the Scheme of £30,000 to Trading.com.

176. The Claims and Loan Investment, to the extent that Scheme funds were used, appears to have amounted to no more than the purchase of a speculative list of potential

marketing leads to be used by a third party, Barings Law. Although a proportion of these leads, if converted, might conceivably have resulted in fees paid to Barings Law, I have been provided with no explanation by the Trustee of how the Scheme and its members would have benefited from this purchase.

177. It is clear, therefore, that none of the Hoole Liverpool, Gambling Insight, JM Limited, Reid Fotheringham, Local Loans or Claims and Loan Investments complied with the requirements of Regulation 4 of the Investment Regulations. The investments cannot be considered to have been in the best interests of the Scheme's members or beneficiaries, as required by paragraph (2) of Regulation 4, and owing to their illiquidity, high risk and lack of diversity, cannot be considered to have been made in accordance with paragraph (3) of Regulation 4.

178. The underlying allocation of Scheme funds within the Quantum Investment appears to have been 89% in two funds listed on the Mauritius Stock Exchange, and 11% in a 'Quantum cash fund'. 'Regulated market' is defined in the Investment Regulations as:

"(b) a UK regulated market or an EU regulated market within the meaning of Article 2.1.13A and 2.1.13B respectively of Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments; or

(c) any other market for financial instruments—

(i) which operates regularly;

(ii) which is recognised by the relevant regulatory authorities;

(iii) in respect of which there are adequate arrangements for unimpeded transmission of income and capital to or to the order of investors; and

(iv) in respect of which adequate custody arrangements can be provided for investments when they are dealt in on that market"

179. Even if the Mauritius Stock Exchange does fall within the second limb of the definition of 'regulated market', it is clear that by investing the majority of the Scheme's funds in the Quantum Global Bond, which in turn invested the majority of the funds in two underlying Mauritius based funds, excessive reliance was placed on Quantum Leben and the issuers of those underlying funds. Clearly, by concentrating the majority of the Scheme's funds in this manner, the Scheme was exposed to an excessive concentration of risk. The Quantum Investment cannot therefore be said to have been made in accordance with paragraph (7) of Regulation 4. I find that the Trustee acted in breach of Regulation 4.

180. By virtue of Regulations 6(1) and 7(1), Regulation 4 applies only to schemes with 100 members or more. As set out in paragraph 15 above, the evidence suggests that there were more than 100 members in the Scheme. In the event that the Trustee is correct that there were fewer than 100 members, I have considered the Trustee's duties under Regulation 7(2) of the Investment Regulations, which requires trustees of schemes with

fewer than 100 members to "have regard to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme."

181. Hoole Liverpool, Gambling Insight, Reid Fotheringham, JM and Local Loans Investments were high risk, being newly incorporated or loss making, unlisted and unregulated. The Quantum Investment concentrated a majority of the Scheme's investments into a life assurance policy issued by a single Liechtenstein based issuer and the underlying assets into two funds listed on the Mauritius Stock Exchange.

182. As a result, in addition to my finding at paragraph 179 above, I find that the Trustee also acted in breach of the requirements of Regulation 7(2) by failing to have regard to the need to diversify investments taking into account all of the circumstances of the Scheme.

D.3.4 Section 36(3) and (4) (Choosing investments: requirement to obtain and consider proper advice)

183. The relevant parts of Section 36 of the 1995 Act, subsections (3) and (4), are as follows:

> *"(3) Before investing in any manner…the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the requirements of regulations under subsection (1), so far as relating to the suitability of investments…"*
>
> *(4) Trustees retaining any investment must –*
> *determine at what intervals the circumstances, and in particular the nature of the investment, make it desirable to obtain such advice as is mentioned in subsection (3), and obtain and consider such advice accordingly."*

184. Proper advice, as defined by Section 36(6) of the 1995 Act means:

> *"(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000) [**FSMA**], advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);*
>
> *(b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes."*

185. Under subsection (7) of Section 36 of the 1995 Act, pension scheme trustees will not be regarded as having complied with subsections (3) or (4) unless the advice that they have obtained is in writing.

186. In relation to the Hoole Liverpool, Gambling Insight, Reid Fotheringham, JM Limited, Local Loans, and Claims and Loan Investments, I have seen no evidence that the Trustee obtained any written investment advice.

187. Given that the statutory requirements imposed by Regulation 4, or alternatively Regulation 7, were clearly not met, it is more likely than not that, had the Trustee obtained investment advice in accordance with section 36 of the 1995 Act in relation to these investments, he would have been advised against investing the Scheme's assets in the manner in which he did.

188. In relation to the Quantum Investment, Transglobe provided written advice to the Trustee on four separate occasions between 21 May and 11 July 2012. The relevant excerpts of these letters are reproduced at Appendix 3. As set out in paragraph 184 above, proper advice must constitute a regulated activity and be given by a person who is authorised or exempt.

189. Under section 22 of FSMA, an activity is regulated if it is of a specified kind and relates to an investment of a specified kind. Specified activities and investments are set out in the SI 2001/544 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (**RAO**).

190. Under article 53(1)(b)(i) RAO, advice on the merits of buying a relevant investment is a specified activity given to a person in his capacity as an investor or in his capacity as agent for an investor. In this case, Transglobe recommended the investment in the Quantum Bond to the Trustee. Although not an investor on his own account, I consider that the definition of agent is wide enough to include the Trustee.

191. The definition of "Relevant investment" includes rights under a "qualifying contract of insurance" and rights under any contract of insurance. The definition of "contract of insurance" includes a "contract of long-term insurance", defined in Part II of Schedule 1 of the RAO as:

> *"…*
>
> *III Linked long term*
>
> *Contracts of insurance on human life or contracts to pay annuities on human life where the benefits are wholly or partly to be determined by references to the value of, or the income from, property of any description (whether or not specified in the contracts) or by reference to fluctuations in, or in an index of, the value of property of any description (whether or not so specified).*
>
> *…"*

192. I consider that this definition is sufficiently wide to include the Quantum Global bond because the value of the bond is stated in the policy documents to be 100% of the encashment value of the underlying investments. The FSA's Perimeter guidance (as it then was) states at PERG 5.8.2 that for advice to fall within article 53, it must "relate to a particular contract of insurance (that is, one that a person may enter into). Here, the policy appears to have been written in the name of the Scheme, but the Quantum Global Bond was capable of being entered into by a person, so the product itself would appear to be compatible with the guidance.

193. So, the advice given by Transglobe appears to have constituted a regulated activity within the meaning of section 22 of FSMA and the RAO.

194. The second limb of the definition of 'proper advice' is that the regulated advice must have been given by a person who, by giving that advice, would not contravene the general prohibition in section 19 of FSMA. In other words, they must have held the proper FSA authorisation to give the advice. The advice is presented on headed paper for Transglobe Independent Financial Advisors Limited and signed by Richard Cook.

195. Transglobe was authorised by the FSA/Financial Conduct Authority (**FCA**) until 6 February 2014.

196. The FCA's records for Transglobe show that Richard Cook held the following appointments at the time the advice was given to the Trustee:

- CF1 Director
- CF3 Chief Executive
- CF30 Customer
- Responsible for insurance mediation

197. In paragraph (1) of SUP 10A.10.7 of the FCA Handbook, the CF30 Customer function is defined as the function of:

 "(1) advising on investments other than a non-investment insurance contract…"

198. A non-investment insurance contract is defined as a contract of insurance which is a general insurance contract or a pure protection contract but which is not a long-term care insurance contract. In this case, the insurance product is not included in the list of contracts in the definition of "general insurance contract" in Article 3(1) of the Regulated Activities Order.

199. Finally, the advice must be in writing under s.36(7), which the advice was in this case.

200. So, I consider that the advice from Transglobe was, in form, "proper advice" for the purposes of s.36(3) and s.36(6)(a) of the 1995 Act.

201. However, the requirement under section 36(3) was for the Trustee to obtain and *consider* proper advice, having regard to the Investment Regulations. I find that Mr Hoole failed to properly consider the contents of the advice or have regard to his duties under the Investment Regulations.

202. The substantive advice given in the four letters is identical, differing only in the recommended investment sums and commissions payable. The summaries of the "Current Assets" given in each letter are obviously arithmetically incorrect and have clearly been copied and pasted from one letter to another by Transglobe without amendment.

203. I note the reference in the statement in the advice that "the policy holder [and] the life assured… are also the pension scheme," which is reflected in the policyholder being referred to as the Scheme in correspondence from Quantum Leben. This is palpably absurd. It is quite obvious that a life assurance policy cannot be written in the name of a pension scheme as it is not a natural person. It is also concerning in this context that the Global Bond Illustration Document, which appears to be dated 11 July 2012, refers to the Policyholder and Life Assured as Mr Chris Hoole and the Date of Birth as 27 May 2012.

204. The advice considers attitude to risk and identifies that the Trustee's attitude to risk is "10 Aggressive," going on to characterise aggressive investors as those "looking for the highest possible return on their capital and are willing to take considerable amounts of risk to achieve this, they are usually willing to take risk with all of their available assets." However, it is clear that the Trustee's own risk appetite ought to have been irrelevant. The Trustee was not investing on his own behalf but in the best financial interests of the Scheme's beneficiaries.

205. Transglobe explicitly recommended the Quantum Investment on the basis of the Trustee's risk appetite. Under the heading "recommendation," the advice states that "a number of factors have been considered including personal circumstances, attitude to risk and stated objectives." The advice goes on to state that:

> *"this investment is not authorised by the FSA as it is considered to be a high risk product. We have therefore taken the decision to treat this investment as an unregulated collective. Normally we would only recommend this type of investment to a high net worth / sophisticated investor. Given that you were previously an IFA holding several controlled functions we have certified you as a Sophisticated investor as you have an excellent understanding of the financial markets and specialised investments and you are aware of the risks associated with such products. We have discussed at length and you are aware of the following:*
>
> *…*
>
> *The composition of the bond portfolio and the underlying investments will be determined by an Investor Advisor appointed by Quantum Life. The Investment Adviser has the opportunity to invest in high risk and unregulated collective investment schemes. This does not necessarily mean that your bond will be invested in high risk assets however it is important to identify to you the exact nature of the risks that can be involved. You have confirmed to me your understanding of this.*
>
> *…"*

206. This highlights that the advice was given to Mr Hoole on the basis that, as a sophisticated investor and an experienced IFA, Mr Hoole was in a particular position of knowledge when considering the appropriateness of the advice in the context of the Scheme's investments. Mr Hoole's previous roles and permissions, according to FCA

records, include CF1 Director, CF21 Investment Adviser and a person responsible for Insurance Mediation. The FCA's records of Mr Hoole's qualifications are set out in Appendix 4.

207. A fundamental deficiency in the advice given by Transglobe was that it provided no advice on the actual underlying funds or asset allocation with the Quantum Global Bond. As the advice states, the Quantum Global Bond is merely a "unit linked, whole of life, offshore investment bond offered by Quantum Life" which was capable of holding a broad variety of assets. I consider that it would have been clear to the Trustee, given his knowledge as an IFA and previous FCA authorisation as a person responsible for insurance mediation, that the Quantum Bond was not an investment in itself, but merely a wrapper in which investments could be held.

208. I have seen no evidence that Transglobe advised on the underlying investments. Indeed, the advice states that an investment adviser at Quantum Leben was responsible for selecting the underlying investments, which is repeated in the conclusion to the advice. I have seen no indication that the Trustee formally delegated the investment function to Quantum Leben or sought advice on the suitability of the underlying investments. Indeed, I have seen no evidence as to how the underlying funds were even selected.

209. I find that an experienced IFA with Mr Hoole's knowledge and qualifications would have concluded, even on a cursory examination of the advice received by Transglobe, that the Quantum Investment was being recommended on the basis of an inappropriate and flawed assumption that Mr Hoole's personal risk appetite was relevant to his decision making as a trustee of the Scheme. He would also have been aware that the advice was incomplete and did not address the underlying assets within the Quantum Global Bond.

210. The Trustee also appears to have invested significantly more in the Quantum Global Bond than he was advised to do so by Transglobe. The Total Recommended Quantum Investment Sum was lower than the total Quantum Investment sum by £1,130,000. I find that the Trustee cannot rely on the investment advice in respect of this portion of the Quantum Investment.

211. In relation to the remaining £1,705,000 invested in the Quantum Global Bond, I consider that a trustee with the knowledge and experience of the Trustee, had he properly considered the contents of the advice from Transglobe and had regard to his duties under the Investment Regulations, would have concluded that the Quantum Global Bond and the constituent investments held within it were wholly unsuitable for a UK based pension scheme. I find that the Trustee acted in breach of the requirement to obtain and consider written advice under sections 36(3) and (4) of the 1995 Act.

212. I note that the way in which the Trustee set up the Quantum Investment, in which he took advice from Transglobe on the basis of his personal aggressive attitude to risk, his failure to inform members about the basis on which the Quantum Investment took place, and his later misconceived application to the FSCS on that basis (in which it

appeared that the investment was the Trustee's personal investment) also likely deprived the Scheme's members from successfully applying to the FSCS for the losses suffered as a result of that advice.

D.3.5 Delegation of the Trustee's power of investment

213. I have also considered section 34(2) of the 1995 Act, under which trustees are permitted to delegate their discretion to make investment decisions to a fund manager who is authorised by the FCA to take the necessary decisions.

214. Section 34(4) of the 1995 Act, provides that a trustee is not responsible for the acts or defaults of a fund manager in the exercise of any discretion delegated to him under section 34(2), if the trustee had taken all reasonable steps to satisfy themselves, "(a) that the fund manager has the appropriate knowledge and experience for managing the investments of the scheme, and (b) that he is carrying out the work competently and complying with section 36 [of the 1995 Act]".

215. I have seen no suggestion that the Trustee delegated his investment decision-making discretion to a fund manager. Therefore, the Trustee remains liable for any breach of any obligation to take care or exercise skill in the performance of any of his investment functions.

D.3.6 Duties under case law

216. Case law provides further requirements that trustees must meet in exercising their power of investment, as follows:-

216.1. Pension scheme trustees are required, in investing scheme assets, to take such care as an ordinary prudent person would take if he invested "for the benefit of other people for whom he felt morally bound to provide" (*Re Whiteley* [1886] UKHL).

216.2. Pension scheme trustees must act in members' best financial interests (*Cowan v Scargill* [1984] 2 All ER 750).

216.3. A distinction has been drawn by the House of Lords between investments made by a business person and those made by trustees, the requirement of trustees being that trustees must avoid "all investments attended with hazard" (*Learoyd v Whiteley* [1887] 12 AC 727).

217. Looking further at the case of *Cowan v Scargill*, Megarry V-C said, at paragraph 41:

> *"the starting point is the duty of trustees to exercise their powers in the best interests of the present and future beneficiaries of the trust, holding the scales impartially between different classes of beneficiaries. This duty of the trustees towards their beneficiaries is paramount. When the purpose of the trust is to provide financial benefits for the beneficiaries, as is usually the case, the best interests of the beneficiaries are normally their best financial interests. In the case of a power of investment, the power must be exercised so as to yield the best return for the*

beneficiaries, judged in relation to the risks of the investments in question; and the prospects of the yield of income and capital appreciation both have to be considered in judging the return from the investment."

218. Citing the case of *Re: Whiteley*, Megarry V-C said, at paragraphs 49 to 50:

"the standard required of a trustee in exercising his powers of investment is that he must take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide. That duty includes the duty to seek advice on matters which the trustee does not understand, such as the making of investments and, on receiving that advice, to act with the same degree of prudence. This requirement is not discharged merely by showing that the trustee has acted in good faith and with sincerity. Honesty and sincerity are not the same as prudence and reasonableness. Some of the most sincere people are the most unreasonable."

219. A trustee's power to choose and make investments is a fiduciary power. As set out in *Cowan v Scargill* above, this power must be exercised in the best financial interests of beneficiaries. It was also confirmed in *Merchant Navy Ratings Pension Fund v Stena Line & Ors* [2015] EWHC 448 (Ch), that for a trustee to act in the best financial interests of beneficiaries it is necessary for that trustee to identify the purpose of the trust and to act accordingly to promote that purpose. Per Mrs Justice Asplin at paragraphs 228 to 229:

"In my judgment, it is clear from Cowan v Scargill that the purpose of the trust defines what the best interests are and that they are opposite sides of the same coin, an approach which is supported by the way in which the matter is dealt with in Harries v Church Commissioners, another case concerning investment policy and in Australian Securities and Investments Commission v Australian Property Custodian Holdings Limited (No 3) in which Murphy J made comments which were obiter in which he described the principle as a "portmanteau". The learned Judge's comments were made in the context of his consideration of a statutory duty to act in the best interests of the members of a trust. He explored the common law and equity in some depth and concluded that the statute did not extend beyond the general law. If by his conclusion that the "best interest duty" operates "in combination with other duties" he meant that it flows from and is moulded by the trustee's obligation to promote the purpose for which the trust was created, I agree. As Lord Nicholls pointed out, first it is necessary to determine the purpose of the trust itself and the benefits which the beneficiaries are intended to receive before being in a position to decide whether a proposed course is in the best interests of those beneficiaries.

220. Here, it is not in dispute that the purpose of the Scheme was set up as an occupational pension scheme. The fundamental purpose of a pension scheme is to safeguard and invest trust assets in the best financial interests of members, in order to ensure the provision of long-term retirement benefits, as well as maintaining sufficient liquidity to enable members to exercise a transfer right, whether statutory or otherwise. I consider

that the Trustee's identifiable investments show that he took no account of the proper purpose of the Scheme.

221. I find that, in investing the Scheme's assets in:

221.1. the Hoole Liverpool, Gambling Insight, Reid Fotheringham, JM Limited, Local Loans, and Claims and Loan Investments without taking investment advice;

221.2. the Quantum Investment above the sum recommended by Transglobe; and

221.3. the Quantum Recommended Sum without properly considering the deficient advice given by Transglobe, which was aimed at a single high-risk investor and not a varied group of pension scheme members;

the Trustee failed to meet the requirements set out in case law. I consider that the Trustee failed in his equitable duty to exercise due skill and care in the performance of his investment functions. The investments made were high-risk in nature, there was a lack of diversification of risk and no regard to liquidity, showing a lack of regard for members' financial interests and a failure to avoid hazardous investments, contrary to the requirements imposed on trustees by *Cowan v Scargill* and *Learoyd v Whiteley*. In failing to invest in the best long term financial interests of the members and to identify and promote the purpose for which the Scheme was established, the Trustee did not exercise his fiduciary power of investment for a proper purpose. I find that each of the Scheme's identifiable investments made by the Trustee constitute a breach of trust.

D.4 Other payments out of the Scheme

D.4.1 Payments to the Trustee

222. Between 3 February 2014 and 15 January 2019, payments from the Scheme totalling £119,750[6] were made to the Trustee, which are set out at Appendix 6. There is no reference in the Scheme's bank account statements as to what these payments represented.

223. It is a well-established principle in case law that the office of trustee is carried out free of charge and, while a trustee is entitled to recover costs properly incurred in the course of acting as a trustee, a trustee is not entitled to payment for professional services or compensation for effort or loss of time[7].

224. This principle is subject to section 28(2) of the Trustee Act 2000, which provides that a trustee is entitled to receive payment in respect of services, provided that (1) there is a provision in the trust instrument entitling him to receive payment out of trust funds in respect of services provided by him to, or on behalf of, the trust and (2) the trustee is a trust corporation or is acting in a professional capacity.

[6] The Total Mr Hoole Payment Sum

[7] Robinson v Pett (1734) 3 P Wms 249, *Re Duke of Norfolk's Settlement Trusts* [1982] Ch 61, Brudenell - Bruce v Moore & Ors [2014] EWHC 3679 (Ch)

225. Clause 19 of the incomplete Trust Deed provides:

> *"All the expenses of administration management and investment of the Scheme shall be charged to and paid out of the designated account of the Member in respect of whom such costs have been incurred. The Provider shall also have power to levy such further expenses as may be incurred in connection with the Scheme as it may, in its sole discretion, deem necessary."*

226. I do not consider that clause 19 amounts to a provision within the meaning of section 28(2) Trustee Act 2000, as the clause refers only to expenses, not to remuneration or compensation for services.

227. Section 28(5) Trustee Act 2000, provides that a trustee acts in a professional capacity if:

> *"he acts in the course of a profession or business which consists of or includes the provision of services in connection with —*
>
> *(a) the management or administration of trusts generally or a particular kind of trust, or*
>
> *(b) any particular aspect of the management or administration of trusts generally or a particular kind of trust,*
>
> *and the services he provides to or on behalf of the trust fall within that description."*

228. Besides the payment of sums to the Trustee, I have seen no evidence that he was acting in the capacity described in section 28(5).

229. In any event, the timing and quantum of payments to the Trustee are irregular and excessive. Following on from the issues identified in paragraph 162, a payment of £10,000 was made to the Trustee on 26 June 2014, which at that point, represented approximately half of the entire cash balance held in the Scheme's account. A payment of £64,000 on 24 September 2015 to the Trustee represented approximately 84% of the cash balance held in the Scheme's account immediately before the payment was made.

230. The Trustee addressed the payments to him briefly in his submissions, asserting that "the £110,000 payments from scheme to myself over the period are not excessive in regards to reasonable expenses [sic]." However, the Trustee has provided no evidence to support the assertion that the Total Mr Hoole Payment Sum (£119,750) related to legitimate expenses, such as receipts or Scheme accounts documenting incurred expenditure. It is also striking that the only expenses occurred were payable to him, and not to any third party supplier of services.

231. He has also provided no explanation for the irregular pattern of payments. It is inherently unlikely that over half of the expenses of the Scheme would be legitimately incurred as a single tranche in September 2015, several years after the establishment

of the Scheme, and not on a regular ongoing basis. On the evidence I have seen, I find that the sums comprising the Total Mr Hoole Payment Sum did not relate to the reasonable expenses of running the Scheme, but represented fees or remuneration drawn by the Trustee from the Scheme. The Trustee has provided no evidence that he was entitled to draw such remuneration under the Scheme rules, and I find that the payment sums comprising the Mr Hoole Payment Sum were made in breach of trust.

D.4.2 Payments to introducers

232. The EBS Financial Solutions Payments are set out at Appendix 7. It is not clear precisely what these payments represent, but I note that the declaration set out at Appendix 5 stated that "Advisers within EBS Financial can receive a commission on monies invested into private equities they promote." I have seen no evidence that EBS Financial Solutions provided investment advice to the Trustee, which in any event would not have amounted to proper advice as EBS Financial held no FCA authorisation. So, on the evidence available, I find that these payments represented commission payments to EBS Financial Solutions for referring members to the Scheme or for recommending particular investments. I have seen no evidence that members were informed or consented to such commissions being taken from the Scheme's assets. There is also no provision within the Trust Deed authorising the Trustee to make such payments.

233. Mr Hoole has disputed the EBS Financial Solutions Payments on the basis that he does not believe that EBS Financial Solutions maintained a bank account. He has asserted that references were for "internal use." However, the Scheme's bank account shows transfers to EBS Financial Solutions, which is not possible to reconcile with Mr Hoole's submission, and he has not provided a coherent, alternative explanation for the EBS Financial Solutions Payments.

234. I find, on the evidence available, that the payments made to EBS Financial Solutions were made by the Trustee in breach of trust.

D.5 Scheme assets not accounted for

235. In total, payments of £97,212.58 were made from the Scheme to recipients identified only with six numerical digits, which are set out at Appendix 8. In total, payments of £177,650.98 were made from the Scheme to unidentifiable foreign transferees[8], which are set out at Appendix 9.

236. A number of the unidentified payments set out in Appendices 8 and 9 are highly concerning. Between 16 July 2018 and 17 August 2018, a total of £100,000 was paid into the Scheme, which appear to represent the recovered sum from the Quantum Investment. Immediately prior to these sums being paid into the Scheme, the balance in the Scheme's bank account was only £99.45. Mr R was informed by the Trustee in a letter dated 14 June 2019 that the Quantum Investment would return £129,000 and

[8] This figure does not include the payment of £8,500 made on 15 January 2019 with manuscript reference "CGH", this payment is included in the Total Mr Hoole Payment Sum.

that "we will endeavour to allocate assets of the Scheme as fairly as possible." However, on 29 August 2018, payments of £900.00, £802.98 and £97,000 were transferred from the Scheme account to an unidentifiable foreign transferee.

237. A number of payments totalling £231,497.17 were also made to named individuals, including Mr R, which are set out at Appendix 10. I find, based on the evidence I have seen, that these payments were made, on the balance of probabilities, to Scheme members.

238. Regarding the Claims and Loan Investment, Mr Hoole has submitted that the leads were purchased by him on behalf of the Scheme, but he has not specified which payments from the Scheme to him were then used for this payment. Although the sum of £119,000 is roughly equal to the Total Mr Hoole Payment Sum, Mr Hoole has also submitted that "the £110,000 payments from scheme to myself over the period are not excessive in regards to reasonable expenses", which acknowledges that (at least the bulk of) the Mr Hoole Payment Sum was in fact retained by him.

239. It is possible that some of the payments listed in Appendices 8 and 9, or a proportion of the outstanding discrepancy identified in paragraph 345 below were paid to Lead Spark, either directly from the Scheme or to Mr Hoole first, who paid the sums to Lead Spark. However, there are no payment references in the Scheme's bank account statements which refer to Lead Spark, Barings Law, or to pay day loans or claims, and it is not possible to corroborate the figure of £119,000 from the Scheme's bank records.

240. I consider below, in paragraphs 344 to 345 the payments listed in Appendices 8 to 10, as well as the remaining discrepancy within the Scheme accounts, in my assessment of redress.

D.6 Administration and governance of the Scheme

D.6.1 Trustee duties toward Scheme administration:

241. The Trustee was required, under section 249A of the Pensions Act 2004, to "establish and operate internal controls". "Internal controls" is defined, by section 249A(5) as:

> *"(a) arrangements and procedures to be followed in the administration and management of the scheme,*
>
> *(b) systems and arrangements for monitoring that administration and management, and*
>
> *(c) arrangements and procedures to be followed for the safe custody and security of the assets of the scheme."*

242. Based on the evidence I have seen, I consider that the Trustee failed to establish and operate sufficient internal controls. The Scheme's banking records show that transferred funds from members were paid into a single account from which commission payments to introducers, unidentified payments to third parties and payments to the Trustee personally were made.

243. Further, I consider that there are clear instances of maladministration, as demonstrated by the member complaints, which indicate that they have not received any benefit statements, nor have they been able to claim their benefits.

244. Having seen no evidence to suggest otherwise, I find that the Trustee has acted in breach of the requirements of section 249A of the Pensions Act 2004, by failing to have in place effective internal controls. I also find that the Trustee's failure to have proper regard to the requirements of the 2013 Code amounts to maladministration.

D.6.2 Administrator duties toward Scheme administration

245. It is not clear whether the Trustee formally appointed Joy Grainge or 'Wirral Business Services' as an administrator, or the date on which this appointment was made. It appears that Ms Grainge corresponded on behalf of the Trustee as his personal assistant, and there does not appear to be a company registered in the United Kingdom with the name 'Wirral Business Services.'

246. The Trustee has informed TPO that Ms Grainge died in early 2022.

247. Paragraph 168 of the 2013 Code[9], which, on the evidence available, was in force when any such appointment was made, contained the following requirement concerning the appointment of service providers:

"168. Trustees should evaluate the suitability of all advisers and service providers prior to appointment. Trustees need to establish and document controls to manage the appointment of advisers and service providers and the delivery of information, advice and services provided by them. Trustees also need to establish and review what procedures and controls their advisers and providers have in place to ensure the quality and accuracy of the service they provide is suitable. Trustees should find out:

- *what professional indemnity cover they have?*
- *what qualifications and accreditations they have and how they keep their professional knowledge up to date?*
- *whether they have experience of dealing with schemes of a similar size and type to their scheme".*

248. The Trustee has said he had assumed 'AJC2' had taken over the administration of the Scheme when TCML and T12 Pension Services had ceased their services. This not only demonstrates a severe lack of understanding of his role as Trustee, but also confirms that the Trustee did not do what was required as outlined in the 2013 Code. He has admitted that there was no formal appointment of an administrator, and I have seen no evidence that internal controls were put in place, documented and operated.

249. I consider that the Trustee's failure to operate the necessary internal controls regarding the Scheme's administration, and to inform himself of the existence of the requirement to do so, as required by statute, amounts to maladministration.

[9] This is replicated under paragraph 56 of the 2016 Code

D.7 Information provided to members

250. Based on the evidence I have seen, there appear to have been multiple occasions on which the Trustee provided information to members that was, at the very least, inaccurate.

251. In the 31 July 2012 Letter, the Trustee explained that a statement of investment principles had been prepared with assistance from Transglobe, that the Scheme's investments in unquoted preference shares were backed by personal guarantees in most cases from the directors of those companies, that Quantum Leben was FSA regulated and the Quantum Global Bond allowed the diversification of investments.

252. The Trustee has since stated in his response to the complaints made against him, that no SIP for the Scheme was ever produced. The Trustee has also provided no evidence that any personal guarantees were provided by directors of the companies into which the Scheme invested.

253. The advice from Transglobe also conflicts with the Trustee's statement that Quantum Leben was regulated by the FSA, as the advice stated that "this investment [Quantum] is not authorised by the FSA as it is considered to be a high risk product." I also consider that the Trustee's reference to a wide range of individual investments is misleading. The majority of the underlying investments in the Quantum Global Bond were in only two funds listed on the Mauritian Stock Exchange.

254. In the 1 July 2014 Letter, it is not clear what the "trading fund" refers to, and I note that the Trustee gives no valuation figures. Regarding the investment into Local Loans Limited, at this point, as set out in section A.2.6.2 above, Local Loans Limited had been wound up so the value of any shares held by the Scheme was likely nil. I also note that Mr O subsequently received extensive correspondence from the Trustee regarding the Quantum Investment, which suggests that Mr O's fund was in fact invested in the Quantum Global Bond, not in Local Loans Limited.

255. I consider that, at best, the 1 July 2014 Letter provides inaccurate information in response to Mr O's enquiries.

256. The letter sent to Mr N on 7 July 2014 stated that, "The Quantum Bond is not due for encashment for a further two years." It is unclear why the Trustee made this statement, as this period is not specified in any of the documentation he has provided. Indeed, the Trustee himself requested that Quantum Leben encash the Quantum Global Bond in August 2014. Again, this response is, at best, highly inaccurate.

257. In the 30 April 2015 Letter, the Trustee informed Mr R that an investment into the "Sports Arbitrage Fund [Gambling Insight]" had failed and that this had been reported to the Pensions Regulator. The Trustee also stated that an Independent Trustee would be appointed to oversee and manage investment returns to protect Members' interests. I have seen no evidence that the Trustee did report this to the Regulator. The Trustee has also confirmed that no Independent Trustee was in fact appointed.

258. In the 14 June 2019 letter, the Trustee informed Mr R that there had only been one return of £129,000 from Quantum Leben, which would be allocated as fairly as possible, as well as the Claims and Loan Investment which was due to return £119,000 and within six to nine months. However, by the date of this letter, the Quantum Return (£120,000, not £129,000) had already been paid out of the Scheme to Mr Hoole and to unidentifiable foreign accounts. Scheme bank records show that the Scheme's account was closed on 23 May 2019 (it is unclear where the final balance of £2,376.71 was sent). So, at the point of the 14 June 2019 Letter, the Scheme in fact had no assets, and no bank account into which the Claims and Loan Investment' could have been paid.

259. In the 16 April 2020 Letter, the Trustee also stated that the Claims and Loan Investment return would be distributed fairly. I have seen no evidence that any return was distributed to members and indeed the Trustee's submissions on this point suggest that no return was likely to be achieved by the time the letter was sent.

260. In the 26 November 2021 Letter, the Trustee stated that the Scheme had been reported as wound up to TPR. However, the Trustee has presented no evidence of this contact with TPR.

261. I find that the Trustee's failure to provide accurate information to members, as well as the provision of information which the Trustee would have known to be inaccurate, amounts to exceptional maladministration.

D.8 Member consent and contributory negligence

D.8.1 Member consent

262. It is an established principle of trust law that where a beneficiary, who is of full age and capacity, freely consents to the act in question, or afterwards waives the right to sue the trustees in respect of it, he may not later sue for that breach of trust, whether or not he knew that what he was consenting to would amount to a breach of trust (*Re Pauling's Settlement Trusts* [1962] 1 WLR).

263. Regarding the relevance of the question whether it might be fair for the beneficiary to sue the trustees for breach of trust, the following passage from the judgment of Wilberforce J in *Re Pauling's Settlement Trusts* (at paragraph 108), was cited by Harman LJ in *Holder v Holder* [1968] Ch 353 at 394:

> *"The result of these authorities appears to me to be that the court has to consider all the circumstances in which the concurrence of the cestui que trust was given with a view to seeing whether it is fair and equitable that having given his concurrence, he should afterwards turn round and sue the trustees: that, subject to this, it is not necessary that he should know that what he is concurring in is a breach of trust, provided that he fully understands what he is concurring in, and that it is not necessary that he should himself have directly benefited by the breach of trust."*

264. Harman LJ went on to say, at 394G, that:

> *"...the whole of the circumstances must be looked at to see whether it is just that the complaining beneficiary should succeed against the trustee."*

265. Underhill and Hayton: Law of Trusts and Trustees[10] [11], advises that, for this principle to apply: the beneficiary must have: been "of full age and capacity at the date of such assent or release[12]"; "had full knowledge of the facts and knew what he was doing[13] and the legal effect thereof[14], though, if in all the circumstances it is not fair and equitable that, having given his concurrence or acquiescence, he should then sue the trustees, it is not necessary that he should know that what he is concurring or acquiescing in is a breach of trust (provided he fully understands what he is concurring or acquiescing in) and it is not necessary (though it is significant[15]) that he should himself have directly benefited by the breach of trust[16]"; and "no undue influence was brought to bear upon him to extort the assent or release[17]."

266. Regarding the requirement for the beneficiary to have been subject to no undue influence, Underhill and Hayton refers to *Re Pauling's Settlement Trusts* [1964] Ch 303, in which:

> *"the Court of Appeal expressed the view that a trustee who carried out a transaction with the beneficiary's apparent consent might still be liable if the trustee knew or ought to have known that the beneficiary was acting under the undue influence of another, or might be presumed to have so acted, but that the trustee would not be liable if it could not be established that he knew or ought to have known."*

267. In this case, I have seen no indication that any of the Applicants were acting under the undue influence of another, and none of the Applicants have stated that they did not transfer their funds to the Scheme freely. Each Applicant was also of full age and capacity. However, upon joining the Scheme, based on the evidence I have seen, it appears that each member signed a form that said that the Trustee would not permit any investments of payments by the Scheme which would result in the loss of HM Revenue & Customs registered status, and that they understood and agreed that the

---

[10] Paragraph 1 of Article 95 of the 19th edition.
[11] The same paragraph of the 1960 edition of Underhill and Hayton was referred to by Wilberforce J in *Re Pauling's Settlement Trusts* [1962] 1 WLR 86 (on appeal [1964] Ch 303).
[12] *Lord Montford v Lord Cadogan (1816) 19 Ves 635; Overton v Banister (1844) 3 Hare 503 at 506.*
[13] *Re Garnett* (1885) 31 Ch D 1; Buckeridge v Glasse (1841) Cr & Ph 126; *Hughes v Wells* (1852) 9 Hare 749; *Cockerell v Cholmeley* (1830) 1 Russ & M 418; *Strange v Fooks* (1863) 4 Giff 408; *March v Russell* (1837) 3 My & Cr 31; *Aveline v Melhuish* (1864) 2 De GJ & Sm 288; *Walker v Symonds* (1818) 3 Swan 1
[14] *Re Garnett* (1885) 31 Ch D 1; Cockerell v Cholmeley (1830) 1 Russ & M 418; *Marker v Marker* (1851) 9 Hare 1; *Burrows v Walls* (1855) 5 De GM & G 233; *Stafford v Stafford* (1857) 1 De G & J 193; *Strange v Fooks* (1863) 4 Giff 408; *Re Howlett* [1949] Ch 767 at 775.
[15] *Stafford v Stafford* (1857) 1 De G & J 193 (benefits from breach of trust accepted for 15 years); *Roeder v Blues* [2004] BCCA 649, (2004) 248 DLR (4th) 210 at [33].
[16] *Holder v Holder* [1968] Ch 353 at 369, 394, 399 (CA) approving *Re Pauling's Settlement Trusts* [1962] 1 WLR 86 at 108. Also *Re Freeston's Charity* [1979] 1 All ER 51 at 62, CA.
[17] See paragraph 266 below.

funds would be invested in appropriate arrangements. As highlighted above in section D.3.3, this is not what actually happened and I have seen no evidence that members understood that the Scheme and investments were being operated contrary to what they had been told, or that they consented to this. I have seen no evidence that the members consented to any of the investments set out in section D.3 before those investments were made or retrospectively.

268. I understand that Mr R received a document from the Scheme prior to his transfer (see Appendix 5), which outlined the risk involved in investing in private equity, and how EBS Financial Solutions were remunerated for promoting certain investment opportunities. However, the document made no reference to Mr R's funds being invested into a specific private equity fund or investment, nor that it would be recommending the Trustee to do so. By signing this form, Mr R confirmed that he understood that there was risk attached to private equity investments, not that he consented to his funds being invested in such a manner. Indeed, although the term "private equity" could be construed literally to mean any direct investment in a company's share capital not listed and admitted to trading on a recognised stock exchange, the term is usually used as a shorthand to describe a specific style of investment in which a sophisticated asset manager deploys investor funds and leverage to purchase large private or publicly listed companies. Based on the evidence there is no indication that any of the investments made were, in this sense, private equity investments. Further, despite the EBS Financial Solutions Payments there is no indication that the specific investments actually made by the Scheme had been promoted by EBS Financial Solutions.

269. I also note that in Re Pauling's Settlement Trusts it was found that, due to the complicated action in question in that case, even one of the claimants, who was an experienced lawyer, could not be expected to appreciate his rights as a beneficiary until they had been drawn to his attention. Looking at the present case, investments and other payments made by a pension scheme, and the raft of legislation which governs those investments and the Trustee who possessed the power to make them, are a complicated matter. None of the Applicants had any investment experience, nor were they pensions professionals. Instead, they placed trust in Mr Hoole, as Trustee, to invest their funds on their behalf and to do so safely, within the requirements imposed on pension scheme trustees, which I have set out in Section D.3 above. I therefore find that the Applicants could not have been expected to understand: that their pension funds would be invested in unregulated and/or high-risk investments or that the Trustee would do so without carrying out due diligence or taking investment advice. Further, I have seen no evidence that the members consented to the EBS Financial Solutions Payments, the Total Mr Hoole Payment Sum or the payments set out in Appendices 8 and 9 being paid from Scheme funds.

D.8.2 Contributory negligence

270. I have found the Trustee to have committed multiple breaches of trust, including misapplying the Scheme's assets, as set out in Sections D.2 to D.7 above.

271. In Underhill and Hayton: Law of Trusts and Trustees (19th edition), at paragraph 2 of Article 87, it is explained that, in cases such as this one, where a trustee has lost or misapplied the trust's assets, "contributory negligence [as a defence against the requirement that the trustee restores those assets to the trust fund or pays the amount due to make the accounts balance] is inapt because of 'the basic principle that a fiduciary's liability to a beneficiary for breach of trust is one of restoration'"[18].

272. It is further explained, in Underhill and Hayton, that "Where a trustee has acted fraudulently, a further reason for denying him the defence would be the rule that 'it is no excuse for someone guilty of fraud to say that the victim should have been more careful and should not have been deceived'"[19].

273. I have explained above in section D.3.6, duties imposed on the Trustee by case law required him to invest members' funds prudently and with regard to members' best financial interests. The Trustee also had a fiduciary duty to act honestly and in good faith when dealing with members' funds. I have already found (and as I set out below with regard to the Trustee's duty to act honestly and in good faith in section D.9), the Trustee has breached all of those duties and those breaches have caused the members to lose their pension funds.

274. On that basis, the Trustee is not entitled to rely upon any defence of contributory negligence against his personal liability for the consequences of his many breaches of trust.

D.9 The Trustee's liability

275. I have concluded that there have been multiple breaches of trust and acts of maladministration by the Trustee, outlined in Section D.2 to D.7 above.

276. I shall now consider the effect of the statutory provisions under section 33 of the Pensions Act 1995 (**Section 33**).

D.9.1 Section 33 of the 1995 Act

277. Section 33 prevents trustees of an occupational pension scheme from excluding or restricting their liability for breach of any duty imposed on them to take care and exercise skill in the performance of any investment functions:

> *"(1) Liability for breach of an obligation under any rule of law to take care or exercise skill in the performance of any investment functions, where the function is exercisable:*
>
> *(a) By a trustee of a trust scheme, or*

---

[18] The following cases are cited: *Alexander v Perpetual Trustees (WA) Ltd [2004] HCA 7*, *(2004) 216 CLR 109 at [44]* and esp [104] and *Bristol & West Building Society v A Kramer and Co (a firm) [1995] NPC 14*, *(1995) Times, 6 February*; *Nationwide Building Society v Balmer Radmore (a firm) [1999] Lloyd's Rep PN 241*; *De Beer v Kanaar & Co (a firm) [2002] EWHC 688 (Ch) at [92]*.

[19] *Maruha Corpn v Amaltal Corpn Ltd [2007] NZSC 40*, *[2007] 3 NZLR 192 at [23]*, citing *Standard Chartered Bank v Pakistan National Shipping Corpn [2002] UKHL 43*, *[2003] 1 AC 959*.

(b) By a person to whom the function has been delegated under section 34,

cannot be excluded or restricted by any instrument or agreement.

(2) In this section, references to excluding or restricting liability include:

(a) making the liability or its enforcement subject to restrictive or onerous conditions,

(b) excluding or restricting any right or remedy in respect of the liability, or subjecting a person to any prejudice in consequence of his pursuing any such right or remedy".

278. The Trustee has not provided a complete copy of the Scheme's Trust Deed, and the extracts he has provided do not contain an exoneration clause.

279. If the Scheme's Trust Deed does contain an exoneration clause, section 33 prevents trustees of a pension scheme from excluding or restricting liability to take care or exercise skill in the performance of their investment functions by any instrument. It has been confirmed that section 33 applies both to breaches of statutory investment duties and breach of the equitable duty to exercise due skill and care in the performance of the investment functions[20].

280. The wording of section 33 also does not confine its effect to exclusion clauses within a pension scheme's trust deed and rules; liability "cannot be excluded or restricted by any instrument or agreement". So, the scope of section 33 extends to any attempt, made outside a pension scheme's trust deed and rules, to exclude or restrict the pension scheme's trustees' liability to take care or exercise skill in the performance of their investment functions.

281. A purposive interpretation of section 33 requires indemnities (particularly a member indemnity) to be included. The impact of any indemnity would prejudice the member in consequence of his pursuing his right or remedy (section 33(2)(b)). To allow an indemnity under section 33 would render section 33 open to circumvention and ineffective in practice. As a matter of public law policy where there has been dishonesty it cannot be correct to give effect to any indemnity.

282. I consider that the Application Forms to join the Scheme containing the statement, "I agree to hold the Trustees fully indemnified against any claim in respect of such [investment] decisions" can properly be regarded as forming part of the documents comprising the Schemes. "Pension scheme" for the purposes of section 1(5) of the 1993 Act is defined as a "…scheme or other arrangements, *comprised in one or more instruments or agreements* (my emphasis) having or capable of having effect so as to provide benefits".

[20] Dalriada Trustees Ltd v Mcauley [2017] EWHC 202 (Ch)

283. On that basis, I find that section 33 applies to the indemnity given by members on joining their respective Scheme[21].

284. This renders the indemnity ineffective in preventing the Trustee from being held personally liable for any loss suffered by members in relation to the Trustee's breach of investment duties, imposed by statute (see Section D.3.3 and D.3.4) and/or common law (see Section D.3.6) by having committed the various breaches of trust that I have found the Trustee to have committed.

D.9.2 Exoneration Clauses under the scheme documentation

285. The Trustee has not provided TPO with a full copy of the Trust Deed and Rules for the Scheme. The excerpts of the Trust Deed that he has provided do not contain any provision excluding the liability of the Trustee.

286. I have already found that the Trustee acted in breach of trust by breaching his fiduciary and statutory duty to manage conflicts of interest and to operate necessary internal controls, as required by section 249A of the Pensions Act 2004 (see sections D.2 and D.6); acting outside the scope of his powers by making payments to himself (section D.4.1) and to Introducers (section D.4.2) out of Scheme funds; and failing to fulfil his investment duties (section D.3). I have found that the Trustee committed maladministration by failing to have regard to the 2013 Code (sections D.2 and D.6.2 above) and by providing inaccurate information to members (section D.7 above). All of these breaches of duty and findings of maladministration are intertwined and have led, directly or indirectly, to the loss of Scheme funds.

287. In the apparent absence of any provision in the Trust Deed which would operate to exclude the Trustee's liability, I find that he is personally liable to pay sufficient compensation to restore the trust to the position it would have been in had he not committed these breaches of trust. I consider whether it would be reasonable to excuse the Trustee from liability under section 61 of the Trustee Act 1925 in section D.9.3 below.

D.9.3 Section 61 of the Trustee Act 1925

288. Under Section 61 of the Trustee Act 1925 (the **1925 Act**), I may direct relief to the Trustee wholly or partly of personal liability if it appears to me that: (1) the Trustee acted honestly and reasonably; and (2) it would be fair to excuse the Trustee from personal liability, having regard to all the circumstances of the case.

289. In *Royal Brunei Airlines v Tan* [1995] 2 AC 378 Lord Nicholls said (in the context of knowing assistance and constructive trusts) in *Royal Brunei Airlines* that honesty is an objective standard:

[21] It has also been acknowledged, in the Court of Appeal judgment of *Robert Sofer v SwissIndependent Trustees SA* [2020] EWCA Civ 699, that it is arguable that an indemnity must be subject to an implied term that it does not apply to any underlying transaction where the defendant has acted dishonestly.

"… in the context of the accessory liability principle acting dishonestly, or with a lack of probity, which is synonymous, means simply not acting as an honest person would in the circumstances. This is an objective standard. At first sights this may seem surprising. Honesty has a connotation of subjectivity as distinct from objectivity of negligence. Honesty, indeed does have a strong subjective element in that it is a description of a type of conduct assessed in the light of what a person actually knew at the time, as distinct from what a reasonable person would have known or appreciated…. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour."

290. Under the heading "Taking Risks" Lord Nicholls said:

"All investment involves risk. Imprudence is not dishonesty, although imprudence may be carried recklessly to lengths which call into question the honesty of the person making the decision. This is especially so where the transaction services another purpose in which that person has an interest of his own. This type of risk is to be sharply distinguished from the case where a trustee, with or without the benefit of advice, is aware that a particular investment or application of trust property is outside his powers, but nevertheless he decides to proceed in the belief or hope that this will be beneficial to beneficiaries or, at least, not prejudicial to them. He takes a risk that a clearly unauthorised transaction will not cause loss. A risk of this nature is for the account of those who take it. If the risk materialises and causes loss, those who knowingly took the risk will be accountable accordingly."

291. In *Walker v Stones* [2001] 2 WLR 623, Sir Christopher Slade restated the position - "at least in the case of a solicitor-trustee" - that honest belief would not be found where a trustee's perception of the interest of the beneficiaries was so unreasonable that, by an objective standard, no reasonable trustee-solicitor could have thought that what he did or agreed to do was for the benefit of the beneficiaries. He explained that he limited the proposition to trustee-solicitors because on the facts he was only concerned with a trustee-solicitor and because he accepted that the test for honesty may vary from case to case depending on the role and calling of the trustee.

292. In *Mortgage Express Limited v S Newman & Co* (a firm) (The Solicitors Indemnity Fund limited, Pt 20 defendant) [2001] All ER (D) 08 (Mar), Etherton J said:

"It is now well established that dishonesty, in the context of civil liability, embraces both a subjective and an objective element. The well known statement on this issue is that of Lord Nicholls in Royal Brunei Airlines v Tan … The inter-relationship between the objective and subjective standards can

produce both conceptual and practical difficulties. I was referred, for example, to … Walker v Stones…".

Etherton J went on to consider Sir Christopher Slade's dictum, and said that he did not consider that Sir Christopher Slade could have been intending to abolish the critical distinction between incompetence and dishonesty – that incompetence, even if gross, does not amount to dishonesty without more.

293. In the later case of *Fattal v Walbrook Trustees (Jersey) Limited* [2010] EWHC 2767 (Ch)[22], it was accepted, at para 81, that the law concerning the interpretation of exoneration clauses, as set out in *Walker v Stones*, was not confined to applying to solicitor-trustees. As set out in *Fattal v Walbrook*[23] the test for dishonesty, at least in the case of a professional trustee, seems to be that the trustee has committed a deliberate breach of trust and either: (a) knew, or was recklessly indifferent as to whether, it was contrary to the interests of the beneficiaries; or (b) believed it to be in the interests of the beneficiaries, but so unreasonably that no reasonable professional trustee could have thought that what he did was for the benefit of the beneficiaries.

294. In the case of *Ivey v Genting Casinos Ltd t/a Crockfords* [2017] UKSC 67, it was confirmed that there should be a common standard of dishonesty in both civil and criminal cases and that the civil standard, as formulated in the cases of *Royal Brunei* and *Barlow Clowes* should be applied in the criminal, as well as in the civil, context. Paragraph 74 of *Ivey* sets out the following test:

"The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

295. So, although the nature of the objective test in *Walker v Stones*, which was accepted in *Fattal v Walbrook Trustees*, is in some respects unclear (and where the court did not

[22] which acknowledged, at para 81, that there had been "twists and turns in the legal definition of dishonesty", referring to the cases of *Twinsectra Ltd v Yardley* [2002] AC 164 (Twinsectra), *Barlow Clowes v Eurotrust International Ltd* [2006] 1 WLR 1476 (Barlow Clowes) and *Abou-Rahmah v Abacha* [2006] EWCA Civ 1492.

[23] and confirmed in the case of *Sofer v Swiss Independent Trustees SA* [2019] 2071 (Ch) and subsequently in *Robert Sofer v Swiss Independent Trustees SA* [2020] EWCA Civ 699.

have the benefit of the Supreme Court's decision in *Ivey*), I consider that there is a distinction between a trustee's conduct constituting a breach of trust and the belief he held at the time of the breach, which is supported by the two stage test set out in *Ivey*.

296. In assessing dishonesty, it was further held in *Royal Brunei* per Lord Nicholls at 107g that:

"When called upon to decide whether a person was acting honestly, a court will look at all the circumstances known to the third party at the time. The court will also have regard to personal attributes of the third party such as his experience and intelligence, and the reason why he acted as he did."

297. The Scheme's bank records show that the Trustee personally received significant payments from the Scheme. Although I have found above in section D.4.1 that these were not properly authorised payments and made in breach of trust, it is clear from these payments and the Trustee's communication with members that he held himself out to be a professional trustee.

298. In relation to the Trustee's personal attributes and experience, I also take into account his extensive experience as an IFA. He had previously held a number of controlled functions between 2001 and 2010, including responsibility for Insurance Mediation, and I consider that he would have had extensive knowledge of investments and financial markets. The letters from Transglobe also stated that he was an experienced IFA, and I have seen no evidence that the Trustee refuted these statements.

299. In relation to the Trustee's motivation for acting the way he did, I also take into account the large sums that appear to have been misappropriated from the Scheme through Hoole Liverpool Investment and the Total Mr Hoole Payment Sum. In the case of the Total Mr Hoole Payment Sum, I can see no other reasonable explanation for the Trustee's motivation for making these payments other than personal enrichment at the expense of Scheme members. I have also seen no evidence that these payments were disclosed to, or authorised by, Scheme members. The pattern of payments to himself and to connected companies demonstrates that his primary motivation in acting as Trustee was for personal financial gain. In this context, I note that it is highly concerning that Mr Hoole also supplied details of his own personal bank account to receive compensation in his misconceived application to the Financial Services Compensation Scheme.

300. So, drawing these strands together and applying the first limb of the test set out in *Ivey* to the state of the Trustee's knowledge and belief, and, following *Royal Brunei*, taking into account his motivation and personal attributes:

    300.1. the Trustee directed Scheme funds to Hoole Liverpool, a company of which he was the sole director and, from 18 December 2010 onwards at the latest, sole shareholder of ordinary shares. He procured a director loan from Hoole Liverpool to himself of £87,080 in the same accounting period that the Scheme funds were transferred. The SIC Code for Hoole Liverpool at Companies House was "gambling and betting activities." These factors were known to him

at the time and, taking into account his knowledge and expertise, as well as his motivation for acting as Trustee, I find that the Trustee did not genuinely believe that the Hoole Liverpool Investment was made in the best financial interests of Scheme members;

300.2. the Trustee made the Gambling Insight, Reid Fotheringham, JM and Local Loans Investments knowing that each investment was via preference shares, which would rank lower than secured or unsecured debt on an insolvency. The Trustee sought no investment advice and I have seen no evidence that he took any security over these investments. Each of these investments was in lossmaking or dormant companies which had been recently incorporated. In addition, the Gambling Insight Investment was into a company whose SIC code was “gambling and betting activities.” As an experienced IFA the Trustee was aware of the nature of each investment and would have known the elevated risk of investing in the share capital of unlisted, illiquid and loss making companies. Yet he proceeded regardless. I find that the Trustee did not genuinely believe that these investments were made in the best financial interests of Scheme members;

300.3. to the extent that the Trustee applied Scheme funds to the Claims and Loan Investment, the Trustee knew that, on the evidence available, the investment consisted of no more than a list of potential marketing leads to be used by Barings Law. By its nature, no security could be taken over such a highly speculative purchase, and there is no type of generally recognised security into which the Claims and Loan Investment could even be categorised. As an experienced IFA, the Trustee was aware that he was applying Scheme funds in this manner. Yet he proceeded regardless. I find that the Trustee did not genuinely believe that this investment was made in the best financial interests of Scheme members;

300.4. the Trustee has stated that he made the Quantum Investment on the basis of advice received from Transglobe. The content of that advice was known to the Trustee at the time each premium was paid. Each advice letter states that “we have discussed at length and you are aware of the following [risk factors].” Those risk factors included specific warnings that:

“the actual value of the bond will be dependent upon the performance of the underlying investments”; and

“The composition of the bond portfolio and the underlying investments will be determined by an Investment Adviser appointed by Quantum Life. The Investment Adviser has the opportunity to invest in high risk and unregulated collective investment schemes. This does not necessarily mean that your bond will be invested in high risk assets however it is important to identify to you the exact nature of the risks that can be involved. You have confirmed to me your understanding of this.”

Taking into account also his experience as an IFA, the Trustee knew that the Quantum Global Bond was merely a wrapper which held the underlying investments, and that these investments would be selected by an advisor who would be able to invest in high risk, illiquid and undiversified assets; and

300.5. the Trustee knew from the Quantum policy documentation that approximately 89% of the underlying investments in the Quantum Global Bond were concentrated in two funds listed on the Mauritian Stock Exchange. Given that the majority of the overall Scheme funds was invested through the Quantum Global Bond, he would have known that this represented an excessive concentration of the overall Scheme investments in two offshore funds. Based on these factors, I find that the Trustee did not genuinely believe that the Quantum Investment was in the best financial interests of Scheme members.

301. Based on the Trustee's contemporaneous knowledge as to the facts, taking into account his experience and motivation, I have found above in paragraph 300, that he did not genuinely believe the investments to be in the best financial interests of beneficiaries, yet he proceeded regardless. It follows that, when he made each investment, he acted dishonestly under the first (subjective) limb of the test set out in *Ivey*.

302. In the event that the Trustee did, despite this weight of evidence and his contemporaneous knowledge of the facts, maintain a subjectively genuine belief that the investments were in the best financial interests of beneficiaries, I consider below the second limb set out in *Ivey*, namely whether the Trustee's conduct was dishonest by the objective standards of ordinary decent people.

303. When explaining the objective limb of the test for dishonesty in *Barlow Clowes* (and referred to in *Ivey*), Lord Hoffman used the following formulation, per paragraph 1479-1480:

> "If by **ordinary standards** a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards." [My emphasis]

The test in *Ivey* refers to "ordinary decent people" and *Royal Brunei* to an "honest person."

304. The phrases "ordinary standards," "ordinary decent people" and "honest person" do not denote perfectly synonymous concepts. However, there is a high degree of conceptual overlap as each is used in the authorities cited as the objective standard against which dishonesty is measured. So, I consider it appropriate in assessing how an "ordinary decent person" would behave to also apply Lord Nicholl's consideration in *Royal Brunei* about how an "honest person" would (in the context of accessory liability) behave where an individual takes investment risk:

> "The individual is expected to attain the standard which would be observed by an honest person placed in those circumstances. It is impossible to be more

specific… Acting in reckless disregard of others' rights can be a telltale sign of dishonesty. An honest person would have regard to the circumstances known to him, including the nature and importance of the proposed transaction, the nature and importance of his role, the ordinary course of business, the degree of doubt, the practicability of the trustee or the third party proceeding otherwise, and the seriousness of the adverse consequences to the beneficiaries. The circumstances will dictate which one or more of the possible courses should be taken by an honest person. He might, for instance, flatly decline to become involved. He might ask further questions. He might seek advice, or insist on further advice being obtained. He might advise the trustee of the risks but then proceed with his role in the transaction. He might do many things. **Ultimately, in most cases, an honest person should have little difficulty in knowing whether a proposed transaction, or his participation in it, would offend the normally accepted standards of honest conduct.**" [my emphasis]

305. I do not consider that Lord Nicholls intended these comments to be restricted only to cases involving accessory liability, and it is clear from subsequent judicial consideration of the decision in Royal Brunei in the authorities cited above that the test for dishonesty is of wider application.

306. Drawing these strands together, I consider that an ordinary decent person in the Trustee's position would have:

306.1. acquired the necessary level of knowledge of his fiduciary and statutory obligations to the Scheme members;

306.2. having done so, considered the proper purpose of the trust and the purpose for which he was investing Scheme funds, namely, for the best long term financial benefit of Scheme members;

306.3. refrained from investing Scheme funds in high risk illiquid investments, dormant companies and in a company in which he had a direct economic interest;

306.4. avoided severe conflicts of interest between his own interest in Hoole Liverpool and those of Scheme members;

306.5. properly considered the advice from Transglobe and, at the very least:

306.5.1. have queried the appropriateness of the recommendation to invest in the Quantum Global Bond based on the Trustee's "aggressive" personal risk appetite;

306.5.2. sought further information about the underlying investments and ensured the liquidity and security of those underlying investments;

306.6. not paid himself and introducers substantial undisclosed commissions from the Scheme without authorisation under the trust deed or the consent of members; and

306.7. not informed members in the 30 April 2015 letter, that an Independent Trustee had been appointed to ensure the security of their benefits when no such appointment had in fact been made.

307. In considering further how an ordinary decent person would have acted regarding the Quantum Investment, I acknowledge that the Trustee made several attempts to partially or completely encash the Quantum Global Bond after July 2014, and that certain events outside his control prevented those instructions from being carried out. By the time the bond could be encashed the value of the Agrifund and Fidelis funds had collapsed by around 95%. However, I do not consider those events outside his control to intervene between his decision to invest and the loss caused to the Scheme. Applying Lord Nicholls' consideration of "taking risks" in Royal Brunei, set out at paragraph 290 above, it follows that by paying multiple premiums to Quantum from Scheme funds, the risk that those premiums would be invested in the Agrifund and Fidelis funds and lose substantially all its value is for the account of the Trustee. In this context, the Trustee's complaint to the FSCS, in which he bluntly stated that "such a high risk overseas insurance company they [Transglobe] recomended [sic] was not suitable" is, given the content of the Transglobe advice and the Trustee's knowledge and experience (to which the Transglobe also referred), extraordinary in its reach and mendacity.

308. Further, I consider the Trustee's belated requests to encash the Quantum Global Bond to be further evidence of him acting with, at best, reckless disregard to the best financial interest of Scheme members at the point he paid each premium to Quantum. Had he genuinely believed that the investment was in the best interests of beneficiaries, he would have had no reason to suddenly request an encashment of the bond because, as at July 2014, the evidence suggests that the value of the Agrifund and Fidelis funds had not yet collapsed.

309. I find that, in committing the breaches of trust I have identified, the Trustee did not meet the objective standards of ordinary decent people and he acted dishonestly under the second limb of the test in *Ivey*.

310. In applying the preceding analysis and findings to section 61, I have found that the Trustee did not act honestly or reasonably. The circumstances of this case are, at the broadest level, that the Trustee enriched himself directly from Scheme funds to the detriment of beneficiaries and invested in wholly inappropriate high risk investments. His actions fell far below the objective standards of ordinary decent people and led to the loss of substantially all the Scheme's funds. So, I do not direct that the Trustee is relieved from personal liability under section 61 for the breaches of trust I have identified.

311. I have based my finding in paragraph 310 above on the version of the Trust Deed provided by the Trustee, which contains no exoneration provision. To the extent that the Trustee adduces a complete version that includes an exoneration provision, I consider that my finding in paragraph 309 above would likely render any such clause ineffective. It is well established in case law that the narrowest permissible wording of an exoneration clause would exclude liability for all but a trustee's fraud. Fraud in this context is not used to describe the common law tort of deceit or a statutory offence (although a trustee's actions may amount to these as well) but, per Lord Millett's formulation in *Armitage*, "connotes at the minimum an intention on the part of the trustee to pursue a particular course of action, either knowing that it is contrary to the interests of the beneficiaries or being recklessly indifferent whether it is contrary to their interests or not." So, even if the Trustee adduces an exoneration clause with the widest scope of exclusion permissible under case law, I consider that such a clause would be ineffective because, as set out above, the Trustee acted dishonestly and showed, at best, a reckless indifference and disregard for the interests of Scheme members.

D.9.4 Dishonest Accessory

312. Mr Hoole has asserted, with no supporting documentary evidence, that a limited company was appointed as trustee of the Scheme from 2013 onwards. Given that he continued to write to the Applicants in his capacity as Trustee after 2013, the Trust Deed appoints him as Trustee, the advice from Transglobe was addressed to him personally, and he did not raise this point at all throughout my investigation until his final submission to my second preliminary decision, I find that Mr Hoole was, and remains, the sole Trustee of the Scheme from 4 December 2009 onwards.

313. If the finding in paragraph 312 above is incorrect, and a limited company was indeed appointed as trustee in Mr Hoole's place in 2013, I will consider, for completeness, whether I would in those circumstances have found Mr Hoole liable as a dishonest accessory to the breaches of trust I have identified in section D.3 above to the extent each breach occurred in and after 2013.

314. The test for accessory liability was set out by Lord Nicholls in *Royal Brunei v Tan* as follows:

"A liability in equity to make good resulting loss attaches to a person who dishonestly procures or assists in a breach of trust or fiduciary obligation."

315. So, broadly: (1) there must be a breach of trust by the trustee of a trust; (2) the trustee director must have *procured or assisted* in the breach of trust; and (3) the trustee director must have acted dishonestly. It is not in dispute that the Scheme was constituted by trust deed dated 4 December 2009.

316. I have already found that the Hoole Liverpool, Gambling Insight, Reid Fotheringham, JM Limited, Local Loans, Claim and Loans, and Quantum Investments were made in breach of trust (section D.3).

317. In the context of accessory liability, "assistance" means conduct which in fact assists the commission of the breach of duty[24] and must enable the breach by the limited company acting as trustee to be committed[25]. It is clear from the lack of any contemporaneous evidence of a limited company acting as trustee, or the involvement of any other individual in authorising investments, that Mr Hoole was the sole decision maker regarding the Schemes' investments. He was also the only signatory to the Scheme's bank account, so was the only person with the authority to transfer funds to investee recipients. I am satisfied that, in those circumstances, I would have found that, by carrying out the actions in paragraph 300 above, Mr Hoole assisted the limited company in committing those breaches of trust.

318. I have already found that Mr Hoole acted dishonestly under each limb of the *Ivey* test in the capacity of Trustee at paragraphs 300 and 309 above. Following the analysis above at paragraph 294, I consider the correct test for dishonest assistance is also that set out in *Royal Brunei* and *Barlow Clowes*. Taking into account the actions Mr Hoole took in assisting the breaches of trust as outlined at paragraph 300 above, and the factors at paragraphs 306 to 308 above, if a limited company had been trustee at the relevant time, I am satisfied that Mr Hoole's actions would constitute dishonest assistance to the limited company in committing the breaches of trust I have identified.

319. A person who dishonestly procures or assists in a breach of trust is liable to account in equity for that breach. I would have found that Mr Hoole is personally liable to account to the Scheme on that basis, and that he is within my jurisdiction under Part X of the 1993 Act, either as a constructive trustee of the Scheme in his capacity as a trustee-director of the limited company (if he was a director) or, alternatively, in his capacity as an administrator of the Scheme.

Procedure

320. The Notice of Hearing was issued to the parties on 10 November 2022, which fixed the hearing date for 7 December 2022, 26 days after the notice.

321. Mr Hoole replied to the Notice of Hearing on 11 November 2022 to state that he was "keen" to attend the Oral Hearing but, as he intended to instruct counsel, requested that the hearing was delayed by five weeks. I carefully considered this request but refused an extension. I decided it was reasonable to refuse the extension for the following reasons:

    321.1. The Notice of Hearing was sent 26 days before the hearing date, in compliance with the statutory notice period required under Regulation 10(1) of the 1995 Regulations;

[24] *Madoff Securities International v Raven* [2013] EWHC 3147 (Comm)

[25] *Goldtrail Travel Ltd v Aydin* [2014] EWHC 1587 (Ch)

321.2. Although the Regulations do not require that a Preliminary Decision is issued before the Oral Hearing, such a Decision was issued here and all invitees to the Hearing were therefore aware of the preliminary findings I had made on the papers and those that remained to be considered at the Hearing, in addition to having the opportunity to address both aspects either at the Hearing or in writing subsequently;

321.3. When paying due regard to the convenience of the parties to the investigation, I considered the severity of the complaints from Mr R, Mr N and Mr O and took into account the significant period in which the applicants have been unable to access their benefits under the Scheme;

321.4. Mr Hoole was notified that he was a respondent to complaints in March 2022, and could have sought representation at any point during the period of the subsequent investigation; and

321.5. Under Regulation 10(2)(a)(i) of the 1995 Regulations, Mr Hoole was notified of his right to be represented at the hearing. However, under the Regulations there is no statutory period which provides for additional time to be granted to a party to make written representations or witness statements, or to seek representation.

322. My refusal and reasons were communicated to Mr Hoole on 15 November 2022.

323. Following this, Mr Hoole did not respond in writing to TPO's follow-up communications until the morning of the Oral Hearing, when he confirmed by email that he would not be attending for the reason that "I genuinely feel that the pre decision is unalterable." He gave no indication that he had taken steps to seek or instruct a representative after receiving the Notice of Hearing. So, the Oral Hearing was conducted without him.

324. I assume that Mr Hoole's reference to the "pre decision" is a reference to my preliminary decision, which was sent to him on 10 November 2022 with the notice of hearing and bundle. In that preliminary decision, I found a number of areas of concern regarding the Scheme. In the Notice of Hearing and preliminary decision I set out those areas of concern which I intended to explore further at the Oral Hearing. In the Notice of Hearing it was indicated that the purpose of the Hearing was to consider the Trustee's liability and suitable redress.

325. The List of Issues attached to the Notice of Hearing included the following:

> "Whether and to what extent any protection is available to the Trustee, under the Scheme Trust Deed's exoneration clause (if any) and/or section 61 of the Trustee Act 1925 (set out in the Appendix), in respect of his personal liability for the following breaches of trust and statutory duty, if found:
>
> a) Failure by the Trustee to take care and exercise skill in the performance of its investment functions and to meet the requirements imposed on it by statute and case law;"

326. Further, paragraph 247 of my first preliminary decision stated that assessment of any dishonesty would form part of the investigation following the Oral Hearing.

327. However, I made no finding of liability or directed any redress in my first preliminary decision because I considered it necessary to question Mr Hoole about these areas of concern under oath before reaching my decision, which was reflected in the content of the preliminary decision, the Notice of Hearing and List of Issues. So, I do not consider Mr Hoole’s justification for not attending the oral hearing to be persuasive, because it was precisely to hear and test Mr Hoole’s evidence about the findings in the preliminary decision that I decided to hold the hearing, and this was clearly communicated to him in the notice.

328. Following the oral hearing, I issued a second preliminary decision on 1 December 2023. In that decision I found that Mr Hoole had acted dishonestly and I did not grant relief under section 61 of the 1925 Act for the breaches of trust committed by Mr Hoole I had identified.

329. Mr Hoole was informed that the purpose of the Oral Hearing was to consider his liability and redress, and that the matters in the Notice of Hearing and List of Issues would be considered before I reached a final decision. So, I consider that Mr Hoole has had sufficient notice that my Determination would consider such findings.

330. Mr Hoole made further submissions and information requests in response to the second preliminary decision on 3 and 22 January, and 16 February, 2024. My office responded to the information requests on 9 January and 20 February 2024. He also made a Data Subject Access Request (DSAR) under the Data Protection Act 2018 (the 2018 Act) on 3 January 2024, to which my office responded formally on 23 February 2024, that the terms given had returned no responsive information. Following the DSAR, Mr Hoole was granted a final extension to make submissions by 19 March 2024. Alongside his final submissions on 19 March 2024, Mr Hoole made a further DSAR and requests for information. He stated bluntly that the purpose of this was “to try and demonstrate bias in the investigation, I have anecdotal evidence of this being useful for another party in these matters.” Mr Hoole also requested that my Determination be delayed until the outcome of the second DSAR, on the grounds that he believes that an unidentified external agency or entity has exerted pressure on TPO, resulting in a finding of dishonesty, evidence of which might be gathered from disclosures made as a result of the DSAR.

331. For the avoidance of doubt, Mr Hoole’s unsubstantiated allegations of bias and external pressure are refuted. I have Determined the Applicants’ complaints in accordance with my statutory powers and based solely on the written and oral evidence referred to in this Determination. Mr Hoole is entitled to make a second DSAR under the 2018 Act, but I do not consider it appropriate to delay the Determination of the complaints against him while he embarks on what amounts to, as he effectively acknowledges, a fishing expedition for information.

Decision

332. I have found a number of breaches of trust and maladministration, as set out in sections D.2 to D.7 above, which have caused the loss of Scheme funds and will have impacted severely on Scheme members' retirements.

333. The Trustee is not entitled to rely upon any defence of member consent or contributory negligence (see section D.8 above).

334. The Trustee cannot rely upon any indemnity or exoneration provision, as explained in section D.9.1 and D.9.2 above, and I grant no relief from personal liability for the consequences of his dishonest breaches of trust and acts of maladministration, as explained in section D.9.3 above. The Trustee is liable to reimburse to the Scheme all payments and investments misappropriated from the Scheme's funds.

335. For the reasons set out in paragraphs 336 to 342 below, I consider that the investments made by the Trustee have no monetary value.

336. The final valuation statement provided by Quantum Leben, as at 31 December 2017, shows a total portfolio valuation of £129,598.56. The 5,749.71855 units held in the Agrifund had been purchased for between £100 and £104.63 per unit but redeemed at a unit price of £1.2417 on 4 November 2015. The 238.24010 units held in the Fidelis Fund were purchased for £2,182,950.00, at a unit price of between £10,000 and £8169.1836, but the final valuation statement listed a unit price of £548.68. The balance was held in the Cash Fund.

337. Payments totalling £120,000 were made to the Scheme with the reference "C Hoole Quantum." Although there is a small discrepancy between the final valuation and the Quantum Return of £9,598.56, on the basis of the evidence I have seen, I find that there are no further investments with any monetary value held within the Quantum Global Bond.

338. Hoole Liverpool was dissolved via compulsory strike off on 31 July 2018. Prior to its dissolution, the most recent set of accounts, summarised at paragraph 57 above, show that the company had no assets. I find that the Scheme's shareholding in Hoole Liverpool has no monetary value.

339. Gambling Insight was dissolved following liquidation on 30 April 2018. In the final administrator's report dated 19 January 2018, a secured creditor was reported to be owed £1,925,137 by the company and asset realisations were stated to be insufficient to enable a distribution to any unsecured creditors. On this basis, I find that any claim of the Scheme to repayment of the Gambling Insight Investment has no monetary value.

340. Reid Fotheringham was dissolved via compulsory strike off on 24 July 2018. The final accounts filed at Companies House for the period up to 31 May 2016, show net assets of only £12,230. As set out in paragraph 69 above, it is unclear whether the Reid

Fotheringham Investment was a loan or a purchase of redeemable preference shares. If the payment was a loan, I find that a claim for repayment of the loan has no monetary value. If the payment was a purchase of shares, I find that the shareholding has no monetary value.

341. J M Limited was dissolved by compulsory strike off on 9 September 2014. As set out in paragraph 79 above, the final accounts for the company show shareholder funds of minus £28,188. On this basis I find that the Scheme's shareholding in J M Limited has no monetary value.

342. Regarding the Unidentified Investments:

342.1. Local Loans Limited was dissolved by compulsory strike off on 22 May 2012 and no accounts were filed between its incorporation and dissolution. If the shares were allotted to the Scheme, as set out at paragraph 83 above, I find that the shareholding has no monetary value. If the shares were not allotted to the Scheme, I find that any claim the Scheme may have to recovery or repayment has no monetary value.

342.2. IA Agency was dissolved following a Creditors' Voluntary liquidation. In the 'Return of Final Meeting in a Creditors' Voluntary Winding Up' document filed at Companies House, there was a nil distribution to unsecured creditors and ordinary shareholders. On this basis, I find that any claim the Scheme may have to recovery or repayment has no monetary value.

342.3. There is no UK registered limited company with the name "JML Partnership." On the basis that it is not even possible to identify the recipient of this payment from the Scheme, I find that any claim the Scheme may have to recovery or repayment is remote and has no monetary value.

342.4. Trading.com is a website which provides platforms to allow individuals to trade financial instruments, including contracts for difference, and is a trading style of Trading Point of Financial Securities UK Limited. However, this company was only incorporated on 12 February 2015, some 4 years after the Scheme's payment to Trading.com. On the basis that even the recipient of this payment is not readily identifiable, I find that any claim the Scheme may have to recovery or repayment has no monetary value.

Redress

343. The investments made by the Trustee, set out in section A.2 above, total £4,106,964.56. Payments into the Scheme which appear to represent returns on those investments total £396,494.50. The payments made from the Scheme to Mr Hoole and EBS Financial Solutions, set out at Appendices 6 and 7 respectively, total £209,386.40. These figures form the basis of redress in my directions below.

344. I have identified that the payments from the Scheme, set out at Appendix 10, totalling £231,497.17, constitute, on the balance of probabilities, payments to members. In addition, the payments from the Scheme, set out at Appendices 8 and 9, total £274,863.56. With regard to the payments set out at Appendix 10, these do not form part of the directions for redress below. With regard to the payments set out at Appendices 8 and 9, see paragraphs 236 to 239 above, it is possible that a proportion of this amount was paid to Lead Spark as consideration for leads purchased by the Trustee. I am concerned that some of these sums may also have been misappropriated by the Trustee however, in the absence of sufficient evidence to allow me to make a finding, on the balance of probabilities about the nature of these payments, these sums do not form part of the redress below.

345. There remains a substantial discrepancy between the Total Transferred Sum and the total of each identifiable category of payment out of the Scheme:

Total Transferred Sum	**£5,003,944.21**
	Minus:
Hoole Liverpool Investment	£754,930.00
Quantum Investment	£2,635,240.00
Gambling Insight Investment	£105,025.00
Reid Fotheringham Investment	£97,644.56
J M Limited Investment	£176,025.00
Local Loan Investment	£100,025.00
Unidentified investments	£238,075.00
EBS Financial Solutions Payments	£89,636.40
Total Mr Hoole Payment Sum	£119,750.00
Appendix 8 (unidentifiable 6 digit references)	£97,212.58
Appendix 9 (unidentifiable foreign transfers)	£177,650.98
Appendix 10 (member payments)	£231,497.17
MSB Law	£8,025.00
Transglobe	£26,550.00
Bradlet Jefferi	£1,765.00
Joyce Benne	£7,500.00
Mr A Sweeney	£4,590.52
TPR	£509.00
Bank payment fees	£390.00
Total	£4,872,041.21
Discrepancy	**= £131,903.00**

346. The nature of the remaining net outflow of £131,903.00 is not identifiable with a sufficient degree of particularity from the Scheme bank statements. I consider that at least some of this sum may have been misappropriated by the Trustee, but I do not have sufficient evidence on which to make such a finding on the balance of probabilities.

347. My power to award redress, including those to recognise distress and inconvenience, comes from the 1993 Act, section 151(2):

"Where the Pensions Ombudsman makes a determination under this Part or under any corresponding legislation having effect in Northern Ireland, he may direct the trustees or managers of the scheme concerned to take, or refrain from taking, such steps as he may specify…"

348. A number of appeals have considered the exercise of this power in relation to non-financial injustice, commenting that the effect of inflation should be reflected in the level of awards made in respect of distress and inconvenience. In the High Court case of *Baugniet v Capita Employee Benefits Ltd* [2017] EWHC 501 (Ch), HHJ Simon Barker QC suggested an increase from £1,000 to £1,600 as being broadly in line with inflation. In *Smith v Sheffield Teaching Hospitals NHS Foundation Trust* [2017] EWHC 2545 (Ch), Norris J made similar comments in relation to the effect of inflation, adopting £1,600 as the upper limit and going on to increase the award made by the Deputy Ombudsman from £500 to £2,750. The judge highlighted several instances of maladministration, occurring over a long period, which was material to the likely level of distress.

349. In the Smith judgment, Norris J specifically discussed, at para 31, the Ombudsman's then current Factsheet 'Guidance on redress for Non-Financial Injustice' and considered that the levels referred to therein warranted updating for inflation. He then awarded £2,750 to reflect the severity of the maladministration (that it fell above the non-exceptional level).

350. It was as a direct result of the judges' comments in the *Smith* and *Baugniet* cases that TPO published a new Factsheet in relation to Non-Financial Injustice in September 2018. This adjusted the upper limit for non-exceptional awards to £2,000. Both sets of guidance, and indeed the judgment in *Smith* too, commented on the fact that the Ombudsman had occasionally awarded more than £2,000 in the past (for 'Exceptional' cases). See, for example, *Lambden* (74315/3) and *Foster* (82418/1) where awards of £5,000 and £4,000 respectively were made for non-financial injustice, or more recently, *Ms R* (PO-18157) where £3,000 was awarded.

351. A review of the Factsheet and this preliminary decision clearly shows that a high number of 'severe' and 'aggravating' factors are present in this case. By any standard, this is an 'Exceptional' case even before considering the specific individual circumstances of the pension scheme members affected by the Respondent's actions

over a number of years. I also take into account the comments made by Mrs N in paragraphs 137.8 and 138 above.

352. The circumstances of the complaint have clearly caused the Applicants an exceptional level of distress and inconvenience. They were significantly misled by the Trustee over a number of years, as to the cost and security of the arrangement they had entered into. In addition, they have not been kept informed of the issues in which the Scheme found itself, which, I have no doubt, has affected their quality of life detrimentally. In considering the appropriate level of award, I have taken into account the submissions made by Mr R, at paragraph 133 above, by Mrs N, at paragraphs 137 to 138 above, and by Mr O, at paragraphs 148.8 to 148.10 above.

353. All applicants were relying on the pension provision within the Scheme to provide them with a comfortable retirement. Mr O submitted that he will likely not be able to retire at 65, as he has only a small additional occupational pension. Mrs N has submitted that Mr N had no other pension provision besides the Scheme. He also had to continue working past retirement age and was unable to stop working, even to recover from surgery, in order to support his family. So, the awards set out in paragraph 357 below, made within my jurisdiction under section 146(1)(a) of the 1993 Act, are in recognition of the injustice suffered in consequence of the many instances of maladministration by Mr Hoole. I find that the maladministration has had a severely deleterious and, at least regarding Mr N, irreversible effect on the Applicants' lives and wellbeing, which is separate to the financial loss suffered by the Scheme or the Applicants.

Putting things right

354. Within 28 days of the date of the Determination, the Trustee shall pay into the Scheme, to be held on behalf of the Scheme membership as a whole:

354.1. £3,919,856.46, which is the sum of the:

354.1.1. Quantum Investment minus the Quantum Return (£2,515,240.00);

354.1.2. Hoole Liverpool Investment minus the Hoole Liverpool Returned Sum (£547,430.00);

354.1.3. Gambling Insight Investment minus the Gambling Insight Returned Sum (£37,025);

354.1.4. Reid Fotheringham Investment minus the Reid Fotheringham Returned Sum (£96,650.06);

354.1.5. J M Investment (£176,025);

354.1.6. Local Loans Investment (£100,025);

354.1.7. Unidentified Investments (£238,075);

354.1.8. EBS Financial Solutions Payments (£89,636.40); and

354.1.9. Total Mr Hoole Payment Sum (£119,750);

less:

354.1.10. The current value of any investments (£0); and

354.2. Interest on the above sum at the rate of 8% per annum simple from the date of the Determination to the date of payment.

355. In the event that the Trustee does not comply fully or at all with any of the directions in paragraph 354 above, the Trustee will account to the Plan, or to any independent trustee appointed by TPR, for any amount outstanding.

356. It is my hope that TPR will appoint an independent trustee to take over as trustee of the Plan as soon as practicable. In the meantime, any amount paid into the Plan, in accordance with paragraph 354 above, is to be held within the Plan on trust for the benefit of all of the Members until any independent trustee appointed by TPR is able to pay those funds to the Members.

357. For the exceptional maladministration causing injustice, within 28 days of the date of this Determination, the Trustee shall pay the sum of £5,000 to Mr R and Mr O, and the sum of £6,000 to the estate of Mr N.

Reporting

358. As set out in paragraphs 344 – 346 above, I cannot safely direct that the Total Transferred Sum is restored to the Scheme, but the irregular and disorderly Scheme bank account records are highly concerning and suggest further misappropriation of funds by the Trustee. On issuing the Determination of these complaints, I will pass a copy of it to TPR and to the Police.

Anthony Arter CBE

Deputy Pensions Ombudsman

25 April 2024

Appendix 1

Applicants

The Pensions Ombudsman's Reference	Name of Applicant
CAS-53044-T5K7	Mr R
CAS-55238-T3N4	Mr N (continued by his estate)
CAS-57583-H5G0	Mr O

Appendix 2

Extract of the "Additional Member Declaration" signed by Mr R

"I apply for Membership of a Self Invested Personal Pension Scheme.

(a) I agree to be bound by the rules of the Scheme
(b) To the best of my knowledge and belief, the particulars given on the Application are correct and complete.
(c) I undertake to tell Tudor Capital Management Limited in writing within 30 days if:
  (i) I cease to have Relevant UK Earnings.
  (ii) I begin to have Relevant UK Earnings.
  (iii) There is any change of my employment status.
  (iv) I cease to be a UK resident.

I wish to nominate the person(s) listed in the section headed "expression of wish – disposal of death benefits" to receive any benefit payable under the Scheme on my death. I understand that this nomination will not bind the Trustees of the Scheme.

I hereby consent to Tudor Capital Management Limited obtaining details from the Administrator or Trustees or insurance company or other pension provider of any Scheme, arrangement or contract of which I am or have been a Member and authorise the giving of any such details to Tudor Capital Management Limited. I understand that the transfer may only be applied to provide benefits at that time I take retirement benefits or on my death.

I fully understand and agree that the trustees of the scheme (other than the managing trustee) are solely responsible for all decisions relating to the purchase, retention and sale of investments forming part of the Scheme. I agree to hold Tudor Capital Management Limited fully indemnified against any claim in respect of such decisions.

I understand and agree that the managing trustee will not permit any investments or payments by the scheme which would result in the loss of HM Revenue & Customs registered status, and that any such decision by the managing trustee is binding upon the trustees as a whole.

I understand and agree that the funds will be included in appropriate arrangements, details of which are available on request. I request Tudor Capital Management Limited to provide the appropriate benefits as may be required from time to time.

The information on this form and any supplementary information provided by me and/or my nominated advisers, now or in the future, will be used by Tudor Capital Management Limited to

(a) Set up and administer my Self Invested Personal Pension scheme.
(b) Send me information relating to my scheme.
(c) Provide statistics for marketing/new business analysis by Tudor (or its agents).
(d) Contact me with details of additional products or services that Tudor considers will be of interest to me."

Appendix 3

Excerpts from investment advice given by Transglobe Financial Advisers dated 21 May, 14 June, 19 June and 11 July 2012.

Except where indicated below, the content of each letter was identical.

Dear Chris

RE: Your Investment Requirements

Further to our meeting of the 15th April 2012, the purpose of this letter is to summarise the recommendations made to yourself following a review of the financial circumstances and objectives specifically in relation to the AJC2 Pension Scheme of which you are the Trustee.

…

This is not a review of your personal financial circumstances and objectives, the advice we are proving [sic] is solely in relation to investments to be made on behalf of the AJC2 Pension Scheme of which you are the sole trustee.

Current Situation

You are the sole trustee of the Scheme which operates for AJC2 Limited. You have been in this role for 20 months. Prior to this you were an independent financial adviser for ACG Financial Management Limited (from 2002 to 2006) and also for CH Financial Advice (2007-2010). You were the Director of each of these firms and as such carried the controlled functions of Compliance Oversight, Apportionment and Oversight, Money Laundering Reporting as well as providing advice yourself.

Objectives

As the Trustee of the AJC2 Pension Scheme, you have a responsibility to the scheme members to ensure the suitability of the investments made on behalf of the scheme and to obtain and consider proper investment advice. Therefore, even though you have many years' experience as a financial adviser and are a sophisticated investor, you have approached us to provide you with advice on how to invest the funds held in the scheme in order to provide you with assistance in your role as trustee.

We have previously provided you with advice in this area and you have requested that we review the scheme's investment requirements again.

Attitude to Risk

You have completed a Risk Profile Questionnaire. The profiler has been developed to enable to us [sic] to ascertain the attitude to risk of investors more accurately, which in turn assists us in determining suitable investment strategies. The risk profile tool however is not the only determinant of these strategies as for your planning we also need to take into consideration your overall financial and personal circumstances and aspirations.

We have identified that your overall attitude to risk is: 10 Aggressive

In general, Aggressive investors are looking for the highest possible return on their capital and are willing to take considerable amounts of risk to achieve this. They are usually willing to take risk with all of their available assets. Aggressive investors can easily be persuaded to take a gamble rather than a certain outcome and enjoy gambling as an activity. They have firm views on investment and will make up their own minds on financial matters quickly. They do not suffer from regret to any great extent and can accept poor outcomes without much difficulty. Aggressive investors typically have substantial amounts of investment experience and will typically have been active in managing their investment arrangements.

Current Assets

[The content of this section for each of the letters is set out below:]

[21 May 2012 letter:

There are currently 32 members of the scheme and the current value of the scheme is £1.45 million. You have confirmed that the current investments are as follows:

£100,000 in loans to individuals
£55,000 in a bridging finance property deal
£800,000 in UK unquoted limited companies via preference shares
£600,000 in the Quantum Global Bond
£360,000 in cash

You require advice on investment of the £360,000 currently in cash.]

[14 June 2012 letter:

There are currently 32 members of the scheme and the current value of the scheme is £1.45 million. You have confirmed that the current investments are as follows:

£100,000 in loans to individuals
£55,000 in a bridging finance property deal
£800,000 in UK unquoted limited companies via preference shares
£1,030,000 in the Quantum Global Bond
£365,000 in cash

You require advice on investment of the £365,000 currently in cash.]

[19 June 2012 letter:

There are currently 32 members of the scheme and the current value of the scheme is £1.45 million. You have confirmed that the current investments are as follows:

£100,000 in loans to individuals
£55,000 in a bridging finance property deal
£800,000 in UK unquoted limited companies via preference shares
£1,305,000 in the Quantum Global Bond
£490,000 in cash

You require advice on investment of the £490,000 currently in cash.]

[11 July 2012 letter:

There are currently 32 members of the scheme and the current value of the scheme is £1.45 million. You have confirmed that the current investments are as follows:

£100,000 in loans to individuals
£55,000 in a bridging finance property deal
£800,000 in UK unquoted limited companies via preference shares
£1,885,000 in the Quantum Global Bond
£690,000 in cash

You require advice on investment of the £690,000 currently in cash.]

Recommendation

In making the recommendations a number of factors have been considered including personal circumstances, attitude to risk and stated objectives.

We are recommending that you establish an Offshore Bond via the insurance company Quantum Life. The recommended level of investment is [21 May letter: £270,000, 14 June letter: £275,000, 19 June letter: £400,000, 11 July letter: £600,000]

In general investment bonds are single premium non-qualifying life assurance policies designed primarily as an investment and usually offering very little in the way of assurance cover. Most bonds are written on a whole of life basis, so the investment period is effectively open ended. In respect of investment choices, they are very adaptable. Money can be moved from fund to fund, perhaps changing from a growth funds [sic] to one that provides an income. Regular income can be provided or alternatively one-off payments can be taken from the bond to help with any unexpected surprises.

Investment bonds have no fixed term. They are designed to be a medium – long term investment and therefore should not be viewed as a short-term commitment.

A bond lets you invest your money to provide potential growth, provide an income or a combination of the two. It can be a tax efficient way of investing though this depends on the circumstances of the investor.

Offshore bonds are insurance bonds issued by companies based outside of the UK in generally low tax environments where the investment rolls up more or less free of tax. Whilst providers of offshore bonds are set up outside of the UK you can be confident that they are still maintained in well regulated jurisdictions.

Investors in offshore bonds have a significantly wider choice of investments than those available to investors in onshore bonds. Investment choices include hedge funds, property funds, unregulated collective investment schemes and other non-UK based investments. The bond effectively has an open architecture and therefore in most cases the investment company acts solely as a wrapper for a potentially diverse range of investments with further

tax advantages to the investor. This can be very beneficial in the creation of a bespoke investment strategy for specific circumstances.

…

Taxation

Taxation issues in relation to the encashment of existing assets are potentially complex and are determined by residence and domicile status.

Any investment gains which are returned to the UK may be subject to Capital Gains Tax.

TransGlobe Independent Financial Advisors Limited are not able to provide advice in respect of international tax law and we therefore recommend that specialist tax advice is obtained in relation to these transactions.

Policy Holders / Life Assured

The policy holder will be the pension scheme itself, not you as an individual. Furthermore, the life assured and beneficiaries are also the pension scheme therefore the scheme itself will always hold the bond in any eventuality which is for the ongoing benefit of the scheme members.

Product Provider / Jurisdiction

The Quantum Global Bond is a unit linked, whole of life, offshore investment bond offered by Quantum Life, based and regulated in Lichtenstein [sic]. Quantum Life's main business is providing life assurance products in the UK under EEA Passport Rights.

Quantum Life are specialists in developing truly unique products tailored to the needs of their customers and distributors. As a result their products offer great flexibility in their solutions with a wider range of investment opportunities than are generally available through traditional bonds.

…

Whilst investment opportunities are typically extensive through any offshore bond, the Quantum global bond can accommodate a very wide range of investments from cash to specialised investments. Quantum does not warrant or endorse any particular investment a client may enter into but it does perform due diligence to satisfy itself that an investment is, as far as can be determined, bona fide and can be included within the bond.

One of the features of the bond is that Quantum Life appoints an Investment Adviser to instruct them where the assets of the bond are invested and there is no contractual opportunity for a client to direct Quantum Life as to how their money is invested. In practice, the Investment Adviser would receive relevant information of an investor's circumstances and objectives as well as an understanding of their attitude to risk before directing Quantum Life as to the placement of an investment.

Transglobe Independent Financial Advisors have advised to the suitability of the Quantum Portfolio Bond as being an appropriate vehicle to meet your needs and objectives.

Please be aware that as this investment is not authorised by the FSA as it is [sic] considered to be a high risk product. We have therefore taken the decision to treat this investment as an unregulated collective. Normally we would only recommend this type of investment to a high net worth / sophisticated investor. Given that you were previously an IFA holding several controlled functions we have certified you as a Sophisticated Investor as you have an excellent understanding of the financial markets and specialised investments and you are aware of the risks associated with such products. We have discussed at length and you are aware of the following:

Risk Factors

The actual value of the bond will be dependent upon the performance of the underlying investments. The value of investments can fall as well as rise.

If you surrender your bond you will get back the value of the underlying assets less any applicable charges or fees. Depending on the future return from assets, if you surrender the bond you may get back less than you invested.

If you make regular withdrawals, which exceed the growth in value of the bond, the value of the investment in the bond will fall.

If you invoke the right to cancel your bond, you will get back the amount that you have invested less any fall in the value of the underlying assets within the bond.

If the bond holds an investment for which there is no recognised and liquid market it may be difficult to deal in the investment or to obtain a reliable valuation or information about the risks to which it may be exposed.

The composition of the bond portfolio and the underlying investments will be determined by an Investment Adviser appointed by Quantum Life. The Investment Adviser has the opportunity to invest in high risk and unregulated collective investment schemes. This does not necessarily mean that your bond will be invested in high risk assets however it is important to identify to you the exact nature of the risks that can be involved. You have confirmed to me your understanding of this.

The bond may invest in unregulated collective schemes. These are usually high risk schemes and you may lose some or all of your money. Some invest in unlisted companies or private equity and some may borrow money to finance investment (gearing), which increases risk.

There is no guarantee that the bond will out-perform your previous investments.

You could lose out on investment growth during the period of funds being surrendered and subsequently re-invested with the new provider.

…

Key Features Document

I have provided you with a Key Features Document. This document is important and contains information regarding the product that I have recommended, particularly with regards to the product's aims, the commitment which it entails together with its legal and tax status and the commission payable. If there are any points on which you are unsure or require further clarification, please contact me and I will be pleased to explain these in greater detail.

…

Charges

For arranging this transaction, Transglobe Independent Financial Advisors Limited will receive initial commission of 1% which will be paid on a fee arrangement basis. Based on an investment of [21 May letter: £270,000, 14 June letter: £275,000, 19 June letter: £400,00[sic], 11 July letter: £400,00[sic]] this will total [21 May letter: £2,700, 14 June letter: £2,750, 19 June letter: £4,000, 11 July letter: £6,000].

For the establishment of the plan, Quantum will charge 1% of the initial investment. In addition, Quantum will receive 2% annually from the annual management charge which will also cover the fees for the appointed Investment Adviser. This is show [sic] in the illustration which is enclosed.

These costs have been explained to you and you are happy to accept them.

Conclusion

The Quantum Life Global Bond has been recommended as it offers the option of diversification of investments within the pension scheme whilst offering the tax benefits of an offshore bond. As the scheme does not need to access to these funds for the foreseeable future it offers a good long term investment option.

You have previously invested in the bond and have been satisfied with this investment and have confirmed that you are happy to invest further funds into this bond.

The advice provided to you is based on the information disclosed and therefore if this letter does not accord with your view of the situation or you require any further clarification, please contact me immediately.

Following the establishment of the bond it will be referred to a third party Investment Adviser in order for them to advise the bond [sic] in respect of suitable underlying investments.

Appendix 4

Excerpts from the Trustee's FSA/FCA record:

<u>ACG Financial Management Limited</u>

CF1 Director
From 31 May 2002 to 22 May 2006

CF11 Money Laundering Reporting
From 12 Jan 2002 to 22 May 2006

CF21 Investment Adviser
From 31 May 2002 to 22 May 2006

<u>C H Financial Advice Ltd</u>

CF1 Director
From 14 Sept 2007 to 06 Aug 2010

CF8 Apportionment and Oversight
From 14 Sept 2007 to 31 Mar 2009

CF10 Compliance Oversight
From 14 Sept 2007 to 06 Aug 2010

CF11 Money Laundering Reporting
From 14 Sept 2007 to 06 Aug 2010

CF21 Investment Adviser
From 14 Sept 2007 to 31 Oct 2007

CF30 Customer
From 01 Nov 2007 to 06 Aug 2010

Responsible for Insurance Mediation
From 14 Sept 2007 to 06 Aug 2010

<u>Investment Strategies (UK) Limited</u>

CF21 Investment Adviser
From 01 Dec 2001 to 30 May 2002

<u>ACG Financial Management Ltd (Appointed Representative)</u>

CF1 Director (AR)
From 01 Dec 2001 to 30 May 2002

Responsible principal firm:
Investment Strategies (UK) Limited

Appendix 5

Extract of the information provided by the Scheme/EBS Financial Solutions signed by Mr R on 11 June 2010

"**Private Equity Investments**
Explanation of Investment Risk and conflict of Interest

We are keen to promote and educate individuals on the benefits of investing into private equity. Within our ethos of 'In it together' we also make it our priority to ensure that all investors understand the nature of the risk involved in private equity investment and the ways in which EBS Financial Solutions are remunerated for marketing this type of investment opportunity. Consequently we would ask that you reach and confirm your understanding of the following;

- Investing in Private Equity is **high risk.** The value of your initial investment can be reduced to zero.
- Shares promoted by EBS Financial Solutions are investments into single companies. These shares are not readily tradeable. Consequently, you should view this type of investment as long term (5 years plus).
- Due to the illiquid nature of unlisted single company shares it may not be possible to realise a value from these shares at any given time.
- Any tax benefits provided to you on investment cannot be guaranteed and are subject to rule which, if breached, can result in the loss of some or all of the tax relief(s) granted.
- Full details of the tax reliefs are contained within the Information Memorandum provided by the individual Company to summarise the investment opportunity. This should be read before proceeding with an investment into a private equity opportunity.
- Advisers within EBS Financial Solutions can receive a commission on monies invested into private equities they promote. Some of this commission may be passed on to third parties for promoting and marketing the investment opportunities to their clients.
- Advisers within EBS Financial Solutions can hold a shareholding in private equity companies recommended to you, in addition to having a directorship. For carrying out this role, the adviser can receive a fee from the private equity company.

I confirm I have read and understand the risk attached to investing into single company shares. I have also been made aware EBS Financial Solutions and its advisers [sic] conflict of interest."

Appendix 6

Payments from the Scheme to Mr Hoole

Note: this does not include the payment of £106,025 paid from the Scheme dated 22 September 2010. In context this appears to have been a payment to Hoole Liverpool.

Date	Payment Reference	Amount
3 February 2014	C G Hoole	£5,000
27 March 2014	C G Hoole	£5,000
24 April 2014	C G Hoole	£5,000
1 May 2014	C G Hoole	£3,000
7 May 2014	C G Hoole	£4,250
26 June 2014	Chris Hoole	£10,000
24 September 2015	Chris Hoole	£64,000
27 October 2015	Chris Hoole	£5,000
7 November 2018	C G Hoole	£10,000
15 January 2019	FT203594816341 FOREIGN (manuscript addition of CGH)	£8,500
	Total	**£119,750**

Appendix 7

Payments from the Scheme to EBS Financial Solutions Limited

Date	Payment Reference	Amount
5 April 2011	EBS Financial	£1,958.00
15 April 2011	EBS Financial S	£1,390.00
14 July 2011	EBS Financial S	£3,425.00
30 November 2011	EBS Financial S	£8,368.40
29 February 2012	EBS Financial S	£4,125.00
8 May 2012	EBS Financial S	£35,025.00
17 May 2012	EBS Financial	£25,025.00
28 June 2012	EBS Financial So	£10,320.00
	Total	**£89,636.40**

Appendix 8

Scheme payments with unidentifiable numerical references

Date	Payment Reference	Amount
07-Apr-11	010051	£55.96
19-Apr-11	010052	£360.00
27-Jun-11	010054	£157.00
01-Sep-11	010059	£13,082.60
	010060	£720.00
28-Dec-11	010061	£1,440.00
	010062	£360.00
30-Jan-12	010063	£360.00
09-Feb-12	167974	£25,305.86
24-Feb-12	010064	£1,800.00
	010065	£360.00
12-Mar-12	010066	£360.00
14-Mar-12	010067	£720.00
	010068	£360.00
	010069	£360.00
30-Mar-12	010070	£720.00
	010072	£6,480.00
	010071	£1,800.00
25-Apr-12	010073	£1,800.00
	010074	£360.00
16-May-12	010075	£1,440.00
	010076	£1,440.00
	010076	£720.00
06-Jun-12	010078	£720.00
	010079	£1,080.00
11-Jun-12	010080	£5,040.00
	010081	£1,440.00
	010082	£2,520.00
	010083	£360.00
	010084	£360.00
	010085	£720.00
	010086	£360.00
17-Jul-12	010087	£150.00
18-Jul-12	010088	£360.00
04-Oct-12	010089	£260.00
18-Oct-12	010091	£7.20
31-Oct-12	010092	£150.00
02-Nov-12	010093	£147.11
13-Nov-12	010096	£220.00
16-Nov-12	010095	£150.00
	010094	£2,160.00
24-Jan-13	010097	£2,880.00

18-Oct-13	010098	£360.00
13-Nov-13	010099	£166.50
15-Nov-13	010100	£146.00
19-Nov-13	010101	£3,300.00
10-Dec-13	010102	£165.00
24-Jan-14	010105	£180.00
27-Jan-14	010104	£91.00
	010103	£91.00
30-Jan-14	010106	£273.60
13-Feb-14	010107	£180.00
18-Mar-14	010108	£180.00
09-Apr-14	010109	£180.00
29-May-14	010111	£400.00
30-May-14	010110	£39.60
17-Jun-14	010112	£1,896.00
24-Jun-14	010113	£280.00
27-Jun-14	010116	£574.80
30-Jun-14	010115	£2,626.75
01-Jul-14	010114	£137.14
17-Jul-14	010119	£320.00
21-Jul-14	010118	£42.00
25-Jul-14	010117	£208.72
06-Aug-14	010120	£1,170.00
14-Aug-14	010121	£360.00
12-Sep-14	010122	£460.00
15-Oct-14	010123	£480.00
03-Nov-14	010124	£13.00
11-Nov-14	010126	£530.00
26-Nov-14	010128	£42.00
28-Nov-14	010125	£120.00
01-Dec-14	010129	£120.00
10-Dec-14	010130	£560.00
09-Jan-15	010133	£400.00
13-Jan-15	010132	£13.00
14-Jan-15	010131	£267.84
12-Feb-15	010134	£514.90
16-Mar-15	010135	£103.00
23-Jun-15	010136	£575.00
	Total	**£97,212.58**

Appendix 9

Scheme payments with unidentifiable Foreign "FT" references

Date	Payment Reference	Amount
26 October 2012	FT134611837341 FOREIGN	£45,000
20 December 2012	FT136126232341 FOREIGN	£765.00
10 January 2013	FT136589194341 FOREIGN	£19,000
28 May 2013	FT140307463341 FOREIGN	£14,183.00
29 August 2018	FT198877074341 FOREIGN	£900.00
	FT198876879341 FOREIGN	£802.98
	FT198877651341 FOREIGN	£97,000.00
	Total	**£177,650.98**

Appendix 10

Possible payments to Scheme members

Date	Anonymised payment reference	Sum
07-Jun-10	SS	£13,022.12
	CD	£19,724.65
02-Jul-10	PS	£17,038.20
07-Jul-10	SB	£55,025.00
14-Jul-11	Mr SM	£778.45
	Mr AC	£50,025.00
	Mr AC	£10,025.00
16-Mar-12	Mr JM	£19,825.00
30-Jul-12	Mr SM	£750.00
09-Oct-12	Mrs RD	£2,025.00
24-Dec-12	Mr R (applicant)	£13,378.75
11-Apr-13	Ms DH	£10,000.00
15-Apr-13	Ms DH	£18,030.00
11-Sep-13	Mr SI	£750.00
03-Jul-14	Mr SI	£750.00
07-Jul-15	Mr SI	£350.00
	Total	**£231,497.17**

Appendix 11

Newspaper advertisement shared by Mr O