

Ombudsman's Determination

Applicants	Ms Y, Mr S, Mr E, Mr Y and Mr G (the Applicants)
Schemes	<ol style="list-style-type: none">(1) Eleven Property Pension Scheme (the Eleven Scheme)(2) SHK Property Services Pension Scheme (the SHK Scheme)(3) Gilbert Trading Pension Scheme (the Gilbert Scheme) <p>(each a Scheme and collectively, the Schemes)</p>
Respondents	<ol style="list-style-type: none">(i) Brambles Administration Limited (Brambles)(ii) Mr Simon Hamilton Kaigh(iii) Mr Michael McNally (collectively, (ii) – (iii) the Individual Trustees)(iv) Eleven Property Limited (Eleven Property)(v) SHK Property Services Limited (SHK Property Services)(vi) Gilbert Trading Limited (Gilbert Trading) (collectively, (iv) – (vi) the Trustee Companies when referring to them in their capacity as trustees) <p>(collectively, (ii) – (vi) the Trustees)</p>

Complaint summaries

1. The Applicants have complained on similar points.
2. Ms Y, a member of the Eleven Scheme, has said:-
 - 2.1. Brambles has provided her with a very poor service and has failed to respond to her requests for information.
 - 2.2. Additionally, she is concerned that she cannot transfer out of the Eleven Scheme or sell the investment and has never received any rental return.
3. Mr S, a member of the Eleven Scheme, has said:-
 - 3.1. He has been scammed by Brambles and the Eleven Scheme.
 - 3.2. He received no annual statements and no advice as to how he can access his money. This situation has affected his mental health.
4. Mr E, a member of the SHK Scheme, has said:-
 - 4.1. He has suffered a financial loss of £24,387.69 and was told by the FCA that the SHK Scheme was likely a scam.
 - 4.2. Brambles has not provided him with the information he has requested.
5. Mr Y, a member of the SHK Scheme, has said:-
 - 5.1. Brambles has stopped engaging with him and he has been unable to access his pension commencement lump sum or transfer away from the SHK Scheme.
6. Mr G, a member of the Gilbert Scheme, has said:-
 - 6.1. He was expecting his pension to be transferred in early May 2019. There have since been delays, and only half of the pension has been transferred. He believes he is owed over £29,000 from the Gilbert Scheme. He is also concerned about how the Trustees have acted in relation to investing his pension.
 - 6.2. Brambles has refused to answer his numerous questions or respond to his complaint.

Summary of the Ombudsman's Determination and reasons

7. Having fully considered the evidence and submissions presented in writing, I uphold the complaints against the Trustees and Brambles. My reasons are as follows.
8. The Trustees have committed various breaches of trust and maladministration by:
 - 8.1. operating a pension liberation arrangement by making unauthorised payments to the Schemes' members in breach of trust and in contravention of section 255 of the Pensions Act 2004;
 - 8.2. failing to have adequate regard to the need for diversification of investments, as required by Regulation 7(2) of The Occupational Pension Schemes (Investment) Regulations 2005 (the **Investment Regulations**);
 - 8.3. breaching their duties in relation to investing the Applicants' assets imposed on them by Part I of the Pensions Act 1995 (**1995 Act**) and by case law;
 - 8.4. breaching the requirements to avoid or manage conflicts of interest set out at law and in the Pensions Regulator's guidance; and
 - 8.5. breaching their statutory duties and regulatory guidance regarding governance and administration oversight.

In certain of the breaches and maladministration committed, I find that the Individual Trustees have acted dishonestly.

9. I consider that there has been maladministration on the part of Brambles for its failure in handling the Applicants' concerns and in its record-keeping. I also find that Brambles has acted as a dishonest assistant to certain breaches of trust.

Oral Hearing

10. I held an oral hearing on 26 October 2022 (the **Oral Hearing**), as part of my investigation. I considered it necessary to do so because it appeared to me, from the evidence I had received, that the conduct, which is the subject of these complaints, may have been dishonest. As such, Mr Kaigh and Mr McNally might be personally liable for their acts and omissions in their capacities as the Individual Trustees, and Mr Kaigh and Brambles might be liable as accessories after the Trustee Companies had been appointed. The Oral Hearing was attended by Mr S, Ms Y, Mr E and Mr Y. Neither Mr G, nor Mr Kaigh, nor Mr McNally, nor a representative from Brambles attended the Oral Hearing.

Confidentiality

11. In accordance with my usual policy, the Applicants have been anonymised. In my Determination, there are specific investments referred to, particulars of which are

available for public inspection at, for example, Companies House or the Land Registry. Certain details relating to these investments have been redacted or pseudonymised in order to protect the Applicants' confidentiality, which is in accordance with The Pensions Ombudsman's (TPO) privacy policy. It has been denoted in square brackets where this has been done. I have shared an interpretative key to the pseudonymised data with the Respondents so they are clear about the facts underpinning this decision.

12. Brambles has requested that the individuals (who are not the Applicants) named in my Determination are anonymised as well. I am not acceding to this request. My findings are clear that the Schemes involved were pension liberation schemes and certain individuals involved with them played a part in their operation. I consider it is necessary for understanding my Determination that, where I find certain individuals to have been involved in the Schemes, that their identity is not concealed.

Jurisdiction

Jurisdiction in respect of the Schemes

13. Under general trust law principles, any individual beneficiary has standing to require trustees to account for breaches of trust.
14. I have the power to direct the Trustees to restore, or pay, to the Schemes, any assets which have been lost by reason of the breach of trust. If specific restitution is not possible, the liability of the Trustees to the Schemes is to restore their funding to the position it would have been in had there been no breach of trust.
15. Any money recovered by the Schemes, as a result of my directions, is available for the general benefit 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."
16. 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).

Jurisdiction in respect of certain Applicants' complaints

Mr S

17. The Respondents have stated that Mr S's complaint is outside my jurisdiction under Regulation 5(2) of The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 (the "**1996 Ombudsman Regulations**"), and is timed out, as he was aware of the circumstances forming the basis of his complaint for more than three years before complaining.
18. During the Oral Hearing, Mr S indicated that in 2015 he was 'getting a bit dubious' about his pension in the Eleven Scheme, into which he had transferred his benefits in 2012. His complaint was received by TPO in early 2022.
19. When my jurisdiction was first considered in relation to Mr S's complaint, it was thought he had only become concerned more recently in 2021. In the light of his evidence at the Oral Hearing, I have re-examined my jurisdiction in relation to his complaint.
20. Having done so, I am satisfied I still have jurisdiction to investigate it. I appreciate Mr S suspected something was wrong in 2015 but do not find this amounted to sufficient knowledge of the acts and omissions carried out by the Respondents which are documented in my Determination, and of his losses flowing from these, to bring a complaint at that stage. I do not believe Mr S ought reasonably to have known of the acts or omissions at that time either, the current degree of knowledge about which has only become clear as a result of substantial investigation. Contrary to Brambles' assertion, referred to at paragraph 352 below, it is not my view that Mr S only had the knowledge to complain by virtue of what the investigation has uncovered.
21. Mr S has said that in 2021 he made further investigations into Brambles and became aware then that multiple claims had been made that Brambles had been involved in scams. It is at this point, for the purposes of Regulation 5(2) of the 1996 Ombudsman Regulations, that Mr S knew or ought reasonably to have known of the acts and omissions being complained of now. He has therefore brought his complaint within time for the purposes of Regulation 5(2) of the 1996 Ombudsman Regulations.

Ms Y

22. The Respondents have stated that Ms Y brought her complaint too late. I understand their position is that she should have been aware she had reason to complain in 2015, and therefore would be out of time under Regulation 5(2) of the 1996 Ombudsman Regulations. The Respondents were not satisfied by the reasoning given for me accepting jurisdiction of her complaint.
23. Ms Y, as explained below, requested a sale of the assets underlying her pension in 2015, but was informed that there was no purchaser so this was not possible. Her complaint was also received by TPO in early 2022.
24. When my jurisdiction was first considered in relation to Ms Y's complaint in May 2022, it was known that Ms Y's request to sell her underlying assets had not been satisfied.

I also note Ms Y had reported Brambles to certain authorities in 2015, as there was confusion about ownership records around her investment. Clearly, these events were longer than three years before receipt of her complaint. Regulation 5(3) of the 1996 Ombudsman Regulations states as follows:

“Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complaint or dispute if it is received by him in writing within such further period as he considers reasonable.”

25. At the time, I decided that it was reasonable for Ms Y not to have brought her complaint within three years of 2015 – which was the date then identified as when she knew something was wrong. The reasoning I gave to Ms Y’s representative was that an extension was reasonable because the Ombudsman had only recently understood there were broader issues surrounding the complaint relating to the conduct of the Trustee(s) and their investment duties. The Respondents have disputed that this was a valid reason for an extension. It does not follow that I do not have jurisdiction in relation to the complaint.
26. My reason for accepting jurisdiction was based on my acceptance that Ms Y’s understanding of her cause for complaint had developed since 2015, when she first expressed dissatisfaction about her pension to Brambles. In 2015, Ms Y knew her investment had not been realised and had concerns around its ownership. These concerns appear to have been answered at the time by Brambles. It is therefore understandable she did not complain in 2015. I concluded that knowledge of the peripheral issues (such as liquidity problems) and other consequences which emerged in 2015 was not the same as knowledge of the true acts and omissions, that is, the suspicion of a scam which had taken place on transferring into the Eleven Scheme in 2013. I decided that it was reasonable that she had not referred her application within three years of 2015 and that the further period until January 2022, when I received her complaint, was a reasonable one for her to have brought it.
27. Ms Y only had (or should have had) the requisite knowledge of the acts or omissions to bring a complaint in May 2019, when she discussed the matter with her representative, The Financial Repayment Service (as it was then known). Before then, the nature of her understanding of the problem was not such that she knew she had cause to complain about a potential scam. Her representative was in a position to identify the underlying acts and omissions and assist her to come to this conclusion as well. This led to the formulation of the complaint received within three years of May 2019. Indeed, the date of 4 May 2019 is referred to on her application form as the date Ms Y first became aware of the problems being complained of. During the period between May 2019 and bringing the complaint in January 2022, Ms Y’s representative investigated the position and raised a formal complaint with Brambles.
28. Therefore, although on receipt of her complaint jurisdiction was accepted under Regulation 5(3), it should instead have been accepted under Regulation 5(2). This is

because the period of three years starting from her knowledge of the relevant acts/omissions had not yet expired. This reasoning stands despite the Respondents disputing that I have jurisdiction over Ms Y's complaint (see paragraphs 343 to 344, below).

29. Alternatively, even if Ms Y had suspected she had been scammed as early as 2015, I note she has been suffering from ongoing ill health difficulties since at least that date. Indeed, it was the diagnosis of the ill health issues which prompted her to investigate her pension affairs in 2015, when the difficulties in selling her investments emerged. These health issues are ongoing and I am satisfied constitute reasonable grounds for delaying a complaint until she received assistance from her representative, and they had a reasonable period of time to investigate. It follows that I have jurisdiction over Ms Y's complaint.

Detailed Determination

A. Material facts

A.1 Background

A.1.1 Brambles Administration Limited

30. On 9 October 2012, Brambles was incorporated. It was registered in Morecambe, Lancashire. Its registered office moved to Preston, Lancashire on 3 September 2018. Brambles is an active company with a sole director and shareholder, Mr Glenn Laurence House.
31. I understand that Brambles became administrator of the Eleven Scheme on 26 June 2014 and administrator of the SHK Scheme on 6 May 2015. It succeeded Pension Administration Resources (**PAR**) in these roles. Brambles also succeeded PAR as the Gilbert Scheme administrator and I assume it did so on 6 May 2015.

A.1.2 The Eleven Property Pension Scheme

32. Eleven Property was incorporated on 11 November 2011. On 12 January 2012, Mr Michael McNally was appointed as the sole director.
33. On 23 April 2012, the Eleven Scheme was established by Trust Deed. Eleven Property was the Provider and Mr McNally was appointed as the first trustee. The establishing Trust Deed was witnessed by Mr Simon Stubbs. The Rules of the Eleven Scheme appear to have been attached to the establishing Trust Deed. Relevant sections of the Trust Deed and Rules are set out in Appendix 2 below.
34. The Eleven Scheme was registered with HMRC on 23 April 2012, with the Pension Scheme Tax Reference 00783381RB.
35. The Eleven Scheme's administrator was PAR. PAR was a trading name of Commerce Resources Ltd, of which Mr McNally was the sole director from 8 February 2012. Commerce Resources Ltd was dissolved on 12 April 2016 and so is not a Respondent in this Determination.
36. On 25 June 2014, Eleven Property as Provider, replaced Mr McNally as trustee with Mr Kaigh by way of a Supplementary Deed. The deed was witnessed by Mr Simon Stubbs. The following day, Mr McNally resigned as director of Eleven Property and Mr Kaigh replaced him as sole director.
37. On 14 July 2016, Eleven Property removed Mr Kaigh as the Eleven Scheme's Trustee and appointed itself as the replacement by supplementary deed. The deed was witnessed by Mr Paul Dalton.
38. Brambles has stated that the Eleven Scheme has 55 members.
39. Brambles has stated that the following investments were made by the Eleven Scheme:

Eleven Scheme	Type	Amount
Storage Units at Strongbox Self-Storage	Lease	£677,636.05
Priority Solutions Limited	Shares	£234,716
Harper International Consultants Limited	Shares	£114,005
Turcotte Corporation Limited	Shares	£170,280
POD Estates Limited	Shares	£136,576
Capital Bridging Finance Solutions Limited	Loans	£28,384.70
Total		£1,361,597.75

Brambles has indicated that none of the investments has been revalued so they are currently being valued at cost.

40. Brambles has separately said that £1,553,546.87 was transferred into the Eleven Scheme (an amount £191,949.12 higher). I assume £165,000 of the difference is attributable to the Eleven Scheme Fee Amount (as defined below). In default of an explanation of the residual difference I will assume the figure of £1,553,546.87 (the “**Eleven Scheme Total**”) is the amount which has been under the trusts of the Eleven Scheme.
41. On 23 April 2024, Eleven Property was dissolved from the companies register, having been compulsorily struck off. It has been the subject of substantial investigation in advance of its dissolution, so my Determination records it as a Respondent, and indeed it may legally be restored to the register. It is not the subject of any directions in Section E.4.

Ms Y

42. In late 2012 or early 2013, Ms Y conducted internet searches to find a pension adviser in order to access part of her pension. She found and spoke to a local adviser. The adviser referred her to Mr McNally, who called Ms Y directly. Mr McNally referred Ms Y to an individual called ‘Simon’, who purported to be from Brambles. Simon contacted Ms Y and offered to find a suitable pension scheme. Ms Y was told by Mr McNally and Simon that cash could be withdrawn from her pension.
43. On 26 February 2013, Ms Y received an application form in the post, and signed it to join the Eleven Scheme. Relevant extracts are set out in Appendix 4.
44. On 17 April 2013, PAR issued a letter to Ms Y confirming that £21,161.81 had been transferred into the Eleven Scheme. The funds originated from two sources, one a transfer-in of £19,133.78 and one of £2,028.03.
45. On 30 April 2013, Hill Dickinson solicitors wrote to Ms Y. The letter said:

*“You are to take a lease from Samarian Holdings Limited (“**Samarian**”), a Gibraltar company, for a term of 250 years from the date of the lease paying a ground rent as set out in the lease.*”

Samarian has exchanged contracts to acquire the freehold interest of the building at Bahama Road Haydock which your storage unit forms part of with the current registered proprietor and we understand that this will occur simultaneously with the grant of the lease to you.

... Please find enclosed herewith form TR1 which you are required to execute in order to transfer the lease to your pension scheme."

46. In late April or early May 2013, Ms Y received payments totalling what she believed was somewhere between £3,500 and £3,800. The exact amount paid is not precisely clear, but on the basis of the amount transferred in, this suggests a figure of £3,633.84, that on the balance of probability, was paid. This amounts to 20% of the transfer value, minus administration fees, which, I understand, was a calculation formula by which some members were being paid. I will assume this figure for the purposes of my Determination. She understood this was part of her pension funds.
47. On 1 May 2013, Ms Y signed a 'member-directed investment form' for the Eleven Scheme. Relevant extracts are set out in Appendix 4.
48. Ms Y agreed to purchase leases of Units [X.23], [Y.24] (a 31.33% shareholding) and [X.16] (a 8.98% shareholding) through Strongbox Self-Storage Limited (**Strongbox**). The form confirmed that she would already have purchased Unit [X.23] in her personal capacity. The form was pre-populated and this was all the information Ms Y received about the investment. £18,169.19 was the amount in the Eleven Property Scheme to be invested.
49. Ms Y was informed by Simon from Brambles that the lease investments would be sold at a later date in order to realise liquid funds, that she would be assisted in this, and this procedure had successfully been done before.
50. On 14 May 2013, £2,992.62 was deducted from Ms Y's pension funds for administration fees covering a six-year period. Ms Y understood that these funds would be used to satisfy any tax liabilities arising from HMRC.
51. On 26 June 2014, Brambles was appointed as the administrator of the Eleven Scheme in place of PAR. Ms Y received a pension statement for the year end 5 April 2014 from Brambles. The statement indicated there was a negative cash amount of -£7.38 attributable to her account.¹
52. In late 2014 and early 2015, Ms Y contacted Brambles, informing it of her ill health and requesting that the investments be sold.
53. On 2 February 2015, Hill Dickinson wrote to Ms Y providing an Official Copy of the Register of Title for Unit [X.23] which confirmed that Ms Y was a joint leaseholder of Unit [X.23] from 7 May 2013. Strongbox and Samarian Holdings Limited were also parties to the lease. It went on to say that it was "*now looking to transfer the property to Michael McNally as a Trustee of the Eleven Property Pension Scheme.*" Ms Y

¹ This suggests £3,000 may have been deducted for administration fees, rather than £2,992.62.

attempted to call various contacts in relation to this letter, including a certain Mr William Ross-Jones, but her calls were not returned. As explained further below, Mr Ross-Jones has acted as a trustee and employer director of another pension scheme relevant to these matters.

54. On 6 May 2015, Brambles responded saying that they were attempting to find a buyer for the Strongbox investment and were talking to various agents to locate an interested party.
55. Ms Y received a further annual statement from Brambles for the year end 5 April 2019.
56. On 1 September 2021, Strongbox wrote to Brambles and confirmed that Brambles had requested that it seek a purchaser for Ms Y's unit in 2015 and despite making contact with possible purchasers none had been found.
57. On 10 January 2022, Ms Y referred her complaint to TPO. Ms Y subsequently confirmed that she wished for the complaint to be expanded to include Mr Kaigh, Mr McNally and Eleven Property, in their capacity as the Eleven Scheme's Trustees.

Mr S

58. In 2012, Mr S conducted internet searches to find a pension company in order to access part of his pension as he was in need of funds. Following this, he was contacted by telephone by an individual called Will from a company called Pension Max. Following several subsequent conversations, Mr S applied for a transfer into the Eleven Scheme from his workplace pension scheme.
59. On 23 November 2012, Mr S received a member-directed investment form from Mr McNally in respect of an investment in Harper International Consultants Limited, based in Gibraltar. An information memorandum was also attached to this email. When contacting Mr S, Mr McNally used an email address connected to a business called Pension Admin Resources.
60. Mr S signed the form the following day and returned it on 25 November 2012. The form stated that £16,189.77 had been transferred into the Eleven Scheme. It indicated £13,189 was to be invested by the Eleven Scheme into the beneficial interest in ordinary shares in Harper International Consultants Limited. It said that Harper International Consultants Limited had purchased a vacant plot of land in Maryport, Cumbria which had planning permission to build a residential care home. Elsewhere on the form it said both ordinary and preference shares would be purchased. The form also stated: "*I am a beneficial owner of shares in this company and my pension funds will be used to purchase the shares from myself and the other beneficial owners.*" The first benefit statement Mr S received from PAR in relation to the tax year ending 5 April 2013 indicated the investment was made in November 2012.
61. The form also indicated that £3,000.77 would be set aside to cover additional costs such as annual scheme administration fees.

62. Mr S has said he received a one-off payment of approximately £2,000. At the Oral Hearing he thought he received this amount at a later date, some time in 2014 or 2015. This does not tally with correspondence he had with Pension Max in 2012 which indicates an immediate payment being arranged. The amount is not quite clear and figures of £2,300 and £2,600 were being discussed. I assume £2,637.80 was received, which was 20% of the value of the amount transferred (after deducting the administration fees) and will assume, on the balance of probability, that this was the sum paid.
63. Mr S was advised in 2012, by Will from Pension Max, that he may receive requests from HMRC regarding capital gains tax in relation to his pension at a later date.
64. In February 2015, Mr S emailed Brambles in order to see if he could access his pension funds as he was unemployed due to ill health. At the time he was getting suspicious of the Eleven Scheme. Glenn House, sole director of Brambles, replied saying that the investment in Harper International Consultants Limited was 'tied up' and was expected to be so for the next 18 months.
65. On 9 November 2015, a sole practitioner lawyer called Robert Metcalfe, trading as RMJ Solicitors wrote to Mr S about a simultaneous acquisition and then sale of the beneficial interest of shares in Priority Solutions Limited, based in Gibraltar. RMJ Solicitors was to arrange the purchase of the beneficial interest of three shares in Priority Solutions Limited for £1,401 and their immediate sale for £2,700. It is doubtful whether this transfer was completed, given that subsequent benefit statements refer to a holding of a substantially different amount.
66. Mr S sporadically received annual statements from Brambles, but not consistently. He has provided statements from 2013, 2014, 2017 and 2022.
67. From 2017, the statements indicated a change in investment to "Ordinary Shares in Priority Solutions Limited" and a diminution in value from £13,189.77 to £10,551.97.
68. Over the course of 2021, Mr S tried to contact Brambles concerning his investment in the Eleven Scheme. He requested access to his pension as he had reached age 55.
69. On 16 June 2021, Brambles responded explaining that his pension was invested in Priority Solutions Limited shares as he had instructed. For him to access his pension a buyer would need to be found for the shares. Mr S has said he was not aware of the apparent change in investment.
70. On 4 January 2022, Mr S referred his complaint to TPO. Mr S subsequently confirmed that he wished for the complaint to be expanded to include Mr Kaigh, Mr McNally and Eleven Property, in their capacity as the Eleven Scheme's Trustees.

A.1.3 The SHK Property Services Pension Scheme

71. On 5 July 2012, SHK Property Services was incorporated by Mr Kaigh. Mr Kaigh has been the sole director and sole shareholder throughout and it remains an active company.

72. On 10 July 2012, the SHK Scheme was established by Trust Deed. SHK Property Services was the Principal Employer and Mr Kaigh was appointed as the first Trustee. The establishing Trust Deed was witnessed by Mr McNally. The Rules of the SHK Scheme were attached to the establishing Trust Deed. Relevant sections of the Trust Deed and Rules are set out in Appendix 2 below.
73. On 10 July 2012, HMRC confirmed registration of the SHK Scheme with the PSTR 00785226RH.
74. On 16 May 2013, the SHK Scheme was registered with the Pensions Regulator (**TPR**). It was recorded as a defined contribution occupational pension scheme. The SHK Scheme's address was given as Commerce Resources Ltd (which traded as PAR) at 41 Mapledale Road, Liverpool, L18 5JE, United Kingdom. The trustee's address was listed as Flat 4, 16a South Road, Waterloo, Liverpool, L22 5PQ, United Kingdom. The submission to TPR shows two members.
75. Mr McNally was listed as the SHK Scheme's point of contact with the PAR address referred to in paragraph 74 above, and a PAR email address.
76. On 14 July 2016, SHK Property Services removed Mr Kaigh as the SHK Scheme's Trustee and appointed itself as the replacement by supplementary deed. The deed was witnessed by Mr Paul Dalton.
77. On 1 August 2016, SHK Property Services changed its registered office address from 16a South Road, Waterloo, Liverpool, L22 5PQ to Venture Business Centre, Crosby Road North, Waterloo, Liverpool, L22 0NY. This property is otherwise known as "3TC House" and is often referred to in this way in documentation relevant to this matter. Throughout this Determination it will be referred to as 3TC House. SHK Property Services' registered office address was changed again on 3 February 2023 to: 68-76 Kempston Street, Liverpool L3 8HL.
78. Brambles has stated that the SHK Scheme has 42 members.
79. Brambles has provided information on the amount invested in the SHK Scheme both before and after the Oral Hearing. The following investments were set out in a spreadsheet after the Oral Hearing:

SHK Scheme	Type	Amount
Capital Bridging Finance Solutions Limited	Loan	£789,630 ²
Capital Developments Waterloo Limited	Loan	£164,027.35
Tennyson Property Investments Limited	Shares	£106,528.31
Strongbox	Lease	£288,892.38
Priority Solutions Limited	Shares	£163,089.23
GBT Partnership Limited	Shares	£298,737.60
TMG Swansea Limited	Shares	£123,798.42

² The spreadsheet provided before the Oral Hearing set out a slightly larger figure: £792,122.44. This may be attributable to interest accrued.

One Islington Plaza	Shares	£34,825
Total		£1,969,528.29

Brambles has indicated that none of the investments has been revalued so they are currently being valued at cost.

80. An undated spreadsheet provided by Brambles in advance of the Oral Hearing indicates there were two additional investments in the SHK Scheme, plus an amount in cash:

SHK Scheme	Type	Amount
Fleet Street Liverpool Limited	Unknown	£28,640
3TC House	Unknown	£29,400
Cash		£9,548.46
Total		£67,588.46

From the evidence submitted in respect of Mr Y, I am assuming that the 3TC House investment was at some point sold and the proceeds reinvested in CBFS, constituting an investment switch. However, the spreadsheet sent in advance of the Oral Hearing did not disclose the loan in Capital Developments Waterloo Limited (**CDWL**).

81. My investigation suggests that the information provided by Brambles is either not up-to-date, non-exhaustive or otherwise incorrect and the SHK Scheme had made other investments, or investments differing in amount.

81.1. A notice of voluntary arrangement, taking effect on 3 February 2022, filed at Companies House, indicates the SHK Scheme was a creditor of CDWL by over £100,000 more than Brambles stated. This may be due to interest accrued on the principal sum, but this point has not been confirmed. In any event, I will use the sum referred to on the loan documentation submitted in evidence. I note that the Schedule of Creditors' Voting included in that document indicates that SHK Property Services was also a creditor of CDWL, separately to the SHK Scheme, to the amount of £22,062.

81.2. The notice of administrators' proposals delivered on 23 May 2019 for Mederco (Huddersfield) Limited (**Mederco (Huddersfield)**), lists that the SHK Scheme owned 182 shares in that company. 10,000 shares at a par value of £59.50 each had been issued. Brambles has not indicated Mederco (Huddersfield) was an SHK Scheme investment.

SHK Scheme	Type	Amount
Mederco (Huddersfield) Limited	Shares	£10,829 (par value)

81.3. Brambles has provided loan documentation in respect of Capital Bridging Finance Solutions Limited (**CBFS**). This sets out two loans. One is a loan of

£789,630 which aligns with the information provided, above. However, there is an additional loan of £68,635 which was not set out in the summary information provided. The loan documents are of even date and document total lending of £858,265.

- 81.4. From an individual benefit statement issued to Mr E, I understand that Baltic House Developments Limited was also an investment of the SHK Scheme by way of a loan note, with £15,096.90 invested from the proceeds of the sale of ordinary shares in GBT Partnership. I understand this represents an investment switch, so while Baltic House Developments Limited represents an additional investment, it does not affect the sum of amounts invested, as I assume the loan note amount is represented in the GBT Partnership Limited investment amount.
82. Brambles has separately stated that an amount of £1,304,130.98 was transferred into the SHK Scheme. However, this does not align with the information set out above which instead indicates that £2,086,640.75 has been subject to the trusts of the SHK Scheme.
83. When my second preliminary decision was sent to the Respondents they made representations disputing the amounts in respect of which I had, in draft, directed redress. No specific representations were made about the conclusions I had reached in relation to the SHK Scheme in contrast to the Gilbert Scheme where specific objections were raised and have been taken into account. See paragraph 132, below.
84. Given the difference in the two figures, I have carefully considered the evidence, and concluded that the figure of £2,086,640.75 (the “**SHK Scheme Total**”) was invested through the SHK Scheme. In reaching my Determination, I note:
- 84.1. In both the case of the Gilbert Scheme and the Eleven Scheme, the investment information provided is a close approximation to the amount transferred into the relevant Scheme.
- 84.2. I have not seen evidence of any relevant investment switches which, if not taken into account, would result in double-counting; that is, I am not aware of any case where effectively the same money was invested in two different SHK Scheme investments, and would be counted twice by adding all the investments. The two exceptions are Mr Y’s 3TC House investment which appears to have been sold and the proceeds reinvested in CBFS, and part of the GBT Partnership investment Mr E held which was sold and reinvested into Baltic House Developments Limited. Otherwise, the lending to CBFS referred to in paragraphs 253 to 254 below, documents that the ‘facility consolidates all previous lending between the parties’. This does not suggest an investment switch.
- 84.3. I have carefully reviewed the bank statements provided in relation to the SHK Scheme. Although they are incomplete, the documents I have seen appear to confirm that £1,426,735.86 was transferred in in respect of 32 members. This is clear evidence that more was transferred into the SHK Scheme than the Respondents have stated. Given there were 42 members in the SHK Scheme,

this would favour accepting the SHK Scheme Total as the correct figure rather than the smaller amount of £1,304,130.98.

84.4. The Respondents have previously supplied incorrect information for the amounts transferred into the Gilbert Scheme (see paragraph 132 to 134, below).

84.5. Whilst the Respondents have stated they have not had time to get legal representation to respond properly to my second preliminary decision, this is primarily an accounting matter. In this respect, I note the Respondents were able to make further specific representations about the amounts transferred into the Gilbert Scheme.

Mr E

85. In 2013, Mr E conducted internet searches regarding investments for his pension. Following this, he was contacted by email by an individual called Simon Stubbs from Pension Max.

86. On 18 September 2013, Mr E completed an Application Form to join the SHK Scheme. Relevant extracts of this are set out in Appendix 4.

87. On 15 January 2014, an email was sent by Mr Simon Stubbs from Pension Max to Mr E informing him that an enquiry about his pension had been made to his pension provider.

88. On 5 April 2014, PAR wrote to Mr E with a copy of his annual statement. This showed that there were no funds held by the SHK Scheme for Mr E. At some point following 5 April 2014, £24,387.69 was transferred into the SHK Scheme on Mr E's behalf.

89. On 9 July 2014, Mr E received a further email from Mr Simon Stubbs at Pension Max, saying:

"In simple terms the product involves investing your pension in a particular property or land deal and results in you realising a personal capital gain in the form of a lump sum which you can use for any purpose you wish. The lump sum is not a loan and is therefore not repayable.

Based on the projected figures, you will realise a capital gain of approximately 20% of the value of the pension funds that you decide to invest. Your pension remains fully intact and will be invested to provide retirement benefits. The majority of your pension funds will be invested in the property deal with £3000 (including VAT) set aside to cover the annual fees associated with the scheme for 6 years."

At around this time Mr E also spoke to Simon Stubbs on the telephone.

90. Attached to the email was a Pension Max Q&A document. I have included details of this document in Appendix 3.

91. Pension Max wrote to Mr E again on 9 July 2014 saying:

"I have attached some information relating to the upcoming investment deal. We anticipate completing this deal in 3-4 weeks.

I would like to point out that you are in now [sic] way obliged to take this deal, we have deals every 2 – 3 months so if this does not suit you, you can always wait until the next one. I will be in touch nearer the time to talk you through the paperwork which will be sent out to you in due course."

92. Attached was an investment summary for GBT Partnership Limited (**GBT Partnership**).
93. At around this time, Mr E received documentation through the post, including a document the same as or similar to the Pension Max Q&A document. He also received TPR's scorpion leaflet warning against scams.
94. On 21 August 2014, Mr E completed a member-directed investment form instructing the investment of £21,389.44 into GBT Partnership. This would purchase [NUMBER.1] Ordinary Shares at £[PRICE.1] per share. £2,998.25 of Mr E's pension funds would be set aside to cover additional scheme costs and administration fees. Relevant extracts are set out in Appendix 4. Mr E has said that this document was pre-populated with the investment and the only input he had in relation to it was signing it. Companies House Annual Return records suggest Mr E acquired these shares from CBFS and immediately transferred them on the same day.
95. Mr E has said that he received a payment of £4,377.18 in relation to his transfer into the SHK Scheme. According to his records this had been received during the tax year 2014-2015.
96. On 5 April 2015, an annual benefit statement was produced for Mr E. This showed Mr E's investment as Ordinary Shares in GBT Partnership valued at £21,389.44. £3,000 had been paid for administration fees for a six-year period. Mr E said that it was his view at the time that this £3,000 sum would be used to cover any tax arising as well as other matters.
97. On 2 September 2015, Brambles wrote to Mr E explaining that it had taken over the administration of the SHK Scheme.
98. In 2016, Brambles issued an annual statement to Mr E which showed that the GBT Partnership shares had been sold that year for £[PRICE.3] per share, at an overall sale price of £15,096.90. The same annual statement said that Mr E's investment was now held as a "Loan note for the proceeds of the sale of Ordinary Shares in the GBT Partnership Limited". Mr E has said he did not understand this transaction and was not aware at the time it was taking place, or why.
99. In May 2018, Mr E received correspondence from HMRC regarding a tax charge related to his transfer to the SHK Scheme, which he forwarded to Brambles.
100. On 30 May 2018, Brambles responded to Mr E commenting on HMRC's correspondence. Brambles explained that:

“The land owned by GBT was valued at the time. I have attached a copy of this valuation.

You sold [NUMBER.1] shares in GBT Partnership to your pension for £[PRICE.1] each. A total of £21,279.44. The payment was sent to RMJ Solicitors on [DATE]. I believe you purchased the shares on the same day as the pension scheme purchased them from you.

It is my understanding that you purchased the shares for £[PRICE.2] each, a total of £16,822.26. The payment you received from RMJ Solicitors will have been the proceeds from this sale. RMJ Solicitors dealt with the transaction.”

101. On 29 January 2019, Mr E contacted Brambles informing it that he wished to transfer away and requesting information. This request was repeated several times during February 2019.
102. On 20 March 2019, Mr E referred his concerns about the SHK Scheme to TPO.
103. On 5 April 2019, an annual benefit statement was produced for Mr E. This showed Mr E’s investment as a “Loan note for the proceeds of the sale of Ordinary Shares in GBT Partnership Limited”, valued at £15,096.90.
104. On 18 September 2019, Brambles wrote to Mr E explaining:

“Your pension benefits were invested in GBT Partnership Limited. These shares were sold, as detailed on your annual statement; a copy of which is enclosed. The funds were being repaid to the scheme on an instalment basis and are not fully back within the scheme at this time. Once they are available you can transfer the funds to a provider of your choosing, or you may wish to take a pension commencement lump sum from the SHK Property Services Pension Scheme.”

105. Over the course of 2021, Mr E tried to transfer his funds to an alternate pension provider without success.
106. An annual benefit statement showing benefits as at 5 April 2024 was issued to Mr E. This showed his benefits amounted to £15,096.90 in the form of a loan note for the proceeds of the sale of Ordinary Shares in GBT Partnership Limited. The statement displayed an additional entry noting that the loan note was issued by Baltic House Developments Limited, which was currently in liquidation. The statement also indicated the loan note was guaranteed and the trustees were taking advice on how to deal with the matter. This statement was received shortly before issuing my Determination; to ensure factual accuracy at date of publication, I have taken this document into account.

Mr Y

107. Around or before August 2013, Mr Y received a cold call about transferring his pension. After providing details of his pension and its value, the caller explained to Mr Y how he could take advantage of pension freedoms introduced in new legislation. The caller offered Mr Y a pension product involving property investment, where his pension would

be safe and grow. The offer included a bonus of approximately £6,000 arising from the property profit. Details were exchanged and Mr Y and the caller had a number of subsequent conversations around this time. An application form for the SHK Scheme was sent to Mr Y.

- 108. On 30 August 2013, PAR wrote to Mr Y confirming that his admission to the SHK Scheme had taken place on 12 August 2013 and a transfer request had been made to his current pension provider.
- 109. On 10 September 2013, Mr Y signed a transfer request form from his current pension provider to the SHK Scheme.
- 110. On 13 September 2013, Michael McNally signed the receiving scheme declaration in relation to Mr Y's transfer to the SHK Scheme.
- 111. On 19 September 2013, Mr Y's pension provider confirmed a transfer of £33,066.05 had been made following his request.
- 112. On 14 October 2013, Mr Y signed an SHK Scheme member-directed investment form. This instructed the trustees of the Scheme to invest £30,066 into the following:

Investment	Amount	Type
40.52% shareholding of Unit [w] 3TC House	£20,032	Lease
Capital Bridging Finance Solutions Limited	£10,034	Loan

Relevant extracts are set out in Appendix 4 below. The form was pre-populated and Mr Y did not need to input any further information other than signing. The member-directed investment form indicated that £3,000.05 would be set aside to cover administration fees.

- 113. In October 2013, Mr Y received a payment of £6,060.96.
- 114. Mr Y received member statements annually until 2018. The enclosed figures appeared to display the initial investment amount; there were no updates about profit from Unit [w]. Over these years, Mr Y attempted to make contact repeatedly by telephone, having various questions. Neither PAR nor latterly, Brambles, replied.
- 115. In July 2018, HMRC contacted Mr Y querying a possible tax liability relating to the £6,060.96 amount received in 2013, requesting tax due of approximately £2,600. Mr Y sought advice from Brambles on this.
- 116. Brambles advised Mr Y that no tax was due and the payment was not unauthorised as it arose from profits on the property transaction. An email from 16 August 2018 shows Brambles' response, as follows:

“A copy of the Venture Business Centre [3TC House] valuation is attached. The purchase and sale took place on the same day. The completion date was

between the 2nd and 15th October 2013. The exact date will tie in with the date on which you received the proceeds of the sale/purchase.

The SHK Property Services Pension Scheme purchased a 27% shareholding in Unit [w] at Venture Business Centre, from you, for £13,026.96. The payment you received was the profit, or gain, you made on the sale to your pension.

Please note that, neither Brambles Administration Limited, nor the trustees of the SHK Property Services Pension Scheme are authorised to offer advice of any kind, and will never do so. It is recommended that independent financial advice is taken.”

117. Brambles also provided Mr Y with a copy of an unsigned and undated lease for Unit [w] 3TC House. For this lease, Imperium Enterprises was the Landlord and Mr Y, Bright Limited and one other individual were to be the Tenants. The signature pages only of three documents have also been provided, which appear to comprise:

117.1. a signed execution page for the lease (signed by Mr Y only). Unsigned signature blocks for Imperium Enterprises and the other individual are set out on this page. The absence of a signature block for Bright Limited can be explained by the fact that it would have signed on the following page;

117.2. a signed execution page for a TR1 (signed by Mr Y only). Unsigned signature blocks for the other individual, Bright Limited and “*Simon Hamilton Kaigh as Trustee of the SHK Pension Scheme*” are set out on this page; and

117.3. a signed execution page for another document (signed by Mr Y only). Unsigned signature blocks for the other individual are set out on this page.

The implication of these documents is that a lease had been agreed between Imperium Enterprises Limited and Mr Y, another individual and Bright Limited. The cost of the 250-year lease was recorded as £25,800. The lease had then been transferred to Mr Kaigh as Trustee of the SHK Scheme.

118. On 9 November 2020, Mr Y referred his concerns regarding the SHK Scheme to TPO. He complained that he had invested his pension funds and that Brambles were now uncontactable. He has confirmed that he wanted the complaint to be expanded to include Mr Kaigh, Mr McNally and Eleven Property Services, in their capacity as the Eleven Scheme’s Trustees.

119. In 2021, Mr Y made attempts to transfer his pension from the SHK Scheme to another provider but was unsuccessful in doing so.

120. An annual benefit statement showing benefits as at 5 April 2024 was issued to Mr Y. This showed his benefits amounted to £37,477.39 in the form of a commercial loan to CBFS. The statement displayed an additional entry noting that CBFS was currently in

administration³ and Brambles was awaiting further details in this regard. This statement was received shortly before issuing my Determination; to ensure factual accuracy at date of publication, I have taken this document into account.

121. This suggests that the investment in Unit [w] 3TC House amounting to £20,032 had been sold and switched to CBFS. The increase in the amount of Mr Y's benefits of £7,411.39 is, I assume, attributable to interest on the CBFS loan.

A.1.4 The Gilbert Trading Pension Scheme

122. Gilbert Trading was incorporated on 5 July 2012 by Mr Kaigh. He has been the sole director and sole shareholder throughout and it remains an active company. Initially, Gilbert Trading operated from 16a South Road, Waterloo, Liverpool, L22 5PQ.

123. On 10 July 2012, the Gilbert Scheme was established by Trust Deed. Gilbert Trading was the Principal Employer and Mr Kaigh was appointed as the first trustee. The Trust Deed was witnessed by Mr Simon Stubbs. The Rules of the Gilbert Scheme were attached to the establishing Trust Deed. Relevant extracts from the Trust Deed and Rules are set out in Appendix 2.

124. From 21 December 2012, Tennyson Property Investments Ltd was party to a sub-lease for Flat 4, 16a South Road, along with several other parties.

125. On 8 July 2015, the transfer of the sub-lease for Flat 4, 16a South Road was registered in the name of Mr Gary Quillan.

126. On 14 July 2016, Gilbert Trading removed Mr Kaigh as the Gilbert Scheme's trustee and appointed itself as the replacement by supplementary deed. The deed was witnessed by Mr Robert J Metcalfe.

127. On 1 August 2016, Gilbert Trading changed its registered office to the 3TC House address. The registered office address was subsequently changed to 68-76 Kempston Street, Liverpool L3 8HL on 3 February 2023.

128. Brambles has said that the Gilbert Scheme has 20 members.

129. Brambles has said that the following investments were made by the Gilbert Scheme:

Gilbert Scheme	Type	Amount
Harper International Consultants Limited	Shares	£65,725
Gematria Estates Limited	Shares	£137,000
3TC House office units	Lease	£346,931.26
Capital Bridging Finance Solutions Limited	Loan	£185,332
Turcotte Corporation Limited	Shares	£101,730
Storage Units at Strongbox	Lease	£254,029.25
Mederco Limited	Loan	£49,040.92

³ This is factually incorrect. CBFS moved from administration to liquidation, with liquidators appointed on 31 March 2021.

Capital Developments Waterloo Limited	Loan	£222,495
Great Moor Street Bolton	Land	£30,800
Tennyson Property Investments Limited	Shares	£38,294.92
Priority Solutions Limited	Shares	£48,972.90
GBT Partnership Limited	Shares	£35,229.10
Total		£1,515,580.35

Brambles has indicated none of the investments has been revalued so they are currently being valued at cost.

130. In addition, I note that documentary evidence indicates that the Gilbert Scheme held an additional investment attributable to Mr G. I understand this investment was transferred *in specie* from the Mapleleaf Scheme at a date in 2018.

Gilbert Scheme	Type	Amount
One Islington Plaza Limited	Shares	£64,925

131. Brambles has provided loan documentation in respect of CBFS. This documents a loan of £186,852. There is a slight difference between the two figures and this irregularity has not been accounted for.

132. In response to my enquiries, the Respondents stated on 22 December 2022 that a total of £681,647.04 had been transferred into the Gilbert Scheme. This did not appear to align with the investment information set out above which appeared to indicate that £1,582,025.35 had been subject to the trusts of the Gilbert Scheme. In my second preliminary decision sent to the parties I set out my assumption that this latter figure was correct. When responding to my second preliminary decision, the Respondents stated that £1,476,741.18 had been transferred into the Gilbert Scheme, with supporting documentation: a ledger showing transfers being made into the Gilbert Scheme. Brambles additionally referred to amounts being paid out to members directly. I accept this ledger as evidence of the amount transferred into the Gilbert Scheme with one correction, as the ledger failed to show Mr G's transfer-in from the Mapleleaf Scheme (as defined below) of £64,925 (see paragraph 159, below). Therefore, the total should be £1,476,741.18 plus £64,925, which equals £1,541,666.18 (the "**Gilbert Scheme Total**"). I note the total of the investment figures is a higher amount, but this may be attributable to investment switches.

133. Two further points should be noted about this figure:

133.1. the Gilbert Scheme Total includes amounts paid out in fees after transfer-in, so no addition will be made to the Gilbert Scheme Total in that respect; and

133.2. I will give credit for amounts shown on the ledger, as sums paid out to members which will therefore not be recoverable from any of the Respondents. I note in this respect that Brambles' record of the amount paid out to Mr G aligned with the evidence I had seen and the provision I had made in this respect in the draft

Directions in my second preliminary decision. Since then, one further payment to Mr G has come to light and will be accounted for in the Directions.

134. It is a highly concerning error that the Respondents initially provided a figure of the amount that had been transferred into the Gilbert Scheme which was far lower than the amount later evidenced.

Mr G

135. On 9 March 2013, Mr G completed an application form to join the Gilbert Scheme. Relevant extracts from this are set out in Appendix 4.

136. On 12 March 2013, Mr G transferred £145,039.96 into the Gilbert Scheme. Payment was credited to the Gilbert Scheme bank account on 25 March 2013.

137. On 1 May 2013, Mr G signed a Gilbert Scheme member-directed investment form. This instructed the Trustee of the Gilbert Scheme to use £77,799.45 of his funds to purchase five units within Strongbox Self Storage on 250-year leases. The purchase price would be £15,000 each along with legal and service charges in advance. Relevant extracts from this are set out in Appendix 4. Included in the member-directed investment form was the following statement in bold:

“Prior to the purchase, I will have personally acquired units [Z.19]’, [Z.20]’, [Z.21]’, [Z.22]’, [Z.51]’ and therefore my pension fund will purchase the storage units from me personally.”

138. On 18 September 2013, in an email from an unregulated introducer company named Pension Max, Mr G was provided with information on proposed investments. The email suggests that approximately £20,000 of Mr G’s pension funds would be invested in “pods” and £10,000 would be invested in “bridging finance”.

139. On 14 October 2013, “Will” at Pension Max emailed Mr G requesting that he complete a member-directed investment form. He was asked to send the original to “Pension-Max, 3TC House, 16 Crosby Road North, Waterloo, Liverpool, L22 0NY.” This is the same address as the 3TC House investment that Mr G would eventually invest in.

140. On the same day Mr G signed the new member-directed investment form. This instructed the Trustees of the Gilbert Scheme to use £30,980 to purchase a 27.98% shareholding of a 250-year lease of Unit [e] 3TC House, costing £20,700 and loan £10,280 to CBFS. This would provide interest of 6% per year compounded monthly on a “term of 5-6 years”. The form included the following:

“The investment amount detailed above represents a proportion of the £145,039.96 transferred into the scheme from my previous pension providers and is specifically attributable to my pension benefits held within the scheme, £77,799.45 has previously been invested is [sic] storage units and this will leave £36,260.51”

“I acknowledge that the value of my pension will be reflected in the performance of the above storage units and that the investment may be tied up for several

years if I am unable to find a buyer for the units. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs."

141. On 18 October 2013, "Will" confirmed receipt of the form and provided a timescale for money to be received by Mr G.

142. On 7 November 2013, Mr G signed a document titled Declaration of Payment of Proceeds Re Sales of Office Units at 3TC House, Liverpool. This confirmed that he wished "*for the proceeds of the sales of my office units to be paid to the following account...*". I have received documentation suggesting this was in relation to an on-paper 'back-to-back' property sale of Unit [b] (rather than Unit [e]), in respect of which Mr G and others are said to have participated, and Mr G may have received £602.99 as a result of this transaction. The sale of Unit [b] happened in December 2013. It is not clear from the documentation whether the sale of Unit [e] proceeded.

143. On 28 March 2014, Mr G signed a letter instructing the trustees of the Gilbert Scheme to invest £25,000 into land situated between Great Moor Street and Lottery Row, Bolton. The letter states that these plots held planning permission to build 104 student units. It included the following:

"I can confirm that my pension fund will purchase the above asset from a group of companies and individuals of which I am one."

"I acknowledge that the value of my pension will be reflected in the performance of the above assets and that the investment may be tied up for several years whilst the build and sale of units takes place. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs."

144. Around 5 April 2014, PAR, the Gilbert Scheme's then administrator of which Mr McNally was the director, issued an annual statement to Mr G confirming the following investments:

Investment	Value
2.632% share, Great Moor St, Bolton	£25,000
Investment into Storage Pods (Strongbox)	£77,799.45
Investment into Office Pods (Venture Business Centre)	£20,700
Commercial Loan to Capital Bridging Finance Solutions Limited	£10,280
Cash	£8,541.65
Total	£142,321.10

Included in the cash figure was a payment of £281.14 received in respect of interest on the CBFS loan. Further, £3,000 was deducted for Administration fees over a six year period.

145. On 5 April 2015, Brambles issued an annual statement to Mr G confirming the following:

Investment	Value
2.632% share, Great Moor St, Bolton	£25,000
Investment into Storage Pods (Strongbox)	£77,799.45
Investment into Office Pods (Venture Business Centre)	£20,700
Commercial Loan to Capital Bridging Finance Solutions Limited	£10,280
Cash	£9,437.27
Total	£143,216.72

£895.62 was said to have been paid in interest from the 'Capital Bridging' Loan.

146. On 2 September 2015, Brambles wrote to Mr G confirming that Brambles was now the Gilbert scheme administrator.

147. On 2 November 2015, Mr G signed a 'Restricted Investor Statement', which said:

"I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because..."

...

"I accept that the investments to which the promotions will relate may relate may expose me to a significant risk of losing all of the money invested or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities."

The full details of this statement are set out in Appendix 4.

148. On 9 November 2015, RMJ Solicitors wrote to Mr G regarding "*The acquisition and sale of beneficial interest in Ordinary shares in Priority Solutions Ltd (a company based in Gibraltar)*". The letter was sent by Mr Robert Metcalfe, the Sole Principal at RMJ Solicitors and was counter-signed (but not dated) by Mr G. The instruction was:

"You wish to acquire the beneficial interest in 5 (five) shares in Priority Solutions Ltd for a total consideration of £2,335... On the same day you wish to sell (transfer) your beneficial interest in said shares for a total consideration of £4,500..."

149. Separately, I have seen an additional member-directed investment form signed (but not dated), which anticipates a larger sum of £20,000, used to acquire 22.222 ordinary

shares at £900 per share, would be invested in Priority Solutions Limited. From later statements, it would appear that this larger sum was invested rather than the £2,335 amount referred to in correspondence with RMJ Solicitors.

150. On 11 November 2015, Mr G signed a letter addressed to the Trustees of the Gilbert Trading Pension Scheme, requesting the payment of £9,437.27 on attaining normal minimum pension age at a date shortly following the date of the letter. I understand this was paid.

151. Around 5 April 2016, Brambles, which had taken over the administration of the Gilbert Scheme, issued an annual statement to Mr G confirming the following investments:

Investment	Value
22,222 Ordinary shares in Priority Solutions Limited	£20,000
Strongbox Storage Box	£77,799.45
3TC House	£20,700
Capital Bridging Finance Solutions Limited	£10,280
Cash	£1,620.02
Total	£130,399.47

The cash sum comprised £616.80 of interest on the CBFS loan and £1,003.22 of rental income from the 3TC House investment.

152. I note there had been a diminution of the amount held by Mr G in the Gilbert Scheme amounting to £11,921.63 (£142,321.10 less £130,399.47). To summarise the differences between the 2014 statement and the 2016 statement:

152.1. The Great Moor Street, Bolton investment of £25,000 appeared to have been sold and replaced by £20,000 in Priority Solutions Limited.

152.2. The £8,541.65 in cash appears to have been used in some way. There was therefore a total capital diminution of £13,541.65 (£5,000 plus £8,541.65) between 2014 and 2016.

152.3. £9,437.27 of this sum was received by Mr G directly, leaving an unexplained diminution of £4,104.38.

152.4. £1,620.02 from investment distributions during this period had been credited to the cash account (explaining the difference between £13,541.65 and £11,921.63).

153. On 21 October 2016, Brambles emailed Mr G saying that he could receive a pension commencement lump sum from the cash on deposit within the Gilbert Scheme of £1,620.02. Confirmation of payment was sent to Mr G on 27 October 2016. This stated that payment came from the Mapleleaf Scheme (as defined in the following paragraph); I assume this was a typographical error and the payment was made from the Gilbert Scheme.

Transfer-in from Mapleleaf Enterprises Pension Scheme

154. Mr G was separately and at the same time a member of a pension scheme called the Mapleleaf Enterprises Pension Scheme (the “**Mapleleaf Scheme**”). The principal employer of the Mapleleaf Scheme is Mapleleaf Enterprises Limited, which has had two directors: Robert John Metcalfe and William Kennedy Ross-Jones. I understand these two individuals are, or were, also the trustees of the Mapleleaf Scheme.

155. On 8 February 2017, Mr G received an email from a person he has identified as “Will Ross Jones” at Pension Max, which I understand was in relation to Mr G’s pension in the Mapleleaf Scheme. The email said that his pension currently held 92,848 shares in JVC Developments Limited and that an offer had been made from a third party offering 70 pence per share. This would provide a return of £64,993.60⁴. The email proposed that the proceeds of this sale be invested in CDWL, which was in the process of converting commercial property to residential property. The email also said:

“The scheme will purchase the shares from you as an individual and it is anticipated that you will make a capital gain on the sale of approximately 10% of the investment total (approximately £6,400).

You are under no obligation to instruct the trustees of the scheme to proceed with the sale of the shares. As always, it is recommended that independent financial advice is taken before making any decisions regarding your pension. I am not authorised to offer financial advice.”

A later, undated email that I have been provided with, indicated that an alternative to CDWL would be proposed.

156. An email from Brambles dated 12 October 2018, indicated Mr G was a member of both the Gilbert Scheme and the Mapleleaf Scheme. Within the two Schemes, Mr G was said to hold the following investments:

Investment	Value
Capital Bridging Finance Solutions Limited	£10,280
Additional sum lent to Capital Bridging Finance Solutions Limited, representing sale proceeds of 3TC House unit ⁵	£13,455
Priority Solutions Limited	£20,000
3TC House	£77,799.45
One Islington Plaza	£64,925

157. Only the One Islington Plaza investment was held in the Mapleleaf Scheme, with the other investments held in the Gilbert Scheme. I note that the Gilbert Scheme investments had diminished by £7,245 which was lost on the sale of the 3TC House

⁴ It would appear from this offer that the shares had £1 nominal value, and the offer was effectively being made at 30% below par value. The implication is that £92,848 had originally been invested in the Mapleleaf Scheme.

⁵ £20,700 had originally been invested in 3TC House, representing a £7,245 loss.

unit. I have received no evidence regarding whether or not the sale of the 3TC House unit and re-investment of the proceeds was carried out with Mr G's knowledge.

158. A letter dated 28 November 2018, addressed to the Trustees of the Gilbert Scheme and signed by Mr G contained the following wording:

"My pension held with the Gilbert Trading Pension Scheme holds the following assets:

- ...
- *371 Ordinary Shares in One Islington Plaza Limited, recently transferred, in-specie, from the Mapleleaf Enterprises Pension Scheme, and originally purchased for £64,925.00."*

159. Therefore, Mr G's interest in the Mapleleaf Scheme, which was originally invested in JVC Developments Limited, had been liquidated for £64,925 and re-invested in One Islington Plaza Limited. This investment was transferred to the Gilbert Scheme at some point between 12 October 2018 and 28 November 2018. Combined with the original £145,039.96, the total amount transferred into the Gilbert Scheme was £209,964.96.

Sale of Gilbert Scheme investments

160. In Autumn 2018, Mr G wished to realise his pension investments due to his personal circumstances and asked for an update.

161. On 5 September 2018, Mr G emailed Brambles stating, *"After my call with Will I was promised the statements but I have still not received them."*

162. On 22 September 2018, Mr G emailed Brambles explaining:

"I know you haven't been able to get me the current details recently but as I see it I have nearly £200,000 in the Gilbert and Mapleleaf schemes

I have a situation now where having got married and discussed things with my wife I am looking to go to live in Manila and wish to realise what I can from my investments.

Ideally I would like to be able to get £50,000 before [REDACTED] which is our birthdays (both of us) and the rest anytime before March next year.

I don't mind taking a shortfall on the investments but not much. I realise whatever I receive will be subject to tax and will inform inland revenue when I receive it. Please let me know what I can do and how much I can get. In going to Manila I will be retiring."

163. On 1 October 2018, Mr G emailed Brambles stating:

“Ideally I would like to be able to get a sum out of them in early November or late October which means in a month. Also for a final settlement when I intend to retire at the end of the year (this may extend to the end of February 2019).

As from my last statements which are not this year (I assume the balance will not have changed much as nothing has happened much) I have in [M]apleleaf at least £64,925 I also have in Gilbert £128,780 although the grand totals in the statements were higher at £92k and £130k respectively.

As I see it then I have a total at the lowest of at about £193-£194k I need you to be able to confirm my current position and be able to let me have a lump sum covering balance by February at the latest and if possible an advance settlement of £15k at end of October.

I will accept a sum less than the £193k but only within reason. I am not looking to get a reduction in the value of my investments and then a payment of 20% as done previously as after settling I will be moving abroad and would like the lump sum to settle comfortably in my new location in retirement.

I mentioned all this so would like an early response as soon as you can especially as the first part of my plans would like to be in place at the end of this month.”

164. On 12 October 2018, Brambles emailed Mr G stating:

“Thank you for your emails. You hold pensions with the Mapleleaf Enterprises Pension Scheme and the Gilbert Trading Pension Scheme. Each pension holds investments in various assets. In order to take your pension benefits or to make a cash transfer, the assets would have to be sold or realised.

In response to your queries I can confirm the following:

Your pension benefits held with Mapleleaf are invested in shares in One Islington Plaza Limited. These were purchased for £64,925.00. We will make enquires with One Islington Plaza as to the progress, current valuation of the shares, and the possibility of selling them.

Your pension with Gilbert holds various assets:

- Commercial loan to Capital Bridging Finance Solutions Limited of £10,280.00.*
- The share of the unit in Venture Business Centre was sold for a price of £13,455.00. These funds were subsequently lent to Capital Bridging Finance Solutions Limited.*
- Shares in Priority Solutions Limited purchased for £20,000.00. We will make enquires with Priority Solutions Limited as to the progress, current valuation of the shares, and the possibility of selling them.*

- *Storage units at Strongbox Self Storage - £77,799.45. There has not yet been any return on this investment. We will make enquiries as to any interest in purchasing these units and let you know.*

165. On the same day, Mr G responded stating:

"As I said in my previous emails I am willing to take a slight shortfall in the investments so if buyers can be found to purchase at lower than the valuation I am willing to take it. For example I can take 85p in the pound realising around £160K

I would really like at least one or 2 of the investments sold by the end of the month."

166. On 13 October 2018, Mr G emailed Brambles saying:

"Sorry to hassle again but the two investments with bridging solutions can you please try to realise something from them next week.

I am in desperate need to make an advance payment for the property I want in Manila, and want to be able to pay them next week."

167. On 15 October 2018, Mr G emailed Brambles saying:

"Could you let me know of the possibility of getting some funds to me by the end of the week. I realise that paperwork will need to be completed so I am mindful that time is tight.

Is there any possibility of an advance of any sales value in order for the opportunity I have to be taken. I would not want to miss out and will have to consider my options with my investments if I lose out on the property I have already expressed my interest in getting."

168. On the same day, Brambles responded, stating:

"It is very unlikely that anything is going to be available this quickly.

You initially informed us that you were looking to move to the Philippines in 2-3 years and wanted an update on the investments held by your pension. We will continue in our enquiries regarding the possible sale of the assets and update you in due course.

Once the assets have been sold there are processes which need to be performed. It is not a case of just paying the funds directly to you."

169. On 14 November 2018, Brambles emailed Mr G stating:

"Please bear with us. We are in discussions with a third party interested in possibly purchasing some of the assets held by your pension. We hope to have a response with you by the end of the week."

170. On 16 November 2018, Brambles emailed Mr G saying:

“A third party has made an offer to purchase all assets held by your pensions within the Mapleleaf Enterprises Pension Scheme and the Gilbert Trading Scheme. The assets are currently listed at cost for a figure of £186,459.45.

They have offered to purchase all of the assets for £90,000; to be paid as follows:

£10,000 immediately, £10,000 on 10th December, and £70,000 by the end of March 2019”

171. On the same day, Mr G responded, stating:

“I was hoping for £120,000 but would accept £100,000 providing at least £30,000 is paid before Christmas assuming it gets to me not the pension. And of that £10,000 is reasonably immediate to me (next week), given the scale of the discount on the current valuation in the pension I see this as reasonable.

I may even accept the £90,000 if you could get the £30,000 immediately to me not the pension scheme so I can put my plans in place.”

172. On 19 November 2018, Brambles emailed Mr G explaining:

“We are working out the figures in terms of what is outstanding on your pension commencement lump sum entitlement. Apart from this, you would need to transfer your pensions to another provider to take the remainder. The schemes do not allow Pension Freedoms.

There are a number of options, (none of which we can provide any advice on). These may include a QROPs or an International SIPP, since you have stated that you are moving abroad. Alternatively, you may wish to transfer to another UK based pension scheme in order to take benefits under Pension Freedoms. Any proposed new scheme must be registered with HMRC and fit the criteria relevant for transfer.

It is strongly recommended that you take independent financial advice from a suitably qualified advisor. Neither Brambles Administration Limited nor the trustees of either the Gilbert Trading Pension Scheme or the Mapleleaf Enterprises Pension Scheme can offer advice of any kind and will never do so.”

173. On 20 November 2018, Mr G emailed Brambles stating:

“I am going to summarise the possibilities.

- 1. I accept valuation of pension as say £100,000 and request you transfer it – cost to you immediately £100,000*
- 2. Pension is valued at £100,000 – you pay me lump sum from my lump sum entitlement £25,000 – cost to you is £25,000 immediately. Then I request the remaining balance of the value of the pension but not until next year.*

3. *Under government legislation from 2015 I can take a lump sum from my pension scheme at any time I have already retired from work – 25% of the value is tax free and I can take this on required [sic]. Then I request £25,000 immediately and promise to take the rest after April next year. This will cost you £25,000 immediately as in 2. And further payments next year.*

As I see it you will need to find much more funds under the first option which I believe your email is suggesting and I will probably not get any funds for sometime. Under either option 2 or 3 you will need a smaller initial outlay and I can start my plans to move. I may also consider the valuation being just £90,000.

However options 2. and 3. will only be possible if you sort out the lump sum of £25,000 this week or be middle of next week at the latest.”

174. On 21 November 2018, Brambles emailed Mr G saying:

“The offer of £90,000 for the purchase of all of the assets held by your pensions within Gilbert and Mapleleaf is still being offered by the third party potential purchaser.

They have stated that they would purchase on the following terms:

£10,000 within the next week.

£10,000 by the end December 2018

£10,000 by the end of January 2019

£60,000 by the end of March 2019

Following discussions with the trustees, it appears that you have a pension commencement lump sum allowance of approximately £30,000. You could take the three lots of £10,000 as part of this allowance.

The remaining £60,000 would have to be transferred to another pension provider to allow you to take it. It is strongly recommended that you take independent financial advice in regards to this. If you are happy with the proposal above we will arrange for the relevant paperwork to be provided to you.”

175. On the same day, Mr G emailed Brambles saying:

“I am thinking that the third party is getting a good offer from this and whilst I would like £100,000 and would accept that with the remaining £10,000, I would accept the £90,000 if it was £10,000 in the next week and £20,000 by 14th December (10th was originally stated) and the remaining balance into the pension scheme at the end of March.

I assume with this the £60,000 is not transferable to any other scheme till then

Thanks for all your efforts and if you can let me know of a decision on my proposal tomorrow so you can email the papers this week.”

176. Later the same day, Mr G said:

“I know I gave an offer earlier but given I am willing to consider what is a very generous settlement and my wife has been very upset this evening. I think I would accept if you get the paperwork done tomorrow -Thursday and I can send it back to you via email and then you can process and pay the £10,000 on Friday”

177. On 22 November 2018, CDWL wrote to the Trustees of the Gilbert Scheme. This was signed by Mr Paul Dalton. It confirmed that it was offering to buy Mr G’s assets within the Gilbert Scheme for £90,000 to be paid in instalments between November 2018 and March 2019. The letter indicated that Mr G’s assets within the Gilbert Scheme amounted to £186,459.45 and comprised:

Investment	Value
Capital Bridging Finance Solutions Limited	£23,735
Priority Solutions Limited	£20,000
Strongbox Self Storage	£77,799.45
One Islington Plaza	£64,925

178. The instalments were due on the following timeline:

- 178.1. No later than 30 November 2018 £10,000;
- 178.2. No later than 25 December 2018 £10,000;
- 178.3. No later than 31 January 2019 £10,000; and
- 178.4. No later than 31 March 2019 £60,000.

179. On 23 November 2018, Mr G stated:

“I wish to know what is happening

I will accept £10,000 early next week

I will accept £10,000 in December but before Christmas and the January payment as stated.

If those are not paid on time then I will not accept the final payment as settlement and cancel the arrangement. The dates are for the money to be in my account not for paperwork to be sent.”

180. On 26 November 2018, Mr G signed a request to be paid a £10,000 pension commencement lump sum (**PCLS**).

181. On 28 November 2018, Mr G signed a letter confirming his acceptance of CDWL's offer of £90,000. The letter indicated £30,000 would be taken by Mr G 'as part of my Pension Commencement Lump Sum' and the balance of £60,000 would be transferred to a new pension provider. The letter included the following statement:

"I have requested that the assets held within my pension are urgently sold in order for me to take my remaining Pension Commencement Lump Sum allowance. Further, I wish to transfer the remaining benefits to another provider in order to take advantage of Pension Freedoms. You have informed me that you have been approached with an offer from a third party to purchase all of the assets held by my pension fund.

My pension held with the Gilbert Trading Pension Scheme holds the following assets:

- *Commercial loan to Capital Bridging Finance Solutions Limited of £23,735.00.*
- *Shares in Priority Solutions Limited purchased for £20,000.00*
- *Storage units at Strongbox Self Storage - £77,799.45.*
- *371 Ordinary Shares in One Islington Plaza Limited, recently transferred, in-specie, from the Mapleleaf Enterprises Pension Scheme, and originally purchased for £64,925.00.*

The total purchase price of these assets was £186,459.45. I understand that an offer of £90,000.00 has been made by a third party to purchase all of the assets. I am happy for the assets to be sold for a total of £90,000.00, and would ask the trustees to accept this offer. I acknowledge that these assets would almost certainly gain a higher price if they were left within the scheme for a longer period of time. However, I am happy to accept this offer and ask the trustees to accept this on my behalf."

182. The same letter also included the following discharge:

"I acknowledge that I am under no obligation to instruct the trustees to sell these assets and that I have the right to ask you to retain them in the scheme.

Whilst I accept that I have received no financial advice from the Trustees of the scheme, I have been made aware that there is a reasonable likelihood that the assets would achieve a price of more than that offered if it were retained in the scheme for a longer period. I acknowledge that the trustees and scheme administrator of the Gilbert Trading Pension Scheme have strongly recommended that independent financial advice is taken in relation to this. It is my sole responsibility to decide whether or not to take such advice. I discharge the trustees of the scheme of all liability in respect of the sale of the asset for a price lower than for which they were purchased."

183. On 30 November 2018, Mr Kaigh instructed a payment of £10,000 from the SHK Scheme to Mr G. This is described as a PCLS. Mr G says that the remaining £20,000 payments, which were described as PCLSs, were paid late.

184. On 25 December 2018, Mr G emailed Brambles concerned that the second instalment had not been received.

185. On 29 December 2018, Brambles informed Mr G that payment had been instructed and that it was expected to be made the following Monday.

186. Around 5 April 2019, Brambles issued an annual statement to Mr G providing an investment valuation of £60,000 held within a "Loan Note". Mr G has stated that he was not aware that this sum would be provided in the form of a loan note.

187. On 24 April 2019, Mr G emailed Brambles stating:

"I was hoping as I have taken such a big drop in valuation by over £90,000 you would be reasonable and find a way to help especially as the funds should now be in cash in my pension scheme as was agreed in our contract of sale.

I thought given my initial transfers were well over £300,000 and I have no evidence that they were invested anywhere a help of £5,000 would not be unreasonable.

Especially as you can charge a fee which will earn you even more from me".

188. On 1 May 2019, Brambles issued a transfer value quotation to Mr G's preferred pension provider of £60,000 and stated that he had already accessed his PCLS.

189. On 3 June 2019, Mr G emailed Brambles and requested the email address for the Scheme's trustees to chase the transfer of his pension scheme.

190. On the same date, Brambles confirmed that the Trustee was waiting on a payment into the Gilbert Scheme and was chasing it daily. On receipt, the transfer would be made.

191. On 5 June 2019, Brambles responded to Mr G stating that it was in contact with the trustees and were trying to resolve the situation. On the same day, Mr G responded, again requesting the trustee's contact details and followed up with a further email restating it and demanding "DO IT NOW". On 6 June 2019, Mr G requested their emails and telephone numbers, and that he considered the agreement to be broken.

192. On 7 June 2019, Brambles responded, saying:

"I understand your frustration and you have my sympathies in relation to the situation regarding your son. However, the funds are not currently available to transfer. The trustees are awaiting a repayment to the scheme and, on receipt, will make the transfer. We are not sure when this will happen due to cashflow problems with the company who is making the repayment.

You have emailed Brambles twenty six times within the last week. You cannot expect me to respond to each and every email. Brambles administers numerous pension schemes with numerous members and, therefore, time is limited in respect of the responses I can provide to an individual member."

193. On 13 and 16 June 2019, after further emails, Mr G again requested contact details for the trustees.

194. On 21 June 2019, Brambles confirmed that no funds were available at that time.

195. Mr G has said he received £3,997.52 in July and August 2019.

196. On 31 July 2019, Brambles emailed Mr G saying:

"I understand your frustration. However, we are doing our very best for you. I do not believe that posting videos online will help anyone's causes but, it is your choice if you wish to do this. The situation is an unfortunate one. We had assurances that the funds would be repaid in April. Cash flow difficulties have meant that this has been delayed. The funds will be repaid as soon as they are available and we are chasing for them daily. I hope to have some good news for you soon and will be in touch as soon as I do.

I do not believe that contacting the Pensions Ombudsman at this stage is the best course of action. However, again, this is your decision. If you wish to do so, they can be contacted at... We will not be able to provide them with any information more than what we have provided to you."

197. On 19 August 2019, Mr G wrote to Brambles, saying:

"I know you are trying but I am in a perilous state here. I need those funds now very urgently. We are going to hospital this week for check up further immunisations and at this time cannot afford it.

I have borrowed from everyone I know and given up any pride I have in my life."

198. On 21 August 2019, Mr G wrote to Brambles, saying:

"You know how desperate I am yet you totally fail to say anything... I ask again who is the company buying my investments and what have they told you. Please don't say soon as your soon can be years and is already months.

Also if they haven't paid then you must still hold all the investments so sells [sic] them immediately for £60,000 and give me my money."

199. On the same day, Brambles responded:

"The trustees have confirmed that, there is a final figure of £997.52 available in respect of your pension commencement lump sum. Having liaised at length with the company in which your pension benefits are invest[ed], they have managed to find this figure and will repay to the scheme today. Once received, I will ensure that this amount is sent to you today. I am sorry that it is not a larger figure but, hope it will not be too much longer.

As previously stated, we continue to chase the repayment of the remainder of the funds and will be in touch as soon as they are available to be transferred to

Pension Bee. I cannot give you a time-frame at this stage but, hope it will not be too much longer.”

200. On 8 October 2019, Brambles offered Mr G a transfer agreement on the basis that Brambles Administration, on behalf of the Gilbert Scheme, would transfer £5,000 per month to Mr G's preferred pension provider. This would be paid every month until the transfer value of £60,000 was paid in full, whereby if payments were made as agreed, the final payment would be on or before 31 August 2020. The agreement stated that the first payment had been made and the next was due before 31 October 2019.
201. The issue of the requested transfer continued over the course of 2020. Partial transfers were made, eventually amounting to £35,997.52 in total, leaving arrears of £24,002.48.
202. On 17 April 2020, Brambles wrote to Mr G explaining that the purchaser was going through cashflow issues and that the payments were delayed.
203. On 24 May 2020, Mr G submitted a formal letter of complaint to Brambles.
204. On 20 August 2020, Mr G submitted an application form referring the complaint to TPO.
205. As at 26 November 2020, an agreement was confirmed that payments of £2,000 would be made to the Gilbert Scheme by CDWL and then transferred to Mr G's preferred pension provider for 14 months. The amount due according to that agreement was £24,000; the figure was rounded up to £28,000 to include compensation. I understand £3,500 of that compensation has been paid by Mr Paul Dalton, and £500 of the agreed compensation is still outstanding. The full £24,002.48 is outstanding in respect of the pension.
206. On 23 January 2021, at 03:23 (GMT), Mr G emailed Brambles regarding a video he had made about the situation. As the video was not attached, he followed it up at 03:35 (GMT) attaching the video. At 11:19 and 11:20 (GMT), Brambles forwarded those emails, and the video to Gary Quillan.
207. On 30 November 2021, Mr G highlighted concerns to Brambles about Mr Simon Hamilton Kaigh and Mr Paul Dalton of CDWL operating from the same address.
208. Mr G confirmed that he wished for the complaint to be expanded to include the Trustees' conduct in relation to the investments.
209. Brambles has shared an extract from a spreadsheet which says the following:
- “[Mr G] – CDWL purchase – £24,500 – Transfer to Pension Bee – chases daily – 24,500 outstanding. Member will be willing to accept £15,000. CDWL is now in a CVA. [Mr G] has been informed. Ongoing Ombudsman complaint.”*

A.2 The Schemes' Investments

210. I have been informed or otherwise discovered by investigation that the Schemes made investments with the entities set out, below. I have summarised the information known about the investments.

Storage units at Strongbox

211. The references to lease investments with Strongbox are to storage pods at a site run by Strongbox at Bahama Road, Haydock Industrial Estate, Haydock, St. Helens, Merseyside, WA11 9XB. Strongbox appear to be continuing to carry on business there. Both Ms Y and Mr G signed member-directed investment forms, directing their pension funds to be invested in storage pods at this site. Strongbox is an active company incorporated on 29 January 2013 by Mr Paul Dalton, who is the sole director and shareholder.
212. The freehold of the storage pod site was owned by Haystore Limited after 30 November 2019, when it acquired the freehold from Moneything (Security Trustee) Limited. The freehold title has over one hundred leases on 250-year terms registered against it, each lease comprising a single storage pod. Most of the leases were created in 2013 and some were created in 2014.
213. According to Ms Y's and Mr G's member-directed investment forms in relation to the Eleven Property Scheme and Gilbert Scheme respectively, their pension was going to be invested in the following units:

Ms Y	Units [Y.24], [X.16], [X.23]
Mr G	Units [Z.19], [Z.20], [Z.21], [Z.22], [Z.51]

As set out in Appendix 4, the forms indicated that Ms Y would personally acquire Unit [X.23] and her pension fund would then acquire it from her personally. She would acquire a percentage share of the other two storage pods, but never own these personally. Mr G would acquire all of his units personally, then his pension fund would acquire them from him.

214. As is to be expected for 250-year leasehold property which is registrable at the Land Registry, each of these units has its own title. In the section of the register which sets out short particulars of the lease under which the land interest was created, the parties are listed as follows:

(1) Samarian Holdings Limited
(2) [NAMED INDIVIDUAL]
(3) Strongbox Self-Storage Limited

The named individual is Ms Y in the case of Unit [X.23], and Mr G in the case of all his units. Other individuals who are not directly involved with this matter are the named individual in respect of Units [Y.24] and [X.16].

215. It would appear that Samarian Holdings Limited (**Samarian**) was the landlord and the named individual was the original tenant for each lease. I understand Strongbox had management responsibilities for the premises.

216. Documentation from the Land Registry showed the proprietor for each lease as the Individual Trustee, that is, Mr Simon Kaigh, as trustee of the Gilbert Scheme, was the proprietor for each of Mr G's storage pods and Mr McNally, as trustee of the Eleven Scheme, was the registered proprietor for Ms Y's storage pod and the two additional pods she had an interest in.

3TC House

217. The freehold of 3TC House was originally owned by Imperium Enterprises Ltd (**Imperium**). According to the Statement of Administrator's proposals for Imperium, dated 28 October 2016, Imperium was an investment company operating from 3TC House. Imperium was incorporated on 20 May 2010 and until December 2014, its directors were Mr William Ross-Jones and Mr Robert John Metcalfe, also the sole principal of RMJ Solicitors. Mr Ross-Jones and Mr Metcalfe remained directors until 15 February 2017 and 30 September 2016 respectively. Imperium was dissolved on 28 May 2019.

218. I have received an investment brochure issued by Imperium in 2013 from Strongbox Serviced Offices, a trading style of Strongbox. This described an Investment into Office Pods due for completion in November 2013. The investor would purchase a 250-year lease and enter into a management agreement with Strongbox which would then rent the units to end users. Strongbox would be responsible for marketing and other management responsibilities in exchange for a management fee.

219. The return was stated to be 8% per year return from the date of investment to the date of completion. On completion, the net return would be 3.4% allowing for 50% occupancy and 8.3% on the basis of 100% occupancy.

220. The brochure described the investment as an "*excellent opportunity to enter the lucrative Commercial Property Market at an affordable level*" and as being SIPP compliant. In respect of selling the asset, the brochure stated that it could be sold privately by the investor, sold to the pension fund or marketed by Strongbox for sale.

221. The following risks were identified in the brochure:

221.1. no recognised market and the investment could be illiquid;

221.2. no guaranteed occupancy and there may be no return after expenses; and

221.3. the value of the investment could rise and fall, and the full capital value might be lost.

222. A RICS valuation for 3TC House prepared for investment purposes and addressed to the Trustees of The Gilbert Scheme, dated 30 May 2013, made the following conclusions:

222.1. The intention was to convert the building into 11 high quality office pods for investment purposes.

222.2. The valuation assumed a yield of 7% and 85% occupancy over 10 years.

222.3. The individual office pods were valued between £48,900 (for two persons), £73,350 (for three persons) and £97,800 (for four persons).

222.4. The market was deemed slightly unstable and there was no advice regarding business viability.

223. According to Companies House a number of companies operate or have operated from 3TC House, including:

Company	Directors
SHK Property Services Limited	Simon Hamilton Kaigh
Eleven Property Limited	Simon Hamilton Kaigh, Michael McNally
Gilbert Trading Limited	Simon Hamilton Kaigh
FIG Investments Limited	Simon Hamilton Kaigh
DNAL Investments Limited	Michael McNally, Gary Quillan
23 Administration Limited	William Ross-Jones, Paul Dalton
Capital Innovative Finance Limited	Paul Dalton, Mark Roberts
Capital Secured Finance Solutions Limited	Paul Dalton, Mark Roberts
Silvertree Investments Limited	Robert John Metcalfe, William Ross-Jones
Franklin International Limited (E&W)	David Hemsley
JVC Developments Limited	Simon Kim Williams

224. A full list of companies operating from 3TC House is set out in Appendix 5 below. Several of these companies are the sponsoring employer of a similarly named pension scheme administered by Brambles and several involve directors of other investments made by the Schemes.

225. Pension Max also used 3TC House as its address.

226. Imperium, the freeholder, went into Administration on 28 September 2016. On appointment of administrators, Capital Bridging Financial Solutions (**CBFS**) made a direct offer for all of Imperium’s freehold properties. The sole director of CBFS at the time was Mr Paul Dalton. Within the Statement of administrator’s proposal, dated 3 November 2016, the Administrator said:

“It was also established that the ground floor at 3TC House was split into various units and sold individually to a number of different parties on 250 years leases. Further enquires revealed that the leaseholds were not registered at Land Registry which they were required to be. However, legal advice suggested that failure to register would not invalidate the leases however their existence would have a detrimental effect on the value of the property especially to developers There was also a long term leases [sic] in favour of the resident management

Company however this has yet to be located despite enquires with the Directors and their former legal advisers.”

227. According to the administrator the sale of the 3TC House freehold to CBFS completed on 10 February 2017.

228. Brambles has said that in late 2017 or early 2018, CDWL contacted the leaseholders of 3TC House, including the Schemes, to purchase the leaseholds. At the time Mr Paul Dalton was the sole director of CDWL. Brambles has said that it understood that CDWL owned the freehold of 3TC House.

CDWL

229. CDWL was incorporated on 19 October 2016 by Mr Paul Dalton.

230. A confirmation statement dated 23 January 2017 shows shareholders including:

230.1. 1000 Ordinary Shares owned by Mr Paul Dalton; and

230.2. 1750 Ordinary Shares owned by Mr David Hemsley.

231. On 10 February 2017, CDWL registered a charge over the land at 3TC House in favour of Oakmore Investments Limited.

232. In a confirmation statement dated 31 August 2017 the shareholders included 2031 Ordinary Shares owned by CBFS.

233. I have been provided with two loan agreements dated 16 May 2018 documenting lending to CDWL: one with the SHK Scheme as lender and the other with the Gilbert Scheme as lender (the “**2018 CDWL Loan Agreements**”). Both appear to be in final form, but neither is signed by either party which raises concerns about the administration of legal documents in relation to the two Schemes. They are on substantially identical terms save as to the amount: the SHK Scheme lent £164,027.35 and the Gilbert Scheme lent £222,495.

234. The 2018 CDWL Loan Agreements provide for a term of 6 years, with interest chargeable at 6% for the first year and 18% annually thereafter. The entire principal and all interest is repayable at the end of the term.

235. In a voluntary creditors arrangement dated 8 February 2022, creditors of CDWL included:

Company	Amount
Gilbert Trading Limited	£37,876
Gilbert Trading Pension Scheme	£360,805
Mapleleaf Enterprises	£7,499
SHK Property Services Limited	£22,062
SHK Property Services Limited Pension Scheme	£266,160

Silvertree Investments Pension Scheme	£107,316
Turcotte Corporation Limited	£120,840
One Islington Plaza Limited	£168,400

236. I note the sums referred to here are greater than those lent in the loan agreements. It has not been explained why this is the case, but it may include interest accrued on the loan. I also note that the Principal Employer of each Scheme, in addition to the Schemes themselves, appear to be lending to the same entity.

Mederco Limited (“Mederco”)

237. Mederco was incorporated on 6 July 2011.

238. I have not been provided with a copy of the Gilbert Scheme’s Loan Agreement with Mederco.

239. On 25 January 2019, Mederco entered administration.

Mederco (Huddersfield)

240. Mederco Huddersfield was incorporated on 29 April 2014 by Mr Stewart Paul Day.

241. A 2016 summary of the Mederco Group stated that it offered “*individuals the opportunity to invest in a strategic and carefully planned but aggressive UK-based property portfolio.*” The stated intention was to purchase properties at least 30% below market value and sell the property on at a profit. The “investment period” for funds was described as 5 years and the risk of repayment deadlines not being met was described as “minimal”.

242. On 28 March 2019, Mederco (Huddersfield) entered administration. It is notable that the following pension schemes, individuals and companies were shareholders at the point that the company entered administration:

Shareholders of Mederco Huddersfield
Capital Bridging Finance Solutions Limited
Silvertree Investments Pension Scheme
Mr Gary Robinson
The SHK Property Services Pension Scheme

Tennyson Property Investments Limited (Tennyson)

243. Tennyson was incorporated on 30 September 2011 by Mr Gary Robinson. On 21 March 2016, Mr Dalton was appointed as a director and Mr Robinson resigned on 7 May 2016.

244. An Information Memorandum dated 1 October 2012 stated that Tennyson intended to raise £2,470,000, allowing investment in a portfolio of residential properties which would be let out and managed by a professional management company. The long-term projected investment return was 2.5% to 3% per share after tax and expenses. The investment was intended to be at least five years and it would take a number of years before initial costs were offset by the profits and dividends which could be paid. The Information Memorandum also said, in summary:

244.1. Tennyson Property Investments Limited was not regulated and was not providing financial advice.

244.2. The investment was in Ordinary Shares of the company at £1 per share and intended for SIPP pension arrangements. The individual was recommended to take regulated advice and conduct their own due diligence.

244.3. The company would be a Genuinely Diverse Commercial Vehicle (GDCV) in order to avoid the investment in residential property constituting an unauthorised investment.

244.4. The investment was not, and was not intended to be, listed on any recognised investment exchange.

245. The Information Memorandum included a number of risk factors, including:

245.1. Commercial risks, without guarantees. The investment was speculative and the original capital might not be returned.

245.2. Government tax and policy might change affecting tax rates and reliefs.

245.3. Unquoted shares and stock are high risk, may be illiquid, difficult to value and volatile.

245.4. The investment may not be suitable and financial advice should be taken by the individual.

245.5. Commission of 6.5% of the investment value would be paid to introducers.

246. An Annual Return submitted to Companies House on 9 March 2015 showed the following shareholders:

Tennyson Shareholders	Shareholding
SHK Scheme	110,139 Ordinary Shares
Gilbert Scheme	40,739 Ordinary Shares
Silvertree Investment Pension Scheme	90,678 Ordinary Shares
Focus Administration Pension Scheme	93,849 Ordinary Shares
Business Way Pension Scheme	134,141 Ordinary Shares

247. CBFS's report from the CVA, which it entered into on 23 March 2021, indicates that Tennyson borrowed £512,000 from CBFS.

248. On 6 April 2021, a court order was lodged to wind up Tennyson and a liquidator was appointed on 7 March 2022.

CBFS

249. CBFS was incorporated on 24 January 2012 by Mr Paul Dalton. Mr Gary Robinson was also a director between 1 January 2013 and 1 January 2014.

250. Initially, the company operated from 3TC House and it later returned to that address.

251. An Information Memorandum dated 31 May 2013, stated that CBFS intended to raise £1,000,000 in Ordinary Shares of the company at 50p per share to provide bridging finance to professional investors with security on land and property. It was anticipated that the borrower would pay interest of 12% to 30% per year. The investor would receive interest of 6% per year with the aim of returning the capital after five years, with a possible extension up to six years. As of 31 May 2013, the company owed £95,077 to existing lenders. The Information Memorandum also stated:

251.1. CBFS was unregulated and the Information Memorandum did not constitute financial advice.

251.2. CBFS had accounts for the period up to 31 May 2013.

251.3. The investment was not, and was not intended to be, listed on any recognised investment exchange.

252. The Information Memorandum stated that the investment involved a “significant degree of risk”, including:

252.1. Commercial risks due to a fluctuating lending and property market. The investment was speculative and bridging finance loans made by the Company may default or be repaid late.

252.2. Government tax and policy might change affecting tax rates and reliefs.

252.3. Any loan made to the company is for a fixed period and it may not be possible to realise or sell the investment during that period.

252.4. The investment may not be suitable and financial advice should be taken by the individual.

252.5. Commission of 7% of the investment would be paid to introducers.

253. I have been provided with three loan agreements dated 8 October 2019, documenting lending to CBFS: two with the SHK Scheme as lender and the other one with the Gilbert Scheme as lender (the “**2019 CBFS Loan Agreements**”). All are dated, but none is signed by either party which again raises concerns about the administration of legal documents in relation to the two Schemes. They are on substantially identical terms save as to the amount: the SHK Scheme lent £858,265 in two agreements (£789,630 plus £68,635) and the Gilbert Scheme lent £185,332.

254. All three 2019 CBFS Loan Agreements are stated to 'supersede all previous agreements between the two parties'. This would suggest a consolidation of previous lending arrangements between the parties, but none of the previous agreements have been provided. The terms of the 2019 CBFS Loan Agreements are unusual. They appear to provide for a variable final repayment date which depends on when the final instalment of the loan is drawn down by CBFS as the borrower. There seems to be no date by which the final instalment must be drawn down, leaving the date of eventual repayment of the entire principal and all interest indeterminable. Interest is charged at 6% per annum.

255. On 17 April 2020, CBFS went into administration and on 31 March 2021 it entered Creditors Voluntary Liquidation.

256. The Joint Administrator's proposals dated 18 May 2020 stated that:

"According to the Company's records, Tennyson (a related company by virtue of common directors and shareholders) is indebted to CBFS for approx. £524K, which was secured by way of a first ranking charge on part of Hockney Court."

257. The Company also held shares in Mederco (Huddersfield) and creditors of CBFS included:

Creditors of CBFS
Gilbert Trading Limited
SHK Property Services Limited
Mapleleaf Enterprises Limited
Silvertree Investments Limited
Strongbox Self Storage Limited
The Focus Administration Pension Scheme

Fleet Street Liverpool Limited (**Fleet Street**)

258. Fleet Street was incorporated on 7 March 2016 by Mr Christopher Saggars. On 17 October 2016, Mr Saggars resigned as director and was replaced by Mr Mark Roberts.

259. On 30 June 2020, Fleet Street changed its registered address to 3TC House.

260. On 25 November 2021, Fleet Street entered administration.

261. According to the Administrator's Proposals dated 6 January 2022, Fleet Street had intended to purchase and develop land in central Liverpool for student accommodation. As part of this it sought finance from CBFS and had borrowed £200,000.

GBT Partnership

262. GBT Partnership was incorporated on 6 April 2010 by Mr Clifford Donald Wing. On 7 April 2010, Mr Simon Kim Williams was appointed as a co-director. On 27 May 2011,

Mr Wing resigned and Mr Williams was the sole director until its dissolution on 6 September 2016.

263. Originally, Mr Williams was the sole shareholder with one ordinary share. According to the Annual Return dated 6 April 2012 an allotment of 1,950,000 shares took place; all shares went to the Silvertree Investments Pension Scheme. Mr Williams kept his one share.

264. I have been provided with an Investment Summary for GBT Partnership. This confirmed that the company's solicitors were RMJ Solicitors of 3TC House. It stated that its trading activity was as follows:

“GBT raised £1,950,000 in February 2011. Monies were utilised to purchase a site in Norfolk Street in the ‘Baltic Triangle’ where significant regeneration is anticipated over the next few years... the company has submitted a new planning application for 356 student rooms (‘Pods’) and commercial spaces.

...

Once the planning application has been approved the company intends to sell the land (or alternatively shareholders can elect to sell their shares) to a developer that has huge experience in developing these types of sites and, in selling the individual student pods to investors.

...

Company Assets

<i>Land Valued at</i>	<i>£3,730,000</i>
<i>Cash (at bank 08/05/14)</i>	<i>£19,799.00</i>
<i>Total</i>	<i>£3,749,799”</i>

265. I have also been provided with a RICS valuation of the Norfolk Street land dated 8 May 2014. The instructions for this valuation were provided by Mr Gary Quillan on behalf of GBT Partnership. This provided an undeveloped valuation of £3,730,600 with a valuation of £4,500,000 if planning permission for student accommodation was approved.

266. The Annual Returns submitted to Companies House and dated 8 July 2014 and 24 March 2015 show that multiple share transfers took place at GBT Partnership between 4 July 2014, with the shares being transferred to and from over twenty parties. In the first instance, 1,200,000 shares were transferred from the Silvertree Investments Pension Scheme to CBFS. CBFS then transferred these shares to three individuals and two companies. Following this, large numbers of shares were transferred between:

266.1. several pension schemes, including the SHK Scheme and the Gilbert Scheme;

266.2. certain individuals, including Mr E and Gary Quillan. Another such individual was Gregory Garrett, who has been disqualified as a director for being involved with pension liberation in the same case as Gary Quillan.⁶ I understand Gary Quillan and Gregory Garrett are brothers-in-law; and

266.3. overseas companies, including Pure Wealth Management Limited.

Gematria Estates Limited

267. Gematria Estates Limited is a Gibraltar based company incorporated on 2 May 2012. Its last submission to the Gibraltar registry was in October 2016 and it was struck off on 21 September 2017.

268. As at 30 September 2012, Gematria Estates Limited owned 142000 ordinary shares in Tennyson.

Harper International Consultants Limited

269. Harper International Consultants Limited is a Gibraltar based company incorporated on 17 April 2012. Its director was David Hemsley. Its last submission to the Gibraltar registry was in April 2019 and it was struck off on 14 September 2022.

270. According to Mr S's member-directed investment form, Harper International Consultants Limited had invested in land in Maryport, Cumbria. I note from Companies House records that Harper International Consultants Limited had mortgaged a plot with title number CU227515 in Maryport, Cumbria in favour of CBFS on or around 19 July 2016. On or around the same date, CBFS in turn created a sub-charge over the land in favour of Silver Gina Limited, registered at Palm Grove House, PO Box 438, Road Town, Tortola, British Virgin Islands.

271. Harper International Consultants Limited had a Secretary listed as Franklin International Limited (incorporated in England and Wales) (**Franklin International E&W**), with the address given as 3TC House, Liverpool, L22 0NY.

272. The shareholding was:

Shareholders	Number of shares
David Hemsley	2826 Ordinary Shares and 2283 Preference Shares
Eleven Property Limited	805 Ordinary Shares and 651 Preference Shares
Mapleleaf Enterprises Limited	998 Ordinary Shares and 806 Preference Shares
Gilbert Trading Limited	371 Ordinary Shares and 300 Preference Shares

⁶ <https://www.ftadviser.com/pensions/2019/10/03/bosses-behind-12m-pension-scam-banned/>

Turcotte Corporation Limited

273. Turcotte Corporation Limited is a Gibraltar based company incorporated on 21 November 2012. Its last submission to the Gibraltar registry was in December 2019 and it was struck off on 17 May 2022.

274. On 9 March 2017, Mr Simon Kim Williams was appointed as a secretary of Turcotte Corporation Limited.

275. On 1 March 2019, Franklin International E&W was appointed as a secretary of Turcotte Corporation Limited, with the address 3TC House, Liverpool, L22 0NY.

276. The shareholding was:

Shareholders	Number of shares
Eleven Property Limited	1252 Ordinary Shares and 868 Preference Shares
Gilbert Trading Limited	748 Ordinary Shares and 519 Preference Shares

Priority Solutions Limited

277. Priority Solutions Limited is a Gibraltar based company incorporated on 22 December 2014. It is an active company, with all shares owned by Acquarius Management Services Limited. Its director is listed as Mr David Hemsley.

278. On 3 July 2020, Franklin International E&W was appointed as a secretary of Priority Solutions Limited, with the address 3TC House, Liverpool, L22 0NY.

TMG Swansea Limited

279. TMG Swansea Limited is an active company incorporated on 29 August 2018 by Mr Stewart Day. Mr Stewart Day was the sole director but resigned on 1 December 2022 leaving TMG Swansea with no directors.

One Islington Plaza Limited

280. One Islington Plaza Limited was incorporated on 28 May 2015. It is a student accommodation development in Liverpool. I understand that the Mapleleaf Scheme and Mr David Hemsley were shareholders of the company.

281. The Administrator's Statement of Proposal dated 5 January 2021 shows that CBFS owed One Islington Plaza Limited £715,761 and that CDWL owed £150,000.

Great Moor Street Bolton

282. Mr G's member-directed investment form referred to three registered titles of land which formed this investment. The plots are geographically on one site:

Title	Description
GM252461	14 Great Moor Street, Bolton (BL1 1NP) (Freehold)
LA365839	14 Great Moor Street, Bolton (BL1 1NP) (Closed Freehold on 20 April 2017. Registration continued under GM252461)
GM625198	Land on the north side of Great Moor Street, Bolton, held under a 999 year lease

283. The purchase of the three plots completed on or shortly before 3 November 2015 for between £500,001 and £1,000,000. The registered proprietor has, from that date, been Franklin International Limited (incorporated in Gibraltar) (**Franklin International Gibraltar**). Franklin International Gibraltar's status at Gibraltar Companies House was recently listed as 'Liquidation Pending'.
284. According to documentation filed at Companies House, Franklin International Gibraltar appears to have mortgaged the land shortly after acquisition on or around 13 November 2015. The lender for this mortgage was CBFS. Sub-charges were immediately created over the same land by CBFS in favour of two companies registered at the same address in the British Virgin Islands: Great Ford Limited and Pure Wealth Management Ltd.
285. The CBFS mortgage is not recorded at the Land Registry. However, two different charges over each title are recorded as follows:

Title	Charge	Date
GM252461 and GM625198	Equitable Charge in favour of Synergy Bridging Finance Limited	19 May 2016
	Charge in favour of Collateral Security Trustee Limited	20 June 2017
LA365839	Equitable Charge in favour of Synergy Bridging Finance Limited	19 May 2016
	Charge in favour of Capital Mortgages Direct Ltd, trading as Moneything.com	15 March 2016

POD Estates Limited

286. POD Estates Limited was incorporated in Gibraltar on 4 October 2012. According to Companies House Gibraltar records, Simon Hamilton Kaigh was the sole shareholder in POD Estates Limited. David Hemsley was appointed as sole director on 2 February

2017 and Franklin International E&W was appointed as secretary on 1 March 2019. POD Estates Limited was struck off by the registrar for failing to file annual returns on the 9 March 2022.

Baltic House Developments Limited

287. Baltic House Developments Limited was incorporated on 6 August 2015. According to Companies House records, its business was in the development of building projects. On 17 May 2018, an order was made by the court to wind up Baltic House Developments Limited.

A.3 Companies and individuals linked to Mr Simon Hamilton Kaigh

288. In addition to his connection to the Schemes' sponsoring employers, Mr Kaigh has links to the following relevant companies and individuals:

Bright Limited

289. Mr Kaigh is currently the sole director of Bright Limited. Previous people connected to Bright Limited include Mr Gary Quillan and Mr Mark Roberts. Mr Quillan was director of Bright Limited from 2 March 2005 to 1 October 2019.

290. On 7 February 2012, the company's address changed to 3TC House.

291. Bright Limited was listed as a tenant of Unit [w] 3TC House along with Mr Y at the time of its purchase by the SHK Scheme. Gary Quillan was director of Bright Limited at the time, and Mr Kaigh was the trustee of the SHK Scheme.

292. In the context of Mr Kaigh's link with Mr Quillan, I note the following paragraphs from the judgment of the First-tier Tribunal (Tax) in *Sippchoice v Revenue and Customs* [2016] UKFTT 464 (TC)⁷, regarding an alleged pension liberation scheme involving Imperium Enterprises Limited and various individuals linked to the Schemes' investments:

"12. The nature of the Pension Liberation Scheme alleged to have been operated in this case was as follows:

Step One: An individual ("the Member") transferred his/her pension savings to the SB SIPP.

Step Two: At the request of the Member, Sippchoice, as scheme administrator of the SB SIPP, invested the Member's pension savings in shares in Imperium Enterprises Limited ("Imperium").

Step Three: Imperium lent the funds to BOH Investments Limited ("BOH").

Step Four: BOH funded a subsidiary, SKW Investments Limited ("SKW") by way of a share subscription.

⁷ <http://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05217.html>

Step Five: SKW made a loan (“the Loan”) to the Member. The Loan was of an amount up to 25% of the value of the Member's savings with the SB SIPP and was expressed to be repayable out of the Member's pension derived from the SB SIPP.

13. The alleged Pension Liberation Scheme was in practice implemented as follows:

(1) SKW found individuals who needed a loan and who had funds within a conventional pension scheme.

(2) SKW promised a loan to such an individual of up to 25% of the value of his/her pension fund, if the individual transferred his/her pension fund from the existing provider to a pension fund administered by Sippchoice and, therefore, became a Member.

(3) After transferring the pension funds, those individuals requested that Sippchoice invest their pension funds in shares in an unquoted trading company, Imperium.

(4) As well as investing in property, Imperium made loans to BOH and another company, Real Bridging Finance Ltd (“RBF”).

(5) BOH subscribed in cash for new shares in SKW.

(6) Either before or afterwards, SKW made the promised loan to the Member. The precise timing is unclear.

14. The overall effect was that funds moved from the Member's existing pension scheme to a pension scheme administered by Sippchoice. From there cash flowed to Imperium, then, sooner or later to BOH, then to SKW and then by loan from SKW to the Member. Thus, the Member enjoyed a loan indirectly from his/her own pension fund. HMRC say that this was an unauthorised payment.”

293. The judgment makes further relevant comments about the conduct of the various parties, including:

“79. We find that the concerns which [SIPPchoice] had, were laid to rest by misinformation deliberately given them by Imperium (and Mr Quillan). On a number of occasions, SIPPchoice were very clear about their concern that a pensions liberation scheme was being operated, and yet they were given answers designed to give false assurances. We refer to the comment that loans may be being made by an unconnected third party, made at the meeting on 7 July 2011. We also refer to Mr Roberts’s misleading email to [SIPPchoice] of 31 January 2011 in which the involvement of SKW in deliberately soliciting pension funds for transfer to the SB SIPP with proposals to unlock your pension were concealed from [SIPPchoice]. We also refer to the financial information about Imperium which was provided to SIPPchoice and which (intentionally, in our judgment) gave no indication of how the investments of Imperium were a cover

for the eventual loans to be made to Members by SKW. Further back, there were the assurances given by William Ross-Jones of Imperium in the initial conversations with [SIPPchoice] in May 2010, and the explicit assurance given by Mark Roberts of Imperium in his email to [SIPPchoice] of 16 August 2010, covering the Investment Memorandum. Our findings are, of course, confirmed by the evidence that the 'contact at SKW' had rebuked Mr Bakes for contacting SIPPchoice at all, telling him that he had jeopardised everything they were doing."

294. The Respondents have asked me to explain the relevance of these paragraphs and have accused me of implying guilt by association. Although I acknowledge they do not refer to Mr Kaigh or Mr McNally directly, I consider Mr Kaigh's links (which have been explained in paragraphs 289 to 291 above) to parties implicated in pension liberation activities, most notably Mr Ross-Jones and Mr Quillan, who themselves have had some involvement in the Schemes in this case, to be important background information.

A.4 Companies and individuals linked to Mr Glenn House

295. As well as Brambles, I have identified other companies and individuals linked with Mr Glenn House.

Samarian Holdings Limited

296. Samarian was incorporated in Gibraltar on 18 August 2011. According to Companies House Gibraltar records, Glenn Laurence House was the sole shareholder in Samarian. Mr House was appointed as director on 8 April 2014. Brambles was appointed as secretary on 11 October 2017. Samarian was struck off by the registrar for failing to file annual returns on the 9 March 2022.

297. According to the Administrators' Statement of Proposals for Imperium dated 28 October 2016, Samarian was owed £185,869 by Imperium. Samarian held security in the form of a second charge over 'Land and Buildings at Hicks Road, Waterloo', Land Registry Title MS322997. This property is 3TC House.

B. Summary of the Respondents' position

298. Brambles has responded both to the complaints and preliminary decisions issued by me on its own account and on behalf of the 'trustees'. It is clear that this covers Mr Kaigh and the Trustee Companies, but I have had no direct contact from Mr McNally which would authorise Brambles to act on his behalf, or otherwise. I have summarised the joint submissions below. Some comments are of general application and some pertain to a specific Applicant's complaint.

299. In its submissions, Brambles has said that where the Respondents have not addressed a specific issue, it should not be taken to mean that it is accepted.

Scheme and trustee information

300. The Eleven Scheme has 55 members, the SHK Scheme has 42 members and the Gilbert Scheme has 20 members. Details of the investment amounts and other information requested have also been supplied.

301. Mr Kaigh had been an individual trustee or director of a corporate trustee since 2012. He studied and passed the relevant TPR Trustee Toolkit exams.

302. Mr Kaigh became the trustee of the Gilbert Scheme through his directorship of the sponsoring employer.

Scope of Determination and Schemes' structure

303. The Deputy Pensions Ombudsman has a duty (if wrongdoing is found), to order redress to the individual member who complained, not for those who have not complained. The Deputy Pensions Ombudsman would overstep the mark if redress is ordered for those who have not complained. Whether or not the Deputy Pensions Ombudsman has the power to restore any assets, such as those of members who have not complained, it does not mean that it is the right thing to do.

304. Each Scheme member had an individual fund and the arrangements were not pooled. It would be unconscionable for a member to claim otherwise now. These were individual arrangements, and it should be clear and obvious that this was the intention. If individual arrangements existed then only those members who brought complaints to TPO should be compensated if compensation is due.

305. It is standard practice for legal documents relating to scheme assets to identify the scheme or trustees as the owner as opposed to individual members. Reference to the scheme or trustees on legal documents does not undermine the argument that these were individual arrangements.

Pension liberation

306. Pension Liberation has no legal or statutory meaning, as stated by the First Tier and Upper Tier Tax Tribunals and has no place in a legal decision such as this. The Schemes' transactions cannot be pension liberation payments and no 'unauthorised payments' were made.

307. No pension liberation has taken place, as pensions legislation allows for a pension scheme to purchase an asset from a member provided the purchase price is no greater than market value. Sections 164 and 171 of the Finance Act 2004 mean that there were no unauthorised payments and the Deputy Pensions Ombudsman must apply these provisions. There is no evidence of a breach of trust or contravention of section 255 of the Finance Act 2004.

Investments and their acquisition

308. All Applicants sold assets to the relevant Scheme at market value and that sum represents the value that the members received from that Scheme. These transactions were legally valid and evidenced by documentation, and the Deputy Pensions Ombudsman is incorrect to describe them as 'manufactured'. The members signed legally binding documentation and had the capacity to understand the forms. The sums they realised from the Scheme should be taken into account in any Directions.

309. All of the evidence, including legal documentation, supports the finding that these 'back-to-back' transactions were genuine, and it is preposterous to conclude otherwise. The Deputy Pensions Ombudsman is inconsistent in his description of these transactions and the finding demonstrates a biased investigation to reach a desired predetermined outcome.

310. The member directed investment forms were clear that the members were selling properties to the Schemes. This signed contemporaneous evidence should be given more weight than vague or incomplete recollections many years later.

311. All property asset investments were supported by a valuation from a chartered surveyor. Many of the property assets were held within corporate structures.

312. Brambles does not hold any copies of any investment advice. The Trustees honestly did not believe that they were obliged to take financial advice in circumstances where the members were directing the investment choice and where the members had accepted that it was their responsibility to take suitable advice.

313. The Deputy Pensions Ombudsman has failed to consider fully Regulation 7(2) of the Investment Regulations and specifically that it requires a trustee to "have regard to the need for diversification of investments, **in so far as appropriate to the circumstances of the scheme**". The circumstances of the schemes meant that members were allowed to self-select property and property type investments, show that the trustees met that requirement. The fact that the Deputy Pensions Ombudsman has misquoted this regulation is indicative of dishonest and biased decision making.

314. The Deputy Pensions Ombudsman failed to request an explanation for the investment in Gibraltar holding companies, and in doing so demonstrates bias. There is a very good reason why a pension scheme would prefer Gibraltar limited companies in that it is more tax efficient for pension schemes as it is free from corporation tax, whereas UK companies pay corporation tax.

315. There is no evidence to suggest the investments made in Gibraltar were based on a deliberate attempt to escape regulatory scrutiny and put assets beyond the reach of members and authorities. There is no evidence to support a finding that the Priority Solutions Limited investment was an intentional breach of trust or a 'bogus investment' or located in Gibraltar to benefit from administrative obscurity.

Member consent

316. The Applicants chose their investments of their own volition, and it would be obvious to any reasonable person that they wanted to proceed. They were not forced to sign the investment instructions and were not under duress. They were aware that the investments were illiquid and it is absurd for them to now claim they were unaware of what they were doing. The evidence shows that the Applicants were fully aware of the terms of the underlying investments. Detailed warnings about tax matters and financial advice were provided.

317. It was reasonable for the Trustees to invest funds in accordance with the Applicants' written directions. The Applicants have been negligent in failing to take their own independent advice, despite being recommended to do so.

318. The use of pre-populated forms is no less valid than any other form so it is irrelevant whether these were used to instruct investments. Neither Brambles nor the Trustees pre-filled these forms. Any independent review of the member directed investment forms would show that they constituted express agreements. No case law or legislation suggests otherwise, and pre-populated forms are regularly used in other legal documentation and are no less valid or evidence that the individual did not understand what they were signing. The use of the word "purported" in the preliminary decision in relation to the member directed investment forms is incorrect as they did provide authorisation. The Deputy Pensions Ombudsman should not be referring to the use of pre-populated forms or relying on their use to reach decisions.

319. When considering whether there was consent to the investments, the Trustees should not be held accountable for the actions of unconnected third parties or any alleged introducer.

320. If the Trustees pursue the indemnity clause(s) in their favour, this is a matter between the Trustees and the Applicants, and the opinion of the Ombudsman is not relevant.

Fees and charging

321. The Deputy Pension Ombudsman's consideration of the Schemes' fee structure incorrectly compares them to standard occupational pension schemes when they have more in common with a small self-administered scheme (**SSAS**) or self-invested personal pension (**SIPP**) as the members were able to self-select non mainstream investments.

322. SSAS/SIPP charges for schemes which allow members to self-select property or similar investments do often charge flat fees which typically run to £500 per year or

more. The comparison to standard schemes is an unfair comparison. The fees were reasonable given the characteristics of the Schemes and the Deputy Pensions Ombudsman's analysis is further evidence of bias.

323. Although PAR was paid for work six years in advance, the members were not further charged by Brambles and so they were not double-charged. The advance payment had no impact on the members' statutory transfer rights and there is no justification to say that it did.

324. The Deputy Pensions Ombudsman should take account of the fact that the members all gave informed consent (in writing) as to the fees that were charged, and there should be credit given in any redress directed for what a reasonable fee would be. The lack of credit given is further evidence of bias on the part of the Deputy Pensions Ombudsman.

Conflict of interest

325. Any conflicts of interest are denied and the fact that two companies may share a registered office does not give rise to a conflict, nor does the fact that a director of one company might know the director of another. These situations are normal in the business world and have been mischaracterised by the Deputy Pensions Ombudsman to suit his purposes. In any event none of the alleged conflicts caused any harm to scheme members. If a conflict is found to exist, they had no impact on the investment decisions made by the members.

326. Any link between Mr Kaigh and Mr Quillan, if any, is wholly irrelevant. Just because one had certain knowledge does not mean that the other one did. The Deputy Pensions Ombudsman has implied guilt by association.

327. The Trustees cannot be found in breach of trust for the actions of unconnected third-party introducers.

328. It is typical for investment companies such as Tennyson to borrow against assets in order to attempt to grow the business. This is not irregular.

Administration

329. Brambles denies any maladministration, although it may have been slow to respond to some requests and would like to apologise for that.

330. Although members were unable to communicate directly with the trustees, this was because the trustees requested Brambles handle the day to day running of the schemes. Brambles maintains a spreadsheet containing the current position of members and discussions with the Trustees. Brambles holds regular meetings with the trustees of the schemes that it administers to discuss member requests.

331. In relation to the proper registration of Scheme assets for safe custody, the Trustees obtained a quote from a solicitor for this work but there was no liquidity within the scheme to pay the legal fees.

Breaches of trust and dishonesty

332. Any allegation of breach of trust is denied. If a breach of trust is found, then it is denied that it was deliberate.
333. All allegations of dishonesty or misappropriation of Scheme funds are denied. If mistakes were made, they were made honestly and without dishonest intent. There is no evidence to the contrary.
334. No diminution of scheme assets took place, either deliberately or otherwise. The assets were purchased at a market value calculated by RICS surveyors and as such it should be accepted that no diminution took place. The Deputy Pensions Ombudsman has not challenged the RICS valuations.
335. The Trustees had an honest belief that they were not obliged to seek financial advice where the members were directing the investment and where they had accepted responsibility to seek suitable advice.
336. It is denied that the respondents have been dishonest by the standard of Ivey v Genting:

“At all times, the trustees acted in what they believed was the best interests of the members. The trustees carried out the written requests of the members. An ordinary decent person would not consider the act of carrying out another person's wishes to be dishonest in any way. Consider the hypothetical situation where Mr Smith and a ten pound note [sic] to Mr Brown asks him to place a bet on the favourite in a particular horse race. Mr Brown does exactly as he is asked. The bet loses. At no time did Mr Brown actually own that £10.00 personally. He was holding it in trust for Mr Smith. No ordinary decent person would feel that Mr Brown has acted dishonestly. This situation is exactly the same as the situation regarding the pension investments. TPO is wrong to find that that the trustees acted dishonestly as per Ivey. Because of the biased manner in which [the Deputy Pensions Ombudsman] has carried out this investigation, he is not a suitable person to make any rulings in regard to whether the conduct of the trustees was honest or dishonest by the standards of ordinary decent people.”

Procedural unfairness and bias

337. Insufficient time has been allowed for the Respondents to obtain suitable legal advice and they do not have the expertise or resources to respond to every issue considered by the Deputy Pensions Ombudsman.
338. The investigation has been a sham and biased from start to finish to reach a predetermined outcome of dishonesty. The intention was for scheme members to obtain compensation from the Fraud Compensation Fund and as such the entire decision is unreliable.
339. The Ombudsman has said in a preliminary decision that the Oral Hearing was held to consider whether “Mr Kaigh and Brambles might be liable as accessories”. There was

no mention of this prior to the Oral Hearing or in earlier correspondence and the Respondents do not believe that this statement was true.

Directions

340. Any direction from the Deputy Pensions Ombudsman to provide a transfer value would not be possible for the Trustee to comply with as there are no funds within the Schemes. Further, any such direction would appear to give priority to the Applicants over the other members of the Schemes contrary to Hillsdown Holdings plc v Pensions Ombudsman. See paragraph 16, above.
341. Any award of distress and inconvenience for maladministration should be proportionate to the harm suffered by the Applicants. The amounts proposed by the Deputy Pensions Ombudsman are significantly higher than normal awards of this nature and the requirement for Mr Kaigh to pay this personally is vindictive and unjust.
342. Should the findings of the second preliminary decision stand, the Determination will be appealed to the High Court.

Ms Y's complaint

343. Ms Y has brought her complaint too late for consideration by the Ombudsman and the Deputy Pensions Ombudsman's explanations for accepting the complaint have evolved, indicative of biased decision making to suit a predetermined outcome.
344. Ms Y clearly had knowledge in 2015 to report Brambles to various authorities and that should be taken as her date of knowledge for jurisdiction purposes. That Ms Y did not meet with her adviser until May 2019 is not a valid reason for bringing the complaint late. There is no evidence to suggest that Ms Y was unwell, and any such health problems did not prevent her from reporting Brambles to the authorities in 2015. If she was well enough to do that, then she could have brought a complaint to TPO.
345. Ms Y did not independently decide to expand her complaint. She was advised and encouraged to do so by an individual at TPO, who was not acting impartially, as they were duty bound to.
346. Brambles was not the administrator at the time Ms Y transferred into the Eleven Scheme and invested in the units.
347. In relation to Ms Y's complaint, Brambles took steps to sell her investment in 2015, but there were no interested parties. Additionally, although Ms Y has said that Brambles has not kept her informed of the performance of the pension, annual statements had been issued.
348. Brambles apologised for being slow during 2020 as their business was adversely affected by the Covid-19 pandemic.
349. Brambles sent annual benefit statements to all members where a current address was held. There was some confusion over Ms Y's address.

350. The Trustees accept no responsibility for the investment choices made by Ms Y. Despite what she has said, she did receive an incentive payment as she was the original owner of one of the units that was bought by the Eleven Scheme.

Mr S's complaint

351. Mr S has brought his complaint too late to the Ombudsman, as he was dubious about the Eleven Scheme in February 2015. Mr S ought to have taken action at that time when he became aware.

352. The Deputy Pensions Ombudsman has relied upon the fact that Mr S's knowledge only became clear after a substantial investigation, but that cannot be the reason why Mr S brought the complaint late. This explanation lacks logic as it is clear that Mr S brought his complaint prior to the substantial investigation taking place. The explanation by the Deputy Pensions Ombudsman suggests a predetermined desire to allow the complaint to be brought late and then subsequently try to find an explanation for that decision.

353. Mr S did not independently decide to expand his complaint. He was advised and encouraged to do so by an individual at TPO, who was not acting impartially, as they were duty bound to.

Mr E's complaint

354. In relation to issues around member consent and whether members were duly informed, it is bizarre to conclude that Mr E did not understand documents written in plain English.

Mr Y's complaint

355. Mr Y claims he has sent over 50 calls and emails from Mr Y, but Brambles denies this and puts Mr Y to proof on this matter.

356. Mr Y did not independently decide to expand his complaint. He was advised and encouraged to do so by an individual at TPO, who was not acting impartially, as they were duty bound to.

Mr G's complaint

357. Mr G sends frequent emails, numbering thousands of pages, which have included insulting and personal comments, and numerous allegations. Brambles, Mr Kaigh and the other parties mentioned deny the allegations. Because of the frequency of Mr G's emails Brambles has been unable to respond to every one. This has been explained to Mr G.

358. Given the content of the emails, Brambles and Mr Kaigh would respectfully request anonymity in any published Determination for all individuals involved.

359. In 2018, Mr G requested to sell his assets. To assist, and outside of its responsibilities as the Scheme administrator, Brambles was able to secure an offer of £90,000 from CDWL over a repayment schedule. Unfortunately, CDWL was unable to maintain the

payment plan and some repayments remain outstanding. Brambles has chased this regularly, but CDWL has had cash flow problems.

360. All investment decisions were made by Mr G himself, including the sale of his assets at an undervalue in 2018. He also signed various statements including a restricted investor statement and a statement indemnifying the Trustees for any investment decisions.
361. The sum outstanding to Mr G is £24,500, the current value of the investment. Brambles has already agreed an ex-gratia payment of £4,000 to Mr G. £500 remains outstanding and is included in the figure above. Should the complaint be upheld this payment should be taken into consideration.
362. Since the complaint was made CDWL has entered a voluntary creditors arrangement whereby they are likely to receive 15p in the pound.
363. Mr G has said that his assets were not worth “that amount”, but this has not been taken into account by the Deputy Pensions Ombudsman when making findings against the Respondents.
364. Mr G pushed for his assets to be sold at a discount and it was he who suggested the figure of £90,000. This is evident in exchanges between Mr G and Brambles which the Deputy Pensions Ombudsman has refused to read which has led to an incorrect decision. Mr G more than consented to the transaction, he proposed it, actively pushed for its implementation and freely consented to it. Brambles and Gilbert Trading merely followed his instructions and acted as a facilitator in an honest attempt to help Mr G. Any decision to hold Brambles and Mr Kaigh responsible for this appears to be vindictive.
365. The Deputy Pension Ombudsman’s analysis of the sale of Mr G’s assets shows bias. On the one hand he concludes that the assets were essentially worthless, but at the same time accuses the respondents of a deliberate diminution of the assets. The assets cannot simultaneously be worthless and more than £90,000. Mr G benefited from this transaction and shows that Brambles and the trustees worked together and if it had not completed then Mr G would have been significantly worse off. This transaction shows that Brambles and the Trustees worked together in good faith to find a solution for Mr G.
366. In relation to Mr Dalton’s offer to purchase Mr G’s assets on behalf of CDWL, the Deputy Pensions Ombudsman has made the false allegation that the money was being distributed for the trustee or other parties’ benefit who were misappropriating scheme assets. These allegations are denied and there is no evidence to support them.

C. Summary of the Applicants' position

367. Ms Y has said:-

- 367.1. She would like the complaint to include Mr Kaigh, Eleven Property and Mr McNally.
- 367.2. She received a payment around the time of the transfer, which she understood was a payment from her pension and not an incentive payment.
- 367.3. She was introduced to the Eleven Scheme by Mr McNally who put her in contact with Mr Kaigh. At the time she had been trying to take benefits from her existing pension schemes but had been unable to.
- 367.4. She has received no rental income from the investment in Strongbox. She was told that this was a ten-year investment and she was fine with this aspect. She has said that she did not anticipate it to be a "long term investment".
- 367.5. Since the investment was made she has never received anything from Brambles.
- 367.6. When she became unwell she spoke to Mr Kaigh who told her that she could not access the funds because it was a long term lease.
- 367.7. Her alternative pension provision is minimal, providing £17 per annum and so her only meaningful pension provision will be her state pension at age 66. She has no assets or savings.
- 367.8. But for her existing health conditions she would have had to return to work until at least age 66.
- 367.9. She believes that her health conditions and mental health have been worsened by the events. She has required counselling and required immediate referral to a mental health team.
- 367.10. She has constantly questioned her decision to transfer into the scheme and it "haunts" her daily, leaving her in fear. She feels "foolish & stupid" to have made the decision to transfer, leaving her with nothing for a rainy day, her funeral or anything to pass to her children. It has affected her sleep and has a knock-on effect on the pain caused by her health conditions. Life is a continual struggle, the feeling of which is overwhelming and exhausting, physically and mentally.
- 367.11. She has lost self-confidence, self-esteem and trust in others. The circumstances of the complaint have compounded her mental health issues and impaired her ability to manage her physical health and move forward with her life.
- 367.12. She feels unable to venture far from her home and only attends appointments as a result of feeling depleted of self-worth and the loss of her safety net of home.

367.13. She has to be very careful of her spending.

368. Mr S has said:-

368.1. He would like the complaint to include Mr Kaigh, Eleven Property and Mr McNally.

368.2. Brambles' website and phone number do not exist. Brambles are at fault for a lack of information and he has not received an annual statement or any advice as to how he can access his pension.

368.3. The internet shows that other individuals have made claims to TPO against Brambles in relation to scams.

368.4. He has been scammed for approximately £15,000 and wants his money back. The issue is causing him mental health problems and Brambles should be held to account.

368.5. He has no other pension provision.

368.6. In May 2023 he suffered a stroke and doubts ever being able to return to work.

368.7. This matter, and the time it is taking to resolve, is affecting his mental health.

369. Mr E has said:-

369.1. He has requested information from Brambles about his investment in the SHK Scheme but received no response.

369.2. He has lost £24,387.69 and has been advised by the Financial Conduct Authority that this is a scam and he is unlikely to get his money back. He wants the sum invested returned to him.

369.3. He received money at the point of the transfer as an incentive payment.

369.4. His alternative pension provision is a workplace pension with a current value of £2,300.

369.5. He will have to continue working beyond his anticipated retirement age due to the uncertainty over his pension provision and the need to support his wife.

369.6. He will need to use his savings to support his daughters through higher education.

369.7. The uncertainty over his pension provision has affected his wellbeing and it is always on his mind, leaving him feeling anxious, angry and depressed.

369.8. His retirement expectations have been taken away from him by the Eleven Scheme and all he wants back is the money that he paid in to be transferred back to him.

370. Mr Y has said:

370.1. He transferred approximately £42,000 to the SHK Scheme⁸. At the time of the transfer he received a £6,060.96 incentive payment, which HMRC has since indicated was taxable. He was telephoned by an employee of PAR who explained that he would receive the money up front and only had to stay in the SHK Scheme for six years after which he could exit with no fees.

370.2. He has been unable to contact Brambles through its website and its telephone number goes to an independent answering service. He has called and emailed over 50 times without response.

370.3. He believes he was tricked into the SHK Scheme.

370.4. Brambles has ignored his request to access his pension now he has reached age 55 and failed to act on his request to transfer.

371. Mr G has said:

371.1. At the time of his transfer into the Scheme he did receive a lump sum, but the details are unclear and he no longer has the paperwork since moving abroad. He recalls signing documents but cannot remember the amount received and cannot access his bank to check.

371.2. He invested through both the Gilbert Scheme and the Mapleleaf Scheme.

371.3. The transfer and investments were agreed following a discussion with an individual named "Will Ross Jones" with the email info@pensionmax.co.uk. He recalls making some searches online and receiving a phone call from Mr Ross Jones. He no longer has a full record of emails from the time. Any paperwork that he signed was sent to his home address and then posted back. He has not spoken to Mr Ross Jones since.

371.4. He did agree to the original investments, and despite being unhappy he agreed to the sale of the investments for £90,000.

371.5. Although he had transferred £180,000 into the Schemes, he was happy to sell at £90,000 as the investments were not worth that amount at the point he needed the money.

371.6. He did not agree to the loan that has been made to CDWL and was not told when it happened or the details of the loan such as the amount and repayment terms.

371.7. He was never told who the trustees were.

⁸ Subsequent documentation suggests only £33,066.05 was transferred.

- 371.8. Mr Kaigh is linked to the same address as Mr Paul Dalton and CDWL, the company which purchased his investments. The purchase was “a good deal between mates” and the arrangement was for their benefit.
- 371.9. Some payments have been made, including from “Simon Hamilton Kaigh SHK Property SV” but the agreements made have failed. He has been cheated by Brambles and the Trustees.
- 371.10. It has been several years since his original transfer request and Brambles has not kept him updated despite many requests for information. Brambles failing to respond to TPO is typical of its communication with him and he has not received an annual statement in three years. He considers it has done no administration of his pension since March 2021.
- 371.11. Since 2019, he has been in a position of significant financial hardship and he is owed £24,500 by the Gilbert Scheme.
- 371.12. There should be significant penalties given the stress that he has experienced.
- 371.13. He accepts that at times he has been insulting toward Brambles, but this has been provoked by its lack of action.

D. Conclusions

372. The Applicants' complaints centre on the security of their benefits, and the performance and liquidity of their investments as they have been unable to transfer these out or draw further benefits. Some Applicants have raised concerns that the Schemes are scams. On investigating the Applicants' complaints, concerns have arisen about the Schemes and the acts and omissions of the Individual Trustees, the Trustee Companies and Brambles.

373. I will consider the Applicants' complaints under the following headings, to determine whether the Individual Trustees and/or Trustee Companies have committed any breach of trust and whether Brambles has committed maladministration or otherwise acted improperly.

D.1 The Status and Structure of the Schemes

D.2 Mr Kaigh's and Mr McNally's roles as the Individual Trustees and Mr Kaigh's role as director of the Trustee Companies

D.3 Pension Liberation

D.4 Investment of the Schemes' Funds

D.5 Conflicts of Interest and The Pensions Regulator's Code of Conduct

D.6 Administration of the Schemes

D.7 Member Consent and Contributory Negligence

D.8 The Individual Trustees and the liability of their Trustee Company successors in office

D.9 Accessory Liability

D.10 Procedure

D.1 The Status and Structure of the Schemes

374. It is not disputed that the Schemes are occupational pension schemes.

Trust Deed and Rules

375. The Rules for each Scheme were attached to the Establishing Trust Deed of each Scheme and took effect from that date. The Rules are materially identical, and only vary on the name of one definition and other minor typographical points.

376. The Establishing Trust Deeds of the SHK Scheme and the Gilbert Scheme are very short and the operative provisions are confined to: the Schemes' establishment and appointment of the first trustees; giving effect to the Rules and empowering the Principal Employer to exercise the power of amendment and the power of appointment and removal of trustees; and the effective date of the deed.

377. The Establishing Trust Deed of the Eleven Scheme is different in that it is far more comprehensive and sets out provisions governing the Scheme.⁹ These provisions do not harmonise with the Rules as they in large part address the same topics as the Rules but with differently worded provisions and use of different defined terms¹⁰. Where the provisions conflict in a manner relevant to my Determination, I will set out my understanding of what the provisions mean. Neither the Trust Deed nor the Rules states which document takes precedence in case of conflict.

378. Relevant provisions of the Establishing Trust Deeds and Rules are set out in Appendix 2.

Structure of Schemes' funds

379. For the purpose of my Determination it is necessary to establish how the Schemes' funds were structured: whether there was one overarching trust or a series of individual sub-trusts. In this section capitalised words refer to defined terms in the Rules.

380. The definition of 'Individual Fund' (set out in Appendix 2) in the Rules, allows the Trustees to divide the Fund into multiple Individual Funds and allocate these to Members based on their contributions and/or transferred amount. However, the definition of 'Fund' shows that the intention behind creating Individual Funds was not to create separate sub-trusts for each Member but was notional only. The definition reads as follows:

*“‘Fund’ means all contributions, gifts and transfer payments made to and received by the Scheme and any other monies, investments, policies, property or other sums or assets for the time being held by the Trustees upon the trusts of the Scheme. **The allocation of any part of the Fund to any Individual Fund or to the General Fund shall be notional and for the purpose of calculating benefits only.**”* [my emphasis]

381. Rule 18 in each Scheme permits one Member to have several Individual Funds in case, for example, of a new contribution or transfer when the Member has an existing Individual Fund. With the express agreement of the relevant Member and the Trustees, several Individual Funds in respect of one Member could constitute separate 'arrangements' for tax purposes under the Finance Act 2004. Without any such express agreement, the default would be that the Member's Individual Funds would constitute one 'arrangement'.

382. Brambles, on its own and on the Trustees' behalf, has said that each Applicant had an Individual Fund, and the arrangements were not pooled. The Schemes were run on the basis of Individual Funds and it would be unconscionable now for the Applicants to claim otherwise. I agree that the references to specific investments, for example on benefit statements provided by Brambles, suggest that monies were allocated to an

⁹ I note that a Trust Deed in substantially the same form as this one has been used in a pension liberation case considered by the High Court. See *Dalriada Trustees v Woodward* [2012] EWHC 21626 (Ch).

¹⁰ Clause 6 of the Trust Deed purports to import the definitions in the Rules, but uses definitions not defined in the Rules.

Individual Fund for a Member and specific assets were attributable to them. However, as clarified by the Rules and explained above, the establishment and maintenance of an Individual Fund was a tool to record the contributions or transfers made, and payable, in respect of each Member, and did not give rise to individual sub-trusts within the Schemes.

383. I have seen no evidence of express agreements between a Member and the Trustees to designate an Individual Fund as a separate 'arrangement' for tax purposes, and I do not agree with the Respondents' argument that the member-directed investment forms constituted an agreement to create separate arrangements. Even if separate 'arrangements' in respect of one Member had been established, this would not entail the creation of separate sub-trusts within the Scheme. As explained, 'arrangement' is specialist pensions tax term and the existence of one or multiple arrangements per Member would not have a bearing on the legal structure of the Schemes as the Respondents have suggested. Each Scheme formed one trust only.

384. In addition, various assets of the Schemes, for example registered land or shares, are referred to at the Land Registry or Companies House (as applicable) in the name of the relevant Scheme or the Trustee Company, and not in the name of any individual, suggesting that the investments were made on a Scheme-wide basis.

385. The Establishing Trust Deed of the Eleven Scheme makes additional provision on the same topic. Clause 13 states:

*"The Trustee shall ensure that, in relation to each Arrangement of a Member, all contributions and other amounts paid by or in respect of the Member to the Scheme as permitted by the Rules are applied in accordance with the Arrangement and that, in the case of each and every Arrangement, a separate and clearly designated account is maintained in respect of each Member's Fund under the Scheme."*¹¹

386. This Clause appears to go further than the Rules in that it demands the creation of 'a separate and clearly designated account' to be maintained in respect of each Member – and should a Member have more than one arrangement, several accounts. However, this exact phrase has been held not to entail separate, segregated, sub-trusts. In the case of *Dalriada Trustees v Woodward*¹², it was held that the relevant schemes in that case were set up under a single trust, in which members' funds were pooled:

"The argument for [the defendants] rests largely on the terms of clause 13. The use therein of the word 'Arrangement' appears to be against the background of the definition of that word in s.152 Finance Act 2004. That section also includes the definition of money purchase benefits. It is, in my view, clear that the 'separate and clearly designated account' to which clause 13 refers is intended

¹¹ There are interpretative difficulties, as referred to in paragraph 377. In particular, I note 'Arrangement' is not defined under the Rules but infer that it is importing the same definition as under the Finance Act 2004. It seems 'Member's Fund' should be read as 'Member's **Individual** Fund' in order to make sense of the provision.

¹² [2012] EWHC 21626 (Ch).

to reflect the ‘amount available for the provision of benefits...to the member’ by reference to which, in accordance with s.152(4), the rate or amount of the pension or lump sum benefit to which that member is entitled is to be calculated. Such an accounting tool does not predicate a series of sub-trusts, one for each member; it is consistent with a single trust scheme for all the members whose benefits are variable by reference to the contributions made by or in reference to them.”

387. The court found that a member of the scheme was “*one of many beneficiaries entitled to benefits from the trust assets, the rate or amount of which is ascertainable in accordance with the rules and by reference to the amount credited to his account for contributions made by or in reference to him and investment returns thereon.*”

388. I find that, on the evidence I have seen, all the Schemes’ assets were held within the Fund and no member of any of the Schemes has a sub-trust under which his or her funds are maintained or ringfenced.

D.2 Mr Kaigh’s and Mr McNally’s roles as the Individual Trustees and Mr Kaigh’s role as the director of the Trustee Companies

The Eleven Scheme

389. Mr McNally was the sole Trustee of the Eleven Scheme from its establishment on 23 April 2012 until 25 June 2014. Following his resignation Mr Kaigh was appointed as the sole Trustee and was in office until 14 July 2016. Following Mr Kaigh’s resignation as Trustee, the principal employer of the Eleven Scheme, Eleven Property, appointed itself as Trustee Company of the Eleven Scheme on 14 July 2016. While no longer an individual Trustee, Mr Kaigh had been the sole director and shareholder of Eleven Property from 26 June 2014 and had taken over the directorship and entire shareholding from Mr McNally on this date.

The SHK Scheme and the Gilbert Scheme

390. Mr Kaigh was the sole Trustee of the SHK Scheme and the Gilbert Scheme from establishment on 10 July 2012. Following his resignation as Trustee on 14 July 2016 in each case, the principal employer of each Scheme – SHK Property Services and Gilbert Trading – appointed themselves as Trustees of the SHK Scheme and Gilbert Scheme respectively. While no longer an Individual Trustee, Mr Kaigh had been the sole director and shareholder of both SHK Property Services and Gilbert Trading from their incorporation on 5 July 2012.

391. I have been provided with no explanation as to why Mr McNally and Mr Kaigh resigned as Individual Trustees and why the Trustee Companies were appointed as Mr Kaigh’s replacement in respect of all three Schemes.

392. When continuing to set out my findings here, I am therefore aware that the identity of the Trustee changed twice in respect of the Eleven Scheme and once in respect of the SHK Scheme and the Gilbert Scheme. I will make some findings on a Scheme-wide

level which transcend these changes in trusteeship, for example, whether a particular investment was made lawfully. In this respect, I will refer to the 'Trustee' from time to time. However, some breaches of trust require the specific Trustee to be identified and their position examined, for example in the case of conflict-of-interest breaches, and this will be done accordingly.

393. When dealing with apportionment of liability, a more thorough treatment of the circumstances of each Trustee's time in office and their specific involvement in a particular investment will be required.

D.3 Pension Liberation

D.3.1 Use of transferred-in funds

394. Following the transfers-in to the Schemes, I have noticed that the Trustee seemed to use each Applicant's funds (or a part of their funds) to make an irregular transaction. On paper, the pension funds received by the Trustee from the Applicant's ceding scheme were to acquire assets held personally by that same Applicant, or another Scheme member. The arrangement appears to anticipate that the Applicant (or other Scheme member) had acquired these same assets shortly before the Trustee of the relevant Scheme would acquire them from the Applicant, and these assets would form part of the pension fund.

395. There are several pieces of evidence indicating how the arrangement was supposed to operate. Mr E was sent a Q&A document from Pension Max who introduced the SHK Scheme to him. I am also aware that Pension Max introduced the Gilbert Scheme to Mr G. At the Oral Hearing, it was clear that Ms Y, Mr S and Mr Y had had similar encounters with introducers.

396. Appendix 3 sets out extracts from the Q&A document, which describes the transaction:

"1. What is Pension-Max?

Pension-Max is a facility whereby you maximise the value of your pension by firstly buying property (which could be residential or commercial) or a plot of land (usually for development) at a discount and then selling it to your pension scheme at the full market valuation.

2. Is this a way of getting money out of my pension?

No, your pension remains fully invested at all times."

397. Several of the Applicants' member-directed investment forms refer to the fact that the assets would be purchased from them personally. Detailed wording is set out at Appendix 4, but by way of example:

398. Ms Y's form set out that, when the Eleven Scheme would be purchasing three storage units:

“Prior to the purchase, I will have personally acquired unit [X.23]’ and therefore my pension fund will purchase the storage units from me personally.”

399. One of Mr G’s forms set out that, when the Gilbert Scheme would be purchasing land situated between Great Moor Street and Lottery Row, Bolton:

“I can confirm that my pension fund will purchase the above asset from a group of companies and individuals, of which I am one.”

400. The member-directed investment forms should not be seen as determinative of whether a transaction between the Applicant in their personal capacity and their Scheme as counterparty took place. For example, explicit wording referring to a purchase by the SHK Scheme of assets owned by the Applicant is absent from Mr E’s member-directed investment form in relation to shares in GBT Partnership. However, Brambles explains to Mr E in a later email, which is indicative that such a transaction took place:

“You sold [NUMBER.1] shares in GBT Partnership to your pension for [PRICE.1] each. A total of £21,279.44. The payment was sent to RMJ Solicitors on [DATE]. I believe you purchased the shares on the same day as the pension scheme purchased them from you.

It is my understanding that you purchased the shares for [PRICE.2] each, a total of £16,822.26.

The payment you received from RMJ Solicitors will have been the proceeds from this sale. RMJ Solicitors dealt with the transaction.”

401. Although this transaction involved shares rather than land, as referred to in the Pension Max Q&A document, I find the arrangement proceeded on the same footing, except the land was held through a company rather than directly. Further, this evidence highlights another feature of the arrangement, which is also referred to in Question 1 of the Pension Max document: that the individual is considered to have made the original purchase at a discounted price and made a notional profit on the subsequent immediate sale to their Scheme.

402. Mr Y’s member-directed investment form did not explicitly anticipate an acquisition by the SHK Scheme from Mr Y personally. However, evidence has been submitted demonstrating that the arrangement was in operation here, too. Mr Y was one of the leaseholders for a 250-year lease of Unit [w], 3TC House and appeared to sign documentation transferring it to Mr Kaigh as Trustee of the SHK Scheme.

403. It is not clear whether Mr Y’s lease and its onward transfer was ever registered at the Land Registry, as a separate 250-year lease covering Units [b], [h], [w] and [z] and signed in 2018 has now been registered.

404. To summarise, I have found evidence that manufacturing a transaction in this way was a feature of each Applicant’s case in respect of at least a portion of their investments, and the entire investment in three cases. I use the word ‘manufacturing’ (which the

Respondents have objected to) to refer to the arrangement by which the same asset was purportedly bought and sold twice in quick succession, first by the Applicant and then by their Scheme. A summary of the position of each Applicant is as follows:

Applicant	Investment
Ms Y	Storage units at Bahama Road (entire investment)
Mr S	Shares in Harper International Consultants Limited (entire investment)
Mr E	Shares in GBT Partnership (entire investment)
Mr Y	Lease of Unit [w] (part of investment)
Mr G	Office units at 3TC House Storage units at Bahama Road Land at Great Moor Street Shares in Priority Solutions Limited (part of investment)

405. It is not clear whether the loan investment in CBFS which Mr Y and Mr G made and Mr G's investment in One Islington Plaza transferred in from the Mapleleaf Scheme, operated on this basis.

D.3.2 Publicly available documentation associated with the transactions

406. As set out in Section D.3.1 above, the transferred-in pension funds appear to have been part of an arrangement which purported to involve the manufacturing of back-to-back sales and purchases of the same asset at mis-matched prices. It falls to me to determine the extent to which these were genuine transactions, the extent to which the Applicants were involved in the transactions and the associated consequences.

407. I note, the arrangement was marketed to certain Applicants by means of the Pension Max brochure, which stated: "*you maximise the value of your pension by firstly buying property (which could be residential or commercial) or a plot of land (usually for development) at a discount and then selling it to your pension scheme at the full market valuation*".

408. There is independent, public documentation which suggests that steps were taken to effect the irregular transaction described above, or at least create an 'on paper' identity. For example, in respect of the unit which Ms Y purported to own and sold to her pension fund, Land Registry records indicate a 250-year lease was taken out in May 2013. The parties to this were:

- (1) Samarian Holdings Limited

(2) Ms Y

(3) Strongbox Self Storage Ltd

I understand Samarian was the Landlord, Ms Y was the tenant and Strongbox was the management company. This is supported by the correspondence from Hill Dickinson referred to above, and a sample lease provided by Brambles.

409. Mr McNally, in his capacity as trustee of the Eleven Scheme, acquired the unit at a later date. The registration of his interest appears only to have been recorded in 2015, but the Land Registry documentation refers to the fact that the unit was last sold for £15,000 on the same date in May 2013 that the lease was demised. This aligns with the back-to-back sale and acquisition referred to above.

410. In respect of the other two units in which Ms Y's transferred-in funds were purportedly invested in-part, another individual's name can be found instead of Ms Y, and Ms Y does not appear to have been a party to the lease.

411. In the case of Mr E's share acquisition in GBT Partnership, Companies House documentation indicates that Mr E personally acquired and disposed of the same number of shares in GBT Partnership as his member-directed investment form indicated that his share in the SHK Scheme would acquire. The timing of the acquisition and sale of shares also closely follows when the member-directed investment form was dated.

412. I questioned the Applicants about these transactions at the Oral Hearing and it was clear that none of them was aware that there was a transaction arranged in this way. In fact:

412.1. None of the Applicants used any personal funds they had (that is funds that were not pension money) to buy the proposed investment in the first place to then sell onto their Scheme; and

412.2. All of the Applicants were given the impression by parties purporting to represent their Scheme that their investment was being made through their pension only, and not personally.

413. The Respondents have said we should disregard this oral evidence as the Applicants may have forgotten that the relevant Scheme purchased assets from them personally. They have said the member-directed investment forms which referred to a purchase being made from the member personally should be relied on instead. I note none of the Respondents attended the Oral Hearing, and so they missed the opportunity to interrogate the Applicants' evidence directly.

414. I am unpersuaded by the Respondents' submissions for the following reasons:

414.1. although the Applicants are alleged to have been the sellers of their pension fund assets to the relevant Scheme, none of the Applicants received full market

value, even minus any transaction costs, for the asset as the Pension Max brochure suggested. The amounts received were far smaller;

414.2. it is inexplicable why the Applicants were able to purchase the same asset 'at a discount' and resell it to their pension at an uplifted market value shortly afterwards;

414.3. I do not accept that all the Applicants had their own ready personal funds to buy the discounted assets in the first place; and

414.4. I found the Applicants' oral evidence on this point to be honest and truthful.

415. Instead, I find that the aspect of the transaction which involved the Applicants owning certain investments personally before selling them to their Scheme was not genuine, and the documents which purport to evidence the back-to-back transactions do not reflect the parties' intentions or actual flow of funds. Instead, any assets bought were done so with pension funds.

D.3.3 Incentive payment on transfer-in

416. It has also come to my attention that several Applicants received payments on or around their date of transferring into their respective Schemes. Their understanding of the receipt of this payment varied between the Applicants:

416.1. Ms Y indicated she received a payment of £3,633.84 from her pension in the Eleven Scheme. She believed she was accessing her pension but was not aware this was not permitted.

416.2. Mr S received a payment of £2,637.80. He understood this as access to his pension but was not aware this was not permitted.

416.3. Mr E has confirmed that he received £4,377.18 on or around transferring into the SHK Scheme. He did not think he was accessing his pension as the brochure he received confirmed his pension would remain fully invested.

416.4. Mr Y has indicated he received a payment of £6,060.96, which has been described as an 'incentive' in relation to his transfer to the SHK Scheme, in respect of which HMRC has subsequently requested tax. He did not think he was accessing his pension, and the funds arose from profit on the property transaction.

416.5. Mr G appears to have received a payment of £602.99 in the context of a property transaction completing on or around December 2013. I note that this is just one of the investments that the Trustee made through the Gilbert Scheme on Mr G's behalf.

417. In the context of the manufactured transaction explained in Sections D.3.1 and D.3.2 above, the Pension Max Q&A document is evidence for how this payment was presented to prospective members:

“3. What happens to the margin between the open market valuation and the original purchase price (i.e. the profit)?

After payment of costs (such as legal and other professional fees, stamp duty etc) the remaining profit is shared between the people who source the land, provide the finance to purchase it and the investors such as yourself.

4. How much will I make (the gain)?

Approximately 20% of the value of your pension.”

418. The Respondents have denied that any unauthorised payments have been made and the payments received by the Applicants were scheme administration member payments under section 164(1)(d) of the Finance Act 2004. More particularly, they were payments made for the purchase of assets to be held for the purposes of the pension scheme under section 171(3)(b).

419. I do not accept this argument. This argument is reliant on the notion that the relevant Applicant genuinely owned the asset, which was allegedly being purchased from them, which I found in paragraph 415 above was false. In any event, the payments which Applicants received directly would not appear to be ‘for the purchase of assets to be held for the purposes of the pension scheme’ as the Respondents claim when they were disbursed directly to the Applicants.

420. I find that the payments the Applicants received on transfer did not in fact arise from any real profit arising from a property deal. On the balance of probabilities, I find that the payments came from the Applicant’s transferred-in funds and these payments were, in effect, pension liberation payments releasing a part of the Applicant’s pension early.

421. The Respondents have objected to the use of the phrase ‘pension liberation’ and stated that it should not be used as it implies wrongdoing and has no legal or statutory meaning. They have referred to their understanding of what the First-tier Tribunal (Tax) and Upper Tribunal (Tax and Chancery) have said about pension liberation, but have not specified or quoted from any authorities. ‘Pension liberation’ is a phrase widely used in the industry to refer to schemes designed to unlock funds from a pension before they can lawfully be drawn upon. The term also has a statutory identity at section 18 of the Pensions Act 2004, although the findings I am making do not relate to that specific provision.

D.3.4 Rules provisions and statutory provisions on pension liberation

422. Rule 19 of each Scheme provides:

“19 Benefits for Member

19.1 *Any Uncrystallised Fund of a Member shall:*

- 19.1.1 *be applied to pay a pension commencement lump sum in accordance with Rule 21 and*
- 19.1.2 *(as to any remainder) become designated as available for the provision of unsecured pension in accordance with Rule 22 on the day before the Member's 75th birthday or on such earlier date as the Member may select, being not earlier than the earliest date on which:*
- 19.1.3 *the Member reaches his normal minimum pension age (or any protected pension age); or*
- 19.1.4 *the ill-health condition is met.”*

423. As would be expected for a scheme registered with HMRC, the Rules do not envisage benefits would be paid to members before normal minimum pension age, in this case 55.

424. Instead, to pay benefits before 55 otherwise than in accordance with Rule 19 the Individual Trustees would have to rely on the rule ‘*Alternative Application of Individual Fund*’ at Rule 25.1 which stated “*The Trustees may at any time at the request of a Member or Dependant (or, where the Member or Dependant is deceased, his personal representatives) apply all or any part of his Individual Fund... 25.1.3 to make unauthorised payments of any kind to or for the benefit of the Member or Dependant or any other person and the Trustees shall not be liable for any loss or tax charge or other liability which the Member or Dependant or any person claiming in respect of him may suffer as a result.*” Under this Rule, unauthorised payments could be paid out of the Schemes, but only at the Member’s request.

425. However, I find that this Rule was not engaged in the arrangement I have described in paragraphs 416 to 420 above. Indeed, the Respondents are claiming that the payments in question were part of an investment transaction and therefore authorised. On their own case, they were not paying unauthorised payments at the request of a Member and therefore cannot claim the benefit of this rule to assert that there were unauthorised payments made by consent.

426. I find that the Individual Trustees were facilitating payments from the Scheme in breach of trust which were unauthorised. On the balance of probabilities, I consider that they were aware they were doing this.

427. Section 255 of the Pensions Act 2004, places an obligation on trustees or managers of occupational pension schemes to restrict their activities to the provision of retirement benefits:

“255 *Activities of occupational pension schemes*

- (1) *If an occupational pension scheme has its main administration in the United Kingdom, the trustees or managers of the scheme must secure that the activities of the scheme are limited to retirement benefit-activities.”*

428. By providing benefits to members before reaching the age of 55 in this way, the Individual Trustees were carrying on activities which were outwith the proper activities of an occupational pension scheme under s.255 of the Pensions Act 2004.

D.4 Investment of the Schemes' Funds

429. The Applicants have raised concerns over the security of their investments. They are also affected by the illiquidity of the investments as they have been unable to take their benefits and they have been unable to transfer out of the Schemes.

430. Having considered the Schemes' investments, I make the following observations:

430.1. All of the investments were unregulated and without any means of regulatory redress.

430.2. All of the investments would be classed as highly illiquid, being either loans or shares not listed on a recognised exchange, or interests in land which could not easily be transferred.

430.3. The literature provided to members proposed a high level of return in the context of typical pension arrangements.

430.4. Several of the investee companies were overseas in Gibraltar, outside the UK regulatory regime and members had little oversight over or accountability in respect of them.

430.5. All of the investments were, in my opinion, high-risk.

431. The duties imposed on pension scheme trustees in relation to investments are contained in: the Schemes' governing documents, such as the Trust Deeds and Rules; Part I of the Pensions Act 1995; case law; and The Pensions Regulator's Codes of Practice. I will examine each of these below.

D.4.1 Investment powers and duties under the Trust Deed and Rules

432. Clause 5.6 of the Schemes' Rules sets out the Trustees' investment powers as follows:

“The Trustees have full powers of investment and application of any monies and other assets which form part of the Fund including all such powers which they could exercise if they were absolutely and beneficially entitled to the Fund. In particular and without prejudice to the generality of the foregoing the Trustees may invest or apply all or any part of the Fund in any part of the world.”

433. It would appear from the forms completed by the Applicants that they had provided instructions as to how the funds should be invested, however the Trustees, under Clause 5.2 of the Schemes' Rules, were not bound by those instructions:

"The Trustees shall not be required to consult, or act upon the wishes of, Beneficiaries and section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996 shall not apply to the Scheme."

This approach is consistent with the Trustees' wider investment duties.

434. However, Clause 16 of the Eleven Scheme's Establishing Trust Deed makes a separate provision for the investment of the Eleven Scheme's assets:

"The Trustees shall have and be entitled to exercise all powers, rights and 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."

This provision in the Establishing Trust Deed of the Eleven Scheme is in tension with the Rules provisions as the Establishing Trust Deed requires the Trustees to take into account a Member's wishes regarding investment whereas the Rules explicitly do not apply this requirement.

435. It is not clear which clause should take precedence. However, assuming that there is a requirement to take a Member's investment wishes into account, Clause 16 does not bind the Trustees to follow those wishes. The requirement is to 'take into account' specific written wishes, not follow them whatever they may be. This position is supported by the Application Form Ms Y signed before transferring into the Eleven Scheme, which stated:

"I understand that the Trustees of the Scheme shall have the right to make all investment decisions relating to the sale and purchase of the investments forming part of the Scheme. I understand that I have the right to request that the Trustees invest the funds held on my behalf in accordance with my instructions but that such requests shall not be binding on the Trustees."

I find Mr S likely signed a similar application form with this wording.

436. Moreover, the requirement to take account of a Member's wishes does not operate to suspend the investment duties under statute and case law, which will continue to apply. However, where a Member appears to have directed an investment, this may be relevant to whether they consented to a breach of investment duty.

D.4.2 Statutory investment duties under the Pensions Act 1995 (the 1995 Act)

437. The 1995 Act, section 34(1), provides the Trustees 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: the 1995 Act, section 36(1); and any restrictions imposed by the scheme.
438. The 1995 Act, section 36(1), requires the Trustees to exercise their powers of investment in accordance with: (i) The Occupational Pension Schemes (Investment) Regulations 2005 (**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 the 1995 Act, section 34.

D.4.3 The Investment Regulations

439. The Investment Regulations, which set out specific requirements in relation to pension scheme trustees’ exercise of their investment powers under section 36(1) of the 1995 Act, are restricted in their application to the Schemes by virtue of Regulations 6(1) and 7(1), on the basis that each of the Schemes had fewer than one hundred members.
440. However, despite this restriction, Regulation 7(2) of the Investment Regulations still 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*”. Contrary to Brambles’ assertion, referred to at paragraph 313 above, this provision was quoted to refer to the proviso ‘*in so far as appropriate to the circumstances of the schemes*’ in my second preliminary decision.
441. I have been provided with considerable information about the Schemes’ investments and I have summarised the Schemes’ various investments that I am aware of in paragraphs 39, 79ff., and 129ff., above. Further details are set out in Section A above.
442. While it appears that there are a number of different investments being made by the Schemes, there are factors which undermine any claim to diversification.

The Eleven Scheme

443. In respect of the Eleven Scheme, I note the following:
- 443.1. Brambles has indicated that there were only six different investments in the Eleven Scheme. These typically purport to be direct property investments, or property investments through development companies. The property is in the north of England and the property companies are in Gibraltar. For example, Harper International Consultants Limited, which was based in Gibraltar, had an underlying investment in land in Maryport, Cumbria.
- 443.2. The direct property investments were all storage pods at the Bahama Road, Haydock site, and were geographically undiversified.
- 443.3. There has been little information provided about the business of Priority Solutions Limited, Turcotte Corporation Limited and POD Estates Limited.

443.4. The Eleven Scheme's investments frequently shared management personnel. David Hemsley was the director of four of the Gibraltar companies: Priority Solutions Limited, Harper International Consultants Limited, Turcotte Corporation Limited and POD Estates Limited, all incorporated in Gibraltar.

The SHK Scheme

444. In respect of the SHK Scheme, I note the following:

444.1. The investments typically purport to be direct property investments, or investments in property development or financing companies, with a focus on Liverpool. There are also investments in Priority Solutions Limited in Gibraltar, but it is not clear what business this company undertook.

444.2. The SHK Scheme's largest investment was £858,265 in CBFS. CBFS itself invested in other SHK Scheme investments as follows:

444.2.1. Loans to Tennyson of £570,000, £269,000 and £100,000. The SHK Scheme held separately and on its own account over £100,000 of shares in Tennyson.

444.2.2. Loans to Fleet Street of £242,000 as at 1 December 2021. The SHK Scheme had separately invested £28,640 in Fleet Street.

444.2.3. 404,546 Shares in GBT Partnership worth £404,546. The SHK Scheme held separately and on its own account almost £300,000 of shares in GBT Partnership.

444.2.4. 420 Shares in Mederco (Huddersfield) worth £1,638,000. The SHK Scheme held separately and on its own account owned 182 shares, when it went into administration.

444.2.5. 2,031 Shares in CDWL. The SHK Scheme also made a loan of £164,027.35 to CDWL.

444.2.6. CBFS became the proprietor of the Freehold of 3TC House in February 2017, units in which investors including Mr Y had directed their pension investments.

444.2.7. The SHK Scheme had also invested into One Islington Plaza Limited. One Islington Plaza had lent £715,761 to CBFS.

444.3. The SHK Scheme had invested £266,160, and SHK Property had invested £22,062 into CDWL. One Islington Plaza had loaned £168,400 to CDWL.

444.4. The SHK Scheme's investments frequently shared management personnel. For example, Mr Paul Dalton was the director of CBFS, CDWL, Tennyson (from 7 May 2016) and Strongbox.

444.5. Strongbox was the management company for the office units in 3TC House into which investors including Mr Y directed his pension investment.

The Gilbert Scheme

445. In respect of the Gilbert Scheme, I note the following:

445.1. The investments typically purport to be direct property investments, or investments in property development or financing companies. They are located in the north of England and Gibraltar.

445.2. The Gilbert Scheme also invested in CBFS. As it did with the SHK Scheme, CBFS in turn invested in other investments held by the Gilbert Scheme: Tennyson, Strongbox, GBT Partnership and Mederco (Huddersfield).

445.3. The Gilbert Scheme had invested in CDWL and £64,925 of Mr G's pension was invested in One Islington Plaza. One Islington Plaza had loaned £168,400 to CDWL.

445.4. The Gilbert Scheme's investments frequently shared management personnel. For example, Mr Paul Dalton was the director of CBFS, CDWL, Tennyson (from 7 May 2016) and Strongbox.

445.5. The Gilbert Scheme held shares in Turcotte Corporation Limited (based in Gibraltar) and had loaned money to CDWL. In addition, Turcotte Corporation Limited had loaned £120,840.81 to CDWL. It is noted on the CDWL CVA that Mr David Hemsley was a shareholder and director of both CDWL and Turcotte Corporation Limited.

445.6. The Gilbert Scheme held shares in Gematria Estates Limited and Tennyson, both as scheme investments. Gematria Estates Limited itself owned 142,000 shares in Tennyson.

445.7. Strongbox Self-Storage Limited was the management company for the office units in 3TC House into which investors' pensions were directed, including Mr G's.

446. In the case of all three Schemes, the concentration of investment in a small number of high-risk entities does not satisfy the diversification requirements of Regulation 7(2) of the Investment Regulations. In the cases of the SHK Scheme and the Gilbert Scheme, companies appear to have been investing in and loaning money to each other, which further concentrates the risk. In respect of the Eleven Scheme, there were a smaller number of investments with the majority of the companies based abroad in Gibraltar. There appears to have been no suitable management of these risks through taking regulated advice or any diversification of investment in liquid, regulated or lower-risk investments. Further there was little cash reserved if one of the Schemes required access to liquidity in the short term.

447. I consider that the investments chosen by the Trustees were high risk, narrow, illiquid and undiversified. There are no particular circumstances specific to the Schemes which would suggest that an investment approach which abandoned all principles of diversification would be appropriate. I do not find the Respondents' contention persuasive that the facility for members to self-select property investments is a relevant circumstance of the Scheme which meant that this regulatory requirement was satisfied.

448. As a result, I find that the Trustees 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 Schemes.

449. In the majority of cases, the Applicants' funds were invested at the point of transferring into the relevant Scheme and no investment switches were made thereafter. However:

449.1. In the Eleven Scheme, Mr S's investment in Harper International Consultants Limited through the Eleven Scheme was switched to Priority Solutions Limited at some point, according to the records I have seen, between February 2015 and 5 April 2017.

449.2. In the SHK Scheme:

449.2.1. Mr E's investment in GBT Partnership was sold for a loan note in Baltic House Developments Limited; and

449.2.2. Mr Y's investment in 3TC House was sold and reinvested in CBFS.

449.3. In the Gilbert Scheme:

449.3.1. Mr G's investment in Great Moor Street of £25,000 was apparently sold and a £20,000 re-investment was made in Priority Solutions Limited.

449.3.2. The 3TC House investment was apparently sold at a loss of £7,245 (£20,700 minus £13,455) at some point between 6 April 2016 and 12 October 2018. The proceeds were lent to CBFS.

449.3.3. All Mr G's investments were sold to CDWL for £90,000 in November 2018 at a loss of £96,459.45 in nominal value. £60,000 of the proceeds was invested in a loan note in CDWL.

450. These re-investments were also high-risk, narrow and undiversified and for the avoidance of doubt, I make the same findings that they were made in breach of the requirements of Regulation 7(2).

D.4.4 Section 36(3) and (4) (Choosing investments: requirement to obtain and consider proper advice)

451. 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.”

452. Proper advice is defined by section 36(6) of the 1995 Act, as advice given by: a person with the appropriate FCA authorisation; or, where FCA authorisation is not required, a person who is “*reasonably believed by the trustees to be qualified in his ability in and practical experience of the management of the investments of trust schemes*”.

453. 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.

454. In respect of the process of deciding upon the investments, Brambles has said, on behalf of the Trustees, that Brambles and the Trustees held regular meetings to discuss member requests. I note that several members completed pre-populated member-directed investment forms in this respect. Brambles has also said all property asset investments were supported by valuations from a chartered surveyor. Brambles has also said that Mr Kaigh studied and passed the relevant TPR Trustee Toolkit exams.

455. Irrespective of these points, the Individual Trustees have provided no evidence that a qualified financial adviser or someone they believed was qualified through practical experience was involved in any of the Schemes.

456. I have seen the following documents in relation to the investments made by the schemes:

456.1. A RICS valuation survey for 3TC House addressed to the Trustees of the Gilbert Trading Pension Scheme.

456.2. An investment summary for the GBT Partnership

456.3. A valuation for land in Norfolk Street, Liverpool for GBT Partnership.

456.4. An investment brochure for 3TC House, produced by Imperium Enterprises Ltd.

456.5. An information memorandum for Tennyson.

456.6. An information memorandum for CBFS.

456.7. An information memorandum for the Mederco group.

457. These documents do not constitute investment advice and I cannot see any other evidence that the Trustees undertook any independent due diligence on the investments entered into. This does not satisfy the requirements of section 36.
458. In submissions, Brambles has stated that the Trustees did not believe that they were obliged to take advice where the member requested the investment and was informed that they should take advice. Clearly, lack of awareness of the requirement applying to the Trustees does not waive the requirement itself.
459. Where evidence has been provided that the Applicants requested their investments, these appear to have been pre-selected and offered to the members at the point of application. I consider it is significant that the investment forms or instruction letters were pre-populated with the investments, implying that the investments were not at the discretion of the member. I am not persuaded that they were independently selected by the member. In fact, due to the similarity in nature of the investments in which the Applicants invested, indeed two of the Applicants invested in storage pods on the same site, this suggests the assets for investment were co-ordinated by those marketing and/or operating the Schemes. I consider that the way in which some members (Mr G and Mr E) were introduced to the Schemes through an unregulated introducer, which operated from 3TC House, put them at a high risk of the investments being misrepresented. I will consider the member consent defence further in Section D.7 below.
460. In any event, the obligation to obtain proper advice is not obviated under section 36(3) of the 1995 Act, by a member requesting a particular investment. In the response to the complaints, Brambles has not referred to the Trustees having taken any written investment advice.
461. I find, therefore, that the Trustees have acted in breach of the requirement to obtain written advice under subsections 36(3) and (4) of the 1995 Act. I will consider section 36(4) in more detail in relation to the failure to review the One Islington Plaza investment.

D.4.5 Delegation of the Trustee's power of investment

462. I have also considered the 1995 Act, section 34(2), 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.
463. The 1995 Act, section 34(4), provides that trustees will not be 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 trustees 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]".
464. I have seen no suggestion that the Trustees delegated investment decision-making discretion to a fund manager. Therefore, the Trustees remain liable for any breach of

any obligation to take care or exercise skill in the performance of any of his investment functions.

D.4.6 Duties under case law: investing for the proper purpose of the Schemes and in the best financial interests of members

465. A trustee's power to choose and make investments is a fiduciary power. As set out in Cowan v Scargill below, 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 a trust and to act accordingly to promote that purpose. Per Mrs Justice Asplin at paras 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.”

466. The power of investment must be exercised within its own terms, but the exercise of the power must also therefore accord with the purpose of the trust. The fundamental purpose of an occupational pension scheme is to safeguard and invest trust assets in the best financial interests of members, in order to ensure the provision of retirement benefits, as well as maintaining sufficient liquidity to enable members to exercise a transfer right, whether statutory or otherwise.

467. Having considered the purpose of the Schemes in this case, I note the following case law which further defines the requirements that trustees must meet in exercising their power of investment, as follows:

467.1. 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).

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

467.3. 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).

468. Looking further at the case of Cowan v Scargill, Megarry V-C said, at paragraph 41, *"that 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."*

469. Citing the case of Re Whiteley, Megarry V-C said, at paragraphs 49 to 50, *"that 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."*

470. I acknowledge that the type and asset class of investments made were within the wide investment powers under the Rules of each Scheme (see Section D.4.1, above). Nevertheless, I find that in investing the Schemes' assets in the manner in which they have been invested, the Trustees exercised their investment powers:

470.1. contrary to the proper purposes of the Schemes of investing, safeguarding and providing retirement benefits; and

470.2. in breach of the requirements set out in case law thereby failing in their equitable duty to exercise due skill and care in the performance of their investment functions,

and accordingly acted in breach of trust and in breach of law.

471. There are several factors which have led me to these conclusions:

471.1. all the Schemes' funds were invested in illiquid and unregulated assets;

- 471.2. the investments made were high-risk in nature and there was a lack of diversification of risk, 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;
- 471.3. several investments were made out of the jurisdiction of England and Wales, such as Priority Solutions and Harper International Consultants. I consider that the movement of scheme investments out of the country to the offshore jurisdiction of Gibraltar was likely a deliberate attempt to escape regulatory scrutiny and put assets beyond the reach of members and the authorities alike. The Respondents have pointed out that Gibraltar was selected as a jurisdiction due to its tax advantages. It is however well known in the pensions industry that overseas investments are a significant risk factor when making a pension transfer, and this was just one of the many risk factors present in these cases;
- 471.4. there have been significant impediments to all the Applicants from either drawing or transferring their benefits, and the reason often cited by Brambles in this respect was the inability to sell or otherwise transfer the investments made. I note, for example, the case of Ms Y who has been unable to draw her pension due to the lack of sale of her storage units. These circumstances were foreseeable and indeed likely foreseen and planned for at the time of investment; and
- 471.5. as I found in Section D.3 above, several investments were made in furtherance of a pension liberation scheme and I consider that investments were selected with the ulterior purpose of facilitating the liberation scheme.
472. In considering these circumstances, I also draw particular attention to the terms on which the 2018 CDWL Loan Agreements and the 2019 CBFS Loan Agreements were made. The lack of due skill and care in making these investments is evident due to:
- 472.1. the fact that none of the agreements was actually signed by the relevant Trustee Company, such that the loans were made on documents which did not observe execution formalities and were therefore legally defective;
- 472.2. none of the 2018 CDWL Loan Agreements or 2019 CBFS Loan Agreements were secured which raises the risk the relevant Trustee Company was taking;
- 472.3. the 2019 CBFS Loan Agreements charged interest at a rate of only 6%, which I consider is a rate below what would be ordinary in these circumstances;
- 472.4. the 2019 CBFS Loan Agreements all included the clause "*The Lender is not obliged to monitor or verify how any amount under this agreement is used*". I find this is a concerning waiver of responsibility on the Trustee Companies' part; and

472.5. the terms for repayment were highly irregular, especially in the case of the 2019 CBFS Loan Agreements which, as I set out above at paragraph 254, had an indeterminable date for repayment of the entire principal and all interest.

473. I consider therefore, that the loss to the Schemes is due to the failure of the Trustees to identify the purpose of the trust and to exercise their fiduciary power of investment to promote that purpose. Instead, I find it is likely that ulterior purposes were at play when investing; assets were chosen which were deliberately difficult to sell or liquidate such that funds could not be accessed by members, were located offshore to avoid regulatory supervision, or facilitated the functioning of a pension liberation arrangement. These findings are sufficient to demonstrate that the investment power was exercised otherwise than for a proper purpose in all cases. In Section D.5 below, I will find that there were in some cases, conflicts of interest which suggest that benefiting the Trustees' contacts with Scheme funds may have been an additional ulterior purpose.

474. In investing in this way, the Trustees failed to meet the minimum standards imposed on them by case law regarding investing the Schemes' funds and failed to discharge their equitable duty to exercise due skill and care in the performance of their investment functions.

D.4.7 Review of investments

475. One of Mr G's investments in the Gilbert Scheme, shares in One Islington Plaza, was transferred in *in specie* from the Mapleleaf Scheme. Therefore, the actual investment was not made in the Gilbert Scheme itself meaning there can be no breach of trust or duty when exercising the power to make an initial investment using trust assets.

476. However, having accepted responsibility for this investment, Gilbert Trading as Trustee Company of the Gilbert Scheme was under trust law duties (following *Nestle v National Westminster Bank plc* [1994] 1 All ER 118, CA, at [158]), and statutory duties under section 36(4) of the 1995 Act, to conduct regular reviews of the investments in respect of which it was acting as trustee.

477. Mr Kaigh likely was (and certainly should have been) aware that the shareholding in One Islington Plaza had been purchased for £64,925 (see paragraph 158, above) and had therefore historically been ascribed this value. On taking charge of the asset on its transfer into the Gilbert Scheme, Gilbert Trading should have investigated the appropriateness of the asset. I have received no evidence that such a review took place. It was in fact just as inappropriate as the other investments I have referred to above. If it had, Gilbert Trading, as Trustee Company, should have realised that the shareholding in One Islington Plaza was completely unsuitable and sold it as soon as reasonably practicable. It was in fact sold, but at a considerable loss (and I shall investigate this transaction further at paragraph 568, below).

D.5 Conflicts of Interest and the Pensions Regulator's Code of Conduct

478. Under the Pensions Act 2004, section 249A, pension scheme trustees are required to have in place "internal controls", including controls enabling them to identify and manage conflicts of interest. Since 2019 the requirement has broadened to require an effective system of governance.

479. In addition, Code of Practice No.13 (the **2013 Code**), published by TPR in November 2013, and entitled '*Governance and administration of occupational defined contributions trust-based pension schemes*', applied to the Individual Trustees from that date. Although many of the initial investments in the Schemes will have therefore pre-dated this code coming into force, the position regarding conflicts should have been re-evaluated once the 2013 Code did come into force.

480. The 2013 Code was replaced by a new code in July 2016 (the **2016 Code**). TPR's codes of practice are not binding in their nature. However, I am required to take them into account, insofar as they are relevant, in determining complaints made to TPO.

481. Paragraph 143 of the Pensions Regulator's Code of Practice No.13 (the **2013 Code**), includes a requirement for pension scheme trustees to ensure that they have processes in place to manage any conflicts of interest.

482. The 2016 Code includes a section entitled 'Conflicts of interest'. TPR's expectations regarding the steps that pension scheme trustees should take to manage conflicts of interest are set out in paragraphs 61 and 62 of the 2016 Code:

"61. Conflicts of interest may arise from time to time in the course of running a pension scheme, either among trustees themselves or with service providers or advisers. Part of the requirement in law to establish and operate adequate internal controls includes having processes in place to identify and manage any conflicts of interest.

62. We expect these controls to include, as a minimum:

- a written policy setting out the trustee board's approach to dealing with conflicts*
- a register of interests (which should be reviewed at every regular board meeting)*
- declarations of interests and conflicts made at the appointment of all trustees and advisers*
- 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."*

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

484. In the case of each of the Schemes and their investments, there are a series of close links between:

484.1. the Trustees (and/or their officers) and Scheme investments;

484.2. Brambles as administrator of the Schemes and Scheme investments;

484.3. Mr McNally as trustee of the Eleven Scheme and his directorship of PAR, the original administrator of the Eleven Scheme;

484.4. the Trustees (and/or their officers) and introducers to the Schemes and Scheme investments; and

484.5. Scheme investments between themselves, which often shared management personnel.

I find these links highly concerning and, in some cases, they put the Trustees in a position of conflicting interests in breach of the provisions set out above.

485. Brambles, on behalf of the Trustees, has denied the existence of any conflicts of interest and considers the circumstances, for example, two companies sharing a registered office, or directors of companies knowing each other, are normal in the business world. Brambles has said that any conflicts found (despite the denial) did not affect investment decision-making, which was member-directed. The question as to whether there were any improper motivations at play will be relevant when I consider the exoneration clause and dishonesty at Section D.8, below.

POD Estates Limited

486. Brambles has indicated that the Eleven Scheme invested in POD Estates Limited. According to Companies House Gibraltar records, Simon Hamilton Kaigh was the last and sole shareholder of POD Estates Limited until it was struck off on 9 March 2022.

487. It is extremely concerning that Mr Kaigh occupied the position of Trustee of the Eleven Scheme and latterly sole director of the Trustee Company of the Eleven Scheme, and entirely owned one of the Eleven Scheme's investments, POD Estates Limited. Although the exact timings are not clear as to whether Mr McNally or Mr Kaigh arranged the investment (I assume it was Mr McNally, as most of the Eleven Scheme investments appear to have been carried out before Mr Kaigh's appointment), it is clear that he was a shareholder concurrently with his sole directorship of the Eleven Scheme's Trustee Company. I find that this was a direct conflict which should have been declared.

Bahama Road, Haydock

488. Samarian was the original landlord for the storage pod site at Bahama Road, Haydock, as demonstrated by the leases registered at the Land Registry. Both the Gilbert Scheme and the Eleven Scheme invested in these land interests. It would appear from Land Registry records that Samarian Holdings no longer owns the freehold, which was transferred to Haystore Limited on 30 August 2019. The transferor in that transaction and therefore previous freeholder was Moneything (Security Trustee) Limited. This indicates the freehold has been transferred at least twice since Samarian's ownership.
489. According to Companies House in Gibraltar, the sole shareholder of Samarian is currently Glenn House. Mr House has also acted as director of Samarian since 8 April 2014 and was latterly the sole director. The company secretary is Brambles, appointed on 11 October 2017.
490. I am concerned that Glenn House acted as the sole director of Brambles, the administrator of the Eleven Scheme and the Gilbert Scheme, and as director and shareholder of Samarian acting as landlord, the company which was entitled to receive lease premium payments from each Scheme.
491. I acknowledge that Brambles' and the Trustees' position is that Samarian would have received lease premiums directly from the relevant Applicants in their personal capacity, and the Schemes only acquired the land interests from the Applicants and did not make any investments with Samarian as a counterparty. However, in Section D.3.2, above, I found that this arrangement was not a genuine one and the Applicants never actually owned any of the Scheme investments directly.
492. There is also a lack of clarity around the timing of these events. It would appear that the lease premium payments would have been paid to Samarian before Brambles became administrator of the Eleven Scheme and the Gilbert Scheme. Further, it is not clear when Mr House became sole shareholder of Samarian, or whether Samarian sold the freehold of the Bahama Road site in advance of being appointed.
493. However, the close links set out above, and the position assumed by the parties now, appear highly irregular and should have been declared as a conflict.

16a South Road, Mr Kaigh, Tennyson and CBFS

494. Mr Kaigh, for a time, operated from the 16a South Road address as director of the Trustee Companies. This address was also linked to the Schemes' investments and individuals involved with them:
- 494.1. Gilbert Trading and SHK Property, directed by Mr Kaigh, both operated from 16a South Road until 1 August 2016, when they both changed address to 3TC House. Eleven Property operated, according to Companies House, from 'Room 4, 16A Room 4, 16A South Road' [sic] from 26 June 2014 until 3 November 2015. Mr Kaigh was the sole director for the entire period Eleven Property was registered at 16a South Road.

494.2. On 21 December 2012, Tennyson took out a lease of 16a South Road for a term of 999 years. On the same day, Tennyson mortgaged the property (along with other land interests on the same site) for £240,000 with a loan from Accelerated Bridging Finance Limited. The legal charge gave Accelerated Bridging Finance Limited's address as 3TC House and Gary Quillan was a director at the time. The charge is still outstanding.

494.3. On 13 December 2013, Tennyson mortgaged the property (along with other land interests on the same site) for a further £100,000 with a loan from CBFS. The charge is still outstanding.

494.4. On 20 October 2014, a sub-charge of a mortgage was registered at Companies House. Flat 4, 16a South Road was the mortgaged property. The original mortgage was stated to have been granted by Tennyson to CBFS on 13 September 2014, and CBFS then sub-charged the mortgage on 20 October 2014, in favour of a certain private individual.

494.5. Gary Quillan was registered as the proprietor of 16a South Road on 8 July 2015. On 11 September 2017, a charge dated 8 September 2017 was registered in favour of CBFS.

495. Both the SHK Scheme and the Gilbert Scheme invested in shares in Tennyson and loaned money to CBFS.

496. The points outlined above suggest that this building functioned:

496.1. as an investment for pension funds: as these two Schemes had an indirect interest in it through Tennyson;

496.2. as security for raising finance, received from other companies including other Scheme investments such as CBFS; and

496.3. for the benefit of Mr Kaigh as a business and trustee address.

497. I consider that this gives rise to conflicts which should have been declared. I am also concerned that the lease appears to have been sold on to somebody closely linked to Mr Kaigh, Mr Gary Quillan, who later operated from the same address, 3TC House.

3TC House

498. Both the Gilbert Scheme and SHK Scheme invested in 3TC House directly in a lease of office units from the freeholder, Imperium. It is notable that the Principal Employer of all three Schemes, whose director and shareholder was Mr Kaigh, later operated from 3TC House having moved from 16a South Road.

499. 3TC House appears to link several of the other parties relevant to this investigation:

499.1. Pension Max, who marketed the Schemes to Mr E and Mr G, had representatives based at 3TC House. Mr William Ross-Jones, representing Pension Max, requested Mr G's member-directed investment form to be

returned to: Pension-Max, 3TC House, 16 Crosby Road North, Waterloo, Liverpool, L22 0NY.

499.2. Mr William Ross-Jones was also a director of Imperium, which was the company owning the freehold of 3TC House.

499.3. Imperium was in part owned by Mr Robert Metcalfe, whose sole-practitioner law firm, RMJ Solicitors, handled the GBT Partnership transaction, during which arrangements were made for Mr E to buy and sell the shareholding to his pension fund in on-paper back-to-back transactions. I refer to this transaction (and other back-to-back transactions in this paragraph 499) as 'on-paper' only, as I found above at paragraph 415 that the aspect of the transaction where the individual Applicant owned the asset and sold it to their pension was not genuine.

499.4. RMJ Solicitors also handled Mr G's on-paper back-to-back purchase and sale of shares in Priority Solutions Limited, and possibly a similar transaction for Mr S.

499.5. Mr G's interest in the Mapleleaf Scheme was previously invested in JVC Developments Limited before being reinvested and transferred *in specie* to the Gilbert Scheme. The director of JVC Developments was Mr Simon Kim Williams; the company also traded from 3TC House.

499.6. Bright Limited was involved in an on-paper back-to-back property transaction of Unit [b] at 3TC House in which Mr G and other individuals participated. The current director of Bright Limited is Mr Kaigh and he was appointed on 4 June 2020. The previous director of Bright Limited was Mr Gary Quillan.

499.7. Another of Mr Kaigh's companies, FIG Investments Limited, operated from 3TC House.

A full list of the Companies operating from 3TC House is set out in Appendix 5.

500. The points outlined above suggest that this building functioned:

500.1. as an investment for trust funds: as the Gilbert Scheme and SHK Scheme had direct interests in it;

500.2. for the benefit of Mr Kaigh as a business and trustee address; and

500.3. for use by the introducers to the Schemes.

501. I consider that this gives rise to conflicts of interest which should have been declared.

CDWL

502. I noted above in paragraph 81.1 that there is evidence in the report of a voluntary arrangement that both the SHK Scheme and SHK Property Services had directed funds

to CDWL as they were both creditors of it, to the amount of £266,160 and £22,062 respectively, when it went into a voluntary arrangement.

503. The same is true of the Gilbert Scheme and Gilbert Trading who were both creditors of CDWL to the amount of £360,805 and £37,876 respectively, when it went into voluntary arrangement.

504. This report indicates that trust assets from the SHK Scheme and Gilbert Scheme had been invested in the same company in which the principal employer of those Schemes had also invested. The sole director and shareholder of both employers was Mr Kaigh. I find that this is a direct conflict of interests which should have been declared.

Mr Paul Dalton and CDWL

505. Mr Kaigh and Mr Dalton appear to have been known to each other from at least 14 July 2016, when Mr Dalton witnessed Mr Kaigh's signature on deeds appointing Eleven Property and SHK Property Services as trustees of the Eleven Scheme and the SHK Scheme respectively.

506. The Gilbert Scheme and the SHK Scheme made investments in CDWL. Mr Dalton was director of this company (and sole director until 1 March 2021). All the Schemes also appear to have invested in storage or office pod property of which Mr Dalton was directly involved through Strongbox.

507. In this context, it is notable that, when Mr G was trying to draw benefits from the Gilbert Scheme in November 2018, Mr Dalton of CDWL made an offer of £90,000 to buy Mr G's pension scheme investments, which had previously been purchased at over twice the price: £186,459.45.

508. Although I find these circumstances very concerning, the Trustee did not appear to be directly conflicted.

Other Gibraltar companies

509. All of the Schemes invested in shares in overseas companies in Gibraltar: POD Estates Limited, Priority Solutions Limited, Harper International Consultants Limited, Gematria Estates Limited and Turcotte Corporation Limited. There are clear links between the individuals involved in these Gibraltar companies, and those involved with the Schemes' UK-based investments.

509.1. Franklin International E&W, which operates from 3TC House, is or has been the company secretary for Priority Solutions Limited, Harper International Consultants Limited and Turcotte Corporation Limited.

509.2. David Hemsley was director for Franklin International E&W as well as the investee companies of Turcotte Corporation Limited, Harper International Consultants Limited and Priority Solutions Limited.

509.3. David Hemsley also had financial interests in other companies in which the Schemes also invested:

509.3.1. A holding in Ordinary Shares and Preference Shares in Harper International Consultants Limited;

509.3.2. A holding in Ordinary Shares in CDWL; and

509.3.3. A shareholding in Fleet Street.

510. It is notable therefore that Mr Hemsley was a shareholder of CDWL when CDWL offered to purchase Mr G's Gilbert Scheme assets for less than half the previous purchase price, which assets included a Gibraltar company, Priority Solutions Limited, of which Mr Hemsley was an officer.

511. The Gilbert Scheme and Eleven Scheme invested in Turcotte Corporation Limited, of which Mr Simon Kim Williams was company secretary. Mr Williams also had links to another of the Gilbert Scheme's investments as he was director of GBT Partnership. Mr Williams was the individual trustee, and then sole director of the corporate trustee of the Focus Administration Pension Scheme, which purchased Unit [b] of 3TC House from Mr G and others. Mr Williams and Brambles were Respondents in a separate Determination I made on 21 September 2023 (ref. CAS-27569-X0V0 & CAS-73885-Q6V9), which found that Mr Williams acted dishonestly in relation to the Focus Administration Pension Scheme.

512. The Gilbert Scheme invested in Gematria Estates Limited. Gematria Estates Limited owned 142,000 ordinary shares in Tennyson.

513. Although I find these circumstances extremely concerning, on the evidence that I have seen no clear and direct conflict is identifiable to me.

Mr McNally and PAR

514. Mr McNally was the sole director of PAR¹³ which was the first administrator of the Schemes and concurrently acted as first Trustee of the Eleven Scheme. When considering the fees charged by PAR in respect of administration of the Eleven Scheme, I find there was a direct conflict of interests. See Section D.6.2, below.

Summary

515. Under clause 7.1 of all the Schemes' Rules, "*The Trustees shall keep such books and records in such form and manner and for such periods as may be required either: 7.1.1 for the proper administration and management of the Scheme; or 7.1.2 by section 49(2) Pensions Act 1995*". I have seen no evidence that the Trustees took any steps to manage or record these potential or actual conflicts of interest. I find that this was in breach of the terms of the trust (but, for the avoidance of doubt, I make no finding regarding compliance with section 49 of the 1995 Act itself, which is a matter outside of my jurisdiction).

¹³ It is unclear who owned PAR, as the shareholding was never updated from the Nominee Director until PAR was dissolved in 2016.

516. In the absence of any proper explanation as to how these conflicts were managed, I consider that these arrangements were highly irregular. I cannot accept Brambles' contention that this was normal business conduct. The pattern of consistent cross investments I have identified give rise to a fundamental conflict between the financial interests of the Scheme members and the financial interests of the Trustees and those persons linked with them whom I have identified. The Respondents' argument that I am mischaracterising normal business relations to suit my own purpose is firmly refuted. There is a substantial difference in fiduciary and regulatory obligations between running a business and running or administering a pension scheme or handling pension scheme member's assets.

517. On this basis, on the balance of probabilities, I find that the Trustees breached the requirements of section 249A of the Pensions Act 2004; clause 7.1 of the Schemes' Rules, they failed to act in accordance with the 2013 Code and 2016 Code and these amounted to maladministration on the Trustees' part and a breach of their fiduciary obligations.

D.6 Administration of the Schemes

D.6.1 Trustees' duties toward Scheme administration

518. The Trustees have been required, under section 249A of the Pensions Act 2004 to 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."

Since 2019, this section was expanded to impose a requirement to operate an 'effective system of governance' which included internal controls.

519. Additionally, paragraph 168 of the 2013 Code¹⁴, which was in force when the Individual Trustees appointed Brambles as administrator of the Schemes, 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:

¹⁴ This is replicated under paragraph 56 of the 2016 version of the Code.

- *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”.*

520. I have seen no evidence that the Trustees put in place adequate arrangements and procedures. It is an obvious failing of the Schemes’ controls and processes that several of the Applicants were able to access part of their benefits in advance of attaining age 55.

521. There also did not appear to be proper procedures in place for the safe custody and security of certain assets of the Schemes. In respect of the Eleven Scheme and the Gilbert Scheme, the Strongbox Self-Storage units were registered in the name of the Individual Trustees long after they vacated office and neither the Trustee Companies nor Mr Kaigh, in his capacity as Individual Trustee of the Eleven Scheme (when he succeeded Mr McNally), have acted to bring the assets under their control and update the records accordingly. Brambles has said the Trustees obtained a quote from a solicitor to have this work carried out, but there were no liquid assets within the Schemes to pay the legal fees. I find this explanation completely unacceptable for failing to take the key step as a trustee of securing the trust property it was obliged to hold.

522. An additional point which is of major concern is that Brambles has informed me that none of the Schemes has a current bank account open. These circumstances have not been explained.

523. Brambles has also stated that it has been unable to supply any written investment advice. Given Brambles has been replying on behalf of the Trustees, I take this to mean that the Trustees are not able to provide written investment advice previously received either. This suggests either records have not been kept or no advice was taken in the first place, which indicates a worrying lack of internal controls in relation to the Schemes.

524. The legal documentation relating to certain other investments was also defective. Neither the 2018 CDWL Loan Agreements nor the 2019 CBFS Loan Agreements were signed by either party to the loan, yet the Respondents maintain that the lending took place. The defective legal documentation casts doubt on the terms on which the lending took place.

525. Brambles has sent over copies of its administration appointment terms, which were materially identical in relation to each Scheme. I have set out the terms at Appendix 6. All of the terms are covered on one page and are considerably at odds with industry standards by being so brief. There are no contractual terms which suggest the Trustees engaged in any meaningful supervision of Brambles’ operations. For example, there are no terms covering key performance indicators, or putting any obligations on Brambles regarding maintaining professional indemnity insurance.

526. Not only are the terms brief, but they are also inappropriate; the first clause requires Brambles to assist with the establishment and registration of each Scheme with HMRC and the Pensions Regulator, which steps had already taken place by the time Brambles was appointed.

527. On the basis of the points set out in this section, I find that the Trustees breached the requirements under section 249A of the Pensions Act 2004, and failed to act in accordance with the Pensions Regulator's code.

D.6.2 Payment of administration fees

528. All the Applicants had a fee of approximately £3,000 deducted on transfer into the relevant Scheme. The fee did not vary according to the size of the transferred amount and was described in the member-directed investment forms as follows: "*£[X] will be set aside to cover additional costs such as annual scheme administration fees.*"¹⁵

Structuring of charges

529. Various Scheme communications and marketing documentation indicate how these charges were structured:

529.1. Ms Y, Mr E and Mr G's first benefit statement set out the following entry under the heading 'Transactions':

"Administration fees to cover a six year period £3,000"

529.2. Mr G's application form for the Gilbert Scheme indicated this was broken down such that £500 per year was payable:

"Pension Scheme administration fees information: The Trustees have agreed to pay the following administration fees in respect of each member. Annual fees of £500 per annum are payable five yearly in advance for the first five year period and thereafter annually in advance. The Scheme Administrator has agreed to waive the fees in year six."

In spite of Mr G applying for membership on the basis of the sixth year of fees being waived, later documentation appears to confirm he was charged the full six years of fees.

529.3. The Pension Max Q&A document and the administration agreement (set out in Appendix 6) confirms the £500 p.a. fee structure. The Q&A document stated:

"11. What fees does the occupational pension scheme charge?"

£500 + VAT per year per member (figures correct as at 2012)."

¹⁵ The member-directed investment forms indicate £2,992.62 was charged to Ms Y, £3,000.77 was charged to Mr S, £2,998.25 was charged to Mr E, £3,000.05 was charged to Mr Y and £3,000.00 was charged to Mr G.

529.4. The first administrator for each Scheme was PAR. Administration agreements have not been supplied between the Trustees and PAR, but administration agreements for Brambles who took over the administration for each Scheme at a later date have been supplied. The administration agreements with Brambles appear to reflect this arrangement:

“The Trustees shall pay fees to Brambles Administration Ltd of £500.00 per annum per member.”

530. I note the administrator changed from PAR to Brambles in respect of each Scheme in advance of the expiry of the six-year period which the Trustees had paid for. I further note that entries on bank statements submitted in respect of the SHK Scheme (incomplete as they are) seem to demonstrate that the full £3,000 was charged in advance and paid over to the administrator. Equally, in respect of the Eleven Scheme, the (incomplete) bank statements show very large distributions being made from the Scheme to PAR, amounting to £151,500 from the period from December 2012 to July 2013.

531. It is not clear how the issue of PAR charging fees for work which it would not perform, given the change in scheme administrator, was resolved. The Respondents have stated that the Applicants were not charged again for Brambles' work when it was appointed as administrator of the Schemes and I accept that Applicants were not charged twice.

532. The evidence appears to show that the Trustees paid PAR for work six years in advance and the applicants were charged £3,000 each directly in advance for this. The funds appeared to go towards scheme administration only and had no other purpose despite the reference to 'other costs' on the member-directed investment forms.

Schemes' rules

533. In principle, the Rules of each Scheme permit the payment of administration costs to be met by members' funds. Rule 10 states:

“10 Costs of the Scheme

10.1 All costs charges and expenses of and incidental to the administration and management of the Scheme shall be borne by the Fund except to the extent that they are borne by the Participating Employers.”

“Fund” is defined widely to include all assets within the Scheme. I am not aware that any of the employers were to pay such costs.

534. The Establishing Deed of the Eleven Scheme's provision is more specific than, but not in conflict with, the provision in the Rules. Clause 19 states:

“19. All the expenses of administration management and investment of the Scheme shall be charged to and paid out of the designated account(s) of the Member(s) 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.”

Trustee Act 2000

535. Section 32 of the Trustee Act 2000, imposes additional requirements on the charging of fees, as follows:

“32 Remuneration and expenses of agents, nominees and custodians

- (1) *This section applies if, under power conferred by Part IV or any other enactment or any provision of subordinate legislation, or by the trust instrument, a person other than a trustee has been--*
 - (a) *authorised to exercise functions as an agent of the trustees, or*
 - (b) *appointed to act as a nominee or custodian.*
- (2) *The trustees may remunerate the agent, nominee or custodian out of the trust funds for services if--*
 - (a) *he is engaged on terms entitling him to be remunerated for those services, and*
 - (b) *the amount does not exceed such remuneration as is reasonable in the circumstances for the provision of those services by him to or on behalf of that trust.*
- (3) *The trustees may reimburse the agent, nominee or custodian out of the trust funds for any expenses properly incurred by him in exercising functions as an agent, nominee or custodian.”*

536. PAR and latterly Brambles were authorised to exercise administration functions as agent for each Scheme on behalf of the Trustees, and this was delegated under the trust instrument. Under section 32(2)(b) the remuneration had to be reasonable.

537. In my Determination, I have found that there were several breaches of trust and significant irregularities in the overall experience the Applicants had of these Schemes. I also make findings below in relation to administration deficiencies which the Applicants suffered. It is concerning that the Applicants were also being charged excessively for this. In particular, I find that the following features of the charging arrangements were highly irregular:

537.1. The sum of £3,000 is out of proportion to all market norms. Charges for occupational DC schemes are typically a fraction of 1% of a member's pot. In this case, to take one example, Mr S's pot was subject to an instant diminution of 18.5% (or in excess of 3% per year, spread over six years).

537.2. The structure of charging for six years in advance disadvantaged members as it deprived them of earning any investment return on the advance charges, when the work by the administrator was to be carried out years in the future. It also assumed that the members would remain in the relevant Scheme for at least six years; it is unclear whether a member who wanted to transfer out the Scheme later but before the expiry of six years would be refunded for any years not spent in the Scheme.

537.3. There was no variation of the charge levied according to the sum invested. Typically, DC occupational pension schemes would levy charges according to a percentage of the member's pot rather than a flat fee which penalises members with small pots.

538. The Respondents have disputed this comparison and have pointed out that the Schemes had more in common with a SSAS or SIPP, especially in the way that members could self-select non-mainstream investments. They assert that charging fees at a flat rate and in the amount of £500 a year was reasonable in light of how these sorts of schemes operate, and the comparison I have made is inappropriate. I do not accept the argument the Respondents have raised, as:

538.1. none of the Schemes was in fact a SSAS or SIPP but they were all DC occupational pension schemes, and so comparing them to other DC occupational schemes is appropriate; and

538.2. I have found the way that the Trustees exercised the investment power was in breach of trust and the Investment Regulations. I cannot accept that these same actions justify the charging of exorbitant fees.

539. I find that charging £3,000 irrespective of the sum transferred to the relevant Scheme was not reasonable remuneration of the administrator but was grossly excessive. The result of this is that, in paying these sums to PAR and/or Brambles, the Trustees breached their statutory duty to remunerate their agents reasonably under the Trustee Act 2000 when making these delegation arrangements.

540. In addition, I note that:

540.1. the Trustee of the Eleven Scheme was Mr Michael McNally for the period from 23 April 2012 to 25 June 2014;

540.2. PAR, whose sole director was Mr Michael McNally, was administrator of the Eleven Scheme until 26 June 2014, when Brambles took on the appointment; and

540.3. £151,500 was paid to PAR from the Eleven Scheme from December 2012 until July 2013.

I find that this is a direct conflict of interests. The administration company of which Mr McNally was sole director, stood to gain from the excessive fees charged directly from the Eleven Scheme funds which he was under fiduciary duties to safeguard and invest.

541. As a result, I find the Individual Trustees (in the proportions set out in the Directions) liable for all fees paid over to PAR and/or Brambles which I find amounted to £3,000 per member and therefore totalled:

541.1. £165,000 in respect of the 55 members of the Eleven Scheme (the “**Eleven Scheme Fee Amount**”);

541.2. £126,000 in respect of the 42 members of the SHK Scheme (the “**SHK Scheme Fee Amount**”); and

541.3. £60,000 in respect of the 20 members of the Gilbert Scheme (the “**Gilbert Scheme Fee Amount**”).

542. The Respondents have said this finding is unfair and indicative of bias, and the findings should give credit for what a reasonable fee is. I have identified that the charging arrangements were unreasonable and paid in breach of legal requirements. The Respondents however have failed to specify and justify any particular level of appropriate fee in respect of proper administration activities lawfully carried out. On this basis, I will provide appropriate directions to remedy the breaches in Section E, below.

D.6.3 Administrator’s duties toward Scheme administration

543. Brambles’ experience in pension administration is unclear. All of the Applicants have indicated their dissatisfaction with Brambles’ conduct, by not replying to calls, emails, requests for benefit statements and other information. I can see from the evidence which has been submitted to TPO that Brambles had severe problems in addressing member requests and complaints, for example:

543.1. Brambles failed to reply to Mr S’s formal complaint in December 2021;

543.2. Mr E struggled to transfer his pension to a different scheme in November 2021. The proposed receiving scheme indicated that Brambles was unresponsive to their information requests;

543.3. Brambles did not respond to Mr Y’s transfer request in November 2020; and

543.4. On 8 October 2019, Brambles agreed, on behalf of the Gilbert Scheme and in response to a transfer request made by Mr G, to transfer his pension incrementally over the course of several months in a highly irregular arrangement. The evidence suggests the incremental transfers ceased part way through and did not complete.

544. Having heard testimony at the Oral Hearing from four of the Applicants in this case, whose experiences were similar to each other, I am satisfied that Brambles’ dealings in relation to the Applicants fell far below the standard of a reasonable pension scheme administrator. Brambles has accepted that its services fell short during 2020 due to the Covid-19 pandemic and has stated that many organisations suffered similar issues. However, I find, on the balance of probability, that the instances referred to in

paragraph 543 above are indicative of a wider plan that Brambles was carrying out to evade member requests and prevent them from accessing their funds.

545. A further area of concern with Brambles' actions relates to the restricted lines of communication between the Trustee and the Applicants. From what I can see Brambles has never offered the Applicants any direct line of communication with the Trustees and answered the complaints against the Trustees and formal responses to TPO, on behalf of them, where such complaints were answered. Although Brambles has explained that the Trustees requested that Brambles dealt with the day-to-day running of the Scheme, sensitive matters such as formal complaints should have prompted involvement from the Trustees.

546. I therefore find that these matters and in particular the consistent failures to respond to information requests, reply to complaints on time and process routine transfers was maladministration.

D.7 Member Consent and Contributory Negligence

D.7.1 Consent

547. Brambles has said that the Trustees genuinely believe that they were acting in the best interests of the members by investing the pension funds in accordance with the written request of the members and it was reasonable for them to act in this way. It has said the various members had capacity to make the requests they did and have been negligent in failing to take their own independent advice, despite being recommended to do so. It has said Mr G signed a 'restricted investor statement'.

548. 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 Paulings' Settlement Trusts* [1962] 1 WLR).

549. 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."

550. 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."

551. Underhill and Hayton: Law of Trusts and Trustees,^{16 17} advises that, for this principle to apply: the beneficiary must have: been “of full age and capacity at the date of such assent or release¹⁸”; “had full knowledge of the facts and knew what he was doing¹⁹ and the legal effect thereof²⁰, 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 significant²¹) that he should himself have directly benefited by the breach of trust²²”; and “no undue influence was brought to bear upon him to extort the assent or release.”

552. 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.”

553. In these cases, I have seen no indication that any of the Applicants were acting under the undue influence of another, and none of the Applicants have indicated that there was any external compulsion in their decision to transfer their funds to the Schemes.

554. Regarding capacity, there is no suggestion any of the Applicants was unable, through incapacity, to make decisions on their own account.

Ms Y

555. I acknowledge Ms Y's member-directed investment form appeared to authorise the investment in storage pods (see Appendix 4). The form also flagged the possible illiquidity of the investment.

¹⁶ Paragraph 1 of Article 95 of the 19th edition.

¹⁷ 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).

¹⁸ Lord Montford v Lord Cadogan (1816) 19 Ves 635; Overton v Banister (1844) 3 Hare 503 at 506.

¹⁹ 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.

²⁰ 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.

²¹ 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].

²² 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.

556. The Respondents have disputed my references to the member-directed investment forms as 'pre-populated' and argued that this does not in any way compromise the validity of the instruction or express consent being provided. However, as referred to in the legal authorities, I must consider all the circumstances of an investment in considering whether the Applicants truly consented to the associated breaches of trust. The content and context of the forms themselves are relevant factors to take into account, and as referred to at paragraph 459, above, I am not persuaded the investments were independently selected by the Applicants, but rather, investments were pre-selected and put to them to sign. This points to the real possibility that the consent was not fully informed and the Applicants were not fully aware of what they were consenting to.
557. Before investing in storage pods, Ms Y was informed that it would be a straightforward process to sell her investment to allow her to retire; it had been done before and she would be assisted with the sale. The introducers who spoke to her offered to find something 'suitable' for her. She therefore consented to an investment which was very different in its characteristics to those which her actual investment featured. The Respondents have stated the actions of unconnected third parties or alleged introducers cannot give rise to a breach of trust on the Trustees' part. My findings in Section D.4 above are clear that the Trustees' actions alone caused the breaches of trust. When it comes to the question of member consent, I must look at the all the circumstances in the round to assess whether each Applicant gave proper consent such as to debar them from bringing an action in relation to that investment.
558. Further to my finding that the 'back-to-back transaction' element of the pension investment was not an accurate reflection of events, I find Ms Y was misinformed about the nature of her pension investment and how it would be used by the Eleven Scheme Trustee and instead thought she was being properly advised by a reputable pensions firm.

Mr S

559. I acknowledge Mr S's member-directed investment form appeared to authorise the investment in Harper International Consultants Limited (see Appendix 4). The form also flagged the possible illiquidity of the investment. However, the original investment had been pre-populated and put to Mr S to sign.
560. Mr S has claimed he was never aware of the investment switch into Priority Solutions Limited and never instructed this. However, he has provided a letter from RMJ Solicitors which alluded to a transaction in this entity taking place. As referred to in paragraph 65 above, it appears the specific transaction envisaged in the letter provided did not proceed, as later statements show differing sums invested. However, Mr S's pension assets were eventually transferred to Priority Solutions. I also note that RMJ Solicitors also sent a letter about a share transfer relating to Priority Solutions to another member, Mr G, on the exact same date. This may suggest that the transaction proposal did not originate from the members themselves but was rather a wider co-ordinated attempt to move assets to Priority Solutions Limited.

561. Having questioned him at the Hearing, I find that misinformation about the nature of the original investment in Harper International Consultants Limited and the transaction being advertised was key to ensuring that Mr S consented to transferring his pension and authorising the investment. I find that there is considerable doubt around what Mr S knew about the subsequent transfer to Priority Solutions Limited and whether he consented and to what, such that I do not find he provided informed consent.

Mr E

562. I acknowledge Mr E's member-directed investment letter appeared to authorise the investment in GBT Partnership. The form also flagged the possible illiquidity of the investment (see Appendix 4).

563. At the Hearing, Mr E made clear that he did not have full knowledge of the implications of the investment of his pension and I am satisfied this is true. He did not understand the investment memorandum for GBT Partnership which was sent to him. He did not believe the payment he received on transfer was an early release of his pension as the Pension Max literature indicated his pension would remain 'fully invested'. For his initial investment, he signed the pre-populated form he was asked to sign and was unaware how the (on-paper) 'back-to-back transaction' arrangement would work. In relation to the sale of the shares in GBT Partnership and re-investment at a loss in a loan note in 2016, he may have signed documents facilitating it but did not understand what the documents were for. At all times, Mr E thought that he was dealing with experts who knew about investment matters.

Mr Y

564. I acknowledge Mr Y's member-directed investment form appeared to authorise the investment in 3TC House and CBFS. The form also flagged the possible illiquidity of the investment (see Appendix 4).

565. However, I note that Mr Y acted having been told that his pension would be 'safe'. He recalls signing lease documentation but understood his pension funds would directly be going into these investments. He did not consider the £6,060.96 he received was a release of his pension funds and was told explicitly it was not but was profit arising from the property investment. He knew nothing of the 'back-to-back transaction' arrangement, which, on the basis of the lease provided, appears to have been operating (on-paper) in relation to the 3TC House investment.

Mr G

566. I acknowledge that all four of Mr G's member-directed investment instructions appeared to authorise the investments in storage pods at Bahama Road, office pods at 3TC House, the loan to CBFS, land at Great Moor Street, Bolton and Priority Solutions Limited. All the forms flagged the possible illiquidity of the investments. I find that these forms were pre-populated as they had been with the other Applicants; these investments had been put to Mr G and he signed off on them but I am satisfied without true knowledge of what he was consenting to.

567. It is not clear why the 3TC House and Great Moor Street, Bolton investments were sold, the former at a loss.
568. In 2018, Mr G agreed to the sale of all his assets in the Scheme to CDWL for £90,000, a loss of £96,459.45 nominal value. The purchase offer was made by Mr Paul Dalton, on behalf of CDWL.
569. The Respondents have stated that Mr G suggested the figure of £90,000 and 'was pushing for his assets to be sold at a discount'. They argue he 'proposed the transaction and actively pushed for its implementation' and 'Brambles and the trustees merely followed his wishes'. The correspondence between him and Brambles demonstrates that he therefore consented.
570. In the correspondence leading up to this sale, Mr G was urgently trying to encash his pension in advance of retiring abroad. The correspondence he had with Brambles demonstrates:
- 570.1. Initially, he expected to realise a substantial portion of the assets, in line with the benefit statements he had received which attributed a value to the asset.
- 570.2. He emphasised to Brambles that he was in desperate need of ready funds. He accepted that there might be a small loss on the value of the investments as a result. Mr House on behalf of Brambles represented to Mr G that he would liaise with the trustee in order to attempt a sale and would make enquiries about potential purchasers.
- 570.3. After correspondence with Brambles, the amount Mr G was prepared to accept for his pension assets gradually decreased from 85p in the pound, to £100,000 in total, to £90,000, provided he would be given some money soon.
571. Following further correspondence, the offer from Mr Paul Dalton on behalf of CDWL was communicated and the sale was eventually confirmed by Mr G countersigning what appears to be a pre-populated letter.
572. I note that:
- 572.1. Mr Dalton was also the sole director of CBFS at the time. One of the investments CDWL was offering to purchase at a discount was a loan to CBFS, so in this way he had effectively discounted what another of his companies was due to repay. This was a highly irregular feature of the transaction.
- 572.2. Mr Dalton was the sole director of Strongbox. Another of the investments CDWL was offering to purchase at a discount was several storage units. Strongbox Self-Storage had been party to the original leases, as the Management Company and Mr Dalton would have been aware, CDWL was then purchasing them at a discounted price.
573. I find Mr G did not provide informed consent for this sale. Mr G was unlikely to be aware of the link through Paul Dalton between the investment in CBFS and Strongbox and

the fact it was being purchased by CDWL. Further, two thirds of the sale price was re-invested in the form of a loan note in CDWL (as opposed to cash), which Mr G had not anticipated and did not agree to; it was agreed that a transfer would be made to a different pension provider.

574. I find that the offer presented to Mr G was not a genuine commercial offer, but a deliberately low amount capitalising on the pressure on Mr G to access ready funds. On the balance of probabilities, I find the low offer was the product of a design between Brambles and Gilbert Trading as Trustee Company of the Gilbert Scheme to get Mr G to relinquish his claim on over half of his pension funds. I find that, notwithstanding Mr G's consent, the transaction made by the Trustee Company was a deliberate diminution of the value of his scheme assets in breach of trust. I firmly reject the Respondents' argument that Brambles and Gilbert Trading were trying to help Mr G in good faith.
575. Brambles has drawn my attention to the 'restricted investor statement' signed by Mr G. The wording of this is set out in Appendix 4. In this, Mr G accepted he could receive communications relating to illiquid securities and had material liquid investments which formed most of his portfolio. I do not find this has any effect on the fact that Mr G was unlikely to know the full facts behind the investments and the links between the personnel involved in this transaction.
576. Therefore, I find that none of the Applicants had full knowledge of the facts or terms of the underlying investments and consequently did not concur or acquiesce to the Trustees' multiple breaches of trust. I do not accept the Respondents' submissions that there is no evidence to make this finding; as set out above from the written evidence and testimony at the Oral Hearing, I consider that none of them consented. Therefore, none of the Applicants is prevented from taking action against the Trustees in respect of those breaches of trust.
577. In relation to the administration fees, the Applicants all signed paperwork which authorised the deduction. However, all the Applicants considered they were paying for the services of a reputable pension provider, whereas their written applications and testimony are clear that they were sent statements only erratically, their reasonable concerns and questions were often ignored and the telephone was rarely answered. I consider that neither PAR nor Brambles intended, at the point each Applicant consented to paying the administration costs, of providing the services of a reasonable pension administrator. In the case of the Eleven Scheme, I do not consider the Applicants knew of the conflicted position Mr McNally was in. I therefore find they did not have full knowledge of all the relevant circumstances when consenting to the payment of administration fees.

D.7.2 Contributory Negligence

578. I have found the Trustees to have committed multiple breaches of trust. In my Determination, I have also identified that in many of these breaches, the Trustees were not acting honestly in good faith, as set out in Section D.8.2, below. My dishonesty

findings cover both individuals who acted as Individual Trustees or director of the Trustee Companies at the relevant time.

579. 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'*"²³.

580. It is explained, in *Underhill and Hayton*, that "*Where the 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'*"²⁴.

581. As I have stated in paragraph 467 above, duties imposed on the Trustees by case law required them to invest members' funds prudently and with regard to their best financial interests. As I have found, the Trustees have breached all of those duties; the liability therefore arises to restore the trust funds. The Trustees also had a duty to act honestly and in good faith when dealing with members' funds, which was breached in many cases.

582. Therefore, the Trustees are not entitled to rely upon any defence of contributory negligence against their liability for the consequences of their many breaches of trust.

D.8 The Individual Trustees and the liability of their Trustee Company successors in office

583. I shall now consider the effect of the statutory provisions under section 33 of the Pensions Act 1995 (**Section 33**), and also, the extent to which Section 33 might not apply, for example in respect of administration breaches, or the extent to which the Trustees might be able to rely on the exoneration provisions under the Schemes' Trust Deeds and Rules. Finally, I shall consider Section 61 of the Trustee Act 1925 (assuming it applies), and the extent to which the Trustees should be afforded relief from personal liability under its provisions.

D.8.1 Section 33 of the Pensions Act 1995

584. 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:

²³ *Alexander v Perpetual Trustees (WA) Ltd* [2004] HCA 7, (2004) 216 CLR 109 [104].

²⁴ *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.

“(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*
- (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”.*

585. 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 (*Dalriada Trustees v McAuley* [2017] EWHC 202 (Ch)).

586. Rule 6 of each Scheme sets out indemnity and exoneration provisions: an exoneration clause at Rule 6.2 and an indemnity from the Schemes’ Funds at Rule 6.3. Clause 21 of the Establishing Trust Deed of the Eleven Scheme sets out an additional exoneration provision in favour of the Trustee of the Eleven Scheme only. Of these, Rule 6.2 is expressed to be “subject to section 33 of the Pensions Act 1995”, and so does not seek to exclude or restrict the operation of Section 33.

587. The Application Forms completed by Ms Y, Mr E and Mr G, contain wording specifically to indemnify the Trustees from any claim in respect of investment decisions (set out in Appendix 4).

588. A purposive interpretation of Section 33 requires indemnities to be included. I consider that Rule 6.3 of each Scheme is subject to Section 33. Separately, Brambles has stated that if the Trustees do decide to pursue the indemnity clause in the Application Forms, this is a matter between the Trustees and the Applicants and the Pensions Ombudsman’s Determination is irrelevant. However, 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, especially where there are accompanying findings of dishonesty, would render Section 33 open to circumvention and ineffective in practice. As a matter of public policy, it cannot be correct to give effect to any indemnity.

589. 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.

590. I consider that the Application Forms to join the Schemes containing the indemnity clauses in this case can properly be regarded as forming part of the documents comprising the Schemes. "Pension scheme" for the purposes of section 1(5) of the Pension Schemes Act 1993 (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".

591. On that basis, I find that Section 33 applies to both the exoneration and indemnity clauses under the Rules and the indemnity given by members on joining their respective Schemes²⁵.

592. This renders both the exoneration clauses and the indemnities ineffective in preventing the Trustees from being held personally liable for any loss suffered by members in relation to the Trustees' breach of investment duties imposed by statute and/or common law (see Section D.4), by having committed the various breaches of trust that I have found the Trustees to have committed.

D.8.2 Exoneration Clauses under the Scheme documentation

593. I have already found that the Trustees acted in breach of trust by:

593.1. operating a pension liberation arrangement which was contrary to the Applicants' interests and in contravention of statute (see Section D.3);

593.2. breaching the investment duties in the 1995 Act, the Investment Regulations and case law and failing to take investment advice (see Section D.4);

593.3. breaching their duties to avoid or manage conflicts of interest and operate necessary internal controls as required by section 249A of the Pensions Act 2004 (see Section D.5); and

593.4. failing to supervise the administration of the Schemes appropriately and paying unreasonable fees for administration services (see Section D.6).

These findings have been made after due consideration of the evidence, contrary to the submissions made by the Respondents. All of these breaches of duty and findings of maladministration are intertwined and have led, directly or indirectly, to the loss of the Schemes' funds.

594. The exoneration clause in the Rules of all the Schemes provides:

²⁵ It has also been acknowledged, in the Court of Appeal judgment of *Robert Sofer v Swiss Independent 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.

“Subject to section 33 of the Pensions Act 1995, no Trustee shall be liable for the consequence of any mistake or forgetfulness whether of law or fact of the Trustees, their agents, employees or advisers or of any of them or for any maladministration or breach of duty or trust whether by commission or omission except to the extent that it is proved to have been made, given, done or omitted in personal conscious bad faith (or negligence in the case of a professional Trustee) by the Trustee sought to be made liable.”

595. In addition, Clause 21 of the Establishing Trust Deed of the Eleven Scheme provides:

“No Member or any other person shall have any claim right or interest under the Scheme or any claim against the Provider or the Trustees in connection with the Scheme except under or in accordance with the provisions of this Establishing Deed. Neither the Provider nor the Trustees shall be personally liable for any acts or omissions not due to their own wilful neglect or default and, in particular, shall have no responsibility to or in respect of a Member in connection with investments made at the option or direction of that Member or any person authorised to exercise such option or make such direction on the Member’s behalf.”

596. As set out in Section D.8.1, above, both exoneration clauses are ineffective in restricting the Trustees’ liability for the breaches of duty and trust relating to investments set out in Section D.4. This includes the exoneration clause in the Eleven Scheme which purports to provide a complete and uncaveated exoneration in respect of member-directed investments. Nevertheless, I will still consider the same breaches for the purposes of my Determination in relation to section 61 of the Trustee Act 1925, in Section D.8.3.

597. In respect of the other breaches of trust and duty, summarised in paragraph 593 (excluding paragraph 593.2) above, the exoneration clauses may be effective.

597.1. The Trustees of the SHK Scheme and the Gilbert Scheme will be exonerated unless “it is to be proved to have been made, given, done or omitted in personal conscious bad faith”.

597.2. The Eleven Scheme exoneration clause provides for a differently worded exemption to the exoneration. The Trustees of the Eleven Scheme are exonerated from the breaches of duty and trust I have found unless they were “due to their own wilful neglect or default”.

598. I will examine the authorities below to see whether there is any difference at law between ‘wilful neglect or default’ and ‘personal conscious bad faith’. In either case, it is established law that the provisions of a trust instrument cannot at law exonerate dishonesty. In *Armitage v Nurse*, the Court of Appeal held that:

“...there is an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust... The duty

of the trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries is the minimum necessary to give substance to the trusts...

599. The leading case on the meaning of wilful default is Re Vickery [1931] 1 Ch 572 where Maugham J construed the words as meaning a “consciousness of negligence or breach of duty, or a recklessness in the performance of a duty”. In Armitage v Nurse, Millet LJ said that wilful default meant “a deliberate breach of trust” and that to establish wilful default “nothing less than conscious and wilful misconduct is sufficient”. Referring to Re Vickery, he said:

“The trustee must be conscious that, in doing the act which is complained of or in omitting to do the act which it said he ought to have done, he is committing a breach of duty or is recklessly careless whether or not it is a breach of his duty or not... A trustee who is guilty of such conduct either consciously takes a risk that loss will result, or is recklessly indifferent whether it will or not. If the risk eventuates he is personally liable. But if he consciously takes the risk in good faith and with the best intentions, honestly believing that the risk is one which ought to be taken in the interests of the beneficiaries, there is no reason why he should not be protected by an exemption clause which excludes liability for wilful default.”

600. In Armitage, the relevant clause of the settlement stated: “No Trustee shall be liable for any loss or damage... unless such loss or damage shall be caused by his own actual fraud.” Millet LJ noted that the clause had been taken from Hallett’s Conveyancing Precedents (1965) and observed that “A more prolix clause **to the same effect** may be found in Key and Elphinstone’s Precedents in Conveyancing (15th edn, 1953) ” [my emphasis]. This precedent clause referred to “personal conscious bad faith.” So, Millet LJ regarded the phrases “actual fraud” and “personal conscious bad faith” to have the same effect, and drew no distinction between “actual fraud” and “wilful default”. I consider that Millet LJ’s conclusions regarding the meaning of “wilful default” apply equally to “personal conscious bad faith.” In relation to the Eleven Scheme, it follows there is no practical difference between the exoneration clause in the Establishing Trust Deed relating to all acts or omissions and that in the Rules.

601. However, in considering the test of honesty in Armitage, which appears to be subjective, Millet LJ did not consider the House of Lords decision 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 an objective test of (dis)honesty is to be applied:

“... 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."

602. 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 if the transaction serves 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."

603. In Walker v Stones [2001] 2 WLR 623, Sir Christopher Slade, giving the only full judgment said that, while there is a difference of emphasis between the judgments in Royal Brunei Airlines and Armitage, as far as they relate to the concept of dishonesty they were not irreconcilable and that he could see no grounds for applying a different test of honesty in the context of a trustee exemption clause from that applicable to the liability of an accessory in breach of trust. With regard to Millett LJ's dictum on a trustee's honest belief he said:

"I think it most unlikely that he would have intended this dictum to apply in a case where a solicitor-trustee's perception of the interests of the beneficiaries was so unreasonable that no reasonable solicitor-trustee could have held such a belief".

604. Sir Christopher Slade restated the proposition, "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. Lord Justice Nourse and Lord Justice Mantell agreed with his judgment without adding anything of their own.

605. 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...”

606. Etherton J considered 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.

607. In the later case of Fattal v Walbrook Trustees (Jersey) Limited [2010] EWHC 2767 (Ch)²⁶, it was accepted, at paragraph 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 Walbrook²⁷ 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.

608. 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 considered in the cases of Royal Brunei and Twinsectra should be applied in the criminal, as well as in the civil, context (paragraph 62 of Ivey v Genting). Ivey v Genting emphasised, in line with Twinsectra, that, in considering whether an individual had acted dishonestly, it was necessary to make that judgment on the basis of the standards of ordinary decent people, not those of that individual.

609. Per paragraph 74 of Ivey v Genting:

“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

²⁶ 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, Barlow Clowes v Eurotrust International Ltd [2006] 1 WLR 1476 and Abou-Rahma v Abacha [2006] EWCA Civ 1492.

²⁷ 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.

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.”

610. The Individual Trustees' positions could be regarded as analogous to that of a professional trustee. In particular, Mr Kaigh acted as the Trustee of three separate pension schemes which are not connected by the same workplace. Mr McNally's position is different in that he held only one trusteeship, however he was also the sole director of the pension administration company, PAR so held himself out to have pensions expertise. In any event, I cannot see how the existence of a duty of care in relation to member funds can have escaped their notice.
611. As I have explained, the applicable test, which has been developed by case law since *Armitage*, is partly objective. Although the nature of the objective test in *Walker v Stones*, which was accepted in *Fattal v Walbrook Trustees*, in some respects differs to the now established and accepted test, 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 test set out in *Ivey v Genting*.
612. As I set out above, the investments came with obvious risks: they were unregulated, illiquid and undiversified. I consider that these risks were clear and obvious to the Individual Trustees. Any question of dishonesty or misappropriation of trust assets has been denied by the Respondents, however, the fact that they proceeded to make these unconventional investments casts serious doubt on their denial. A persuasive explanation would be required to satisfy this doubt; on the other hand, any further suspicious circumstances would point firmly to dishonesty. As explained further below, on the basis of the evidence I have seen, I consider that the breaches of trust committed by the Individual Trustees were the result of a consistent pattern of high-risk investments which raises suspicion due to the close links and conflicts between those involved.
613. I invited the Individual Trustees to attend the Oral Hearing in order to explain the circumstances which appeared to give rise to multiple breaches of trust and acts of maladministration, and their respective states of mind and knowledge at the time of those breaches. In the notice of hearing, I outlined the relevant case law showing a court's approach to the effectiveness of an exoneration clause in a trust deed where in circumstances where a trustee had acted, or been alleged to act, dishonestly rather than merely negligently or carelessly. Neither of the Individual Trustees attended the Oral Hearing. I infer from their failure to attend that they are unable to testify to the reasonableness of the explanations for the breaches of trust or acts of maladministration I found them to have committed.
614. The Respondents have denied that any breaches of trust found were done dishonestly or deliberately. In considering whether, in entering the investments referred to above as Individual Trustees in breach of trust, the Individual Trustees acted dishonestly. I will apply, in the first instance, the two-stage test set out in *Ivey v Genting*. Where relevant, I will also determine whether a breach of trust was committed deliberately.

Storage units at Strongbox

615. The storage unit investments were made through all the Schemes and by both Individual Trustees, Mr McNally and Mr Kaigh, in respect of the Eleven Scheme and the SHK and Gilbert Schemes, respectively.

616. I have already found that:

616.1. the storage unit investments were used as part of a complex pension liberation scheme (Section D.3);

616.2. the investments were made without advice, not for the proper purpose of the relevant Scheme and not in the best financial interests of members (Section D.4); and

616.3. conflicts of interest were apparent as Glenn House as director of Brambles, who was known to both Individual Trustees, became the sole shareholder of Samarian, the landlord of the storage pod leases (Section D.5).

617. I find that all these breaches were committed deliberately by both Individual Trustees and I also make the following findings about what each of them knew and believed at the time of making the investments:

617.1. A common feature of pension liberation schemes is to permit a member to receive a percentage of their pension fund as an unauthorised payment before age 55. It is an equally common feature of the marketing of such schemes, and critical to their success, that the opportunity to receive scheme benefits early is misrepresented to a member as a loan or capital gain, but the actual nature of the payment is obscured. That was the case here; several Applicants were advised that lump sum payments were as a result of a gain in the investments. However, the payments were, unknown to all the Applicants at the time, unauthorised payments. A pension liberation scheme is complex in its design and operation and this one was clearly the work of careful planning. It is simply implausible that the Individual Trustees were oblivious to the design, but rather, it was the product of their careful planning.

617.2. As well as the storage pods being used as devices for pension liberation, I consider that the balance of funds which were not liberated (or used otherwise than for investment, for example, administration fees) were, in large part, disbursed improperly to various parties in a network of individuals with whom the Individual Trustees had close personal links. I find the Individual Trustees knew that co-participants in the liberation scheme stood to gain personally from the investments. I am supported in this view by the role of Mr Glenn House. When Mr McNally as Eleven Scheme trustee and Mr Kaigh as Gilbert Scheme trustee were investing in the pods, the company Samarian Holdings received the lease premium payments. Mr House either was then, or later became, the sole shareholder of Samarian Holdings and was entitled to participate in its profits. Subsequently, Brambles took on the Schemes' administration

appointments. As sole director of Brambles, Mr House played a part in attempting to sell the Strongbox Self-Storage investments. The investments were reported to be illiquid and no funds have been forthcoming.

617.3. In investing Ms Y's and Mr G's funds in Strongbox Self-Storage pods, Mr McNally and Mr Kaigh knew they were distributing their funds to parties in a network who would misappropriate the Schemes' assets. Although both Applicants purported to select these investments, they signed pre-populated forms which they were provided with and were required to return. I note in this regard that the unconnected Applicants ended up with storage pod investments at the same site. Clearly this was no coincidence and the investments were put to them and were not selected of their own volition. Instead, ulterior purposes were at play of selecting illiquid and inaccessible investments so members could not realise ready cash when they needed it.

618. Given the state of mind of both Individual Trustees, I find that ordinary decent people would consider these actions dishonest. Ordinary decent people would not consider it to be honest conduct to knowingly invest other people's pensions as part of a scheme that attempted to circumvent tax legislation, for the benefit of themselves and their own personal contacts at a cost to scheme members. Any participation whatsoever in such an initiative would ordinarily be considered improper and deceitful. In the circumstances, an honest person would have withdrawn from participating in any of these activities and warned members of the danger to their assets.

3TC House

619. The 3TC House investments were made by Mr Kaigh only in respect of the SHK Scheme and the Gilbert Scheme. Mr Y and Mr G had investments in 3TC House. I have already found that:

619.1. the 3TC House investments were used as part of a complex pension liberation scheme (Section D.3); and

619.2. the investments were made without advice, not for the proper purpose of the relevant Scheme and not in the best financial interests of members (Section D.4); but

619.3. direct advantage accrued to Mr Kaigh himself, as well as parties closely linked to him, giving rise to conflicts of interest (Section D.5).

620. I find that the breaches referred to above were committed knowingly by Mr Kaigh and I also make the following findings about what he believed at the time:

620.1. as with the Strongbox self-storage pods, the 3TC House investment was a device used for pension liberation demonstrating carefully calculated conduct;

620.2. Mr Kaigh knew he was investing funds in a building in which he had an interest, most notably by coming to use it as a trading office;

620.3. further, Mr Kaigh's contacts were involved; Mr William Ross-Jones was director of Imperium Enterprises, which owned the freehold of 3TC House. Like Mr House, Mr Ross-Jones was involved in direct contact with the Applicants and appears to have been acting on behalf of Pension Max (itself operating out of 3TC House). On the balance of probabilities, I find that in making the investment in 3TC House, Mr Kaigh was intentionally enriching Imperium, managed by Mr Ross-Jones.

621. In making these findings, I take into account the broader context of Mr Kaigh's links with other individuals involved in pension liberation arrangements.

621.1. In paragraph 292 above, I set out extracts from a judgment of the First-Tier Tribunal of the Tax Chamber. In this judgment, Mr Ross-Jones played a role in a pension liberation arrangement; and

621.2. I set out above that Mr Kaigh likely knew Mr Quillan through: Mr Quillan's ownership of Flat 4, 16a South Road whilst Mr Kaigh traded from there; through succeeding Mr Quillan as a director of Bright Limited; and through trading at 3TC House.

622. Given Mr Kaigh's actual knowledge and his intentional breaches of trust, I find that ordinary decent people would consider his conduct to be dishonest. He was advantaging himself and his own contacts at the expense of the funds for which he had fiduciary responsibilities. This came at a significant cost to the members. An honest person in the circumstances would not have made investments of this sort, but would instead have either sought independent, professional advice on a suitable and genuine investment prospect or withdrawn from the arrangement altogether.

POD Estates Limited

623. The POD Estates Limited investment was made in respect of the Eleven Scheme by either of the Individual Trustees. I have already found that:

623.1. the investment was made without advice not for the proper purpose of the Eleven Scheme and not in the best financial interests of members (Section D.4); and

623.2. obvious and direct conflicts of interest were apparent as Mr Kaigh was the sole shareholder of POD Estates Limited whilst holding the directorship of Eleven Property as trustee (and possibly whilst personally holding office as Trustee of the Eleven Scheme) (Section D.5).

624. I find that these breaches were committed intentionally. I also note the following points about the state of mind of Mr McNally and/or Mr Kaigh as appropriate:

624.1. POD Estates Limited was located offshore and, I find on the balance of probabilities, deliberately selected to avoid regulatory scrutiny and hamper any attempts to reclaim monies.

624.2. As Mr Kaigh selected the investment, or even if the investment in POD Estates Limited had been selected by Mr McNally (rather than Mr Kaigh), I do not consider that the circumstances where Mr Kaigh ended up as owner of the company in which the Eleven Scheme had invested, was a coincidence. Instead, I consider it highly likely that the investment was calculated to disburse the Eleven Scheme's funds for Mr Kaigh's advantage.

625. Given Mr McNally's and or Mr Kaigh's knowledge of these matters, I consider that ordinary, decent people would consider that their conduct was dishonest. Making an investment designed to benefit themselves and/or their contacts (and therefore in a position of conflicting interests) at the expense of the Eleven Scheme's members whom they owed fiduciary duties, would fall far below the standards of honesty that ordinary people would expect. Ordinary and decent people would have no involvement in an arrangement of this order and would have refused to make this investment altogether.

Tennyson

626. The Tennyson investments were made by Mr Kaigh in the SHK Scheme and the Gilbert Scheme. I have already found that:

626.1. the Tennyson investments were made without advice, not for the proper purpose of the relevant Scheme and not in the best financial interests of members (Section D.4); and

626.2. as the Tennyson investment entailed an indirect holding by the SHK and Gilbert Schemes in 16a South Road, which Mr Kaigh also used as the business address for his companies Gilbert Trading and SHK Property, conflicts of interest have arisen in relation to Tennyson (Section D.5).

627. I find that these breaches were committed deliberately. I also note the following points about Mr Kaigh's state of mind:

627.1. Mr Kaigh knew he was benefiting from the use of property indirectly owned by the SHK Scheme and Gilbert Scheme; and

627.2. Mr Kaigh knew of, and was likely party to, the irregular investment and management arrangements surrounding Tennyson. Of particular note in this regard is how Tennyson mortgaged 16a South Road to borrow from CBFS (another investment of the SHK and Gilbert Schemes). While the Respondents have said that borrowing is normal to grow a business, their submission omits to mention that the building, occupied by Mr Kaigh, was charged using Scheme investments. Further, Tennyson was directed by individuals who also directed or owned other of the Schemes' investments. For example, Gary Robinson was a director of Tennyson and was a shareholder in Mederco Huddersfield; Paul Dalton was a director of Tennyson and also a director of CBFS, CDWL and Strongbox.

628. I consider the investments in Tennyson therefore were intentionally made not for the benefit of Scheme members, but for Mr Kaigh's own advantage and the advantage of a close network of contacts.

629. I find that ordinary, decent people would consider this conduct involved concealment of the true nature of the investments from those whose money was being invested and the accrual of secret benefits to Mr Kaigh and related parties. Decent and honest people would not have involved themselves in this form of deception and would have warned the Applicants about the danger to their pension funds and taken no further part in the relevant Scheme.

GBT Partnership

630. The investment in GBT Partnership was made by Mr Kaigh in the SHK Scheme and the Gilbert Scheme. Mr E had an investment in GBT Partnership through the SHK Scheme. I have already found that the investments:

630.1. were used as part of a complex pension liberation scheme (Section D.3); and

630.2. were made without advice, not for the proper purpose of the relevant Scheme and not in the best financial interests of members (Section D.4).

631. I find that these breaches were made consciously and deliberately, and also make the following findings about Mr Kaigh's knowledge and intention about the matter:

631.1. At paragraph 266 above, I described how in the period from July 2014 to March 2015 there were numerous share transfers and acquisitions between parties including Mr E himself (according to the paperwork), the SHK Scheme and the Gilbert Scheme. Alongside these parties were Mr Gary Quillan and Mr Gregory Garrett, who were brothers-in-law. I consider the transactions carried out in rapid order were likely a mechanism to move funds originally contributed by Mr E and other scheme members to other individuals and their businesses in Mr Kaigh's network, including Mr Quillan and Mr Garrett. I note that the Gilbert Scheme and the SHK Scheme ended up with material shareholdings in GBT Partnership after the execution of these transfers and find it concerning that GBT Partnership was then struck off and dissolved in September 2016, rendering the shareholdings worthless. I find that Mr Kaigh was facilitating these transactions with the requisite knowledge to achieve the aim of moving the pension funds.

631.2. I have explained how Mr Quillan has hitherto been involved in pension liberation arrangements. As set out at paragraph 294 above, Mr Kaigh was likely familiar with Mr Quillan; they were both involved with Bright Limited and Mr Quillan owned Flat 4, 16a South Road whilst Mr Kaigh traded from there. They both also traded from 3TC House.

632. These findings clearly depict Mr Kaigh's breaches of trust as intentional and designed to deprive members of the Gilbert Scheme and SHK Scheme of their pension funds, to the advantage of his own contacts. Ordinary and decent people would clearly consider

this conduct deeply dishonest, and honest people would not act in this way. An honest person would have had no part in this operation and would not have deliberately acted to deprive the Applicants of their funds in this manner.

Harper International Consultants

633. The investment in Harper International Consultants Limited was made through the Eleven Scheme acting by Mr McNally and through the Gilbert Scheme by Mr Kaigh. I have already found that the investment was:

633.1. used as part of a complex pension liberation arrangement, in relation to the Eleven Scheme (Mr S's entire investment was made in Harper International Consultants Limited) (Section D.3); and

633.2. made without advice, not for the proper purpose of the relevant Scheme and not in the best financial interests of members (Section D.4).

634. As mentioned in paragraph 633.1 above, the findings about pension liberation are confined to Mr McNally and the Eleven Scheme only. The finding demonstrates carefully calculated conduct on Mr McNally's part, and I find that he knowingly used Harper International Consultants Limited as a conduit for releasing funds to members early. I note that Harper International Consultants Limited, incorporated in Gibraltar, was used in an unusual arrangement as a holding company for land in Cumbria, England. I consider the explanation that has been provided for this, that is it was beneficial from a tax perspective, to be unconvincing. Instead, like certain other of the Gibraltar investments, I find Mr McNally intentionally invested in an offshore company to assist in hiding the balance of the funds which had not been liberated and paid to members.

635. Whilst the final destination of these funds is not entirely clear, they may have been disbursed across the Individual Trustees' network. The position of Mr Hemsley is relevant in this regard, he was a director of Harper International Consultants Limited, along with certain other Gibraltar Companies (Turcotte Corporation Limited, Gematria Estates Limited and Priority Solutions Limited), which were Eleven Scheme investments. I note Mr Hemsley was also a shareholder in CDWL, in which the SHK Scheme and the Gilbert Scheme invested, and so stood to gain from the broader structure of the investments.

636. I consider that ordinary and decent people would consider Mr McNally's conduct dishonest. Mr McNally had fiduciary responsibilities to members. I find the true nature of the liberation arrangement was deliberately concealed from them, and the remaining assets intentionally put beyond their reach. Decent people would consider this conduct and the associated deception deeply dishonest behaviour. Honest people would simply not have acted this way and would not have played a part in the wider plan to hide the Eleven Scheme's members' assets.

637. Whilst it is possible that Mr Kaigh may have invested Gilbert Scheme funds in Harper International Consultants Limited for a similar purpose, I have not received direct

evidence of an ulterior purpose for this particular investment in his case. I will consider whether he acted reasonably in relation to Harper International Consultants at paragraph 670 below.

Priority Solutions Limited

638. The investments in Priority Solutions Limited were made through all the Schemes. Mr Kaigh made the investment in respect of the SHK Scheme and the Gilbert Scheme. Although it was Mr McNally who was first trustee of the Eleven Scheme, his appointment as trustee terminated in June 2014, and Priority Solutions Limited was not incorporated until later that year. All investments in Priority Solutions Limited were therefore made by Mr Kaigh. I have already found that:

638.1. in the case of the Gilbert Scheme, Priority Solutions Limited was used as part of a complex pension liberation arrangement as part of Mr G's investment was made in Priority Solutions Limited (Section D.3);

638.2. in the case of the Eleven Scheme, made without Mr S's clear authorisation (paragraphs 449.1 and 561); and

638.3. in all cases, made without advice, not for the proper purpose of the relevant Scheme and not in the best financial interests of members (Section D.4).

639. I consider that these breaches were made by Mr Kaigh intentionally. I also make the following findings about his state of mind at the time of investing:

639.1. with the exception of the small portion of funds liberated and paid out to the Applicants, the funds were not invested for the benefit of the members. As with the investments discussed directly above, the liberation transaction was carefully designed to incentivise the members with the promise of immediate funds and distract from the disbursement of the balance to a disadvantageous investment.

639.2. I find Priority Solutions was purposefully selected by Mr Kaigh as a bogus investment, located offshore to benefit from administrative obscurity.

640. Considering what Mr Kaigh knew and intended, I consider that ordinary and decent people would consider that he behaved dishonestly; deliberately selecting an offshore and illiquid investment as a device for liberating pension funds and avoiding repaying the balance falls far below the threshold of honesty. Ordinary and honest people would not have made these plans for other people's pension funds and would have declined to consider this investment any further.

Great Moor Street, Bolton

641. The investment in land at Great Moor Street, Bolton, was made in respect of the Gilbert Scheme only, by Mr Kaigh, including in respect of Mr G. I have already found that the investment was:

641.1. used as part of a complex pension liberation arrangement (Section D.3); and

641.2. made without advice, not for the proper purpose of the Scheme and not in the best financial interests of members (Section D.4).

642. I find that these breaches were deliberate and I also consider that Mr Kaigh intentionally selected a direct interest in registered land to perform the dual function of being a device for pension liberation and an illiquid asset to prevent any return of funds to members.

643. Given his state of mind at the time of investment, I consider that ordinary and decent people would consider this conduct dishonest. Mr Kaigh was in position of power over Mr G's pension assets and he used this power for his own purposes and to avoid releasing funds to Mr G.

Payment of administration fees

644. With regard to the payment of administration fees, I set out at Section D.6.2 above that Mr Kaigh and Mr McNally paid out grossly excessive sums in breach of statutory requirements. In Mr McNally's case with respect to the Eleven Scheme, this was a direct conflict of interests; as sole director of the administration company he was effectively acting both as payer for, and recipient of, the administration services. He therefore stood to gain from the fees, which were exorbitant. I find that this was an intentional arrangement to advantage himself. It is implausible that he considered the amount of the fee was reasonable. Ordinary and decent people would consider this conduct to be highly dishonest behaviour when Mr McNally was responsible for looking after the Eleven Scheme's membership's interests.

645. In Mr Kaigh's case, although from the evidence I have seen there was no direct advantage to himself arising from the administration fee payments, I consider it is more likely than not that he and Mr McNally were co-operating to move funds from the members' pots in the SHK Scheme and Gilbert Scheme to Mr McNally's company, PAR. It is clear that Mr Kaigh and Mr McNally were working closely together, not only through the way that scheme administration was delegated to Mr McNally's company, PAR, but also their co-involvement in the SHK Scheme's inception. I note they both signed the establishing Trust Deed. Mr Kaigh was also later appointed Eleven Scheme trustee, taking over from Mr McNally. I therefore find, on the balance of probabilities, that Mr Kaigh was working with Mr McNally to diminish the SHK Scheme and Gilbert Scheme members' pots and move funds outside the two trusts. According to the standards of ordinary and decent people, this behaviour cannot be considered at all honest.

Other breaches of duty and maladministration

646. In addition to my specific findings of dishonesty in relation to the eight investments and payment of administration fees, I also consider that the other breaches of duty²⁸, breaches of TPR's Codes of Practice and maladministration by Mr Kaigh and Brambles

²⁸ Excluding investment duties for the balance of the investments, which I will consider further below.

that I have identified, primarily (but not exclusively) set out in Sections D.6.1 and D.6.3, above, were informed by improper motivation.

647. Viewed through the lens of the patterns of behaviour about which I made findings, I consider that the difficulties that the Applicants experienced when attempting to get in contact with Brambles, procure up-to-date benefit statements or transfer-out of their respective Schemes, were due to Brambles' deliberate attempts to be evasive. At all material times, Brambles was acting through Glenn House. With the intention of concealing the inability to realise any proceeds for drawing benefits, or an onwards transfer and the true destination of the misappropriated funds, I consider that vague or misleading information, or no information at all, was given to Applicants. Furthermore, no direct access was provided to the relevant Trustee.
648. Mr Kaigh, as Individual Trustee, and later as sole director of the Trustee Companies, contributed to the difficulties Applicants encountered. I have already commented on the lack of supervision of Brambles and further note that Mr Kaigh took no active steps to make himself available to members. I consider this was intentional and part of the plan to obfuscate the true nature of the transactions which the Applicants had entered into. I find the failure to keep up-to-date records or any investment advice was also due to this aim.
649. Having assessed Brambles' and Mr Kaigh's knowledge and belief regarding the administration of the Schemes and the breaches they committed, I consider that ordinary decent people would consider this behaviour was dishonest. The omissions were largely intentional with the aim of impeding the Applicants' access to what was being held for them on trust.
650. Ascertaining Mr McNally's state of mind on this specific issue is considerably more difficult given he vacated office as Individual Trustee of the Eleven Scheme relatively shortly after the relevant transactions had taken effect and was therefore not subject to the majority of the Applicants' demands for payment of pension or transfer. I therefore make no finding of dishonesty on his part, and this is reflected in my apportionment of liability for maladministration referred to in my Directions.

Alternative dishonesty test (1): *Fattal v Walbrook*

651. In the alternative, I will also consider the test set out in *Fattal v Walbrook* in the event that test is the correct one to determine whether the Individual Trustees acted dishonestly. I will consider this in relation to the breaches of trust and duty pertaining to the eight investments above and in relation to the payment of administration fees. In doing so, I will consider if the Individual Trustees acted in deliberate breach of trust and either: (a) knew, or were recklessly indifferent as to whether, the breaches were contrary to members' interests; or (b) any genuine beliefs they held that what they did was in the best interests of the members were so unreasonable that no reasonable trustee could have held them.
652. The characterisation of the breaches pertaining to the eight investments, which I have set out above, clearly indicates carefully calculated conduct on the part of each

Individual Trustee. Each was engaged in a plan to incentivise prospective members with the immediate advance of funds and disburse the balance of the money transferred-in to their collaborators using the pretext of making investments, or discharging properly incurred administration fees. I have found the breaches of trust were an integral part of this conspiracy and therefore were committed deliberately. This satisfies the first element of the test.

653. The respondents have stated in their comments that the Trustees genuinely believed that they were acting in the best interests of the members by investing the pension funds in accordance with their written requests. Without any proper professional advice, I cannot see how the Individual Trustees could have supported their view that these transactions were in the members' best financial interests. I have not seen that there were any conventional pension scheme investments offered to them. As such, any choice the Applicants had was illusory and I do not accept any argument against the Individual Trustees' dishonesty that relies on the Applicant's investment selection. Given the nature of the breaches which I have found and their characterisation, this assertion does not stand up to scrutiny. It is extremely likely that it was well known to the Individual Trustees that the breaches of trust were contrary to the members' interests. Indeed, this was an obvious consequence of the financial advantage to themselves and their contacts that the Individual Trustees planned for, and which I have described in detail. Given that the Individual Trustees knew about the detriment to members arising from their deliberate breaches of trust and went on to act regardless, it is self-evident that they were also recklessly indifferent to the members' interests.

654. In the alternative, if the Individual Trustees are right that they genuinely believed they were acting in the best interests of members when investing their funds, I consider the Individual Trustees' beliefs were so unreasonable that no reasonable trustee could have held them. All the investments were unconventional and manifestly inappropriate and the initial £3,000 administration fee was so disproportionately large that any notion of acting in the members' interests is implausible. Therefore, I consider the breaches of trust were deliberate and both tests in (a) and (b) from *Fattal v Walbrook* are satisfied; it follows that the Individual Trustees acted dishonestly by this standard.

Alternative dishonesty test (2): *Armitage v Nurse*

655. As explained above, I consider that the case law establishes an objective standard of honesty by which a trustee's subjective belief and knowledge is measured. However, I will also consider the test set out in *Armitage*, which appears to characterise dishonesty by the subjective thoughts of the person acting in breach of trust.

656. It was established in *Armitage* that "*The duty of the trustees to perform the trusts honestly and in good faith for the benefit of the beneficiaries, is the minimum necessary to give substance to the trusts*" (para 29). A trustee's duty to act honestly in good faith are part of the "*irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust*".

657. In respect of entering into the eight investments referred to in paragraphs 615 – 643 and elsewhere above and using the investments as a cover for a liberation transaction, I made findings that the Individual Trustees were acting deliberately in breach of trust and with an intent to advantage themselves at the Applicants' expense. I found that the Individual Trustees appreciated their conduct was detrimental to the members' interests.

658. On this basis, even if the test for honesty were entirely subjective, I find that the Trustees' breaches of trust were committed with a dishonest state of mind, and they cannot rely on the exoneration clause in the Trust Deeds to excuse them for the breaches of trust that they have committed.

Application of *Ivey v Genting* test to remaining investments

659. I have found above that eight of the Schemes' investments were made in breach of trust and both Mr Kaigh and Mr McNally were acting dishonestly in this respect. There were of course several other investments in the Schemes made by the Individual Trustees, which are not covered directly in the above analysis, and which I will address in the following paragraphs. Whilst these investments had irregularities in common with the investments, set out above which were made in dishonest breach of trust, the evidence is not conclusive as to a finding of dishonesty in respect of these investments.

660. The effect of this does not mean that the Individual Trustees are exonerated in respect of their breaches of trust in relation to their investment duties, due to the operation of Section 33 of the 1995 Act (see paragraph 592, above). However, if they acted reasonably and it would be fair to excuse the Trustees from personal liability, having regard to all the circumstances of the case, then relief under s.61 of the Trustee Act 1925 may be granted.

Mederco

661. A loan was made to Mederco by Mr Kaigh through the Gilbert Scheme. Mederco was a private company, relatively recently incorporated and had a short trading history, having been incorporated approximately one year before the Gilbert Scheme's inception. Stewart Day was its director, who also controlled other investments made by the Schemes, indicating there were fewer individuals involved than the number of investment companies would suggest. These were obvious factors suggesting it was not a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

Mederco (Huddersfield)

662. A small holding of 182 shares was made in Mederco (Huddersfield) through the SHK Scheme, according to insolvency documentation at Companies House. It was a private company, relatively recently incorporated and had a short trading history, having been incorporated in 2014, more recently than the SHK Scheme's inception. Stewart Day was its director, again providing an overlap of personnel between investment

companies. These were strong indications that this was not a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

CBFS

663. Whilst investments were eventually made in CBFS through all the Schemes, the majority of funds were invested through the Gilbert Scheme and SHK Scheme after the Trustee Companies had taken over the Schemes' trustee appointments. However, before the Trustee Companies had taken over from the Individual Trustees in respect of each Scheme:

663.1. Mr Kaigh as Individual Trustee invested Mr G's and Mr Y's funds in CBFS; and

663.2. Mr McNally made a small loan to CBFS through the Eleven Scheme.

664. It is apparent from the information memorandum (see paragraph 251ff., above), that CBFS was unregulated and involved significant risks. It was also a private company and any investment could encounter significant liquidity challenges. I have not seen loan documentation in respect of the investments in CBFS before the Trustee Companies took over, which is very concerning. There were therefore strong indicators that this was not a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

Fleet Street

665. A small investment was made in Fleet Street by Mr Kaigh through the SHK Scheme. Fleet Street is a private company with a short trading history, incorporated over three years after the inception of the SHK Scheme itself. It is therefore unusual for a pension scheme investment, not being traded on an exchange, and would not be considered to be a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

Gematria Estates Limited

666. Mr Kaigh, acting as Individual Trustee, invested in Gematria Estates Limited through the Gilbert Scheme. Gematria Estates Limited was based offshore in Gibraltar and was therefore overseas and subject to additional difficulties and impediments regarding accessing funds and monitoring the investment. It was therefore an unusual company for an England and Wales pension scheme to invest in. There were unusual features about this investment, including the fact it owned a significant shareholding in Tennyson, another of the Gilbert Scheme's investments. This brought about a significant concentration of risk. Given these factors, it was not a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

Turcotte Corporation Limited

667. Turcotte Corporation received investment funds from the Eleven Scheme, acting by Mr McNally, and the Gilbert Scheme, acting by Mr Kaigh. Turcotte Corporation Limited was based offshore in Gibraltar and was subject to the same supervision difficulties as

Gematria Estates Limited, referred to in paragraph 666 above. I note there was also a concentration of personnel managing this investment and other of the Schemes' investments which were also based in Gibraltar, with David Hemsley acting as their director. There were therefore strong factors to conclude that this was not a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

One Islington Plaza Limited

668. An investment of £34,825 was made through the SHK Scheme by Mr Kaigh, acting as Trustee. One Islington Plaza Limited was a recently incorporated private company and had a short trading history. The shareholding could not easily be sold, for example, on a regulated exchange. I find that a reasonable trustee would not have entered an investment of this nature.

669. In 2018, the Gilbert Scheme received shares attributable to Mr G's holding *in specie* from the Mapleleaf Scheme; this transaction was made whilst Gilbert Trading was the Trustee Company of the Gilbert Scheme, so will be considered below (see paragraph 685).

Harper International Consultants Limited

670. I made no finding of dishonesty on Mr Kaigh's part in paragraph 637 above, in respect of the Gilbert Scheme investment in Harper International Consultants Limited. However, the investment was still based offshore and subject to significant liquidity and supervision risks. There were also personnel overlaps with other Gilbert Scheme investments as David Hemsley acted as director of several of them. Therefore, entering into the investment was not the decision of a trustee, acting reasonably.

Baltic House Developments Limited

671. A loan note of £15,096.90 was held by the SHK Scheme investing the proceeds from the sale of ordinary shares in GBT Partnership. It appears the investment in Baltic House Developments Limited was made by 5 April 2016, although the identity of the company issuing the loan note appears only to have been communicated to Mr E in 2024. At the time of investment, it had a very short trading history having incorporated in only the previous year. It is unusual for an occupational pension scheme investment, not being traded on an exchange, and would not be considered to be a suitable pension scheme investment that a trustee, acting reasonably, would enter into.

D.8.3 Section 61 of the Trustee Act 1925

672. As the Trustees are unable to rely on the exoneration provisions under the Trust Deed and Rules, there remains for consideration Section 61, under which I may direct relief to the Trustees wholly or partly of that personal liability if it appears to me that: (1) the Trustees acted honestly; (2) they acted reasonably; and (3) it would be fair to excuse the Trustees from personal liability, having regard to all the circumstances of the case.

673. Having already found, in Section D.8.2 above, that the Individual Trustees failed to act honestly in respect of many of the breaches found, or reasonably in the remaining

cases where no dishonesty was found, I cannot see that the criteria set out in Section 61 can apply to the Individual Trustees' acts or omissions. I also note that none of them attended the Oral Hearing to be questioned on the matter. Therefore, I find that they are unable to rely on Section 61 for any relief from personal liability for the various breaches of trust and maladministration that I have found.

D.9 Accessory Liability

674. For the reasons set out in Section D.8 above, I consider that Mr McNally and Mr Kaigh, are personally liable for the breaches of trust (and also maladministration in respect of Mr Kaigh) committed while they were appointed as the Individual Trustees of the Schemes. However, Eleven Property, SHK Property Services and Gilbert Trading were appointed as Trustee Companies on 14 July 2016 and Mr Kaigh resigned as Individual Trustee on the same day. Therefore, the following transactions took place after the Trustee Companies had been appointed:

674.1. execution of the 2018 CDWL Loan Agreements and 2019 CBFS Loan Agreements;

674.2. the *in specie* receipt into the Gilbert Scheme of shares in One Islington Plaza from the Mapleleaf Scheme, valued at £64,925;

674.3. in relation to Mr G, the sale of his investments in the Gilbert Scheme to CDWL at a nominal loss of £96,459.45 and immediate reinvestment of £60,000 in CDWL in November 2018; and

674.4. the investment in TMG Swansea Limited of £123,798.42 through the SHK Scheme.

675. The Trustee Companies will primarily be liable for the breaches of duty and trust involved, unless exonerated under the terms of the trust. Trustee directors will generally be able to shelter behind the corporate veil in relation to any acts or omissions they carry out on behalf of a corporate trustee unless a director is found to be liable as a dishonest accessory to a breach of trust. Parties other than a trustee director can also act as a dishonest assistant.

676. 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.”

677. So, broadly: (1) there must be a breach of trust by the trustee of a trust, (2) the trustee director or other party must have *procured or assisted* in the breach of trust, and (3) the trustee director or other party must have acted dishonestly.

2018 CDWL Loan Agreements and 2019 CBFS Loan Agreements

678. I have already found that the 2018 CDWL Loan Agreements and the 2019 CBFS Loan Agreements (the latter consolidated previous lending between CBFS and the SHK Scheme and the Gilbert Scheme) which included sums representing Mr Y's investment within the SHK Scheme and Mr G's investment within the Gilbert Scheme, amounted to breaches of trust and investment duty (section D.4 above).
679. Although these agreements were not actually signed for or on behalf of the Trustee Companies, I infer from the way that they have been produced as evidence, and the representations from Brambles, that funds of the amounts in the agreements were lent to CDWL and CBFS, that the lending in question took place and the relevant Trustee Company is responsible for this.
680. Mr Kaigh was the sole trustee director of both Gilbert Trading and SHK Property Services and, absent any evidence to the contrary such as a power of attorney, was the only person with authority to effect the lending on their account. Assistance in this context means conduct which assists the commission of the breach of duty²⁹ and must enable the breach by the trustee to be committed.³⁰ Although Mr Kaigh was the only person who could assist the Trustee Companies in breach of trust, the lack of his signature on the loan agreements casts doubt on whether he actually did so and whether he assisted the Trustee Companies.
681. The relevant test to establish dishonesty is set out in *Royal Brunei v Tan*, summarised in *HR & Ors v JAPT & Ors* [1997] EWHC Ch 371:
- "It is Royal Brunei dishonest for a person, unless there is a very good and compelling reason, to participate in a transaction if he knows it involves a misapplication of trust assets to the detriment of beneficiaries or if he deliberately closes his eyes and ears or chooses deliberately not to ask questions so as to avoid his learning something he would rather not know and for him then to proceed regardless."* (paragraph 61)
682. As at 16 May 2018 when the 2018 CDWL Loan Agreements were dated, I found in Section D.8.2 above that Mr Kaigh had previously, as Individual Trustee, been instrumental in distributing the Schemes' assets knowingly and dishonestly. It would have been reasonable for him to know:
- 682.1. CDWL had no significant trading history and there was little prospect of repayment. In this respect, I note CDWL had not yet submitted any accounts to Companies House.
- 682.2. The SHK Scheme and Gilbert Scheme were already indirectly exposed to CDWL through investments in CBFS and this additional investment magnified the exposure.
683. Each of the three 2019 CBFS Loan Agreements stated "*This facility consolidates all previous lending between the two parties. At the date of this agreement the balance of*

²⁹ *Madoff Securities International v Raven* [2013] EWHC 3147 (Comm).

³⁰ *Goldtrail Travel Ltd v Aydin* [2014] EWHC 1587 (Ch).

the loan facility is £[X].” I have seen no preceding loan agreements between CBFS and either the SHK Scheme or the Gilbert Scheme. As at 8 October 2019 (the date of alleged execution), Mr Kaigh had already consciously been acting to disburse the Schemes’ assets amongst connected parties. It would have been reasonable for him to know:

683.1. CBFS’s financial position was precarious. In this respect, I note that accounts filed in respect of CBFS at Companies House for the year ending 31 January 2018 show CBFS owed £10,791,623, primarily to trade creditors falling due within one year. Its net current liabilities totalled £1,085,856 and the assets it had to set off against the total amount owed primarily comprised the debt that was owed to CBFS by others.

683.2. The 2019 CBFS Loan Agreements provided for the sum to be loaned on an unsecured basis, so would be subordinate to any secured loans in the priority order on an insolvency. I have seen no evidence any security was requested, and there were several charges outstanding when the 2019 CBFS Loan Agreements were dated.

684. I find that the facts, as set out above, give rise to considerable suspicion, but there is insufficient evidence relating to the steps Mr Kaigh took to assist the Trustee Companies and his actual knowledge and belief at the time (as opposed to what he reasonably should have known) to make a finding of dishonest assistance. Nevertheless, SHK Property Services and Gilbert Trading will be liable for the breach of investment duties involved, which, due to the operation of Section 33 of the 1995 Act, they are not exonerated from. It is clear from this analysis that the investments were in no way reasonable to enter into meaning there is no prospect of relief under s.61 of the Trustee Act 1925.

Transfer-in of One Islington Plaza shares

685. I have already found that the failure to review the investment in One Islington Plaza and, having discerned that it was wholly inappropriate for the purposes of Mr G’s funds in the Gilbert Scheme, to sell it, was in breach of trust and in default of statutory investment duties. It follows that Gilbert Trading as trustee is liable for this omission and the associated liability accruing to it, which due to the operation of Section 33 may not be exonerated. The omission to review the investment was also clearly unreasonable and there is no prospect of relief under s.61.

686. As a breach by omission, the failure on Mr Kaigh’s part to take any steps to conduct an investment review of this (or any) company is sufficient to confirm his assistance in the breach of trust. Indeed, he was the only natural person through whom Gilbert Trading as trustee could act. However, it is unclear whether Mr Kaigh turned his mind at all to this investment after its reception into the Gilbert Scheme from the Mapleleaf Scheme and whether this breach of trust carried any improper intentions. It may have been committed purely by omission, and on this basis, the evidence does not point to Mr Kaigh acting as a dishonest assistant.

Gilbert Scheme sale of investment and re-investment in CDWL

687. In relation to the November 2018 sale of the assets in Mr G's pension fund, I found earlier in paragraph 574 above, that this was, on the balance of probabilities, an arrangement made deliberately to diminish Mr G's claim to his full funds. Email correspondence with Brambles indicates that Glenn House, on behalf of Brambles, was liaising with Gilbert Trading as Trustee Company (whose representative I find, on the balance of probability, was most likely Mr Kaigh) in order to bring about this arrangement. The letter signed by Mr G, consenting to the sale, was addressed to the '*Trustees of the Gilbert Trading Pension Scheme*'. It follows that both Brambles and Mr Kaigh assisted in this sale which resulted in the breaches of a diminution of fund assets (£96,459.45) and unauthorised reinvestment in CDWL (£60,000) totalling £156,459.45.

688. In relation to the 2018 sale of Mr G's pension assets, I find Mr Kaigh knew he was eroding Mr G's assets substantially. In light of this, I have not received a satisfactory explanation on why he permitted the sale to proceed. I find Mr Kaigh also knew that he was letting Mr Paul Dalton discount CBFS's debt in relation to the Gilbert Scheme, and acquire the storage units at a discount, through CDWL as purchaser. Given the links between Mr Kaigh and Mr Dalton, set out above at paragraph 505ff., I find that Mr Kaigh was dishonestly arranging for Mr G's assets to be misappropriated. I consider that Brambles, by virtue of Mr House's knowledge and close involvement with Mr Kaigh, was cognisant of this arrangement; Brambles by its own admission was facilitating the sale with Gilbert Trading and CDWL. Brambles likely knew, and if not, at least deliberately closed its eyes and ears instead of raising further questions about the suspicious transaction. I find, therefore, that both Mr Kaigh and Brambles were acting as dishonest assistants in respect of this transaction.

689. Both Mr Kaigh and Brambles are liable to account in equity in respect of the breaches of trust by Gilbert Trading in relation to the 2018 sale of Mr G's assets. As accessories, they are both jointly and severally liable with Gilbert Trading. None of the three parties has the benefit of the exoneration clause as exoneration clauses are ineffective in cases of dishonesty. Mr G never saw any further benefit of the £96,459.45 by which his investments fell in value, but he did receive further benefit from the £60,000 reinvested in CDWL, of which I have taken account in the Directions and apportionment of liability.

TMG Swansea investment

690. I have already found that the investment in TMG Swansea, made through the SHK Scheme, was made in breach of trust (see Section D.4 above). Given Mr Kaigh was operating as part of a network and the fact that TMG Swansea shared a director (Mr Stewart Day) with other unsuccessful Scheme investments, such as Mederco and Mederco (Huddersfield), the concern arises that the SHK Scheme funds were invested by SHK Property Services with the intention of distributing them throughout that network at the members' expense. Whilst I consider this to be a possibility, there is not, in my view, sufficient evidence as to how this investment was made in order to discern the nature of Mr Kaigh's assistance, or whether he was acting dishonestly in this case.

691. Therefore, I consider that the liability falls to SHK Property Services only, as Trustee Company, and given the relevant breach of trust pertained to investment regulations, there is no question of exoneration due to the operation of Section 33 of the 1995 Act, and because of the manifestly unreasonable investment, there is no relief under s.61.

Jurisdiction relating to trustee directors under the 1993 Act (constructive trustee)

692. I consider that Mr Kaigh as trustee director, when dishonestly assisting Gilbert Trading, falls within my jurisdiction as a person responsible for the management of the scheme (section 146(3) of the 1993 Act), through the doctrine of constructive trusteeship. This is described in the case of *Williams v Central Bank of Nigeria* [2014] UKSC 10. Their lordships considered that the phrase “constructive trustee” refers to two distinct concepts and I draw particular attention to the second concept as follows:

“The first comprises persons who have lawfully assumed fiduciary obligations in relation to trust property, but without a formal appointment. They may be trustees de son tort, who without having been properly appointed, assume to act in the administration of the trusts as if they had been; or trustees under trusts implied from the common intention to be inferred from the conduct of the parties, but never formally created as such. These people can conveniently be called de facto trustees. They intended to act as trustees, and if the assets are not applied in accordance with the trust, equity will enforce the obligations that they have assumed by virtue of their status exactly as if they had been appointed by deed. Others, such as company directors, are by virtue of their status fiduciaries with very similar obligations.

In its second meaning, the phrase “constructive trustee” refers to something else. It comprises persons who never assumed and never intended to assume the status of a trustee, whether formally or informally, but have exposed themselves to equitable remedies by virtue of their participation in the unlawful misapplication of trust assets. Either they have dishonestly assisted in a misapplication of the funds by the trustee, or they have received trust assets knowing that the transfer to them was a breach of trust. In either case, they may be required by equity to account as if they were trustees or fiduciaries, although they are not.” [my emphasis]

693. Their Lordships also referred to the statement made by Ungood-Thomas J in *Selangor United Rubber Estates Ltd v Craddock (No 3)* [1968] 1 WLR 1555:

“It is essential... to distinguish two very different kinds of so-called constructive trustees: (1) Those who, though not appointed trustees, take upon themselves to act as such and to possess and administer trust property for the beneficiaries, such as trustees de son tort. Distinguishing features for present purposes are (a) they do not claim to act in their own right but for the beneficiaries, and (b) their assumption to act is not of itself a ground of liability (save in the sense of course of liability to account and any failure in the duty so assumed), and so their status as trustee precedes the occurrence which may be the subject of claim against them.

(2) Those whom a court of equity will treat as trustees by reason of their action, of which complaint is made. Distinguishing features are (a) that such trustees claim to act in their own right and not for the beneficiaries, and (b) no trusteeship arises before, but only by reason of, the action complained of. [my emphasis]

694. I found that Mr Kaigh procured and/or assisted Gilbert Trading's breaches of trust and is therefore liable to account in equity as though he were a trustee. By the same token, he is treated as a trustee for the purposes of my jurisdiction. I see no apparent reason why the Trustee Companies were appointed as trustees other than perhaps as a shield for Mr Kaigh's liability. Mr Kaigh has declined to offer any substantive explanation for his resignation and the appointment of the Trustee Companies, which he was able to execute as sole trustee and as their sole director and shareholder.

Jurisdiction relating to an administrator as a dishonest assistant under the 1993 Act

695. Brambles also acted as a dishonest assistant in relation to Gilbert Trading. Brambles is within my jurisdiction as administrator of the Gilbert Scheme at all material times from the date of its appointment.

D.10 Procedure

696. The Respondents have complained that they have been treated unfairly on a number of points relating to the investigation process, and that I have been conducting a biased investigation.

Legal representation

697. Subsequent to the Oral Hearing, I issued a second preliminary decision on 1 July 2024, and provided all Parties the opportunity to comment on its content. Following its issuance, Brambles requested an extension to respond until 30 September 2024, referring to the need to instruct legal advisers. I agreed an extension until 20 August 2024, which was reasonable in the circumstances. Brambles reiterated that the respondents have not had sufficient time to get advice on the matter. The Respondents have had ample time to engage legal professionals to represent them. In this respect, I note:

697.1. The last Formal Response request for the Applicants was sent on 13 September 2022, so the Respondents have been well aware of the complaints made against them for a considerable period of time; and

697.2. The Oral Hearing (which none of the Respondents attended) was held on 26 October 2022, before which the key issues in the investigation were adequately flagged in the notice of hearing and list of issues.

697.3. A further submission made by Brambles on 5 September 2024, considerably past the deadline, was admitted for consideration.

It does not therefore hold true that the Respondents have not had time to instruct legal representation or have otherwise been treated unfairly.

Conduct of investigation

698. Brambles has accused me of conducting a biased investigation in order to reach a pre-determined outcome of dishonesty. Brambles's sole director, Mr Glenn House, purportedly, including the other Respondents, have suggested I have an ulterior motive to try and secure compensation from the Fraud Compensation Fund (FCF) for the Applicants. They have said there are numerous instances of bias and say that the entire Determination cannot be relied on.

699. These accusations are firmly refuted. I am making my Determination from a careful assessment of the evidence submitted by the parties. I act impartially and decide disputes in accordance with established legal principles.³¹ Having done so, I expect my Directions to be complied with and redress paid by the Respondents, as set out, irrespective of whether any claim is to be made to the Fraud Compensation Fund.

700. Brambles has made specific assertions of bias which are demonstrably false. For example:

700.1. As referred to in paragraphs 313 and 440, the Respondents said that my failure to consider the full provision of regulation 7(2) of the Investment Regulations meant I misquoted the legislation, which was indicative of dishonest and biased decision-making. The proviso was in fact quoted in full in the second preliminary decision.

700.2. As referred to in paragraph 314, the Respondents said my failure to ask why many of the investments were located in Gibraltar was indicative of bias. Under section 149(4) of the 1993 Act, I may make such inquiries as I think fit and have the discretion to hold an oral hearing. There was no omission on my part; it was in fact the Respondents who refused to attend the Oral Hearing and submit to questioning on the matter.

Oral hearing

701. The Respondents queried my motivation for holding an Oral Hearing when I referred in my second preliminary decision to the potentiality for making findings of accessory liability in this investigation. Brambles doubted whether this reasoning was true and requested proof of it, dated prior to the Oral Hearing.

702. In the Notice of Hearing sent to the Respondents dated 28 September 2022 and therefore sent to the Respondents in advance of the Oral Hearing, I set out the list of issues which would be considered at the Oral Hearing. This set out in detail the matters to be covered at the Oral Hearing, and specifically set out the legal test for liability as a dishonest accessory to a breach of trust, as in *Royal Brunei v Tan*. Brambles has not alleged any particular disadvantage they consider the Respondents suffered as a result of being unaware of the purpose of the Oral Hearing, but due to the Notice of Hearing

³¹ *Arjo Wiggins v Ralph* [2009] EWHC 3198 (Ch), *Henderson v Stephenson Harwood* [2005] Pens LR 209 (para. 12); *Hillsdown Holdings v Pensions Ombudsman* [1997] 1 All ER 862, 899; *Wakelin v Read* [2000] PLR 319.

and List of Issues, any claim that they did not have notice about the intended content of the Oral Hearing is invalid.

Scope of complaints

703. The Respondents have disputed the way that Ms Y, Mr S and Mr Y expanded their complaints to cover relevant parties to this dispute. They have stated the relevant Applicants did not do so independently and accused TPO of failing to be impartial and encouraging complaints against other parties.

704. It is clear from Ms Y's, Mr S's and Mr Y's complaints and evidence that there was significant uncertainty and confusion as to what happened with their pension and who was responsible for the problems encountered in transferring or otherwise accessing it. These Applicants identified Brambles, their main point of contact, as the party at fault and their reason for complaining. Upon investigating, it was clear that the relevant Trustees were also answerable to the matters being complained of. Furthermore, the circumstances suggested that Brambles did not permit the Applicants access to the Trustees or identify the Trustees as proper respondents to the complaints, thus the Applicants were unlawfully prevented from identifying the correct Respondents.

705. I therefore put the prospect of including the relevant Trustees as parties to the Applicants, who confirmed their agreement to this. By their agreement, I consider the Trustees were validly added as parties to the complaints. The appropriateness of operating in this manner has been confirmed by the Court of Appeal, which has recognised the informality of my investigations and definition of the issues by the complaint and response. Indeed, Millett, LJ has confirmed my ability to extend the scope of a complaint, saying "*I do not doubt that he can invite the complainant to add to his complaint, and may suggest new matters of defence to the other party, and so extend the scope of the enquiry.*"³²

706. I consider that it was wholly appropriate to ensure the investigation considered the role of all relevant parties and firmly reject the notion that these were improper steps to take or indicative of bias.

Bundle and evidence

707. The Respondents said I have refused to read evidence relating to Mr G's complaint, in particular considerable volumes of correspondence between Brambles and Mr G, and this is indicative of bias.

708. This issue originally arose shortly before the Oral Hearing, when Brambles requested that approximately 17,000 pages of correspondence (previously submitted in April 2022) should be added to the hearing bundle. Having asked what points the Respondents were trying to make and whether Brambles could point out the relevant documents, Brambles replied they could not narrow down the documents and a one-

³² *Hamar v French* [1998] PLR 321 at para. [73].

line justification was provided for submitting this documentation, suggesting that it might be necessary for Mr Long to be questioned about it.

709. In accordance with paragraph 9 of the Notice of Hearing dated 28 September 2022, I decided on 17 October 2022, replying to a request made on 14 October 2022, that the additional documents would not be taken into account for the purposes of the Oral Hearing. In any event, no issue arose practically as none of the Respondents nor Mr G attended the Oral Hearing, so no relevant questioning could have taken place in respect of the documents.

710. After the Oral Hearing, all correspondence has been reviewed on the papers, and any allegation of bias is firmly refuted.

E. Decision

711. The Trustees have committed multiple breaches of trust and acts of maladministration, as summarised in paragraph 593 above, which have caused the loss of the Applicants' pensions.
712. Mr Michael McNally, in his capacity as Individual Trustee of the Eleven Scheme, cannot rely upon any exoneration provisions or indemnity, as explained in Section D.8.2 above, and is afforded no relief from personal liability for the consequences of those breaches of trust I have found he has committed. He is however exonerated from those acts of maladministration identified in Section D.6.1 (as explained in paragraph 650 above).
713. Mr Simon Hamilton Kaigh, in his capacity as Individual Trustee of the SHK Scheme and the Gilbert Scheme, cannot rely upon any exoneration provisions or indemnity, as explained in Section D.8.2 above, and is afforded no relief from personal liability for the consequences of those breaches of trust and acts of maladministration I have found he has committed as Individual Trustee. In respect of those breaches of trust committed by SHK Property Services and Gilbert Trading, I have found in Section D.9 above, that Mr Kaigh is personally liable to account to the Gilbert Scheme as a dishonest accessory in relation to losses arising out of the 2018 sale of Mr G's assets (but in respect of no other breach). Brambles is also liable to account for this loss as a dishonest assistant.
714. SHK Property Services and Gilbert Trading in their capacity as Trustees are liable for those breaches of trust and acts of maladministration committed whilst they were in office, identified in paragraphs 674.

E.1 Value of each Scheme's assets

715. For the reasons set out directly below, I consider that the Schemes' investments have no monetary value.

Storage units at Strongbox

716. I understand from Land Registry records that the storage unit leases demised in Ms Y and Mr G's cases have not been sold on, since being acquired by the Eleven Scheme and the Gilbert Scheme respectively. They are still held by each Individual Trustee, so: Mr McNally, as trustee of the Eleven Scheme and Mr Kaigh, as trustee of the Gilbert Scheme. I note this is the case in respect of Mr G's units, despite the purported sale of his units to CDWL in late 2018.
717. Whilst therefore, the land interests still exist they have not been transferred to the current Trustee of each Scheme. In the ordinary course, the automatic vesting provisions in section 40 of the Trustee Act 1925, do not operate to transfer leasehold interests, unless all required consents are obtained in advance (see section 40(4)(b)). The fact that the Individual Trustees are still registered as the proprietors supports this. It follows that they are not technically in the relevant Trustee Company's control.

718. In any event, Mr G's interests in storage pods purport to have been sold to CDWL. Further, Ms Y instructed for her interest in the storage pods to be sold in April 2015. No sale has yet been completed, with Paul Dalton of Strongbox Self-Storage stating as much in a letter dated 1 September 2021.

719. I find, on the balance of probabilities, that the investments in Strongbox Self-Storage are illiquid and likely worthless. In the event that is not the case, the proceeds of any sale achieved from these units can be used by the relevant Trustee towards the awards set out in the Directions, below.

3TC House

720. The relevant 3TC House investments are, Unit [w] in relation to Mr Y, and Unit [b] in relation to Mr G. I note Mr G's member-directed investment form referred to Unit [e] of 3TC House, but I have seen no further evidence of its acquisition. Having reviewed the records at the Land Registry, I note that these land interests in the separate units no longer subsist; instead, both units are now demised under one lease of 250 years in duration dating from 15 May 2018. The parties to the lease are CDWL as landlord and Hemrite Ltd as tenant, registered at Palm Grove House, Tortola, VG1120, British Virgin Islands.³³ In respect of Unit [e], any interest held by the Scheme has been replaced by a 250-year lease of Unit [e] and Unit [k], also from 15 May 2018. CDWL is the landlord, and Artpole Ltd, registered at the same address in the British Virgin Islands, is the tenant.

721. As the land interests which the SHK Scheme and the Gilbert Scheme acquired appear to have been dissolved and superseded in these two cases, I must assume that neither Scheme still has an interest in 3TC House which can be sold. I therefore find, absent any evidence to the contrary, that the 3TC House investment has no monetary value.

CDWL

722. CDWL entered into a Company Voluntary Arrangement on 3 February 2022. CDWL entered administration on 7 June 2022. In the administrator's progress report filed at Companies House on 13 January 2023, it is stated "*It is not anticipated that the secured creditor will be paid in full...*" and "*Unsecured claims were estimated at £2,718,901.90... It is not anticipated that a dividend will be paid to unsecured creditors.*" Given the Gilbert Scheme and the SHK Scheme are unsecured creditors, it seems likely that the investments in CDWL will not be repaid. I find, on the evidence available, that the investments in CDWL have no monetary value.

Mederco

723. Mederco was dissolved on 20 April 2022. I find therefore that the investment in Mederco has no monetary value.

³³ This is the same address as Silver Gina Ltd, which was granted a sub-charge of a mortgage in relation to the land at Maryport, Cumbria, which Harper International Consultants Limited had acquired. See paragraph 270 above.

Mederco (Huddersfield)

724. Administrators were appointed in respect of Medero (Huddersfield) Limited on 28 March 2019. I note from the most recent Administrator's Report, filed at Companies House on 31 October 2023, that there are four secured creditors, including CBFS, owed a current estimated total of £27,538,155. Creditors rank ahead of shareholders, including the SHK Scheme. The report states that: "*it is currently anticipated that Saving Stream Security Holding Limited [one of the secured creditors] will suffer a shortfall on their lending following the sale of the Property. It is therefore anticipated that there will be no distribution to any class of creditor other than Saving Stream Security Holding Limited following the sale of the Property based upon the claims received to date.*" On 6 July 2024, Mederco (Huddersfield) was dissolved. I find, on the evidence available, that the investment in Mederco (Huddersfield) has no monetary value.

Tennyson

725. An Order to wind up Tennyson was issued by the High Court on 24 March 2021. In the liquidator's progress report filed at Companies House dated 6 June 2022, it appears that the main asset owned by Tennyson at the progress report filing date was a leasehold interest in a number of student pods at Hockney Court, Bradford. Due to the disproportionate cost of realising any value from a sale, the liquidator has disclaimed any interest in the pods. The only other asset identified is monies owed under a Director's Loan Account, but any recovery was considered unlikely after the relevant director's bankruptcy. CBFS is a secured creditor for £712,726 and there is an unsecured creditor claim for £721,538. No realisations were expected to be made to secured or unsecured creditors, and given the Gilbert Scheme's and SHK Scheme's ranking in the proceeds of liquidation is below secured and unsecured creditors, I find that the Gilbert Scheme's and SHK Scheme's shareholding in Tennyson has no monetary value.

CBFS

726. CBFS is currently in a creditors' voluntary liquidation process. According to the Liquidator's latest statement of receipts and payments dated 24 May 2024, 14 claims totalling approximately £4,000,000 had been received from unsecured creditors. The amount due to unsecured creditors was stated to be uncertain and the quantum and timing of any dividend was stated to be uncertain. Therefore, I find, on the evidence available, that the 2019 CBFS Loan Agreements have no monetary value as at the date of this Determination.

Fleet Street

727. Fleet Street is currently in administration. It is stated in the Administrator's progress report filed at Companies House on 10 June 2022 "*it is anticipated there will be insufficient funds realised after defraying the expenses of the Administration to pay a dividend to creditors, other than to the secured creditors and the relevant UN1 holders and as a result, it is anticipated the Company will move to dissolution once the*

Administrators' work is complete." The report identifies approximately £9 million in secured and unsecured creditors.

728. According to the Administrator's progress report filed at Companies House on 20 December 2022, Fleet Street's primary asset was sold. The proceeds were allocated by order of the court to certain parties, which do not include any of the Schemes. In a report filed at Companies House on 13 June 2023, it was reported that no unsecured creditors would receive a distribution. Fleet Street was dissolved in February 2024. On this basis, I find that the SHK Scheme's interest in Fleet Street has no monetary value.

GBT Partnership

729. GBT Partnership was dissolved by compulsory strike off on 6 September 2016 and therefore no longer exists. On this basis, I find that there is no monetary value in GBT Partnership.

Gibraltar companies

730. Harper International Consultants Limited, Turcotte Corporation Limited, Gematria Estates Limited and POD Estates Limited have all been struck off by the Registrar. On the balance of probabilities, I find that none of these investments have any monetary value.

731. Priority Solutions Limited is listed as a live company. However, the shareholding is listed solely as Acquarius Management Services Limited, registered in Gibraltar. This indicates that the Schemes' shareholdings in Priority Solutions Limited have been subsequently transferred. Furthermore, as of September 2022, no annual return had been filed since December 2019 and no accounts had been filed since May 2018. This raises concerns that it may also be due to struck off as with the other Gibraltar companies. Due to these concerns, I consider that, on the balance of probabilities, the investments in Priority Solutions Limited have no monetary value.

TMG Swansea

732. TMG Swansea currently has an active proposal to strike it off and has no director. There are three charges outstanding and unsatisfied at Companies House, which include fixed and floating charges over all its assets. None of the charges are in favour of the SHK Scheme. On the basis of this information, I find that, on the balance of probabilities, TMG Swansea is unlikely to have any monetary value.

Great Moor Street, Bolton

733. The investment in Great Moor Street, Bolton, by the Gilbert Scheme appeared to have been made directly in the land itself, as evidenced by Mr G's member-directed investment form. I note the Gilbert Scheme is no longer the proprietor and the relevant titles were transferred to Franklin International (Gibraltar) in 2015. At some point between 2014 and 2016 Mr G's interest in this investment was changed to Priority Solutions Limited.

734. Therefore, it would appear the Gilbert Scheme no longer has an interest in this investment and therefore I find it is of no monetary value.

One Islington Plaza

735. One Islington Plaza appointed administrators on 13 November 2020. On 7 November 2023, a move from administration to dissolution was finalised and subsequently filed at Companies House. Attached to this notice was the administrator's progress report to the period 12 May 2023. This stated that it was not anticipated that the secured creditor would be paid in full. On 13 February 2024, One Islington Plaza was dissolved. On this basis, it would appear there is no monetary value in the shareholdings which the SHK Scheme and Gilbert Scheme have.

Baltic House Developments Limited

736. Baltic House Developments Limited has been in liquidation since May 2018. In the notice of final account prior to dissolution dated 19 July 2024, the joint liquidators confirmed that no payments were made to either secured or unsecured creditors in the liquidation. On this basis, there is no monetary value in the loan note in Baltic House Developments Limited held by the SHK Scheme.

E.2 Impact on individual Applicants

737. In their written submissions and at the Oral Hearing, the Applicants communicated the effect that these matters have had on them and the distress and inconvenience caused.

Ms Y

738. Ms Y has explained that she has been stressed and concerned to think that she could lose the little pension that she had to look forward to for her retirement. She has said she was relying on these funds, as her alternative pension provision, other than state pension payable at age 66, is £17 per annum. She therefore has to be careful of her spending.

739. As context to this, it became clear to me at the Oral Hearing that Ms Y suffers from ill-health. She said then that the actions of the Eleven Scheme Trustees and Brambles have prevented her from getting her pension in order when she wanted to, due to her ill-health.

740. Additionally, she believes that the circumstances of the complaint have worsened her overall health and contributed to her need for counselling and mental health support. It is also clear that it has impacted her confidence and day-to-day life.

Mr S

741. Mr S was sufficiently concerned by the events that he referred to the possibility of taking legal action against Brambles. He was worried that it was very difficult to contact them; they were not available by telephone and did not receive responses to emails. He has said he has been scammed and the matter has been causing him mental health issues.

742. He has said that he has no other pension provision and following a stroke in May 2023, doubts being able to return to work.

Mr E

743. Mr E has referred to the inconvenience he has been through by HMRC contacting him, when he did not consider this was a possibility. He referred to Brambles as uncaring who just wanted to take his money off him. At the Oral Hearing, he spoke of his frustrations when he was unable to transfer his pension away from the SHK Scheme and has said he believes he has been scammed.

Mr Y

744. Mr Y also spoke at the Oral Hearing to the stress that unforeseen dealings with HMRC has caused him. Mr Y has said he was worried about the lack of contact he received from Brambles, and as a result has called them and emailed them over 50 times.

745. Brambles has denied it received over 50 calls and emails from Mr Y and has asked me to put Mr Y to proof on this point. I note Mr Y attended to testify at the Oral Hearing and Brambles did not attend and missed the opportunity to question him on this point. I find that Mr Y did contact Brambles on multiple occasions with no reply and I am corroborated in this view by correspondence from 2020 where Mr Y complained to Brambles directly that he had made *“30 calls to your answering service and numerous e mails”*. The precise number is not important to verify and I would not necessarily expect Mr Y to have call records to prove this.

746. Mr Y in addition was frustrated that a transfer of his pension has not been arranged. The lack of access to his pension meant he did not have ready funds to cover the costs of his mother's funeral, which he is still paying for.

747. He has limited alternative pension provision and will have to work beyond his anticipated retirement age.

748. The worries caused by the complaint have affected his wellbeing, always being on his mind and causing him anxiety, anger and depression.

Mr G

749. Mr G has also explained the inconvenience and worry he suffered by having to repeatedly request benefit statements and further details in relation to his pension, and getting no substantive answers. The lack of forthcoming pension funds caused Mr G personal problems in relation to settling medical bills on behalf of a close family member at a critical time and made his relocation abroad problematic. He was concerned that his inability to settle the medical bills jeopardised his family member's health and caused distress to his family; eventually he had to borrow to settle them. He says these circumstances caused considerable embarrassment and depression.

750. He was also concerned by having to chase for pension instalments he was informed he would receive but were never paid over to him. Mr G was likewise never able to transfer his pension.

751. Brambles has stated that Mr G was in the habit of contacting Brambles every day and was abusive towards them. Mr G has acknowledged this. I do not condone any abusive conduct, but these matters have no consequence on the liabilities attributable to the Trustees and Brambles.

E.3 Distress and inconvenience – basis for awards

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

“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...”

753. 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 the 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 in non-exceptional cases and going on to increase the award made by 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.

754. In the Smith judgment, Norris J specifically discussed (at paragraph 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 (i.e. that it exceeded the non-exceptional level).

755. It was as a direct result of the judges’ comments in the Smith and Baugniet cases that I decided to publish 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 as well, commented on the fact that the Ombudsman had occasionally awarded more than £2,000 in the past (that is, 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.

756. A review of the Factsheet and the Determination clearly shows that a high number of ‘severe’ and ‘aggravating’ factors are present in this case. By any standard, this is an

'Exceptional' case, and the circumstances of the complaints have clearly caused the Applicants an exceptional level of distress and inconvenience.

757. Having considered the Applicants' submissions I have concluded that they have suffered distress and inconvenience to slightly varying extents. Mr G's and Ms Y's distress and inconvenience has been exacerbated by the health complications encountered. While not lessening the other Applicants' experiences, I find that those individual circumstances warrant a higher level of distress and inconvenience award. This is reflected in the Directions, below. I do not accept the Respondents' statements that these amounts are disproportionate to any harm suffered.

E.4 Putting things right

758. The Respondents have stated that it is not right to order a restoration of assets to the Schemes but should only order restoration in respect of the individual members who have complained. I do not agree, and as referred to at paragraphs 14 to 16 of my Determination, I confirm I have the power and it is the right course of action to redress the Schemes in respect of the breaches of trust identified. As confirmed in those paragraphs, this creates no issue as between the Schemes' members.

The Eleven Scheme

759. Within 28 days of the date of the Determination:

759.1. Mr McNally shall pay into the Eleven Scheme the sum of £1,312,559.23, which represents the Eleven Scheme Total (which is inclusive of the Eleven Scheme Fee Amount) minus £234,716 invested in Priority Solutions Limited, less the sums paid to Ms Y and Mr S (£6,271.64); plus

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

759.3. Mr Kaigh shall pay into the Eleven Scheme the sum of £234,716, representing the amount invested in Priority Solutions Limited, which was made after he was appointed as Individual Trustee; plus

759.4. Interest on the above sum at a rate of 8% per annum simple shall be paid from the date of this Determination to the date of payment.

The SHK Scheme

760. Within 28 days of the date of the Determination:

760.1. Mr Kaigh shall pay into the SHK Scheme the sum of £1,056,111.84, which represents the SHK Scheme Total plus the SHK Scheme Fee Amount, less the sums referable to:

760.1.1. amounts paid to Mr E and Mr Y (£10,438.14);

760.1.2. investments in TMG Swansea (£123,798.42); and

760.1.3. the breaches of trust represented by the investments through the 2018 CDWL Loan Agreement and the 2019 CBFS Loan Agreements (£1,022,292.35).

760.2. SHK Property Services as Trustee Company shall pay into the SHK Scheme the sum of £1,146,090.77, which represents:

760.2.1. the investments through the 2018 CDWL Loan Agreement (£164,027.35) and the 2019 CBFS Loan Agreements (£858,265); and

760.2.2. investments in TMG Swansea (£123,798.42).

761. Plus, in each case, interest on the above sums at a rate of 8% per annum simple shall be paid from the date of this Determination to the date of payment.

The Gilbert Scheme

762. Within 28 days of the date of the Determination:

762.1. Mr Kaigh shall pay into the Gilbert Scheme the sum of £996,275.87, which represents the Gilbert Scheme Total, less the sums referable to:

762.1.1. amounts paid to Mr G as pension (£77,657.80) and an amount paid to another member as pension (£3,740.51);

762.1.2. the breaches of trust represented by the investments through the 2018 CDWL Loan Agreement (£222,495) and the 2019 CBFS Loan Agreement although excluding the lending already in place for CBFS in relation to Mr G (£186,852 - £10,280 = £176,572) (together, £399,067); and

762.1.3. the investment in One Islington Plaza (£64,925).

762.2. Gilbert Trading as Trustee Company shall pay into the Gilbert Scheme £463,992, being those breaches of trust represented by the investments through the 2018 CDWL Loan Agreement, the 2019 CBFS Loan Agreement (although excluding the lending already in place for CBFS in relation to Mr G) and One Islington Plaza.

762.2.1. Of this amount, Brambles (as a dishonest assistant) shall be jointly and severally liable for £120,461.93 which represents the amount outstanding to Mr G at the time of the sale in 2018, less pension received after that date (calculated to be £186,459.45 minus £65,997.52).

762.2.2. Mr Kaigh is also liable (as a dishonest assistant) in the same way as Brambles. However, as he is already primarily liable for the amounts originally invested his liability in this respect shall only be extended by £64,925 (the amount representative of the investment in One Islington Plaza, transferred in from the Mapleleaf Scheme) to total

£1,061,200.87. I note his liability has already been reduced by all sums paid to Mr G, as pension, in paragraph 762.1.1, above.

763. Interest on the above sums shall be paid at a rate of 8% per annum simple from the date of the Determination to the date of payment.

All Schemes

764. In the case of all three of the Schemes, to prevent double recovery, after the sums above (plus applicable interest) have been paid into the relevant Scheme and held for the benefit of the members, Mr McNally, Mr Kaigh, the relevant Trustee Company and/or Brambles as appropriate shall be entitled to recover:

764.1. any sums realised from the sale of Scheme investments or enforcement of any guarantee; and

764.2. any additional sums paid as pension to members which they are able to evidence.

765. In relation to all the Applicants, and within 28 days of a written request being submitted following this Determination, the relevant Trustee Company will arrange for a transfer out of the relevant Scheme to any Applicant which wants it, in the following amounts, which represent the amounts transferred in, less any monies paid over to them:

765.1. Ms Y: £17,527.97 (£21,161.81 transferred in less £3,633.84 paid).

765.2. Mr S: £13,551.97 (£16,189.77 transferred in less £2,637.80 paid).

765.3. Mr E: £20,010.51 (£24,387.69 transferred in less £4,377.18 paid).

765.4. Mr Y: £27,005.09 (£33,066.05 transferred in less £6,060.96 paid).

765.5. Mr G: £132,307.16 (£209,964.96 transferred in less £77,657.80 paid).

766. For the exceptional maladministration causing injustice, within 28 days of the date of this Determination the following payments shall be made:

766.1. £6,000 each to Ms Y and Mr G; and

766.2. £4,000 each to Mr S, Mr E and Mr Y.

767. On a joint and several basis in each case, the amounts in respect of:

767.1. Ms Y and Mr S from the Eleven Scheme are payable by Mr Kaigh and Brambles;

767.2. Mr E and Mr Y from the SHK Scheme are payable by Mr Kaigh, SHK Property Services and Brambles;

767.3. Mr G from the Gilbert Scheme, I note £3,500 has already been paid, leaving £2,500 outstanding, which is payable by Mr Kaigh, Gilbert Trading and Brambles.

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F. Reporting to TPR

768. I have shared this Determination, and relevant documents referred to therein, with TPR.

Anthony Arter CBE

Deputy Pensions Ombudsman

11 November 2024

Appendices

Appendix 1 – Trust Deed extracts

Extracts from the Establishing Deed of the Eleven Scheme

THIS DEED is made the 23rd day of April Two Thousand and Twelve

BETWEEN

Eleven Property Limited ... whose registered office is situated at 41 MAPLEDALE ROAD LIVERPOOL ENGLAND L18 5JE (The Provider”) [sic]

AND

Michael McNally of 41 MAPLEDALE ROAD LIVERPOOL ENGLAND L18 5JE (The Trustee)

WHEREAS

A. The Provider has determined to establish the Eleven Property Pension Scheme (“the Scheme”) with effect from this present date for the sole purpose of providing pensions and lump sum benefits under occupational pension arrangements made by individuals and individuals’ employers in accordance with the Eleven Property Pension Scheme Rules (“the Rules”) as may be amended from time to time.

B. The Provider has determined that the individuals with a right to membership of the Scheme shall include all past, present or future officers and employees of the Provider and their immediate family members and another other person [sic] who the Provider shall consent to joining the Scheme.

C. The Provider wishes to appoint the Trustee to be the first trustee of the Scheme.

D. The Provider has determined that Commerce Resources Limited shall act as the first Scheme Administrator.

NOW THIS DEED WITNESSES:

3. The Provider establishes the Scheme under irrevocable trust on the terms set out in this Deed.

4. The Provider appoints the Trustee as the first trustee of the Scheme.

5. The Provider and the Trustee shall execute such documents, give such undertakings or take whatever other action as may from time to time be required in order to establish and maintain the status of the Scheme as a Registered Scheme

under Part 4 of the Finance Act 2004 and, if applicable, registration with The Pensions Regulator.

6. The Rules form an integral part of this Deed. The definitions contained in the Rules apply for the construction of this Deed...

...

8. The person specified in Preamble D above shall be the first Scheme Administrator.

9. The Scheme Administrator shall at all times be resident in the United Kingdom and shall be responsible for the management of the Scheme in accordance with this Deed. The Scheme Administrator will secure that the Scheme is in all respects managed in accordance this Deed [sic] and in a manner consistent with the Scheme being treated as a Registered Scheme.

...

12. The Scheme Administrator on behalf of the Trustee shall collect or arrange the collection of all such contributions or other amounts as are payable by each Member or by any other person in respect of each Member under the Rules or under any document issued under them and shall apply those contributions or other amounts in accordance with the Rules as the Trustee shall direct.

13. The Trustee shall ensure that, in relation to each Arrangement of a Member, all contributions and other amounts paid by or in respect of the Member to the Scheme as permitted by the Rules are applied in accordance with the Arrangement and that, in the case of each and every Arrangement, a separate and clearly designated account is maintained in respect of each Member's Fund under the Scheme.

14. An option conferred on a Member in accordance with an Arrangement under the Scheme may be exercised only by giving notice –

14.1. in writing to the Scheme Administrator at such address as is nominated by the Trustees for that purpose; or

14.2. by such electronic means as may be approved by the Trustees for that purpose.

15. All assets, investments, deposits and monies held for the purpose of the Scheme shall be in the legal ownership and under the control of the Trustees. However, the Trustees may, with the written consent of the Provider, place those assets, investments, deposits and monies in the name of or under the control of a body corporate as nominee.

16. The Trustees shall have and be entitled to exercise all powers, rights and 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 pension schemes or otherwise.

...

19. All the expenses of administration management and investment of the Scheme shall be charged to and paid out of the designated account(s) of the Members(s) 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.

20. The Scheme Administrator may deduct from any payment made under the Scheme in respect of any person a sum equal to any tax for which the Scheme Administrator becomes liable as a result of that payment.

21. No Member or any other person shall have any claim right or interest under the Scheme or any claim against the Provider or the Trustees in connection with the Scheme except under or in accordance with the provisions of this Establishing Deed. Neither the Provider nor the Trustees shall be personally liable for any acts or omissions not due to their own wilful neglect or default and, in particular, shall have no responsibility to or in respect of a Member in connection with investments made at the option or direction of that Member or any person authorised to exercise such option or make such direction on the Member's behalf.

22. In exercising any power or giving or withholding any consent under the provisions of this Establishing Deed, the Provider shall owe no duty to any Member or any other person in exercising such power or in giving or withholding such consent.

...

25. A trustee may resign subject to the written consent of the Provider. Any trustee may, by written instrument, be removed from the office by the Provider, unless that removal would leave no remaining trustees. The Provider or Trustees with the consent of the Provider may, by written instrument, appoint additional trustees or a new trustee in place of any trustee of the Scheme whose office has otherwise been vacated.

...

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EXECUTED AS A DEED on the day and year first above written. [23 April 2012]

Extracts from the Establishing Deed of the SHK Scheme

Parties

- 1 SHK PROPERTY SERVICES LIMITED... (in this deed called the 'Principal Employer')
- 2 SIMON HAMILTON KAIGH (in this deed called The 'Trustees')

Recitals

- 1 The Principal Employer wishes to establish a pension scheme to be known as THE SHK PROPERTY SERVICES PENSION SCHEME (in this deed called the 'Scheme') intended to qualify as a registered pension scheme for the purposes of Part 4 of The Finance Act 2004.
- 2 The Trustees have agreed to be the Trustees of the Scheme.

Operative provisions

- 1 The principal Employer [sic] establishes the Scheme and appoints the Trustees as the first trustees of the Scheme.
- 2 The Scheme shall be governed by the attached Rules, PROVIDED THAT:
...
 - 2.2 the power in Rule 4.1 (Appointment and Removal of Trustees) may be exercised by deed by the Principal Employer
- 3 The provisions of this deed shall have effect from its date. [10 July 2012]
...

Extracts from the Establishing Deed of the Gilbert Scheme

Parties

- 1 GILBERT TRADING LIMITED ... (in this deed called the 'Principal Employer')
- 2 SIMON HAMILTON KAIGH (in this deed called the 'Trustees')

Recitals

- 1 The Principal Employer wishes to establish a pension scheme to be known as THE GILBERT TRADING PENSION SCHEME (in this deed called the 'Scheme [sic]) intended to qualify as a registered pension scheme for the purposes of Part 4 of The Finance Act 2004.
- 2 The Trustees have agreed to be the Trustees of the Scheme.

Operative provisions

- 1 The Principal Employer establishes the Scheme and appoints the Trustees as the first Trustees of the Scheme.
- 2 The Scheme shall be governed by the attached Rules, PROVIDED THAT:
...
2.2 The power in Rule 4.1 (Appointment and Removal of Trustees) may be exercised by deed by the Principal Employer.
- 3 The provisions of this deed shall have effect from its date. [10 July 2012]
...

Appendix 2

Extracts from the Eleven Scheme Rules, SHK Scheme Rules and Gilbert Scheme Rules (which are identical unless otherwise stated)

"1 Interpretation

1.1...

"Fund" means all contributions, gifts and transfer payments made to and received by the Scheme and any other monies, investments, policies, property or other sums or assets for the time being held by the Trustees upon the trusts of the Scheme. The allocation of any part of the Fund to any Individual Fund or to the General Fund shall be notional and for the purpose of calculating benefits only.

"General Fund" means any part of the Fund which is not an Individual Fund.

...

"Individual Fund" in relation to a Member or Dependant means that part of the Fund which the Trustees determine is attributable to him having regard to:

- (i) (in the case of a Member only) any contributions made by him and by any other person in respect of him;
- (ii) (in the case of a Member only) any reduction agreed with the Member as necessary to obtain Enhanced Protection;
- (iii) (in the case of a Dependant only) any part of the Individual Fund of a Member designated as available for the provision of income withdrawal in accordance with the Rules following the death of that Member;
- (iv) any transfers made to the Scheme in respect of him;
- (v) any allocation or reallocation of any part of the Fund in accordance with the Rules;
- (vi) any pension credit or pension debit applicable to him;
- (vii) any income, gains or losses (whether realised or not), fees, costs and expenses borne by the Fund and any actual or prospective liabilities of the Trustees (other than liabilities to pay Benefits) or of the Scheme Administrator attributable to the Fund.

The Trustees may for this purpose determine that a specific asset of the Fund, or a specific proportion thereof, shall be attributed to a specific Individual Fund (either for a fixed period or indefinitely) and may vary or

revoke any such determination, but in each case only with the consent of any person whose Individual Fund is affected.

...

2 Constitution of Scheme and Fund

- 2.1 The Scheme is governed by the trusts, powers and provisions contained in the Rules. The Trustees hold the Fund upon irrevocable trusts and with and subject to the powers contained in the Rules and may do anything expedient or necessary for the support and maintenance of the Fund and for the benefit of the Members and those claiming under them.

...

5 Trustees: Powers, duties and discretions:

- 5.1 The Trustees are granted all the powers, rights, privileges and discretions they require for the proper implementation of the Scheme, including the performance of all duties imposed on them by law.
- 5.2 The Trustees shall not be required to consult, or act upon the wishes of, Beneficiaries and section 11(1) of the Trusts of Land and Appointment of Trustees Act 1996 shall not apply to the Scheme.

...

- 5.4 The Trustees have power:
- 5.4.1 to employ and to remunerate any agent or agents (including any of themselves or one or more of the Participating Employers) in the transaction of any business of the Scheme including the payment of Benefits;
- 5.4.2 to appoint and obtain the advice of any actuary, solicitor, accountant, auditor or other adviser upon such terms as to duties and remuneration as they think fit;
- 5.4.3 to appoint and to remove (or to arrange for the appointment and removal of) any clerical or executive officers or staff as they consider desirable and to utilise the services of any officers or staff as any of the Participating Employers may make available for this purpose;

- 5.4.4 to appoint an investment manager or investment managers in relation to the whole or any part of the Fund;
- 5.4.5 to accept for the purposes of the Scheme or renounce any gifts, donations or bequests.
- 5.4.6 to pay fees and commissions to introducers or other intermediaries, financial or otherwise, on such terms as the Trustees think fit.

...

- 5.6 The Trustees have full powers of investment and application of any monies and other assets which form part of the Fund including all such powers which they could exercise if they were absolutely and beneficially entitled to the Fund. In particular and without prejudice to the generality of the foregoing the Trustees may invest or apply all or any part of the Fund in any part of the world:

...

- 5.7 The Trustees may lend monies to any person upon such security and subject to such terms as they consider fit.

...

6 Trustees: Liability, indemnity and remuneration

- 6.1 The duty of care under section 1 of the Trustee Act 2000 shall not apply to any Trustee in relation to the Scheme.

- 6.2 Subject to section 33 of the Pensions Act 1995, no Trustee shall be liable for the consequence of any mistake or forgetfulness whether of law or fact of the Trustees, their agents, employees or advisers or any of them or for any maladministration or breach of duty or trust whether by commission or omission except to the extent that it is proved to have been made, given, done or omitted in personal conscious bad faith (or negligence in the case of a professional Trustee) by the Trustee sought to be made liable.

- 6.3 The Trustees shall, to the extent permitted by section 256 of the Pensions Act 2004, be indemnified out of the Fund against any losses, liabilities, costs, charges or expenses or other amounts any of them may suffer or incur as a Trustee in connection with:

- 6.3.1 any proceedings brought in order to comply, or procure compliance by any Trustee or Beneficiary or other person, with

- any obligation imposed by law or by this deed or any agreement made under it;
- 6.3.2 any proceedings brought by or on behalf of a Beneficiary;
- 6.3.3 any other proceedings;
- 6.3.4 any liability to tax or other imposition of any kind in respect of any payment to be made to or in respect of a Beneficiary;
- 6.3.5 the execution of the trusts of the Scheme except to the extent that such amounts:
 - 6.3.6 are recoverable by the Trustees under any policy of insurance and would not be recoverable but for this exception, or
 - 6.3.7 are suffered or incurred as a result of the personal conscious bad faith (or negligence in the case of a professional Trustee) of the Trustee concerned.
- ...
- 6.8 In this Rule 6:
 - 6.8.1 references to Trustee(s) shall be taken to include any former Trustee and any present or former officer of a present or former corporate Trustee;
 - 6.8.2 references to proceedings shall be taken to include any investigation by the Pensions Ombudsman and any other form of action, proceeding or claim.

18 Multiple Individual Funds

- 18.1 The Trustees may at any time treat any existing part of a Member's Individual Fund or any new contribution in respect of a Member as if it were a separate Individual Fund, in which case it:
 - 18.1.1 shall constitute a separate Individual Fund for the purposes of the Rules (including without limitation this Rule 18.1); but
 - 18.1.2 shall not constitute a separate arrangement for the purposes of the Act unless the Member and Trustees expressly agree.

19 Benefits for Member

- 19.1 Any Uncrystallised Fund of a Member shall:
 - 19.1.1 be applied to pay a pension commencement lump sum in accordance with Rule [21]¹; and
 - 19.1.2 (as to any remainder) become designated as available for the provision of unsecured pension in accordance with Rule 22 on the day before the Member's 75th birthday or on such earlier date as the Member may select, being not earlier than the earliest date on which:
 - 19.1.3 the Member reaches his normal minimum pension age (or any protected pension age); or
 - 19.1.4 the ill-health condition is met.

¹ The number 21 is included in the Eleven Scheme Rules and the Gilbert Scheme Rules, and appears to have been omitted by mistake in the SHK Scheme Rules.

Appendix 3

Pension Max Questions & Answers document

“1. What is Pension-Max?

Pension-Max is a facility whereby you maximise the value of your pension by firstly buying property (which could be residential or commercial) or a plot of land (usually for development) at a discount and then selling it to your pension scheme at the full market valuation.

2. Is this a way of getting money out of my pension?

No, your pension remains fully invested at all times.

3. What happens to the margin between the open market valuation and the original purchase price (i.e. the profit)?

After payment of costs (such as legal and other professional fees, stamp duty etc) the remaining profit is shared between the people who source the land, provide the finance to purchase it and the investors such as yourself.

4. How much will I make (the gain)?

Approximately 20% of the value of your pension.

5. Does this have to go into my pension?

No. It is yours to do with as you wish.

...

9. Who values the property or land?

A RICS (Royal Institution of Chartered Surveyors) valuer. This ensure that the pension does not pay greater than open market value for the land. HM Revenue & Customs insist that a pension should not purchase an asset at greater than market value and so this criteria is clearly adhered to.

10. How does my pension buy the property or land?

It is transferred to an occupational pension scheme which then arranges purchase of the properties. Investors should seek independent financial advice as to whether the transfer is suitable to their needs and as to whether they will lose any guaranteed benefits by doing so.

11. What does the occupational pension scheme charge?

£500+VAT per year per member (figures correct as at 2012).

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16. How do I find out more about the investment I will be investing in?

An *Information Memorandum* or similar document will be made available to all investors for each proposed investment. This will detail the specifics of the property or land being purchased and the potential for rent or development. Development costs and building strategy will also be outlined where appropriate.

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Pension-Max is a trading style of Property Reward Ltd.

Suite 31, Don House, 30-38 Main Street, Gibraltar. Company Number 108318.

Property investments of this type are not regulated by the Financial Conduct Authority. Property Reward Ltd is not authorised by the Financial Conduct Authority. Property Reward Ltd is not able to give you financial advice. If you require advice we recommend you speak to a suitably qualified financial adviser.”

Appendix 4

Extracts including from Application Forms and Member-Directed Investment Forms

Ms Y

The Application Form signed on 26 February 2013 included the following wording:

"I understand that the Trustees of the Scheme shall have the right to make all investment decisions relating to the sale and purchase of the investments forming part of the Scheme. I understand that I have the right to request that the Trustees invest the funds held on my behalf in accordance with my instructions but that such requests shall not be binding on the Trustees. I agree to hold the Trustees fully indemnified against any claim in respect of any investment decisions."

The member-directed investment form dated 1 May 2013 included the following wording:

"INVESTMENT DETAILS (DECLARATION)"

*I can confirm that I instruct and authorise the trustees of The Eleven Property Pension Scheme to use **£18,169.19** of the funds held in the bank account of The Eleven Property Pension Scheme to purchase the 250 year leases on the following self-storage units situated on the west side of Bahama Road, Haydock, St Helens:*

- Unit [X.23]' – 100 sq ft Purchase price: £15,000 Ground rent: £200.00 p/a Service charge: £195.00 p/a

Legal fees of £164.89 (including VAT) will be incurred by the pension scheme in relation to the purchase of the above units and ground rent and service charges will be paid to cover one year in advance. Total funds invested in these units will be **£15,559.89.*

A 33.13% shareholding in the following unit:

- Unit [Y.24]' – 25 sq ft Purchase price: £3,725.00 Ground rent: £50.00 p/a Service charge: £48.75 p/a.

Legal fees and disbursements of £73.47 (including VAT) will be incurred by the pension scheme in relation to the purchase of the above units and ground rent and service charges will be paid to cover one year in advance. The contribution of my pension funds towards the purchase of the above units equates to **£1,221 (31.33% of £3,897.22)*

A 8.98% shareholding in the following unit:

- Unit [X.16]' – 100 sq ft Purchase price: £14,900 Ground rent: £200.00 p/a Service charge: £195.00 p/a.

Legal fees and disbursements of £164.89 (including VAT) will be incurred by the pension scheme in relation to the purchase of the above units and ground rent and service charges will be paid to cover one year in advance. The contribution of my pension funds towards the purchase of the above units equates to **£1,338.30 (8.98% of £15,459.89)*

Prior to the purchase, I will have personally acquired unit '[X.23]' and therefore my pension fund will purchase the storage units from me personally.

The investment amount detailed above represents a proportion of the £21,161.81 transferred into the scheme from my previous pension providers and is specifically attributable to my pension benefits held within the scheme. £2,992.62 will be set aside to cover additional costs such as annual scheme administration fees.

I acknowledge that the value of my pension will be reflected in the performance of the above storage units and that the investment may be tied up for several years if I am unable to find a buyer for the units. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs."

Mr S

The member-directed investment form dated 24 November 2012 included the following wording:

INVESTMENT DETAILS (DECLARATION)

*I can confirm that I instruct and authorise the trustees of The Eleven Property Pension Scheme to use **£13,189** of the funds held in the bank account of The Eleven Property Pension Scheme to purchase the following:*

'The beneficial interest in ordinary shares to the value of £13,189 in HARPER INTERNATIONAL CONSULTANTS LIMITED, a company based in Gibraltar. This company has purchased a vacant plot of land in Maryport, Cumbria. The land has planning permission for a 66 bedroom residential care-home. Details of the financials involved in the proposed build-out are contained in the Information Memorandum, which I have read. I am a beneficial owner of shares in this company and my pension funds will be used to purchase the shares from myself and the other beneficial owners.'

I hereby acknowledge that my pension fund will purchase the beneficial interest in shares in Harper International Consultants Limited. The fund will purchase both Ordinary shares and Preference shares in the ratio of approx. 5 Ordinary shares to every 4 Preference shares. The Preference shares will hold priority with regards to any capital held within the Company in respect of liquidation, along with the payment of any dividends distributed by the Company.

The investment amount detailed above represents a proportion of the £16,189.77 transferred into the scheme from my previous pension providers and is specifically attributable to my pension benefits held within the scheme. The remaining £3,000.77 will be set aside to cover additional costs such as annual scheme administration fees.

I acknowledge that the value of my pension will be reflected in the performance of the above asset and that the investment may be tied up for several years whilst the build and sale of units takes place. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my needs."

Mr E

The Application Form signed on 18 September 2013 included the following wording:

“I understand that the Trustees of the Scheme shall have the right to make all investment decisions relating to the sale and purchase of the investments forming part of the Scheme. I understand that I have the right to request that the Trustees invest the funds held on my behalf in accordance with my instructions but that such requests shall not be binding on the Trustees. I agree to hold the Trustees fully indemnified against any claim in respect of any investment decisions.”

The investment instruction letter dated 21 August 2014 sent to me included the following wording:

*“I can confirm that I instruct and authorise the trustees of the SHK Property Services Pension Scheme to invest **£21,389.44** of the funds held in the bank account of the SHK Property Services Pension Scheme by purchasing the following:*

[NUMBER.1] Ordinary Shares in GBT Partnership Ltd (company number 07213327) at £[PRICE.1] per share.*

**This transaction will incur Stamp Duty of £110.00*

The total cost of shares is £21,279.44.

£24,387.69 was transferred into the scheme from my previous pension provider(s). The above investment will be paid for using these pension benefits held within the scheme. **£2,998.25** will be set aside to cover additional costs such as annual scheme administration fees.

I acknowledge that the value of my pension will be reflected in the performance of the asset and that the investment may be tied up for several years. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that, if required, it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my needs.”

Mr Y

The investment instruction letter dated 19 September 2013 sent to me included the following wording:

“I acknowledge that the value of my pension will be reflected in the performance of the above office units and Capital Bridging Finance Solutions Limited and that part of the investment may be tied up for several years if I am unable to find a buyer for the office units. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs.”

Mr G

The Application Form signed on 9 March 2013 included the following wording:

“I understand that the Trustees of the Scheme shall have the right to make all investment decisions relating to the sale and purchase of the investments forming part of the Scheme. I understand that I have the right to request that the Trustees invest the funds held on my behalf in accordance with my instructions but that such requests shall not be binding on the Trustees. I agree to hold the Trustees fully indemnified against any claim in respect of any investment decisions.”

One of four member-directed investment forms, this one dated 1 May 2013, sent to me included the following wording:

“INVESTMENT DETAILS (DECLARATION)

*I can confirm that I instruct and authorise the trustees of the Gilbert Trading Pension Scheme to use **£77,799.45** of the funds held in the bank account of the Gilbert Trading Pension Scheme to purchase the 250 year leases on the following self-storage units situated on the west side of Bahama Road, Haydock, St Helens:*

- Unit [Z.19]’ – 100 sq ft Purchase price: £15000.00 Ground rent: £200.00 p/a Service charge: £195.00 p/a
- Unit [Z.20]’ – 100 sq ft Purchase price: £15000.00 Ground rent: £200.00 p/a Service charge: £195.00 p/a
- Unit [Z.21]’ – 100 sq ft Purchase price: £15000.00 Ground rent: £200.00 p/a Service charge: £195.00 p/a
- Unit [Z.22]’ – 100 sq ft Purchase price: £15000.00 Ground rent: £200.00 p/a Service charge: £195.00 p/a
- Unit [Z.51]’ – 100 sq ft Purchase price: £15000.00 Ground rent: £200.00 p/a Service charge: £195.00 p/a

Legal fees of £824.25 (including VAT) will be incurred by the pension scheme in relation to the purchase of the above units and ground rent and service charges will be paid to cover one year in advance. Total funds invested in these units will be **£77,799.45.*

Prior to the purchase, I will have personally acquired units ‘[Z.19]’, ‘[Z.20]’, ‘[Z.21]’, ‘[Z.22]’ & ‘[Z.51]’ and therefore my pension fund will purchase the storage units from me personally.

The investment amount detailed above represents a proportion of the £145,039.96 transferred into the scheme from my previous pension providers and is specifically

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attributable to my pension benefits held within the scheme. £3,000.00 will be set aside to cover additional costs such as annual scheme administration fees. The remainder of my funds will be invested at a later date.

I acknowledge that the value of my pension will be reflected in the performance of the above storage units and that the investment may be tied up for several years if I am unable to find a buyer for the units. I can confirm that I have received no financial advice or investment guidance from the trustees of the scheme. I accept that it is my own responsibility to seek guidance from a suitably qualified professional such as a financial adviser as to whether this investment is suitable to my future needs.”

There are three other forms pertaining to different investments which included similar acknowledgments and confirmations.

The 'Restricted Investor Statement' dated 2 November 2015 and signed by Mr G included the following wording:

2nd November 2015

<i>"Restricted Investor Statement</i>	
<i>I make this statement so that I can receive promotional communications relating to non-readily realisable securities as a restricted investor. I declare that I qualify as a restricted investor because:</i>	
<i>(a)</i>	<i>In the twelve months preceding the date below, I have not invested more than 10% of my net assets in non-readily realisable securities; and</i>
<i>(b)</i>	<i>I undertake that in the twelve months following the date below, I will not invest more than 10% of my net assets in non-readily realisable securities.</i>
<i>Net assets for these purposes do not include:</i>	
<i>(a)</i>	<i>The property that is my primary residence or any money raised through a loan secured on property;</i>
<i>(b)</i>	<i>Any rights of mine under a qualifying contract of insurance; or</i>
<i>(c)</i>	<i>Any benefits (in the form of pensions or otherwise) which are payable on the termination of my service or on my death or retirement and to which I am (or my dependants are), or may be entitled.</i>
<i>I accept that the investments to which the promotions will relate may expose me to a significant risk of losing all of the money invested or other property invested. I am aware that it is open to me to seek advice from an authorised person who specialises in advising on non-readily realisable securities.</i>	
<i>Signature:</i>	
 <i>[SIGNATURE]</i>	

Appendix 5**Companies operating (or have operated) from 3TC House**

Company	Directors
SHK Property Services Limited	Simon Hamilton Kaigh
Eleven Property Limited	Simon Hamilton Kaigh, Michael McNally
Gilbert Trading Limited	Simon Hamilton Kaigh
FIG Investments Limited	Simon Hamilton Kaigh
DNAL Investments Limited	Michael McNally, Gary Quillan
23 Administration Limited	William Ross-Jones, Paul Dalton
Capital Innovative Finance Limited	Paul Dalton, Mark Roberts
Capital Secured Finance Solutions Limited	Paul Dalton, Mark Roberts
Silvertree Investments Limited	Robert John Metcalfe, William Ross-Jones
Franklin International E&W	David Hemsley
JVC Developments Limited	Simon Kim Williams
SPH Ventures Limited	Gary Quillan
YUR Investments Limited	Gary Quillan
BER Investments Limited	Gary Quillan, Ben Roberts
Accelerated Bridging Finance Limited	Mark Roberts, Gary Quillan
Mapleleaf Enterprises Limited	Robert John Metcalfe, William Ross-Jones
Goldline Investments Limited	Mark Roberts
D H Administration Limited	David Hemsley
Swift Commercial Finance Limited	Paul Dalton, William Ross-Jones
Capital Developments (Middlesbrough) Limited	Mark Roberts, Gary Quillan
Donnelly International Limited	Mark Roberts, David Hemsley

Appendix 6

Administration Agreement

Brambles has provided the written administration agreement which was identical (except for the name) for all three Schemes. The full agreement is set out below.

“BRAMBLES ADMINISTRATION LTD SCHEDULE OF SERVICES AND FEES

SCHEME NAME: [SCHEME NAME]

Services

Brambles Administration Limited shall provide the following services:

- 1. Assistance with the establishment of the scheme including registration with HMRC and the Pensions Regulator.*
- 2. Maintain records based on information supplied by the Trustees.*
- 3. Produce annual member statements.*
- 4. Completion of annual returns to HMRC and the Pensions Regulator as required.*
- 5. Provide day to day administration support including dealing with correspondence by post, email and telephone.*
- 6. Deal with transfers into and out of the scheme as required.*

Fees

*The Trustees shall pay fees to Brambles Administration Ltd of **£500.00** per annum per member. Brambles Administration Ltd reserves the right to increase the fees each year in line with the increase in the Retail Price Index.*

Termination

This agreement may be terminated by either party upon provision of 30 days written notice.”