PO-16266

Ombudsman's Determination

Applicant	Dalriada Trustees Limited (**Dalriada**)
	Those listed at Appendix 1 (the **Additional Applicants**)
Schemes	Genwick Retirement Benefit Scheme (the **Genwick Scheme**)
	Uniway Systems Retirement Benefits Scheme (the **Uniway Scheme**) (referred to collectively as **the Schemes**)
Respondents	Ecroignard Trustees Limited (**Ecroignard**) (in liquidation, dissolution deferred until 10 May 2028)
	Mr Ankur Vijaykumar Shroff

Complaint summary

1. Dalriada and the Additional Applicants have submitted complaints that I have summarised as:-

    1.1. Ecroignard did not adequately inform members of the Schemes as to the nature, suitability and performance of the underlying investments, nor provide an adequate indication of the value and security of their benefits;

    1.2. Ecroignard failed to obtain independent investment advice and/or undertake sufficient due diligence with regard to the investments made on behalf of the members and the Schemes;

    1.3. Ecroignard invested the members' funds in high-risk, unregulated, illiquid investments/assets that were inappropriate and did not comply with the regulations governing pension scheme investments;

    1.4. Ecroignard failed to act upon requests from members in respect of their benefits in a timely fashion, or at all;

    1.5. Ecroignard failed to maintain adequate financial records in relation to the Schemes, including the investments made on behalf of the members;

    1.6. Ecroignard breached the investment duties imposed on trustees under Part 1 of the Pensions Act 1995;

1.7. Ecroignard failed in its duty as trustee to the Schemes, including (but not exhaustively) failing to comply with statutory requirements, guidance from The Pensions Regulator and governance requirements; and

1.8. Ecroignard failed to operate the necessary controls to ensure the effective and transparent administration of the Schemes.

Summary of the Deputy Pensions Ombudsman's Determination and reasons

2. Having fully considered the evidence and submissions presented on the papers, and those provided at the oral hearing, I uphold Dalriada's and the Additional Applicants' complaints. My reasons are as follows:

3. Ecroignard has acted in breach of trust causing scheme members pension loss by:

3.1. failing to have regard, in relation to the Uniway Scheme, to Regulation 4, and in relation to the Genwick Scheme, Regulation 7(2), of The Occupational Pension Schemes (Investment) Regulations 2005 (the Investment Regulations);

3.2. failing to avoid being in a position of conflicting interests and failing to have in place and operate the necessary internal controls, as required by section 249A of the Pensions Act 2004; and

3.3. acting in breach of the duties imposed on it by Part I of the Pensions Act 1995 (1995 Act), and by case law.

4. Ecroignard has committed acts of maladministration by failing to have regard to the Pension Regulator's (**TPR**) Code in respect of investment governance.

Oral Hearing

5. I held an oral hearing on 10 August 2021 as part of my investigation.

6. Representatives of Dalriada attended, along with Mr GW and Mr E. Mr Shroff, Mr Andrew Waterfield[1]. Mr Stephen Granville Edmunds and Ms Tracy Park[2] were invited to attend but did not do so.

Jurisdiction

7. Pursuant to sections 146(1)(ba) and 146(1)(e) of the Pension Schemes Act 1993 (the 1993 Act), Dalriada has brought a dispute against Ecroignard. The Additional Applicants have brought complaints against Ecroignard, Mr Shroff and previous

[1] See paragraph 48.10
[2] See paragraph 114

administrators to the Schemes pursuant to section 146(1)(a) and 146(1)(c) of the 1993 Act.

8. As the dispute brought by Dalriada against Ecroignard covers materially the same matters as the complaints made by the Additional Applicants, I have dealt with the dispute and complaints together in this Determination.

9. Some of the Additional Applicants have named Dalriada as a Respondent to their respective complaints. I have dismissed those complaints as the acts and omissions in question were undertaken by Ecroignard, before Dalriada was appointed as a trustee, and Dalriada had no involvement in those acts or omissions.

10. Under general trust law principles, any individual beneficiary has locus standi to require trustees to account for breaches of trust. Dalriada, as sole trustee of the Schemes to the exclusion of Ecroignard, also has power to seek recovery of any assets of the Schemes applied in breach of trust and/or to seek a remedy in respect of any such breaches.

11. I have the power to direct the Respondents to restore 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 Respondents to the Schemes is to put them back into funds as if there had been no breach of trust.

12. Any money recovered by the Schemes as a result of my directions is available for the general benefit of any member, including the Additional 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."*

13. Dalriada and the Additional Applicants have locus standi (standing) in their own right to seek recovery of trust assets and/or ask the Ombudsman to make a Determination of whether there has been a breach of trust in relation to each of the Schemes. In an action to have a breach of trust redressed, it has been confirmed that no issues usually arise between one beneficiary and another. 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). I have considered this issue further below in the context of the Rules of each of the Schemes.

14. For the reasons set out in section C.11, I consider that Mr Shroff, as an individual, is within jurisdiction as a constructive trustee or, in the alternative, an administrator, of the Schemes.

Scope of Investigation and Findings

15. It will be apparent from the length of this Determination that the circumstances behind the Schemes are complex and involved multiple parties.

16. Following Dalriada's appointment as trustee on 25 August 2020, Dalriada referred a complaint to The Pensions Ombudsman (**TPO**) on 12 December 2020 against Ecroignard, later expanded to include Mr Shroff and subsequent directors of Ecroignard. The Additional Applicants have named Ecroignard as respondents to their complaints to TPO, as well as various past administrators of the Schemes.

17. It is within my jurisdiction to investigate complaints made by a beneficiary against a scheme administrator or a person who carries out an act of administration concerned with a scheme[3]. However, my power to investigate complaints is discretionary. Although, I have seen evidence that the actions of the past administrators of the Schemes amounted to exceptional maladministration, each of those administrators has been dissolved and has ceased to exist. There is, therefore, little that would practically be achieved by accepting these complaints for investigation and making findings (and potentially joint and several redress directions) against them as respondents.

18. I have also seen evidence that Mr Harshal Shah, the director of Deuten Services Limited, was a joint signatory to the primary bank accounts used by the Schemes between 18 June 2013 and 18 November 2015, and that all payments had to be approved by Mr Shah and Mr Shroff[4]. I consider that the wording of the resolution does not intend to give Mr Shah a personal authority to authorise payments, but only in his capacity as a director of Deuten Services Limited, the administrator of both Schemes at the time. For the reasons set out in paragraph 17 above, I consider it reasonable not to investigate Deuten Services Limited.

19. If I am wrong about the effect of the wording of the resolution referred to above, to the extent that the authority conferred on Mr Shah was a personal one, each would have been likely to amount to an act of administration by Mr Shah personally. However, Mr Shah is not a respondent to the complaints and this evidence was received after I held the oral hearing. I have seen no evidence that he acted as a director or shadow director of Ecroignard. I have also seen no evidence that Mr Shah was responsible for making any investment decisions in a personal capacity on behalf of Ecroignard. So, I consider it reasonable not to effectively restart the case, post-oral hearing to investigate Mr Shah's actions.

20. There have been multiple directors and shareholders of Ecroignard from the date of its incorporation until the present date. Each of the Additional Applicants joined the Schemes during the period of Mr Shroff's sole directorship and shareholding of Ecroignard between 18 June 2013 and 18 November 2015, and the evidence set out in this Determination establishes that the majority of members joined during this period.

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[3] Regulation 2 of the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996, section 146(4A) of the 1993 Act

[4] See paragraph 72

The overwhelming majority of the assets of each Scheme was also invested during this period. Between 18 June 2013 and 18 November 2015:

- 138 out of 140 members joined the Uniway Scheme;
- 74 out of 85 members joined the Genwick Scheme; and
- Ecroignard invested:
    - on behalf of the Uniway Scheme a total of £9,215,817.37, representing over 96% of the total sum invested by the Ecroignard between 2013 and 2018; and
    - on behalf of the Genwick Scheme a total of £4,409,654.95, representing over 93% of the total sum invested by Ecroignard between 2013 and 2018.

21. In order to reach a Determination of manageable size and complexity, and in accordance with the Applicants' principal focus in bringing their complaints/disputes, I consider it reasonable to restrict the scope of my investigation and findings primarily to the actions of Ecroignard and Mr Shroff during the period of Mr Shroff's directorship.

22. Ecroignard was appointed as trustee of the Schemes after Mr Shroff became director, so any actions taken by directors preceding Mr Shroff are not relevant to the complaints made by Dalriada and the Additional Applicants. Where relevant actions were taken by directors of Ecroignard after Mr Shroff's tenure ended, I have considered these to the extent that they affect the liability of Ecroignard or Mr Shroff for actions taken between 8 June 2013 and 8 November 2015.

23. By restricting the scope of my investigation and findings to this period, and to the parties listed as respondents, I do not, by extension, make any positive finding regarding the involvement or actions of other directors of Ecroignard or the actions of the Schemes' administrators.

Evidence and Investigation Process

Sources of Evidence

24. I have received evidence from the parties relating to the complaints brought by Dalriada and the Additional Applicants, as well as information that is publicly available at Companies House in the UK and at the Corporate and Business Registration Department of the Ministry of Finance, Economic Planning and Development in Mauritius. Dalriada also received a substantial file of evidence collated by the Insolvency Service, under its statutory powers, pursuant to its investigation into Ecroignard. This evidence has been provided to me by Dalriada. Given the origin of this evidence, I have no concerns about its accuracy or provenance.

25. I have also been provided with records from Park View Administration, which took over administration of the Schemes in approximately 2017. Park View Administration took over from Gleeson Bessent Trustee Services, which in turn took over from Deuten Services Limited (**Deuten**) in 2016. The passing of records from one administrator to another in each case appears to have been somewhat disorderly, and I consider it reasonable to rely on these records mainly as supplementary to other sources of information.

26. In February 2023, I also received a file of evidence from HM Revenue & Customs (**HMRC**) which Mr Shroff had submitted to it at some point in his tenure as director of Ecroignard. Much of the evidence duplicates other sources, but a small number of documents are not reproduced elsewhere. Where these documents are material to my findings, I consider it reasonable to rely on them, but I have sought to corroborate the evidence with other sources where possible.

27. HMRC provided further confirmation on 26 April 2024 of the background behind its request for information about the Uniway Scheme and the scope of its investigation:

> *"Our interest in the mentioned schemes was prompted by transferor schemes enquiring as to the registration status of the Uniway Systems RBS scheme, the receiving scheme. As such, HMRC wrote out to the scheme administrator of the Uniway Systems RBS scheme requesting information. The information we received back from the scheme administrator at the time indicated there wasn't a significant risk of the receiving scheme being set up or being used to allow pension liberation. This led HMRC to issue Response 1 letters. Response 1 letters are standard worded documents which confirm that the receiving scheme is registered with HMRC and is not subject to a deregistration notice. Just to add, HMRC does not authorise or regulate investments or trustees but instead is responsible for the tax relief given to pension schemes."*

Investigation Process

28. Mr Shroff engaged in extensive correspondence with my office between May and June 2021 following the notification that I intended to hold an oral hearing. Mr Shroff objected to a hearing being held on the grounds that he had already made written submissions.

He requested an explanation as to why the hearing was necessary and not "just a pointless fishing expedition for information that is unnecessary and time consuming especially when I have provided all information required in writing." He also confirmed that he was based in India, "which is suffering more than most countries" due to Covid 19 and it was agreed that he would be able to attend the hearing remotely.

29. In parallel, Mr Shroff repeated in writing the two principal arguments he has relied on throughout the investigation:

    29.1. that the Scheme's investments were performing as intended at the point he resigned as director of the Trustee in November 2015 so he cannot be held liable for the actions of subsequent directors and administrators, and that the documentary evidence, to which he no longer had access, would support this account; and

    29.2. HMRC had thoroughly investigated the Schemes on two occasions and approved the Schemes' investments.

30. In relation to the first argument, I received the investigation materials provided to HMRC and the materials collated throughout the Insolvency Service's investigation into the Trustee. As set out in paragraph 26 above I have taken this documentary evidence into account in reaching my decision. I acknowledge the length of time between the oral hearing and the date of this decision, however, given that Mr Shroff has placed reliance on the documentary evidence that he did not have access to after November 2015, some of which was provided to the Insolvency Service by subsequent directors of Ecroignard, it was necessary to thoroughly review these files.

31. In relation to the second argument, Mr Shroff has throughout my investigation consistently placed substantial reliance on the investigation into the Schemes carried out by HMRC, its purported scope and outcome:

    "The WHOLE point of this [HMRC's] investigation was to ensure that people's pension monies were being dealt with properly and into schemes that were conducted properly. This is why the nature of their questions were so vast and far reaching. Otherwise, can you explain what the purpose of their investigation was?... I was presented with their investigation and passed it with flying colours twice, hence my ambivalence as to why it is now that I am being questioned; indeed this strengthens my belief that if matters did go wrong post my tenure, then this is for my successors to answer, and not I."

32. On 3 August 2021, Mr Shroff submitted a "final statement" before the hearing which he requested be used in his absence at the oral hearing. The statement included the following:

    *"**HMRC reviewed all matters, including the paperwork used by the schemes; the record keeping kept across all matters relating to the schemes; the integrity of the client funds and their entitlement to their coupons; the suitability of the investments made and the proficiency of the firms and individuals involved**. It*

seems disingenuous to now suggest that HMRC somehow failed to pick up on lots of issues which you are now claiming may have existed during my time. They reviewed everything twice and took months and months to do so on each occasion; on top of this [they] were furnished with 100s of pages of requested documents and records of book keeping. ***The whole point of HMRC's investigation was to ensure that the schemes were fit for purpose, were being run correctly and that members' investments were sound and into suitable investments****. Given HMRC passed both schemes on two different occasions, it seems perverse and frankly 'incredible' in the literal sense of the word that HMRC could have made so many mistakes.* ***The clear reason for this is that HMRC did not make any mistakes, neither did I and hence why we both were happy with the day to day running, overall corporate governance and performance of the investments and the suitability for the members invested into them****.* [My emphasis]*"*

33. Following the oral hearing, further questions were put to Mr Shroff in writing. In response to the question "*what did HMRC review?*", Mr Shroff replied "*Everything about the schemes' formation, all documentation, all investments and DD behind them, corporate governance. As stated, pls request copies of this from them*".

34. Mr Shroff requested on several occasions that TPO contact HMRC to confirm that it had approved the Schemes' investments, including the following request on 9 August 2021:

"Can I ask if HMRC have been contacted to obtain copies of all correspondence sent to them by Deuten (on my behalf) in connection with the schemes? If they have been contacted, when was this done and what was their response? If they have not been contacted, can I ask why not? I have requested this over a great period of time in writing to yourselves – as this will provide a large amount of information which will validate many of the points raised by myself."

35. Despite it being primarily the responsibility of parties to a complaint to adduce evidence that supports their submissions, under section 149(4) of the 1993 Act, I have the power to obtain information from such persons as I think fit. Following discussion with HMRC, I received its investigation file on Ecroignard in February 2023, and received confirmation of the scope of HMRC's investigation of the Schemes in April 2024.

36. Mr Shroff's clear written account, which is repeated and unequivocal, is that the HMRC investigations signed off on the suitability of underlying investments and investment strategy undertaken by the Schemes. HMRC's written confirmation of the scope of its investigation, set out in paragraph 27 above, is equally unequivocal and is fundamentally at odds with Mr Shroff's account.

37. This is not a situation in which unclear testimony or uncertain recollection of primary facts might benefit by being tested orally and challenged under cross examination before an accepted version is found as fact. This is a situation where it is simply not possible to reconcile two clear written accounts of the same fact, that is, the scope of the HMRC investigations.

38. So, I do not consider that holding a second oral hearing to test Mr Shroff's evidence against that of HMRC on this point would assist me. I consider that the documentary evidence is sufficient on which to base a finding of fact, on the balance of probabilities, of which account is accurate.

39. Considering both accounts, it is an inherently extraordinary claim by Mr Shroff, despite his repeated and vigorous assertion of it, that HMRC would "approve" or "sign-off" on the suitability of investments made by the Trustee of an occupational pension scheme, beyond the narrow question of whether an investment was eligible or ineligible for tax relief. If HMRC had done so, I would expect to have seen clear evidence of this in HMRC's files and correspondence. However, HMRC has confirmed that it does not authorise or regulate investments, and that its investigations into the Schemes related solely to pension liberation. As an outcome to the investigations, HMRC does not refer to any positive "approval" of the Schemes whatsoever, but merely to a confirmation that the Schemes were registered with HMRC and not subject to a deregistration notice.

40. On the written evidence, concerning the scope of HMRC's investigation, I have no difficulty in preferring the submissions of HMRC rather than Mr Shroff. I find that the scope of HMRC's investigation was limited to establishing whether the Schemes were set up or used to facilitate pensions liberation, and did not extend to any approval of the underlying investments or investment strategy by Ecroignard.

41. I also do not consider it necessary to hold a second hearing to test the documentary evidence collated by the Insolvency Service and HMRC generally against the recollections of Mr Shroff. Following the approach set out by Leggatt J (as he then was) in Gestmin SGPS SA v Credit Suisse (UK) Ltd & Anor [2013] EWHC 3560 (Comm) per paragraph 22, I consider that it is better for me to base my findings of fact on inferences drawn from the documentary evidence in the Insolvency Service and HMRC files, and known or probable facts about the Schemes. I do not consider that Mr Shroff's recollection of these documents under oral questioning (assuming he chose to submit to such questioning, unlike before) would assist me in reaching my findings. Indeed, in correspondence with TPO prior to the oral hearing in August 2021, Mr Shroff demanded to be informed of all the questions in advance, stating that he might not be able to recall detailed or accurate information to be able to provide answers at an oral hearing.

42. The extent to which the documentary evidence obtained from the Insolvency Service and HMRC supports or challenges Mr Shroff's written account of his and the Trustee's actions is set out in Part C – Conclusions.

43. I set out my findings and conclusions regarding liability in a preliminary decision dated 22 July 2024, which was issued to all the parties. Mr Shroff and the Trustee were invited to comment on the findings by 16 September 2024. In the absence of a response or acknowledgement, my office sent separate chasers to Mr Shroff on 8 August and 14 August, informing him that:

> "the Ombudsman has made preliminary findings of personal liability against you and a direction that you pay redress into the Schemes. If you wish to make submissions or comment on these findings, it is vital that you do so within the time stipulated in my email. If you do not provide comments or submissions by 16 September, the Ombudsman may proceed to issue a legally binding Determination without further notice after that date. Please acknowledge receipt of this email."

44. Mr Shroff responded on 14 August to request an extension until 16 October 2024, on the grounds that the previous emails had gone into his email spam folder. I considered this request carefully but I rejected it, on the basis that he evidently was able to access emails from TPO and had used the email address consistently in his correspondence since 2020. If he was concerned about spam filters it was incumbent on him to ensure that he conducted regular checks of the folder to ensure he complied with investigation deadlines. However, to ensure that he had sufficient time to make submissions, I agreed to a shorter extension until 23 September 2024. TPO received no further submissions from Mr Shroff in his own capacity or on behalf of Ecroignard.

Detailed Determination

Part A - Material Facts

A.1. The Companies

A.1.1 Genwick Limited

45. On 22 December 2011, Genwick Limited was incorporated and subsequently acted as the sponsoring employer to the Genwick Scheme. Genwick Limited was dissolved on 26 February 2019. The following individuals were directors:

Director	Period of directorship
Mr Richard Spencer Finian O'Driscoll	22 December 2011 to 22 March 2013
Mr Ashok Prakash Sonah	27 March 2012 to 21 April 2013
Ms Sandhya Kumari Surat	28 April 2013 to 17 June 2013
Ms Sandhya Rana Sonah	22 March 2013 to 27 March 2013 and 21 April 2013 to 28 April 2013
Mr Ankur Vijaykumar Shroff	17 June 2013 to 6 August 2013
Ms Roxanne Marie Poole	6 August 2013 to 25 January 2016
Mr Benjamin White	25 January 2016 to 8 March 2016
Mr Michael Patrick Horsford	8 March 2016 to 20 December 2017
Mr William Mcallister	20 December 2017 to date
Mr Andrew George Ramage	20 December 2017 to 14 July 2018

A.1.2 Uniway Systems Limited

46. On 10 January 2012, Uniway Systems Limited was incorporated and subsequently acted as the sponsoring employer to the Uniway Scheme. Uniway Systems Limited was dissolved on 16 April 2019. The following individuals were directors:

Director	Period of directorship
Ms Barbara Kahan	10 January 2012 to 13 March 2013
Mr Ashok Prakash Sonah	27 March 2012 to 21 April 2013
Ms Sandhya Rana Sonah	13 March 2013 to 27 March 2013 and 21 April 2013 to 28 April 2013
Mr Ankur Vijaykumar Shroff	17 June 2013 to 6 July 2013
Ms Roxanne Marie Poole	6 August 2013 to 25 January 2016
Mr Benjamin White	25 January 2016 to 8 March 2016
Mr Michael Patick Horsford	8 March 2016 to 20 December 2017
Mr William Mcallister	20 December 2017 to date
Mr Andrew George Ramage	20 December 2017 to 14 July 2018

A.1.3 Ecroignard Trustees Limited

47. On 18 February 2013, Ecroignard was incorporated. Subsequently, Ecroignard was appointed as the Schemes' first Trustee. The following individuals have been directors:

Director	**Period of directorship**
Mr Bipin Sant Hulman	18 February 2013 to 27 March 2013
Ms Sandhya Kumari Surat	27 March 2013 to 18 June 2013
Mr Ankur Vijaykumar Shroff	18 June 2013 to 18 November 2015
Mr Roger William Bessent	18 November 2015 to 6 April 2017 and 12 October 2017 to 22 November 2017
Dr Phillip Reeves Knyght	7 March 2017 to 12 October 2017
Mr Christopher James Burgess	7 March 2017 to 9 November 2017
Mr Anthony John Waterfield	22 November 2017 to date

48. Ecroignard has a share capital of £99 and 99 allotted shares. Records at Companies House confirm the following directors, shareholders and persons exercising significant control from 2013 onwards:

    48.1. As at 14 May 2013, 49 shares were held by Ms Sonah and 50 shares by Ms Surat;

    48.2. On 17 June 2013, 99 shares were transferred to Mr Shroff;

    48.3. On 18 November 2015, 99 shares were transferred to Mr Bessent and he was appointed as a director;

    48.4. On 7 March 2017, Dr Phillip Reeves Knyght and Mr Christopher James Burgess were appointed as additional directors of Ecroignard alongside Mr Bessent;

    48.5. On 6 April 2017, Mr Bessent resigned as a director of Ecroignard;

    48.6. On 12 October 2017, Mr Knyght ceased to be a director of Ecroignard;

    48.7. On 9 November 2017, Mr Burgess resigned from the directorship of Ecroignard;

    48.8. Mr Bessent was reappointed as director of Ecroignard between 12 October 2017 and 22 November 2017;

    48.9. A notification was filed that Mr Bessent had ceased to be a person exercising significant control of Ecroignard on 22 Nov 2017;

    48.10. On 22 November 2017, Mr Anthony John Waterfield was appointed as director of Ecroignard; and

    48.11. On the same date a notification was filed that Mr Waterfield was a person exercising significant control of Ecroignard.

49. On 3 September 2019, following an investigation by the Insolvency Service and a petition by the Secretary of State for Business, Energy & Industrial Strategy, a sealed order of the High Court was issued ordering that Ecroignard be wound up.

50. On 25 August 2020, Dalriada was appointed as an independent trustee to the Schemes by The Pensions Regulator (**TPR**) under Section 7(3)(b) of the Pensions Act 1995 (the **1995 Act**). Dalriada was given exclusive powers under the appointment.

51. On 31 May 2022, notice was given to Companies House that the winding-up of Ecroignard was complete. On the same date, the Secretary of State directed that the dissolution of the company be deferred and take effect on 10 May 2028.

Ecroignard – Bank Accounts

52. On 4 October 2013, Mr Shroff applied to open an account at Metro Bank in the name of Ecroignard (the Metro Bank Ecroignard Account), of which he was the sole signatory. In the application form, the activities of Ecroignard were described as:

> *"Provide consulting and manage* [sic] *Pension Scheme funds as a trustee role. Give guidance to members of scheme for investing in different asset classes. Take advice and consult IFA/TPR etc to make sure pension scheme works smoothly and effectively."*

53. There was one employee with a projected annual income of £30,000.

54. In boxes below "Countries you trade with", Mr Shroff listed Singapore and Mauritius.

55. In relation to his experience, Mr Shroff stated:

> "10yrs + worked in Asset Management at a FSA regulated company. Qualified – CF30 with FSA & Pension Regulator certified trustee."

56. Typical business transactions were described as:

> "IFA – annually approx. £15000
>
> Accountant – annually approx. £1500
>
> Exact figures for all transactions unknown yet as contracts still need to be drawn up."

57. Between November 2013 and 1 October 2015, the following sums were paid into the account:

    57.1. Sums totalling £5,000 from an unknown account in the name of Ecroignard

    57.2. Sums totalling £2,000 from the Barclays Bank Uniway Account[5]

    57.3. Sums totalling £30,500 from Deuten Services Limited;

[5] Defined in paragraph 68 below

57.4. A sum of £2,500 from "First International[6]";

57.5. Sums totalling £4,000 from the Metro Bank Uniway Account[7]; and

57.6. Sums totalling £4,000 from the Metro Bank Genwick Account[8],

totalling £48,000.

58. Sums totalling £13,051.49 were paid from the Metro Bank Ecroignard Account to Mr Shroff and sums totalling £22,900 were paid to Freny Shroff.

59. A number of additional payments, which do not appear to relate to the business of Ecroignard, were made on the following dates:

59.1. On 26 March 2014, a payment of £1,099.99 to Costco.co.uk;

59.2. On 29 September 2014, a payment of £529.99 to Currys Online Hemel Hempstead;

59.3. On 2 October 2014, a payment of £619.00 to the Apple Store, London;

59.4. On 25 November 2014, a payment of £5,000 to the Ragens Corporation, British Virgin Islands;

59.5. On 24 July 2015, a payment of £488.60 to the Mercure Hotel, Watford;

59.6. On 31 July 2015, a payment of £431.72 to Enterprise Rent-A-Car;

59.7. On 21 August 2015, a payment of £532.00 to WVR UK Hoseasons Barnoldswick, a holiday lettings company;

59.8. On 7 September 2015, a payment of £107.50 to Rolling Luggage, Heathrow; and

59.9. Also on 7 September 2015, a payment of £430.00 to "Sarastem the Travel People", a travel agency in Harrow.

60. The Metro Bank Ecroignard Account was closed on 17 October 2017. The last substantive transaction (besides account maintenance fees, interest charges and internet banking charges) occurred on 1 October 2015.

61. On 26 January 2017, Mr Bessent applied to open an account at Yorkshire Bank in the name of Ecroignard (the Yorkshire Bank Ecroignard Account).

[6] I understand that this was Mr Shroff's employer at the time
[7] Defined in paragraph 70 below
[8] Defined in paragraph 85 below

A.2 The Schemes

A.2.1 The Uniway Systems Retirement Benefits Pension Scheme

62. On 9 August 2013, the Uniway Scheme, a money purchase occupational pension scheme, was established by Trust Deed between Uniway Systems Limited and Ecroignard, executed on behalf of Uniway Systems by Ms Poole and on behalf of Ecroignard by Mr Shroff (the 2013 Uniway Trust Deed & Rules). Between approximately November 2013 and November 2015, the Scheme was administered by Deuten.

63. On 30 September 2013, the Uniway Scheme received its first member transfer. In total, between 30 September 2013 and 26 April 2016, a total of £10,057,128.88 was transferred into the Uniway Scheme.

64. On 18 May 2017, Uniway Systems and Ecroignard established a second Trust Deed and Rules, replacing the 2013 Uniway Trust Deed and Rules in its entirety (the 2017 Uniway Trust Deed and Rules). The 2017 Uniway Trust Deed and Rules was executed by Mr Michael Horsford on behalf of Uniway and by Mr Burgess on behalf of Ecroignard.

65. I understand that the Uniway Scheme has 140 members, 138 of whom joined the Scheme between September 2013 and 18 November 2015. The amount transferred into the Scheme by the two members who joined after November 2015 totalled £60,344.65.

66. I have been provided with an undated pro forma Uniway Scheme Investment Selection Sheet template document on Deuten headed paper. This indicated that there were the following investment choices available to members:

- WH Ireland Discretionary Managed Cautious Portfolio
- WH Ireland Discretionary Managed Moderate Portfolio
- WH Ireland Discretionary Managed Moderately Adventurous Portfolio
- WH Ireland Discretionary Managed Adventurous Portfolio
- AIGO UK Residential Property Fund Loan Note (8% per annum coupon)
- AIGO Commercial Property Fund Loan Note (8% per annum coupon)
- AIGO Natural Resources Fund Loan Note (8% per annum coupon)
- Default Fund

67. The Investment Selection Sheet also included the wording “N.B. £500 of your Member Personal Account will be allocated to a UK cash account for ancillary costs.”

68. I have also been provided with an undated pro forma Tariff of Charges for the Uniway Scheme, notifying prospective members of the following charges:

> *“An establishment charge of 0.5% of your cumulative transfer value, which is payable once you have been accepted as a Member of the Scheme and any transfer(s) into the Uniway Systems Retirement Benefit Scheme have been received.*

An Annual Management Charge of 0.5% of the value of your Member Personal Account is payable annually in advance from your Member Personal Account each year that you are a Scheme Member from year 2 onwards."

Uniway Scheme – Bank Accounts

69. On 22 May 2013, a joint bank account was established at Barclays for the Uniway Scheme between Ecroignard and Deuten (the Barclays Bank Uniway Account). The application form was signed by Ms Surat on behalf of Ecroignard and Mr and Mrs Sonah on behalf of Deuten. It was noted by Barclays that Mr Ashok Sonah was (at that time) the sole shareholder of Ecroignard.

70. The Barclays Bank Uniway Account was closed on 27 November 2013.

71. An account was opened at Metro Bank in the name of the Uniway Scheme on or near to 25 October 2013 (the Metro Bank Uniway Account). The account opening forms were signed by Mr Shroff and Mr Shah.

72. In the section of the opening forms headed "Start-Up Business Additional Information," the question "in regards to your new Business, do you have experience in this industry?" a tick was placed next to "yes." The following text was included in a free text box below:

"10 yrs + worked in Asset Management at a FSA Regulate companies [sic]

Qualified – CF30 – with FSA & Pension Regulator certified trustee"

73. A written board resolution by Ecroignard dated 1 July 2013 was submitted to Metro Bank (the Ecroignard Board Resolution). The resolution stated that:

"Ankur Shroff (Director of Ecroignard Trustees) and Harshal Shah (Director of Deuten Services Limited) are hereby authorized as joint signatories for all bank accounts associated with Genwick Retirement Benefits Scheme & Uniway Systems Retirement Benefits Scheme, and furthermore that all transactions require the joint authorisation and approval of both the above signatories."

The resolution was signed by Mr Shroff and Mr Shah.

74. In a form dated 20 November 2015, Mr Shroff and Mr Shah were removed as signatories. Mr Bessent and Mr Richard Gore were added as signatories.

75. The Metro Bank Uniway Account was closed on 5 April 2017.

76. Between November 2013 and November 2015, Deuten received net payments of £118,097.16 from the Uniway Scheme[9] (the Total Deuten Uniway Payment).

[9] £117,706.67 from the Metro Bank Uniway Account and £390.49 from the Barclays Uniway Account.

A.2.2 The Genwick Retirement Benefits Scheme

77. On 9 August 2013, the Genwick Scheme, a money purchase occupational pension scheme, was established by Trust Deed between Genwick Limited and Ecroignard, executed on behalf of Genwick by Ms Poole and on behalf of Ecroignard by Mr Shroff (the 2013 Genwick Trust Deed & Rules). Between approximately November 2013 and November 2015, the Scheme was administered by Deuten.

78. I have been provided with a Genwick Scheme Investment Selection Sheet template. This indicated that there were the following investment choices available to members:

- WH Ireland Discretionary Managed Cautious Portfolio
- WH Ireland Discretionary Managed Moderate Portfolio
- WH Ireland Discretionary Managed Moderately Adventurous Portfolio
- WH Ireland Discretionary Managed Adventurous Portfolio
- First Global Wealth Limited Fund
- Default Fund

79. The Investment Selection Sheet also included the same wording set out in paragraph 67 above.

80. I have been provided with an undated pro forma Tariff of Charges for the Genwick Scheme, which set out the same charges as in paragraph 68 above.

81. I have also been provided with a Tariff of Charges document signed by Mr C on 2 August 2013, which sets out the following charges:

> *"An establishment charge of £1,900 is payable once you have been accepted as a Member of the Scheme and any transfer(s) into the Genwick Retirement Benefit Scheme have been received*
>
> *An annual Management Charge is payable annually in advance from your Member Personal Account each year that you are a Scheme Member*
>
> *From year 2 onwards of your membership the on-going admin charge is £195 per annum*
>
> *From year 8 onwards of your membership the on-going admin charge is 1% per annum of the value of your Member Personal Account, with a minimum charge of £395 and a maximum of £750, which will be debited from your Member Personal Account."*

82. The first documented transfer into the Metro Bank Genwick Account[10] is dated 6 December 2013. However, records from Park View suggest that there were earlier transfers between approximately September and December 2013.

83. On 27 May 2017, Genwick and Ecroignard established a second Trust Deed and Rules. Replacing the 2013 Uniway Trust Deed and Rules in its entirety (the 2017 Uniway Trust

[10] Defined at paragraph 85 below

Deed and Rules). The 2017 Uniway Trust Deed and Rules was executed by Mr Michael Horsford on behalf of Genwick and by Mr Burgess on behalf of Ecroignard.

84. I understand that the Genwick Scheme has 85 members. 74 members joined the Scheme between 7 August 2013 and 18 November 2015 with a transfer value of approximately £4,926,475.53. One member joined in December 2015, with a total transfer value of £7,282.33, and nine members joined between 10 July 2017 and 2 January 2018, with a total transfer value of £245,199.02. One further member appears to have joined the Scheme on an unknown date, with a transfer value of £187.20.

Genwick Scheme Bank Accounts

85. Barclays noted on the application form referred to in paragraph 69 above, that a similar application had been made on behalf of the Genwick Scheme but no application form to open a Genwick Scheme account, or account statements, had been provided by Barclays.

86. An account was opened at Metro Bank in the name of the Genwick Scheme on or near to 25 October 2013 (the Metro Bank Genwick Account).

87. In a form dated 20 November 2015, Mr Shroff and Mr Shah were removed as signatories. Mr Bessent and Mr Richard Gore were added as signatories.

88. Between December 2013 and January 2016, Deuten received payments of £126,746.89 from the Metro Bank Genwick Account in relation to its work on the Genwick Scheme (the Total Deuten Genwick Payment).

89. The Metro Bank Genwick Account was closed on 5 April 2017.

A.3 Relevant individuals and companies

90. A substantial number of individuals were involved in the administration and management of the Schemes and of Genwick and Uniway. Various individuals and companies were also involved in introducing members to the Schemes, some of whom were also involved in some of the Schemes' underlying investments. Where an individual was involved in multiple capacities, I have categorised that individual by reference to what appears to be their dominant role.

A.3.1 Directors and associates of Ecroignard

Mr Ankur Vijaykumar Shroff

91. Mr Shroff was the sole director and shareholder of Ecroignard between 18 June 2013 and 18 November 2015. He was a director of Genwick between 17 June and 6 August 2013, of Uniway between 18 June and 6 July 2013 and of Deuten between 18 and 20 June 2013.

92. I have been provided with a copy of Mr Shroff's CV from the information provided by HMRC. During the period of his directorship of Ecroignard, this CV states that he was also a Vice President of Asset Management at First International Group Plc, which the

FCA register confirms was a UK authorised firm until 7 February 2018. The information on the CV is further corroborated by the FCA Register entries for First International Group plc and Mr Shroff, which shows that he was authorised to carry out the 'CF30 Customer' controlled function between 8 May 2008 and 14 June 2016.

93. The version of the FCA Handbook in force in June 2016 at SUP 10A.10.7 defines the relevant parts of the CF 30 customer function as:

"(1) advising on investments other than a non-investment insurance contract (but not where this is advising on investments in the course of carrying on the activity of giving basic advice on a stakeholder product) and performing other functions related to this such as dealing and arranging;

…

(3) giving advice or performing related activities in connection with pension transfers, pension conversions or pension opt-outs for retail clients;

…

(5) dealing, as principal or as agent, and arranging (bringing about) deals in investments other than a non-investment insurance contract with, for, or in connection with customers where the dealing or arranging deals is governed by COBS 11 (Dealing and managing);

(6) acting in the capacity of an investment manager and carrying on functions connected to this;"

94. On Mr Shroff's CV, his role at First International Group lists the following areas of responsibility:

- *"Asset Under management (250million USD +)*
- *Asset allocation for portfolio clients*
- *Liaising with Fund Administrators / Banks / Brokers / MIS / Operations to make sure the investment allocation is effectively implemented and executed*
- *Trading and execution of fund investments*
- *Liaising with Investors at all levels*
- *Risk assessment and risk policy implementation"*

95. Included with the information from HMRC was a TPR Trustee Toolkit Certificate of completion for Mr Shroff, showing that he successfully completed the following Trustee Toolkit modules relevant for a defined contribution scheme of 100-249 members:

- *"Introducing pension schemes*
- *Pensions law*

- **How a DC scheme works*
- *Strategic investment*
- *The trustee's role*
- *The 4 major asset classes*
- **Fund management*
- **Running your scheme"*

The asterisk denotes that the module was passed at a distinction level.

Mr Roger William Bessent

96. Mr Bessent was sole director of Ecroignard between 18 November 2015 and 7 March 2017. He was a director alongside Mr Knyght and Mr Burgess between 7 March and 6 April 2017, and with Mr Burgess between 12 October and 9 November 2017. He was the sole director between 10 and 22 November 2017. He was the sole shareholder of Ecroignard between 18 November 2015 and, at least, 22 November 2017.

97. Mr Bessent was an accountant and director of Gleeson Bessent Trustees Limited (**Gleeson Bessant**) which administered several occupational pension schemes.

98. In April 2019, following an investigation by TPR[11], Mr Bessent was convicted of stealing £292,886 from a pension scheme of which he was trustee. This scheme was unconnected to Ecroignard or the Schemes. He was sentenced to a total of 39 months in prison. A confiscation order of £274,000 was made in relation to this against him.

99. Mr Bessent was disqualified from acting as a director and from acting as a trustee between 23 November 2017 and 22 November 2026.

100. Mr Bessent provided comments and information to the Insolvency Service by email in response to its investigation into Ecroignard. He made the following relevant submissions:-

    100.1. He did not believe that Statements of Investment Principles (SIP) had been prepared for either Scheme. A SIP was prepared later by Mr Knyght and Mr Burgess.

    100.2. He had been invited to take over the directorship of Ecroignard and administration of the Schemes by Mr Benjamin White[12] of Hennessy Jones Limited[13]. He had been told that there had been problems with the administrator, Deuten.

[11] https://www.thepensionsregulator.gov.uk/en/document-library/enforcement-activity/regulatory-intervention-reports/focusplay-retirement-benefits-scheme-regulatory-intervention-report

[12] See paragraph 130

[13] See paragraph 121

100.3. Deuten shared an office with Hennessy Jones, which was an introducer to the Scheme, and that Mr White may have been involved with one of the Schemes' investments.

100.4. He had not had any contact with Mr Shroff.

100.5. When Gleeson Bessent took over administration of the Schemes, Mr Richard Gore of Hennessy Jones had been involved in the applications made over the transition period from Deuten to Gleeson Bessent.

Mr Reeves Knyght

101. Mr Knyght was a director of Ecroignard between 7 March 2017 and 12 October 2017.

102. On 14 December 2018, Mr Knyght provided comments to the Insolvency Service regarding his involvement in the Scheme, summarised as follows:

102.1. He had been looking to expand his Non-Executive Director (**NED**) roles and add to his experience as a NED or Trustee.

102.2. At the point of appointment to Ecroignard he was aware of the issues with the Schemes and that the role may involve resolving those issues.

102.3. He had no knowledge of the previous trustee or members of its management team, and had no subsequent involvement with them. He also had not known the other director who was appointed, Mr Christopher Burgess.

102.4. He carried out typical trustee duties such as attending meetings and approving payments, examining the existing investments, drafting a new SIP, reviewing existing legal advice and engaging new legal representation for Ecroignard. He also engaged receivers for the outstanding loans that had been made by the Scheme.

102.5. He was not involved in the Trustee bank account and was not on the mandate.

102.6. He received remuneration of £1,438 only, for meeting fees and attendance.

102.7. In the lead up to his resignation from Ecroignard there had been significant tension between him and Roger Bessent as issues arose around:

102.7.1. Checking the authenticity of payments as the original client database was not available.

102.7.2. Inconsistencies in the authorisation of payments, with Mr Bessent making them, and a mandate that had been intended to allow Mr Burgess to access the Trustee bank account, but which was never implemented by Mr Bessent.

102.7.3. Interest being paid late and the loans not performing as anticipated.

102.7.4. In relation to the White & Co Loan Agreement (referred to at paragraph 187 below), he had identified that the provisions had been breached and the borrower was looking to release security over a property. He and Mr Burgess refused and, after seeking legal advice, the decision was made to appoint a receiver.

102.7.5. Mr Bessent had opposed this decision, saying that if the loans were called Ecroignard may be removed as trustee of the scheme which would be a significant loss of income for Park View Administration. Mr Bessent said that if the receiver was appointed Mr Knyght would be dismissed from Ecroignard.

102.7.6. Mr Bessent subsequently called a meeting which Mr Knyght could not attend and removed Mr Knyght as a director. Mr Knyght could not challenge this as Mr Bessent was the sole shareholder and had the power to appoint and dismiss directors.

102.8. The only documentation he had access to over the period of his directorship were the spreadsheets of clients, copies of two loan notes (which I assume to be two of the AIGO Master Loan Agreements defined in section C.3.1 below) and a copy of legal advice regarding the receivership related to the White & Co Loan Agreement.

102.9. He had believed that Mr Bessent was due to be banned as a director, but was able to appoint himself as director after Mr Knyght was dismissed. When this issue was raised with the Insolvency Service, Mr Knyght was told that Mr Bessent was not yet banned and it was uncertain when he would be. It was suggested that Mr Knyght raise any concerns he might have with TPR.

102.10. Mr Knyght did not take the matter forward as he had no evidence to provide regarding other matters.

102.11. He does not know whether the loan was called in by Ecroignard after his resignation.

103. On 9 January 2019, Mr Knyght wrote to the Insolvency Service in relation to the Primorus and Early Equity investments[14], saying:

"Both Primorus and Early Equity were already accepted as investment prior to me and Chris [Mr Burgess] becoming Directors. They where [sic] both listed and publicly traded investments, and they still are trading. Information from a DD perspective was the same pack as provided to investors (attached), as well as looking at the publicly available trading information (that included being able to compare to other indexes and sectors)."

[14] See section A.9.2.5 below

Christopher Burgess

104. Mr Burgess was a director of Ecroignard between 7 March 2017 and 9 November 2017.

105. On 10 December 2018, Mr Burgess provided comments to the Insolvency Service about his involvement with Ecroignard. He made the following points, in summary:

    105.1. He and Mr Knyght were appointed to assist Ecroignard and try to re-balance the investment portfolio. “We had applied to the court to enable the scheme to continue – rather than disadvantage the members – the existing trustees gave undertakings not to be trustees.”

    105.2. He drew travel expenses of less than £1,000 only.

    105.3. Due to the intransigence of the administrators, Park View, it was not possible for them to carry out their duties. They were not added as signatories to the trustee bank account despite completing the necessary documentation and so they appointed a receiver.

    105.4. He did not retain any documentation, which was held by the administrator.

Anthony Waterfield

106. Mr Waterfield was appointed as director of Ecroignard on 22 November 2017. He appears to have been the sole shareholder from this date.

107. Mr Waterfield did not provide substantive written submissions to the Insolvency Service regarding the Schemes.

Ms Freny Shroff

108. I understand that Ms Freny Shroff is Mr Shroff’s wife, and received the payments referred to in paragraph 58 above from the Metro Bank Ecroignard Account. Her role was described by Mr Shroff as a “part time administrative helper.”

A.3.2 Scheme Administrators

Deuten Services Limited

109. Deuten was incorporated on 18 February 2013 by Ms Sandhya Rana Sonah and acted as the Schemes’ first administrator. The following individuals were appointed as directors:

Director	**Period of directorship**
Ms Sandhya Rana Sonah	18 February 2013 to 18 June 2013
Mr Ankur Vijaykumar Shroff	18 June 2013 to 20 June 2013
Mr Harshal Narendra Shah	17 June 2013 to 20 November 2015
Mr Roger William Bessent	20 November 2015

110. Deuten operated from 17-19 Maddox Street from at least August 2014.

111. Deuten had a share capital of £99 and 99 allotted shares. Records at Companies House confirm the following shareholders and persons exercising significant control from 2013 onwards:

    111.1. Prior to 17 June 2013, Ms Sonah held 1 share and Mr Shah held 98 shares;

    111.2. Between 17 June 2013 and 19 November 2015, Mr Shah held 99 shares; and

    111.3. On 20 November 2015, 99 shares were transferred to Mr Bessent.

112. Deuten was dissolved on 25 April 2017.

113. When asked to comment on the arrangement and relationships between the companies, Mr Shah said, in summary:

    113.1. He was introduced to the role of director of Deuten through “an old contact”, Mr Yajjadeo Lotun. Mr Lotun knew all of the relevant people in the parties mentioned. The funds and Hennessy Jones were already in play by the time he became involved and he just processed and administered the applications as they were received.

    113.2. Mr Lotun also introduced him to Mr Shroff and Ms Sonah.

    113.3. He was introduced to Mr Bessent by Hennessy Jones Limited.

    113.4. He agreed to sell the business to Mr Bessent on the basis of a good offer price and convenient timing.

    113.5. He had no prior experience of pension administration, but he appointed a very experienced team to undertake the operational work. He passed the HMRC Fit and Proper Persons Test. All legislative and regulatory requirements were adhered to.

    113.6. He oversaw the administration of the Schemes, but left the day to day work to his staff. He received no complaints during his tenure and all coupons had been received when he left the business.

    113.7. Deuten only acted for the Genwick and Uniway Schemes.

    113.8. Hennessy Jones introduced clients to the Schemes and as the Schemes’ administrator, Deuten handled the clients’ applications.

    113.9. From his recollection, Deuten operated from 17-19 Maddox St for approximately a year, perhaps longer, before he sold the company, in December 2015. Deuten was offered cheap rent and this was preferrable to reduce overheads and keep scheme charges minimal.

Gleeson Bessent

114. In November 2015, Deuten was replaced by Gleeson Bessent as the administrator of the Schemes. Gleeson Bessent is currently in liquidation and had the following directors:

Director	Period of directorship
Mr Roger William Bessent	27 April 2010 to 22 November 2017
Ms Tracy Park	6 February 2014 to 26 October 2016

Park View Administration Limited

115. In January 2017, Gleeson Bessent was replaced by Park View Administration Limited (**Park View**) as the Schemes' Administrator. Park View was incorporated on 24 October 2016 by Ms Tracy Park and had the following directors:

Director	Period of directorship
Ms Tracy Park	24 October 2016 to 18 October 2017
Stephen Granville Edmunds	18 October 2017 to 21 January 2019

116. Park View was dissolved via compulsory strike off on 7 March 2023. It is unclear who acted as a director between 22 January 2019 and 7 March 2023.

A.3.3 Relevant Associates of Scheme administrators and the Companies

Ashok Sonah

117. Mr Ashok Sonah was a director of Genwick Limited and Uniway Systems Limited between March 2012 and April 2013. When asked to comment on the arrangement and relationships between the companies, he said, in summary:

117.1. Ms Sonah [at the time his wife] was approached to work for Deuten Services Limited, Genwick Limited and Henderson Carter, however she did not get on with the individuals involved and was unhappy with the lack of relevant information. She resigned shortly afterwards, and he stepped in as a director for a short period until new directors were appointed.

117.2. He is a chartered accountant and his firm, Brebners, was approached to act as auditor. Brebners was not comfortable with the activities of the companies and declined.

117.3. He was introduced to Mr Mark Stephen by Mr Yajjadeo Lotun, "who was looking after some kind [of] investment made by Mr Stephen in Mauritius. Mr Stephen approached my firm to act as accountant but yet again my compliance department was not comfortable to act for his company."

117.4. He did not know Mr Shroff and had no prior connection with him. Mr Shroff was "appointed by Mr Lotun and Mr David Worrow as far as I recall."

117.5. He refutes Ms Sonah's suggestion that he had requested the establishment of Deuten Services Limited. That company was set up by Mr Lotun and a Mr David Worrow.

117.6. Mr David Worrow was the shadow director of the companies and was "calling all the shots."

117.7. Ms Surat and Ms Sonah were offered board roles through himself, but these only lasted a few days.

117.8. Although he opened the bank account for Deuten, this was not evidence of close involvement with the company, and his involvement with Deuten ceased prior to the bank account being opened. The handwriting does not appear to be his.

117.9. He acted as a facilitator by finding individuals who could act as directors for the companies. He was aware of the concept that the businesses would operate pension schemes but was unaware of the details.

Ms Sandhya Sonah

118. Ms Sandhya Sonah was a director of Genwick Limited, Uniway Systems Limited and Deuten Services Limited between March and June 2013. She was later a director of Henderson Carter Associates Limited. When asked to comment on the arrangement and relationships between the companies, she said, in summary:

118.1. It was her then husband, Mr Ashok Sonah, who was primarily responsible for the setting up and operation of the companies. She resigned as she "never saw an agenda nor had a meeting to discuss and understand the purpose of these set ups. My understanding is that Ms Surat was the responsible party…"

118.2. She had heard of the name Mr Lotun through Mr Sonah.

118.3. Ms Surat and Mr Sonah were 100% shareholders of the companies.

118.4. Regarding her involvement in Henderson Carter, she was introduced to Mr Henderson by Mr Sonah, "I did some admin work and was pretty much inactive for the duration of my assignment as a Director therefore, I resigned."

Ms Sandhya Surat

119. Ms Sandhya Surat was a director of Genwick Limited, Uniway Systems Limited and Ecroignard Trustees Limited between February and June 2013. When asked to comment on the arrangement and relationships between the companies, she said, in summary:

119.1. She had been asked to act as a director by a friend, Mr Ashok Sonah, who had a client in Mauritius, Mr Yajjadeo Lotun. The intention was to invest UK pension funds in an offshore, Mauritius based investment. "One company would hold the funds and the other would administer the funds. The fund would be managed by Mr Lotun and his Indian associate (who would act as pension administrators)."

119.2. On learning of the detail Ms Surat resigned from the directorship and was unsure "why Ash [Mr Ashok Sonah] couldn't/wouldn't be a director… I was very concerned about how loose a product this was; the transfer of U.K. pension schemes which were afforded a level of protection to a potentially unregulated investment environment which would attract all sorts of financial cowboys."

119.3. In relation to Mr Sonah's involvement, Ms Surat "regarded his involvement more as facilitator. He knew Mr Lotun personally and they had talked about setting up this company."

119.4. In relation to expected remuneration for her involvement, Ms Surat said "I believe at the time, the transfer of pensions schemes attracted exceptional levels of commission or brokerage fees. And as a director of a company administrating said funds one could also command a handsome salary."

A.3.4 Hennessy Jones Limited

120. Hennessy Jones Limited (**HJL**, now Reditum Capital Limited) was initially a lead generator, with the leads subsequently sold on to other parties. It developed a software product called LeadTracker for use in a Pension Review and Advice Process. Leads fitting a set criteria were generated by marketing companies offering a free pension review and then referred to HJL.

121. In addition to introducing potential transferees, HJL was appointed by AIGO Holdings to promote the Loan Notes to pension schemes and would receive 5% of all loans advanced. Additionally, it was appointed as an introducer appointed representative of Henderson Carter Associates Limited and Financial Page Limited. In that capacity it would act as an agent of those regulated entities.

122. On 25 January 2019, HJL provided a response to the Insolvency Service's enquiries, saying, in summary:-

122.1. HJL had no relationship with Ecroignard and no contact with any individuals there.

122.2. HJL only introduced members to Uniway between late 2013 and mid 2014.

122.3. It held no records relating to the transfer of members and did not charge any fees for the transfers.

123. Details of HJL involvement in the arrangement of transfers into pension Schemes for the purpose of investing in the AIGO Funds is set out in the Upper Tribunal decision *UKUT 00124 (TCC)*.

A.3.5 Directors and Associates of HJL

<u>Mr Mark James Stephen</u>

124. Mr Mark Stephen is the managing director of Reditum Capital Limited, formerly HJL, and was the sole shareholder.

125. On 25 January 2019, Mr Stephen provided the Insolvency Service with comment on the involvement of HJL with the Schemes. He confirmed that HJL had introduced clients to the Uniway Scheme, but not to the Genwick Scheme. He also said that it had no relationship with Ecroignard.

126. Mr Stephen was also involved in other areas of the arrangements:

    126.1. He was responsible for establishing and promoting the AIGO Funds and was recorded as the asset manager and adviser of the AIGO Commercial Property Fund, the Fund Manager of the AIGO Natural Resources Fund and the Fund Manager of the AIGO UK Residential Property Fund;

    126.2. He was the sole director of Maddox Property Partners Limited; and

    126.3. He was a director of Stark Enterprises Limited[15].

Mr Simon Morris

127. From August 2013, Mr Simon Morris was the Head of Origination at HJL[16]. He had recently been convicted of fraud after attempting to hide money from creditors[17].

128. Mr Shroff has said that Mr Simon Morris, along with Mr Benjamin White, introduced him to Mr Bessent.

Mr Benjamin White

129. Mr White was the director of Genwick Limited and Uniway Systems Limited between 25 January 2016 and 8 March 2016, with the correspondence address 4th Floor, Maddox Street.

130. He also worked for HJL.

131. Between 25 October 2013 and 16 August 2016, Mr White acted as director of Holistic Wealth Management Limited and between 1 February 2015 and 28 May 2015, Mr White was a director of City Administration Limited.

132. He was also a director and shareholder of White & Co Property Partners between 23 June 2014 and 8 March 2016.

133. Mr Shroff has said that Mr White, along with Mr Simon Morris, introduced him to Mr Bessent.

134. In September 2023, Mr White provided comment to my office, saying, in summary:

    134.1. He accepted the directorship of Uniway and Genwick Limited because the previous director, Ms Roxanne Marie Poole, was not a “party to a wider sale

[15] See section C.3.1 below

[16] https://uk.linkedin.com/in/simonmorrisuk

[17] https://www.mpamag.com/uk/news/general/property-fraudster-targeting-pensioner-buy-to-let/371493

agreement of numerous companies that occurred in March 2016 and which the buyer wanted to purchase these two entities as part of the wider transaction".

134.2. He had never met or spoken to Ms Poole.

134.3. He had no contact with Mr Shroff in relation to the Schemes' investment in White & Co[18] and never met Mr Shroff.

134.4. When he sold White & Co in March 2016, the loan obligations had been met in full and the assets of the company were valued far in excess of the loan value. The company was sold to companies owned by Mr Robert Whitton.

134.5. He met Mr Shah of Deuten through Mr David Worrow.

134.6. Holistic Wealth Management Limited acted as an introducer to the Schemes but received no commission for transfers made into them.

134.7. He did not meet Ms Sonah while a director of Henderson Carter but understood that she was the company's accountant.

A.3.6 Other Introducers

Holistic Wealth Management

135. Holistic was incorporated on 13 November 2012. Mr White acted as a director from 25 October 2013 to dissolution.

136. Holistic Wealth was an appointed representative of the FCA regulated firm, Henderson Carter Associates Limited between 13 January 2014 and 19 June 2015, with the FCA reference number 613157.

137. Holistic Wealth Management introduced Mr SW to the Genwick Scheme.

Henderson Carter Associates Limited

138. Henderson Carter was the Principal Regulated Firm for two appointed representatives, Holistic Wealth and HJL. Over the relevant period it had two directors, Mr Aiden James Henderson (7 September 2009 to date) and Ms Sonah (1 May 2014 to 1 April 2015).

139. Mr Aiden Henderson was employed by HJL in the role of Business Development between June 2016 and June 2019.

140. Mr Henderson has been disqualified as a director and prohibited from working in the financial services sector following a FCA investigation in relation to pension mis-selling between January 2014 and July 2015[19]. He was also subject to an FCA decision notice dated 6 December 2018[20].

[18] See section A.9.2.2 below

[19] https://www.gov.uk/government/news/three-directors-disqualified-after-pension-mis-selling-lost-investors-millions

[20] https://www.fca.org.uk/publication/decision-notices/henderson-carter-associates-limited-2019.pdf

141. Henderson Carter is currently in liquidation.

Financial Page Limited

142. Financial Page Limited was the company that introduced Mr E to the Uniway Scheme in November 2014.

143. On 21 September 2011, Financial Page was incorporated by Mr Andrew Mark Thomas Page, a financial adviser. Financial Page was dissolved in February 2020 following liquidation.[21]

144. On 6 December 2018, the FCA issued a Decision Notice[22] and imposed a financial penalty of £283,100. This was appealed to the Upper Tribunal and a decision issued in May 2022. In summary, the Upper Tribunal decision outlines a pension switching process operated by Financial Page developed and influenced by HJL. This process involved the following:

    144.1. HJL would source clients from lead generation companies and introduce them to Financial Page.

    144.2. HJL and City Administration Limited would use Financial Page's credentials to perform functions on its behalf.

    144.3. An automated suitability report would be produced on pre-set criteria recommending pension transfers and investing in unregulated investments. HJL had an undisclosed material financial interest in the investments.

145. The Upper Tribunal found that Financial Page were aware that Mr Mark Stephen was a director of the company issuing the Loan Notes. However, it took no steps to manage these conflicts of interest or to ensure the common directorships and the structure of HJL's remuneration were disclosed to customers.

A.7 Relevant provisions of the Schemes documents

146. Relevant sections of the Schemes' Establishing Deed and Rules are set out in Appendix 2 below.

147. I have been provided with an undated Members' Booklet for the Schemes on Deuten headed paper. The documents were prepared by Hugh James LLP and include the following statements:

> *"The Scheme is set up under Trust which means that its funds are entirely separate from the Company's assets. In addition, there are appointed Trustees who have a legal obligation to look after your best interests."*

21 https://assets.publishing.service.gov.uk/media/627bed908fa8f57d80991217/Amended_Andrew_Page_etc_decision_for_release.pdf

22 https://www.fca.org.uk/publication/decision-notices/financial-page-ltd-2019.pdf

"A proportion of any charges properly due in relation to the Scheme and its administration will be deducted automatically from your Member's Personal Account."

A.8 The Membership Application Forms

148. Relevant extracts of membership application and investment forms are set out in Appendix 3 below.

A.9 The Schemes' investments

A.9.1 The Uniway Scheme

149. A total of £9,573,457.73 was invested by Ecroignard as trustee of the Uniway Scheme. Of this sum, £9,215,817.37 was invested by Ecroignard between 18 June 2013 and 18 November 2015, the period of Mr Shroff's sole directorship. I have summarised the information known about the investments and any documents received in relation to them.

A.9.1.1 AIGO Loan Agreements

150. The principal investments made by Ecroignard as trustee of the Uniway Scheme were via three master loan agreements with AIGO Holdings PCC (AIGO Holdings), a Mauritius based Protected Cell Company, on behalf of three AIGO Holdings "cells" (the AIGO Cells):

    150.1. A Master Loan Agreement dated 11 November 2013 between Ecroignard as trustee of the Uniway Scheme and AIGO Holdings on behalf of the UK Residential Property Fund (the **AIGO UKRPF**) (**the AIGO UKRPF Agreement**), executed on behalf of Ecroignard by Mr Shroff and on behalf of AIGO Holdings by a signature which appears to be that of Ms Vidyotma Lotun;

    150.2. A Master Loan Agreement dated 8 January 2014 between Ecroignard as trustee for the Uniway Scheme and AIGO Holdings on behalf of the AIGO Natural Resources Fund Cell (the **AIGO NRF**) (the **AIGO NRF Agreement**), executed on behalf of Ecroignard by Fidelis Trust and Corporate Services (**Fidelis**) and on behalf of AIGO Holdings by a signature which appears to be that of Ms Vidyotma Lotun; and

    150.3. A Master Loan Agreement dated 24 March 2014 between Ecroignard and AIGO PCC on behalf of the AIGO Commercial Property Fund Cell (the **AIGO CPF**) (the **AIGO CPF Agreement**), executed on behalf of Ecroignard by Fidelis and on behalf of AIGO Holdings by a signature which appears to be that of Ms Vidyotma Lotun,

    together the "AIGO Master Loan Agreements"

151. Between 18 June 2013 and 18 November 2015, the following sums were loaned by Ecroignard from the Uniway Scheme to each cell:

    - £4,784,511.86 to the AIGO UKRPF cell under the AIGO UKRPF Agreement;

- £2,285,378.71 to the AIGO CP cell under the AIGO CP Agreement; and
- £2,140,799.59 to the AIGO NRF cell under the AIGO NRF Agreement,

totalling £9,210,690.16 (the 2013-2015 Uniway AIGO Loan Sum).

152. Further sums were loaned by the Uniway Scheme after 18 November 2015 as follows:

- £150,043.21 to the AIGO UKRPF cell under the AIGO UKRPF Agreement;
- £143,972.53 to the AIGO CP cell under the AIGO CP Agreement; and
- £13,624.62 to the AIGO NRF cell under the AIGO NRF Agreement,

totalling £307,640.36 (the Uniway Post November 2015 AIGO Loan Sum).

153. The key terms of each of the AIGO Master Loan Agreements are as follows:

153.1. The borrowing cap for each cell was £20,000,000.

153.2. an annual rate of interest of 8% was payable annually in arrears.

153.3. Sums loaned to AIGO Holdings were on an unsecured basis.

153.4. The final repayment date was the date ten years after the date of each agreement.

153.5. A lender was able to serve an “Early withdrawal notice” to AIGO Holdings for repayment. The notice period for an early withdrawal was 12 months, which could be extended by AIGO Holdings for a further 12 months if a repayment would prejudice the solvency of the cell.

153.6. AIGO Holdings undertook to procure from an insurer a Default Insurance Policy in the event that AIGO Holdings defaulted on a payment obligation.

153.7. The “administrator” was defined as Fidelis Trust & Corporate Services (Fidelis). Fidelis is a Mauritius registered company, and records held at the Mauritius Corporate and Business Registration Department lists Ms Vidyotma Lotun as a director of Fidelis from 23 February 2010 onwards.

154. I have been provided with an AIGO Holdings Information Memorandum dated 31 October 2013 (the **AIGO Information Memorandum**), relevant extracts of which are reproduced at Appendix 4, which describes in detail the investment opportunity for which the AIGO Cells were raising funds via the AIGO Master Loan Agreements. The principal features of the offering and the content of the AIGO Information Memorandum are summarised below:-

154.1. Each cell would invite loan participation of up to £20 million via Master Loan Agreements, to be repaid on 31 December 2023, paying a coupon of 8% per year annually in arrears with bonuses paid in years 5 and 10 (the Lending Scheme).

154.2. The Directors of AIGO Holdings were Ms Vidyotma Lotun and Mrs Nazia Bibi Mungroo.

154.3. The funds' investment manager was Fidelis Global Asset Management Limited (FGAM). Fidelis was the administrator.

154.4. AIGO Holdings and the cells were operated as Expert Funds under the Financial Services Commission, Mauritius, with share capital listed on the Mauritian Stock Exchange, a Recognised Stock Exchange by HMRC.

154.5. The Lending Scheme was "designed to appeal to OPSs [Occupational Pension Scheme], SIPPs [Self Invested Personal Pension] and SSASs [Small Self-Administered Scheme]. The Lending Scheme was not offered to persons other than with a view to the investment of moneys held within OPSs, SIPPs or SSASs."

154.6. The Lending Scheme was not considered to be a Collective Investment Scheme for the purposes of Section 235 of the Financial Services and Markets Act 2000 (**FSMA**) or the Collective Investment Scheme Order 2000.

154.7. The Lending Scheme was not regulated by the FCA.

154.8. The AIGO Information Memorandum did not amount to advice for investments regulated under the FSMA.

154.9. HJL was responsible for promoting the Lending Scheme and each cell would compensate HJL with a fee of 5% of the total amount raised under the Lending Scheme. The Information Memorandum stated that "HJ[L] was incorporated in 2013 as a specialist advisory and promotional vehicle by Mr Mark Stephen."

154.10. The use of the AIGO Offering Memorandum by HJL to promote the Lending Scheme by HJL was stated to be on two parallel bases:

154.10.1. To Trustees of or participants in the Lending Scheme via an occupational pension scheme or SSAS, the AIGO Offering Memorandum was not regarded as a financial promotion for the purposes of S21 FSMA; and

154.10.2. To participants in the Lending Scheme via a SIPP, an exempt financial promotion on the basis that HJL was an introducer appointed representative of various (unspecified) FCA authorised investment firms.

154.11. The Lending Scheme was unsecured.

154.12. In a section headed "Investment Advice," reproduced at Appendix 4 the memorandum stated that it did not constitute advice by HJL or AIGO PCC. Despite this, the memorandum included a "Pensions Regulatory Summary," reproduced at Appendix 4, which concluded that:

In principle, the Trustees of an OPS… have the opportunity to consider an Application for participation in the Lending Scheme, subject to careful consideration of their overriding duties under the law as pension Trustees. It is particularly germane that the Stock Exchange of Mauritius is a regulated market for the purposes of the Investment Regulations 2005.

154.13. The Costs, Fees and Expenses of the Lending Scheme were listed as:

Establishment of AIGO Holdings and the Funds	£54,500
UK legal fees	Up to a maximum of £102,500
Administration	£18,000 per year
Investment Management Fees	Initial 1%, 0.5% per year thereafter
Custodian Fees	£4,000 per year
Directors Fees	£4,000 per year
Hennessy Jones Commission	Variable

The proportion of each cost a lender would be liable to bear was not specified.

154.14. The memorandum included a list of risk factors, reproduced at Appendix 4.

155. The AIGO Information Memorandum provided specific information about the proposed investment strategy and key individuals involved in each of the three funds, summarised below:-

<u>AIGO Commercial Property Fund</u>

155.1. The Commercial Property Fund would purchase distressed UK commercial property at a discount and sell it on following improvements. The intention would be for a bonus to be confirmed after five years and paid after ten.

155.2. The asset manager and adviser would be Mr Mark Stephen, a director of HJL.

155.3. 21 specific risk factors of the Commercial Property Fund were listed in addition to the general risk factors set out at Appendix 4.

<u>AIGO Natural Resources Fund</u>

155.4. The Natural Resources Fund would invest in projects predominantly relating to natural resources such as solar or wind energy. An example given was an investment in an Indonesian mining company, via a Singapore based investment company and with a Tri-Party profit share and participation agreement. The arrangement was promoted by Azurite Capital Pte Ltd, headquartered in Singapore, with a UK office of which Dr Phillip Reeves Knyght was director.

155.5. Mr Knyght was listed as the fund's "specialist mining adviser" through Mayfair Investment Management Limited.

155.6. The expectation was that the Natural Resources Fund would diversify its investments by not investing more than 25% of its investable assets in one project over a 12 month period.

155.7. Mark Stephen of HJL was the Fund Manager. Dr Reeves Knyght was listed as the specialist mining adviser, through Mayfair Investment Management Limited.

155.8. A list of 13 risks specific to the Natural Resources Fund was provided in addition to the general risk factors set out at Appendix 4.

AIGO UK Residential Property Fund

155.9. The objective of the fund was to purchase distressed residential property and sell the property on the market at true market value.

155.10. This would be a joint venture with Kazai Capital Limited (**Kazai**), and a lending agreement was in place to purchase up to 300 properties at a 25% or more discount. The fund would have floating charges on all of the properties purchased by Kazai until they are purchased by the fund itself.

155.11. On the fifth anniversary of the loan being made, a bonus would be announced for those lenders who extended the loan for a further 5 years.

155.12. Mark Stephen was the manager of the fund.

155.13. 21 specific risk factors of the Residential Property Fund were listed in addition to the general risk factors set out at Appendix 4. Members of the Schemes were provided with brief investment factsheets which have been submitted to me explaining the intention of the AIGO Funds. These factsheets broadly summarised the information in the Brochure.

156. Mr Yajjadeo Lotun was appointed as a director of Fidelis on 4 January 2016. Both Ms Vidyotma Lotun and Mr Yajjadeo Lotun were appointed as directors of another Mauritius investment company, "Universal Golden Fund." In a registration document for this company filed with the Financial Services Commission in Mauritius[23], the same residential address is listed for both individuals.

157. Signed by the directors on 19 July 2016, chartered accountants based in Mauritius issued a Financial Statements report for AIGO Holdings, including the following relevant points:

157.1. There had been losses in 2014 and 2015 of £524,145 and £1,978,914 respectively and no dividends had been paid.

[23] https://www.fscmauritius.org/media/2928/universal-golden-fund.pdf

157.2. Insurance had been secured for the AIGO UK Residential and AIGO Commercial Property Funds through AOB Insurance Limited.

157.3. As at 31 December 2015, the Funds had the following liabilities:

UK Residential Property Fund	Commercial Property Fund	Natural Resources Fund
£35,529,344	£27,366,984	£9,663,917

157.4. Up to 31 December 2014, the following loans had been made by the funds:

Borrowing party	UK Residential Property Fund	Commercial Property Fund	Natural Resources Fund[24]
Kazai Capital Limited	£8,767,500	-	
Stark Enterprise Limited	£7,254,500	£9,099,000	
White & Co Property Partners Ltd	£2,597,361	-	
EMC Finance Ltd	£786,000	-	
DOS Palm Oil Productions Limited	-	-	

157.5. Up to 31 December 2015, the following loans had been made by the funds:

Borrowing party	UK Residential Property Fund	Commercial Property Fund	Natural Resources Fund[25]
Kazai Capital Limited	£9,277,500	-	
Stark Enterprise Limited	£15,180,000	£1,137,500	

[24] This column is not visible on the copy of the document I have received.

[25] This column is not visible on the copy of the document I have received.

White & Co Property Partners Ltd	£4,528,261	-	
Universe Finance Ltd [Hong Kong]	-	£22,168,000	
Maddox Property Partners Ltd	-	£170,000	
Lambert Perrin Liquidity Plc (formerly HJ Liquid Assets Plc)	-	-	
Stark Equity Ltd	-	-	
Reditum Capital Ltd (formerly Hennessy Jones Ltd	-	-	

157.6. The notes accompanying these tables show that these loans each had fixed interest of 9% or 10%. The Kazai Capital, Stark, White & Co and Maddox Property Partners loans were secured against the underlying assets. The other loans were unsecured.

158. On 16 March 2016, AIGO Holdings PCC delisted the three AIGO funds from the Mauritius stock exchange.[26]

159. In March 2018 a restructuring proposal was made from AIGO Holdings PCC to Ecroignard following an accounts audit and a report from the investment manager, "Wealth Asset Managers". According to the proposal document, the investment manager report:

> "…placed emphasis on the "Adverse Material Circumstances and Going Concern" issues facing the AIGO funds, together with some of the structural and past factors that contributed to these problems."

160. A second report was also carried out by an independent restructuring expert. This identified the same issues. The conclusions of both reports, which the AIGO Board agreed to were:

> "Costs must be reduced;

[26] http://stockexchangeofmauritius.com/downloads/archives/09122013cp.pdf

Redemptions must be ceased until the Final Repayment Date

Coupon payments/returns need to be restructured. In the view of the Board, the borrowing and the sale of assets to fund the annual coupon is not in the long-term interest of the Bondholders and Shareholders of AIGO."

161. The restructuring proposal was accepted by Ecroignard. In respect of the AIGO Commercial Property Fund, the restructure confirmed that there would be no early withdrawals from the fund, where it would prejudice the fund's solvency. Arrears of interest of £201,637 would be paid on 31 March 2018 and any default interest would be waived. This agreement was signed by Mr Waterfield on behalf of Ecroignard.

162. The proposal included the following points:

    162.1. High set up costs and excessive cost of the Investment Manager (£1.3m) would be investigated and the investment management agreement terminated.

    162.2. Insurance cover on two of the cells had lapsed and it would be prohibitively expensive to recommence these.

    162.3. There were Early Redemption Notices in excess of £12m, and so Early Redemptions were formally suspended.

    162.4. Coupons on the cells would be reduced or suspended with no default interest.

163. The following sums were paid into the Metro Bank Uniway Account:

    163.1. With references to the AIGO UKRPF cell, payments of £134,779.92 on 24 April 2014, £123,730.06 on 13 January 2015, £52,631.82 on 3 December 2015 and £25,000 on 17 November 2016, totalling £336,141.80 (the **Uniway AIGO UKRPF Returned Sum**);

    163.2. With reference to the AIGO CPF cell, a single payment of £25,301.45 on 13 January 2015 (the **Uniway AIGO CPF Returned Sum**);

    163.3. With references to the AIGO NRF cell, payments of £55,706.47 on 13 January 2015 and £63,370.52 January 2016 totalling £119,076.99 (the **Uniway AIGO NRF Returned Sum**);

    163.4. With a reference to "Lambert Perrin Liquidity Plc AIGO Interest," a single payment of £566,963.35 on 31 December 2015 (the **Uniway Lambert Perrin AIGO Returned Sum**); and

    163.5. With a reference to the "AIGO Equity Fund," a single payment of £5,858.26 on 21 January 2016 (the **AIGO Equity Fund Returned Sum**),

    totalling £1,053,341.85 (the **Metro Bank Uniway AIGO Returned Sum**).

164. The following sums were paid into the Yorkshire Bank Ecroignard Account:

164.1. With references to the AIGO UKRPF cell, payments of £120,000 on 11 April 2017 and £100,000 and £241,897.89 on 10 May 2017 totalling £461,897.89 (the **Yorkshire Bank AIGO UKRPF Returned Sum**);

164.2. With references to the AIGO CPF cell, payments of £200,000 on 21 June 2017, £14,765.05 on 27 July 2017, £12,710.95 and £201,637 on 11 April 2018 totalling £429,113.00 (the **Yorkshire Bank AIGO CPF Returned Sum**); and

164.3. With references referring to the AIGO NRF cell, a single payment of £184,869.63 on 27 July 2017 (the **Yorkshire Bank AIGO UKNRF Returned Sum**);

Totalling £1,102,261.27 (the **Yorkshire Bank Ecroignard AIGO Returned Sum**). It is unclear whether these sums were paid into the Yorkshire Bank Ecroignard Account for the benefit of the Uniway or Genwick Schemes.

A.9.1.2 WH Ireland

165. On 11 November 2013, Ecroignard entered into two "Client Information & Agreement" forms with WH Ireland for each of the Uniway and Genwick Schemes, executed on behalf of Ecroignard by Mr Shroff. These show that the intention was for WH Ireland to provide a Pension Default Fund through a discretionary fund management service. Contact details for the Schemes was noted as Deuten Services.

166. The financial adviser for the Schemes was listed as Holborn Financial Limited, a FCA regulated financial adviser.

167. Within the application form, Mr Shroff indicated that Ecroignard overall had considerable investment experience. On a scale of "1" to "5", where "1" represented little or no knowledge and "5" considerable knowledge, Mr Shroff ticked "5" in respect of "Equities", "Futures and options" and "Structured products". He ticked "4" in respect of "Fixed interest (e.g. bonds, debentures)", "Collectives (e.g. unit and investment trusts)" and "CFDs/Spread bets." Mr Shroff indicated that Ecroignard had undertaken investment transactions of over £100,000 and understood a wide range of investment types. Ecroignard was said to hold other assets of £627,000 at this time and the objective was a balanced return.

168. A ledger statement from WH Ireland for the period November 2013 to May 2016 shows that the Uniway Scheme transferred £5,127.21 to WH Ireland on 3 February 2014 (the **Uniway WH Ireland Investment**). The funds do not appear to have been invested, and a sum of £5,108.06 appears to have been returned to the Scheme on 9 May 2016.

A.9.1.3 Sport:80 plc and Truspine Technologies Limited

169. On 2 July 2018, Ecroignard entered into a sale and purchase agreement for the purchase of 1,250,000 shares in Sport:80 plc from Copian Capital Partners (**Copian**) for consideration of £50,000.

170. On 6 September 2018, Ecroignard entered into an agreement for exchange of shares with Copian, under which Copian agreed to accept 1,250,000 shares in Sport:80 plc in exchange for 166,667 shares in Truspine Technologies Limited (**Truspine**). The total

value of each shareholding was stated to be the same. A share certificate was issued on 6 September 2018 certifying that Ecroignard, on behalf of the Uniway Scheme, was the holder of 166,667 shares in Truspine Technologies Limited (the **Uniway Truspine Technologies Investment**).

171. Shares in Truspine are listed on the Aquis stock exchange at a current mid-price of £0.125, indicating a current maximum value of £20,833.37.

A.9.2 The Genwick Scheme

172. A total of £4,711,335.59 was invested by the Genwick Scheme. Of this sum, £4,409,654.95 was invested by Ecroignard between 18 June 2013 and 18 November 2015. I have summarised the information known about the investments and any documents received in relation to them.

A.9.2.1 Loans to AIGO

173. I have seen no evidence that the AIGO Master Loan Agreements set out in paragraph 150 above were entered into between AIGO Holdings and Ecroignard on behalf of the Genwick Scheme. Each AIGO Master Loan Agreement was entered into on behalf of the Uniway Scheme only. Nevertheless, between 18 June 2013 and 18 November 2015, the following sums were loaned from the Genwick Scheme to each of the AIGO Cells:

- £901,870.94 to the AIGO UKRPF cell;
- £388,525.52 to the AIGO CP cell; and
- £164,260.50 to the AIGO NRF cell,

totalling £1,454,656.96 (the 2013-2015 Genwick AIGO Loan Sum and, together with the 2013-2015 Uniway AIGO Loan Sum, the **Total 2013-2015 AIGO Loan Sum**).

174. Further sums were loaned by the Genwick Scheme after 18 November 2015 as follows:

- £33,023.57 to the AIGO UKRPF cell;
- £7,521.85 to the AIGO CPF cell; and
- £6,451.80 to the AIGO NRF cell,

totalling £46,997.22 (the Genwick Post November 2015 AIGO Loan Sum and, together with the Uniway Post November 2015 AIGO Loan Sum, the **Total Post November 2015 AIGO Loan Sum**).

175. The following sums were paid into the Metro Bank Genwick Account:

175.1. With references referring to the AIGO UKRPF cell, sums totalling £2,484.90 (the **Genwick AIGO UKRPF Returned Sum**);

175.2. With references to the AIGO CPF cell, sums totalling £1,980.90 (the **Genwick AIGO CPF Returned Sum**);

175.3. With references to the AIGO NRF cell, sums totalling £13,426.52 (the **Genwick AIGO UKNRF Returned Sum**); and

175.4. With reference to an AIGO Interest payment, a sum totalling £87,102.17 (the **Genwick AIGO Interest Payment**),

totalling £104,994.49 (the **Metro Bank Genwick AIGO Returned Sum**)

A.9.2.2 The FGW Investment

176. On 11 September 2013, Ecroignard entered into a loan agreement with First Global Wealth, a company registered in the British Virgin Islands, executed on behalf of Ecroignard by Mr Shroff and on behalf of FGW by a signature identical to that of Ms Vidyotma Lotun (the **FGW Loan Agreement**). According to the British Virgin Islands Financial Services Commission, FGW was a private fund and is now a Former Regulated Entity[27].

177. Fidelis was defined as the administrator appointed by FGW. Clause 14.1(b) stipulated that communications to FGW should be addressed to Fidelis, for the attention of Ms Vidyotma Lotun.

178. The FGW Loan Agreement provides for a borrowing cap of £4,185,000 and the stated purpose of the loan was to finance the "Project", defined as:

> "*an investment in Aquilaria and Agarwood foresting project in Fiji where the Borrower shall acquire a leasehold interest in land which has Aquilaria trees planted and entitlements from their exploitation, more fully detailed in the Schedule 4 to this Agreement and which investment is financed by a loan [sic]*"

179. The wording of Schedule 4 states "Template agreement to be executed by the Borrower for the purposes of the Project."

180. The FGW Loan Agreement provides for no security and an annual interest rate of 5%, payable annually in arrears.

181. According to the Metro Bank Genwick Account records, £888,577.17 was paid to FGW between December 2013 and November 2015. Records kept by Park View set out payments additional to this of £614,753.79, a total of £1,503,330.96 (the **Total FGW Loan Sum**). I consider it likely that the additional payments were made into a Barclays Genwick account for which I do not have records.

182. I have seen a marketing brochure issued by World Forestry Fiji, an associated company to World Forestry Monaco, a "forestry investment company." The brochure advertised two phases of investment in Agarwood plantations, offering a compound

[27] http://www.bvifsc.vg/en-us/regulatedentities/investmentbusiness/privatefunds.aspx#F

annual return of 15% over 5-6 years in relation to Phase 1, and a compound annual return of 20% in relation to Phase 2.

183. I have seen an unexecuted Sub Lease Agreement dated 19 August 2013 between World Forestry Monaco and FGW on behalf of the Genwick Scheme. It indicated that it was in relation to "PTC-14", which appears to be a reference to an individual Genwick Scheme member. The agreement provided for a sub lease to be granted by WFM to FGW as sub lessee of three one acre plots for consideration of £11,950 per plot, situated at Nasavusavu Pt of Lot 1, Nalawa, Ra, Fiji. Each plot was to be planted with 300 Agarwood trees.

184. Accompanying this was an unexecuted Land Asset Purchase Contract dated 19 August 2013 between WFM and World Forestry Fiji, which appears to be a trading style of WFM, also, in relation to a different member, "PTC-30". Under this contract, £8,365 per plot was payable to WFM and the balance of the remaining funds per plot was payable to Ottingnon Ltd, referred to as the "sales company".

185. So, it appears that at least a proportion of the sums loaned to FGW under the FGW Loan Agreement were disbursed to WFM and Ottingnon Ltd in relation to the purchase of Agarwood plantations based in Fiji.

186. I have also been provided with documents referring to an investment by FGW in an entity known as "Dos Palm Oil". However, the terms of any investment or loan made by FGW with regard to this entity are unclear.

187. Between 14 November 2014 and 16 January 2015, payments totalling £37,058.74 were paid into the Scheme by FGW (the **2014-2015 FGW Returned Sum**). On 25 January 2016, in response to correspondence that day, Mr Yajjadeo Lotun, on behalf of FGW, acknowledged a request by Mr Bessent for full repayment of the loan as no interest had recently been received. FGW explained that it was currently unable to repay the loan facility at such short notice as they were long term investments. As an alternative, FGW proposed to novate to Ecroignard a loan it had made to White & Co Property Partners Limited (**White & Co**) dated 22 July 2014 (the White & Co Loan Agreement) in exchange for terminating the FGW Loan Agreement. Of the accrued interest under the FGW Limited Loan Agreement, £35,714 would be paid as partial outstanding interest, and £158,691 of the outstanding interest would be waived.

188. Under the White & Co Loan Agreement, a total of £1,360,000 was outstanding, against the outstanding FGW loan of £1,516,081.68. The novation would result in a loss to the Scheme of £156,081.68. It is not possible to reconcile this higher figure of £1,516,081.68 with the Total FGW Loan Sum, and the discrepancy might represent an element of unpaid interest.

189. On 27 January 2016, FGW, Ecroignard and White & Co executed a deed of novation (the **Deed of Novation**). On the same date Ecroignard and FGW executed a deed of termination, under which the FGW Loan Agreement was terminated. Also on the same date, White & Co and Ecroignard executed a Debenture, under which a fixed charge was created over White & Co's assets in favour of Ecroignard. The charge was

registered at Companies House on 2 February 2016. The sum of £35,714.59 was paid into the Genwick Scheme bank account on 3 February 2016. In addition to the 2014-2015 FGW Returned Sum, the total sum paid into the Genwick Scheme bank account by FGW was £72,773.33 (the **FGW Total Returned Sum**). In a Notice of Court Order Ending Administration, dated 17 January 2023, White & Co's administrator confirmed the novation, showing that White & Co had granted security by way of a Debenture to Ecroignard on 27 January 2016 for £1,521,412. It recorded that no payments had been made to Ecroignard. However, five payments totalling £82,674.90 were received from White & Co on 20 February 2017 (the **White & Co Returned Sum**).

A.9.2.3 Dolphin Capital

190. Dolphin Capital was formed in 2008 with the intention of buying and renovating derelict real estate in Germany for development into residential use.

191. Between October 2014 and July 2015, net payments of £1,415,811.96 were paid to Dolphin Capital from the Genwick Scheme under the reference "BK Law - DC80 – 5 Years Loan Notes" (the **2014-2015 Dolphin Loan Sum**) and a further sum of £45,154.23 was loaned to Dolphin after 18 November 2015 (the **Dolphin Post November 2015 Loan Sum** and, together with the 2014-2015 Dolphin Loan Sum, the **Total Dolphin Loan Sum**). Sums totalling £94,389.98 with the reference "Dolphin Interest" were paid into the Genwick Scheme bank account between April 2015 and December 2016, and sums totalling £26,380.75 were paid into the Ecroignard Yorkshire Bank Account on 24 November 2017 (together, £120,770.73, the **Dolphin Returned Sum**).

192. I have seen an unexecuted "Loan Note Instrument" dated 11 November 2014 in which the directors of Dolphin Capital 80. Projekt GmbH & Co. KG resolved "to create a maximum nominal amount of £3,800,000 average 13.8% fixed rate secured loan notes 2019".

193. The Loan Note Instrument provided that issued notes will be secured by a first ranking land charge over the Property. Property is defined as "Project as detailed in appendix [soc] A" but no such appendix is included in the version of the Loan Note Instrument I have seen. Security was held by the Security Trustee and a pro forma Security Trustee Agreement is included at appendix 5 of the Instrument.

194. Attached to the instrument is an unsigned "Loan Note Offer" addressed to the Genwick Scheme for an investment of £162,955.03 for a term of 5 years at an "Average 13.8% per annum." The Offer is unsigned, but states that "upon receipt of this completed Loan Note Offer form, together with the payment of my agreed investment amount… Dolphin Capital GmbH will then issue to me… a Loan Note Certificate that carries: …Confirmation of the average 13.8% fixed annual interest payment".

195. The Loan Note Instrument defines “Repayment Date” as “11/11/2019, being 5 years from the date on which the Instrument is executed,” which suggests that the documentation was prepared in or around 11 November 2014.

196. Neither the Loan Note Instrument nor the Loan Note Offer provides for early redemption or option to trade or transfer the Loan Note and no option for the early repayment of funds.

197. I have not seen copies of any Loan Note Certificates issued by Dolphin Capital.

198. I have been provided with a document titled “Dolphin Capital GmbH, A Prudent Investment Opportunity for Discerning Individuals”. This was a marketing brochure for use by “Accredited Introducers”, which included the following:

    198.1. This was a short term investment, up to five years, providing upwards of 12% per year interest. There was the security of a first legal charge on the underlying asset, listed German properties, and it had a “proven & fully auditable track record”.

    198.2. “Dolphin Capital GmbH, no associated Group Company or Accredited Introducer is authorised or regulated by the Financial Services Authority (FSA) in the UK under the Financial Services & Markets Act 2000 (“FSMA”).”

    198.3. “The Dolphin Capital GmbH investment is SIPP Approved.”

    198.4. The investment, in summary, was a loan which would be used to purchase derelict German listed buildings, renovate them using tax breaks, and sell the units off plan through sales agents.

199. I have seen a copy of an undated executed Deed between Ecroignard, Dolphin Capital 80. Projekt GmbH & Co. KG (Dolphin 80) and Dolphin Capital 214. Projekt GmbH & Co. KG (Dolphin 214). In this deed, Ecroignard and Dolphin 80 agreed to cancel the principal of 14 loan notes plus accrued interest to 30 April 2017, totalling £1,710,083.81 and to crystallise this sum as a debt. Dolphin 80 transferred to Dolphin 214 the liability to pay the debt.

200. I have seen a copy of an executed deed between Ecroignard, Dolphin 214 and Acorn Growth plc (Acorn). The copy I have seen is undated but I understand that a version was executed on 29 March 2017. The deed recorded that Acorn had purchased a property from Dolphin 214, which had received in consideration ordinary shares in Acorn at a price of £.017 per share. In the deed, Ecroignard and Dolphin 214 agreed that the shares would be allotted to Ecroignard in settlement of the debt created by the deed, see paragraph 199 above.

201. Acorn Growth plc changed its name to Vordere plc (Vordere) on 31 May 2017.

202. On 14 September 2017, Dolphin Trust wrote to Ecroignard referring to a deed of conversion dated 29 March 2017, which, in context, appears to be the deed referred to in paragraph 200 above, apologising for the delay in the conversion.

203. On 28 November 2017, Dolphin Trust sent to the trustees of the Genwick Scheme a document titled "Background to Reasons for Conversion" setting out the reasons for the conversion of the loan notes. It explained the benefits and risks of the Scheme continuing to hold loan notes versus the benefits and risks of converting the loan notes to Shares in Vordere, a company (then) listed on the London Stock Exchange.

204. On 30 April 2018, a share certificate was issued to the Genwick Scheme certifying that it was the registered holder of 10,847,497 shares in Vordere.

205. Shares in Vordere last traded on the Asset Match stock exchange in November 2022 at 3 pence per share, indicating a maximum value of the Genwick Scheme's shareholding of £325,424.91 (the Vordere Sum). Trading in the shares of Vordere are currently suspended.[28]

A.9.2.4 WH Ireland

206. A ledger statement from WH Ireland for the period November 2013 to January 2015 shows that the Genwick Scheme transferred £35,855.07 to WH Ireland on 19 December 2013. The funds do not appear to have been invested, and a sum of £35,562.89 appears to have been returned to the Scheme on 3 December 2014 (the Genwick WH Ireland Investment and, together with the Uniway WH Ireland Investments, the WH Ireland Investment).

A.9.2.5 Early Equity PLC and Primorus Investments plc

207. Between 25 July 2017 and 17 January 2018, payments totalling £209,529.19 were made to Enduro Partnership Limited. It appears that these payments were for shares in Early Equity plc and Primorus Investments plc.

208. A share certificate dated 4 October 2018 certifies that Ecroignard was the registered holder of 6,858,052 shares in Early Equity plc (the **Genwick Early Equity Investment**).

209. A share certificate dated 1 August 2017 certifies that Ecroignard was the registered holder of 10,934,825 shares in Primorus Investments plc (the **Genwick Primorus Investment**).

210. It is unclear at what price shares in either Early Equity or Primorus were purchased by Ecroignard. Early Equity plc is currently listed on the Aquis Stock Exchange at a mid-price of £0.002 per share, indicating a maximum value of £13,716.10. Primorus Investments is currently listed on the London Stock Exchange at a mid-price of £0.0425 per share, indicating a maximum value of £464,730.06.

A.9.2.6 Truspine Technologies Limited

211. On 19 October 2017, the Genwick Scheme entered into an agreement to purchase 150,000 shares in Truspine for consideration of £52,500 (the **Genwick Truspine Technologies Investment**).

[28] https://www.assetmatch.com/app/OurCompanies/CompanyProfile?companyId=1523

212. On 20 October 2017, an addendum was sent by Copian to the Genwick Scheme stating that a more favourable price of £0.30, rather than £0.35 had been secured, resulting in the purchase of an additional 25,000 shares. A share certificate was issued on 20 October 2017 certifying that the Genwick Scheme was the holder of 175,000 shares in Truspine Technologies Limited.

213. Shares in Truspine are listed on the Aquis stock exchange at a current mid-price of £0.125, indicating a current maximum value of £21,875.

A.10 Circumstances of the members' complaints

A.10.1 Mr C's complaint

214. On 2 August 2013, Mr C completed an application form to join the Genwick Scheme. No investments were offered on this form. He declined the opportunity to be considered for the role of Member Trustee.

215. On the same day, Mr C signed a Tariff of Charges document issued by Deuten. This confirmed:

    215.1. an establishment charge of £1,900 plus VAT;

    215.2. an Annual Management Charge of £195 per year from year 2 onwards of Mr C's membership;

    215.3. from year 8 onwards a charge of 1% of the value of his member personal account, with a minimum of £395 and a maximum of £750 per year.

216. In June 2014, Mr C transferred benefits from two occupational pension schemes into the Genwick Scheme. Although the Scheme was promoted to him, Mr C did not receive advice to transfer. He has said he was motivated to transfer because of a "natural resources" investment within the Scheme, which appealed to him.

217. On 17 June 2014, the Metro Bank Genwick Account received a transfer in relation to Mr C of £65,129.78. On the same day, £2,280 (which appears to be the establishment fee plus VAT) was transferred to Deuten with the reference "admin charges", £17.50 deducted in banking charges and a payment of £62,349.78 was transferred to FGW. It appears that an additional £482.50 administration fee was also retained in the Metro Bank Genwick Account (£65,129.78 minus £2,280, £17.50 and £62,349.78).

218. On 19 September 2014, the Metro Bank Genwick Account received a further payment of £16,830.06 relating to Mr C. It is not clear where there this sum was invested, but no corresponding transfer out of the Metro Bank Genwick Account can be identified with certainty.

219. Mr C has said that on completion of the transfer, he spoke with Deuten and was informed that the original investment he had selected was fully subscribed and the investment was not available. He has said he was told that his pension would be held on deposit, with an interest rate of 8%, until a similar investment became available.

220. On 16 November 2014, Mr C wrote to Deuten, requesting: confirmation that the 8% interest continued to apply; an update on when the investment would reopen to new subscribers; and a copy of the Trust Deed and Scheme Rules. The letter was addressed to Deuten at 17-19 Maddox Street. No response was received.

221. On 9 February 2015, Mr C contacted Deuten again, requesting a transfer to a different pension provider.

222. On 24 June 2015, Mr C chased the transfer, having now been informed that his pension had been invested in an "equity fund".

223. In July 2015, Mr C spoke with Deuten. He has said he was told that his funds had been invested in an equity fund and that it would require a 12-month notice period to disinvest the funds. It would backdate the disinvestment request to February 2015, so Mr C ought to be able to access the funds in February 2016. In the meantime, it would continue to apply the 8% interest rate.

224. On 9 October 2015, Mr C submitted a detailed letter of his concerns to The Pensions Advisory Service (**TPAS**)

225. On 30 September 2016, Mr C submitted a complaint to Gleeson Bessent.

226. On 17 October 2016, Gleeson Bessent responded to Mr C. It explained that it had not been involved in the initial transfer or subsequent investments and that it was not the trustee of the Genwick Scheme. The letter stated that Gleeson Bessent would respond to Mr C within 28 days with its findings about what had occurred historically. Included was an information sheet regarding the Genwick Scheme, which confirmed:-

    226.1. On 27 September 2013 Ecroignard had made a loan of £1.5 million to FGW.

    226.2. No interest had been received, and on 25 January 2016 Ecroignard had given notice to FGW that the full capital and interest should be repaid within 60 days.

    226.3. FGW had advanced £1.3 million to White & Co and held a debenture over its assets.

    226.4. At risk of default on the FGW loan agreement, Ecroignard agreed for the loan from FGW to White & Co to be novated to the Genwick Scheme, retaining value for the Genwick Scheme.

227. On 21 February 2017, in the absence of a further response from Gleeson Bessent, Mr C referred the complaint to TPO.

228. On 12 January 2018, Ecroignard wrote to Mr C. It said that the director of the AIGO funds had informed the Trustee that those investments were entering administration and suggested that the underlying assets might be severely impaired. As a result, no transfers out of the Scheme would be possible.

A.10.2 Mr E's complaint

229. On 2 October 2014, Mr E signed an Investment Selection Sheet for the Uniway Scheme, indicating that he wished to invest his pension fund into the AIGO Funds equally. The Form included the following wording:

> "Please indicate below the choice of investments you wish your Member Personal Account to be allocated into."

230. On the same day, Deuten issued a letter to Mr E highlighting that he was transferring away from a final salary defined benefit scheme and requested that he:

> "fully indemnify the Trustees of the Uniway Systems Retirement Benefits Scheme and Deuten Services Limited against any loss of guarantees that occur as a result of you transferring your current plan(s)."

231. On 14 October 2014, Deuten wrote to Mr E confirming that his membership of the Uniway Scheme had been approved by the Trustees.

232. On 21 November 2014, Mr E transferred £192,083.17 into the Uniway Scheme. Of this, £6,000 was paid to Financial Page Limited[29], at the time a regulated Financial Adviser, £1,152 in administration fees paid to Deuten and £52.50 in banking charges. On the same day, the following transfers were made:

    232.1. £60,862.12 with the reference "AIGO Commercial Property fund";

    232.2. £60,862.12 with the reference "AIGO Natural Resource Fund"; and

    232.3. £62,706.43 with the reference "AIGO UK Residential Property Fund";

    totalling £184,430.67.

233. An additional sum of £448 was also retained in the Metro Bank Uniway Account (£192,083.17 minus £6,000, £1,152, £52.50, and £184,430.67).

234. On 30 September 2015, Deuten issued an annual statement to Mr B, providing a fund value of £195,555.11 and stating an investment gain of £12,573.55.

235. On 2 December 2015, Mr B notified Deuten in writing that he wished to transfer away at the end of the required formal notice period.

236. In October 2016, Mr B initiated the process of a transfer away from the Scheme by instructing his preferred pension provider to request a transfer.

237. On 3 December 2016, Mr B emailed Gleeson Bessent advising that his preferred pension provider was having trouble completing the transfer, despite the fact he had given Deuten a year's notice.

238. On 6 December 2016, Gleeson Bessent responded explaining that when it took over the administration of the Scheme, in March 2016, it had not been informed of any transfer requests. As a result, Mr B's notice period was only initiated when it received

[29] https://www.fca.org.uk/publication/decision-notices/financial-page-ltd-2019.pdf

his transfer request in October 2016. Gleeson Bessent said it did not consider the investment redemption period was reasonable and was working to find a solution.

239. On 12 December 2016, Mr B complained to Gleeson Bessent about the fact that his transfer had not been completed and that the Scheme had not been keeping him adequately updated by way of annual statements.

240. On 2 February 2017, Mr B confirmed he still wished to proceed with the transfer. On the same day Gleeson Bessent responded advising that the transfer would take place in October 2017 following the full redemption period.

241. On 25 June 2017, Mr B complained to the Trustee that the transfer was taking too long, that the delay was impacting his investment opportunities and was having an impact on his health. He doubted the "genuineness of your management" and said that he believed it was a mistake investing his pension with the Trustee. Mr B does not appear to have received a formal response to the points complained about.

242. On 17 August 2017, Mr B spoke with the Director of Park View. I understand that the Director informed him that she would chase the investment company to try to bring forward the redemption date.

243. On 1 October 2017, having received no update, Mr B chased the transfer.

244. On 2 October 2017, Park View responded to Mr B informing him that the situation was under review, but the transfer could not proceed at that time.

245. Mr B responded that day, querying why it was so difficult to access the funds and explaining his concern about whether his pension was safe. He also submitted his complaint to TPO.

246. On 3 October 2017, Park View explained that his funds were safe within the AIGO funds. There were, however, liquidity issues due to the number of redemption requests and other priorities, "e.g. death claims".

247. On 12 January 2018, the Trustee wrote to Mr B informing him that the AIGO funds held by the Scheme were likely to be "severely impaired". It confirmed that no payments would be made from the Scheme until further notice.

A.10.3 Mr P's complaint

248. On 1 November 2014, Mr P completed an application form for the Genwick Scheme.

249. On 10 November 2014, Deuten wrote to Mr P attaching a Members' Booklet.

250. On 14 November 2014, Compass Investments Plus Ltd wrote to Mr P confirming his membership of the Genwick Scheme. It indicated that the Scheme was "HMRC protected" and that Deuten was fully licenced and regulated by The Pensions Regulator and HMRC. The Genwick Scheme would provide a return on average of 10% per year.

251. On 24 November 2014, two payments relating to Mr P were received into the Metro Bank Genwick Account, totalling £16,896.86. On the same day Deuten confirmed receipt of a transfer of £16,288.57 in respect of Mr P's benefits. The discrepancy of £608.29 appears to represent the fees charged by Deuten.

252. Mr P's funds appear to have been aggregated with those of other members before being transferred. Member records provided by Park View to the Insolvency Service set out the following amounts referrable to Mr P's transfer:

    252.1. £8,052.17 to AIGO Residential Property Fund; and

    252.2. £7,736.40 to Dolphin,

    totalling £15,788.57.

253. It appears that an additional sum of £500 was retained in the Metro Bank Genwick Account (£16,896.86 minus £608.29 and £15,788.57).

254. In an undated letter, Deuten wrote to Mr P confirming the recent appointment of Gleeson Bessent as the new administrator of the Genwick Scheme. It also confirmed that the investment selected would shortly pay a coupon which would be reinvested in the selected investments.

255. On 30 September 2015, Deuten produced a statement for Mr P confirming a fund value of £16,556.45. It suggested that the amount received into the Genwick Scheme had been £16,896.86 and that there had been an investment gain of £1,204.55. The fund value provided was net of Annual Management Charges. Mr P's funds had been invested in AIGO UK Residential and Dolphin Capital, 51% and 49% respectively, with fixed returns of 8% and 12%.

256. On 16 October 2017, Mr P's representative submitted a transfer request to Park View.

257. On 12 January 2018, Ecroignard wrote to Mr P explaining that the AIGO Funds were being placed into administration as the underlying assets may have been severely impaired. The letter said that the Dolphin Capital investment remained unchanged, but no benefits or transfers could be paid out.

258. On 16 February 2018, Park View wrote to Mr P in relation to the Dolphin Capital investment. This explained that the Genwick Scheme had approximately £1.7 million in Dolphin Capital Loan Notes and that in early 2017 the then Trustees had been offered the opportunity to convert the Loan Notes to share equity in Vordere Plc. The Trustees had considered this and agreed to the arrangement due to concerns over the liquidity of the Loan Notes and the fact that a more liquid investment, such as shares, would be more in line with TPR's expectations.

259. On 13 August 2018, Mr P submitted a complaint to Park View about the handling of the Genwick Scheme.

260. On 17 January 2019, Mr P submitted a complaint to TPO.

A.10.4 Mr S' complaint

261. On 11 October 2014, Mr S signed a Genwick Scheme application form.

262. On 20 November 2014, API Investments, an unregulated introducer, wrote to Mr S regarding his "Recent Pension Review". This explained that the delay in progressing his proposed transfer stemmed from a "mass exodus" from pension schemes to SIPPs. Attached to this letter was a Factsheet which contained significant inaccuracies regarding the operation of pension schemes.

263. On 9 January 2015, Deuten wrote to Mr S confirming its role as the administrator of the Genwick Scheme. Included in this letter were the following statements:

> "Upon transferring your existing defined benefits plan(s), you will no longer be entitled to these defined benefits. There can be no assurances as to the performance of your new fund's assets, which may increase or decrease in value as the participating investments are dependent on market forces. We strongly recommend that you seek independent financial advice and a transfer value analysis prior to your application so that you are fully aware of the benefits you are forfeiting and of any potential losses arising from moving away from your existing provider.
>
> Before we are able to proceed with processing the transfer of your existing plan(s), you must declare in writing that you have understood the need to seek independent advice, are fully aware of potential losses and that you fully indemnify the Trustees of the Genwick Retirement Benefits Scheme and Deuten Services Limited against any loss of guarantees that occur as a result of you transferring your current plan(s)."

264. Also included was a Member's Booklet. This included the statement:

> "In addition, there are appointed Trustees who have a legal obligation to look after your best interests. These are just some of the safeguards to ensure that your benefits are as secure as possible."

265. The address provided for Ecroignard was C/O Deuten Services Limited, 3rd Floor, 17-19 Maddox Street.

266. On 14 January 2015, Deuten wrote to Mr S confirming his application to join had been approved.

267. On 23 January 2015, Mr S' transfer value of £258,809.17 was received by the Genwick Scheme. On 3 February 2015 a sum of £9,868.43 was paid to Deuten with the reference "admin charges," banking fees of £70 were deducted, and the following sums transferred:

267.1. £45,181.19 with the reference "AIGO Commercial Property fund";

267.2. £43,897.56 with the reference "AIGO Natural Resource Fund";

267.3. £45,181.19 with the reference "AIGO UK Residential Property Fund"; and

267.4. £128,994.82 with a reference referring to an investment in Dolphin Capital

268. It appears from records provided by Park View to the Insolvency Service, that these payments were aggregated with sums relating to other members, and the sums referrable to Mr S were an administration fee of £9,317.13 to Deuten and the following sums;

268.1. £42,328.65 with the reference "AIGO Commercial Property fund";

268.2. £42,328.65 with the reference "AIGO Natural Resource Fund";

268.3. £42,328.65 with the reference "AIGO UK Residential Property Fund"; and

268.4. £122,006.09 with a reference referring to an investment in Dolphin Capital,

totalling £248,992.04

269. It appears that an additional sum of £500 was retained in the Metro Bank Genwick Account (£258,809.17 minus £9,317.13 and £248,992.04).

270. Mr S was provided with an Annual Benefit Statement dated 30 September 2015 indicating that the current value of his fund was £258,809.17. This showed that his funds were invested in:

- 17% - AIGO UK Residential – 8% Fixed Return
- 17% - AIGO Commercial – 8% Fixed Return
- 17% - AIGO Natural Resources – 8% Fixed Return
- 49% - Dolphin Capital – 12% Fixed Return

271. On 28 November 2017, Park View provided Mr S with a response to a complaint he had submitted. It highlighted that it had only taken over the administration of the Scheme in April 2017. Its records showed that his funds had been invested as instructed (see paragraph 268 above), following the deduction of £9,317.13 as transfer and management charges. Park View was confident that the figures it now provided were correct.

272. On 12 January 2018, Ecroignard wrote to Mr S. It said the director of the AIGO funds had informed it that those investments were entering administration and suggested that the underlying assets might be severely impaired. As a result, no transfers out of the Scheme would be possible.

273. On 6 February 2018, Park View wrote to Mr S confirming that the investments were being investigated and that for the time being no drawdowns or transfers could happen. It also confirmed that the situation had been reported to TPR.

274. On 14 February 2018, Park View wrote to Mr S providing further information. It said:

"We can confirm that White & Co is still in administration and AIGO UKRP[F] has recently been placed into administration. As soon as we have further information from the Administrators, who are based in Mauritius, we will contact you immediately.

AIGO CPF & AIGO NRSF is still undergoing a restructuring programme and until this has been completed the drawdown of benefits or transfer out transactions will not be authorised."

275. On 16 February 2018, Park View wrote to Mr S enclosing information about the Dolphin Capital investment.

276. On 29 March 2018, Mr S received information regarding a proposal from AIGO, which Ecroignard had accepted. It confirmed that at that time there was no further information regarding the White & Co investment.

277. On 21 May 2019, Park View wrote to Mr S explaining that due to a lack of communication from Ecroignard, it would be suspending its administration services. It referred Mr S to Mr Anthony Waterfield, the sole director of Ecroignard at that time.

278. On 17 September 2020, Mr S submitted a complaint form to TPO.

A.10.5 Mr GW's complaint

279. On 27 October 2014, a transfer of £303,881.53 was received by the Genwick Scheme in respect of Mr GW.

280. It appears from records provided by Park View to the Insolvency Service that these payments were aggregated with sums relating to other members, and the sums referrable to Mr S were an administration fee of £3,600 to Deuten and the following sums transferred;

280.1. £44,967.23 with the reference "AIGO Commercial Property fund";

280.2. £24,731.98 with the reference "AIGO Natural Resource Fund";

280.3. £44,967.23 with the reference "AIGO UK Residential Property Fund"; and

280.4. £110,169.71 with a reference referring to an investment in Dolphin Capital,

totalling £224,836.15.

281. On 11 November 2014, Mr GW received a pension commencement lump sum of £74,945.38.

282. It appears that an additional sum of £4,100 was retained in the Metro Bank Genwick Account (£303,881.53 minus £224,836.15, £3,600 and £74,945.38).

283. On 24 October 2016, Gleeson Bessent Trustee Services (**GBTS**) provided Mr GW with a benefit statement providing a value of £303,881.53.

284. On 4 October 2018, Mr GW was informed that his Dolphin Capital investment had been reinvested in Vordere PLC shares. £127,343.94 from Mr GW's Dolphin Capital Loan Note had been used to purchase Vordere PLC shares at 17p each, buying 749,082 shares.

285. In August 2019, Mr GW submitted a complaint to TPO.

A.10.6 Mr SW's complaint

286. Mr SW has said that before transferring into the Genwick Scheme, he had responded to an email or phone call. He subsequently met with an individual from Holistic Wealth Management Limited at their offices. He has said that he recalls that the investment proposed to him was "a plantation crop in the far east. I remember it was an island, Fiji maybe."

287. He recalls that the investment was likely described as medium to high risk, and that he was "not risk averse".

288. He recalls that he transferred approximately £28,000 to £30,000 into the Scheme but cannot recall further details.

289. Records of Scheme membership provided by Park View to the Insolvency Service suggest that Mr SW transferred £27,412.05 to the Genwick Scheme in 2014, of which £2,280 was paid in fees to Deuten and £24,632.05 transferred to FGW. However, it is not possible to reconcile the transfer value with any single, or combination of two or three, payments received by the Genwick Scheme in 2014.

290. He first received a valuation from Gleeson Bessent in June 2016. The date of the quotation was 20 June 2016, providing an Individual Member's Account valuation of £23,847.94.

291. It does appear that, despite the uncertainty of the amount of Mr SW's transfer sum, he did join the Genwick Scheme based on contemporaneous records from Gleeson Bessent and Park View.

292. On 20 January 2020, Mr SW submitted a complaint to TPO.

Part B - Submissions

B.1 Summary of Ecroignard's submissions

293. The following submissions were made by Park View on behalf of Ecroignard, and Mr Bessent as a former director.

294. Over the years, there has been a number of changes to Ecroignard's directors.

295. The only investments made by the Trustee for the Uniway Scheme were the AIGO investments, each a 10 year Loan Note.

296. The investments made by the Genwick Scheme were Dolphin Capital, FGW and the AIGO investments.

297. There is no record of any due diligence being undertaken on the investments or any investment advice being sought or received. The approval of the investments, and the investments themselves, were made prior to the appointments of both GBTS, Park View and the current directors.

298. It is unclear what information was provided to prospective members, but it is assumed that the investment factsheets were made available. Although the factsheets state there is a contractual agreement that the investments can be surrendered at any time, this has proved impossible to meet. Ecroignard understood that 12 months' notice was necessary for a member to disinvest and transfer, but it was unclear if this was communicated to members prior to transferring into the Scheme.

Mr B

299. The application form shows Mr B was aware of the intended investments. These investments were made prior to the appointment of the current directors.

300. On transferring into the Scheme Mr B had apparently authorised a payment of £6,000 to Financial Page Limited. There is no evidence of that authorisation.

301. It is acknowledged that Mr B gave Deuten notice to transfer on 2 December 2015, but this was not passed on to the subsequent administrators and so they were unaware of this instruction. It is unfortunate that Mr B's transfer request was not originally acted upon, had it been, the transfer request may have been met. By the time GBTS became aware of the transfer request, a significant number of claims on the Scheme funds had been made, such as death claims, lump sum payments and drawdowns.

302. Given these circumstances, liquidity was an issue for the AIGO funds and so it was agreed to stagger payment of the coupon from the funds. Members were informed and payment plans arranged. By the time Mr B's transfer request was formally received, in October 2016, the funds had already been committed to other members and there was insufficient money to meet Mr B's transfer request.

303. It is not a case of refusing to handle the transfer, there was simply insufficient money to make the transfer. Park View had attempted to manage Mr B's expectations.

304. The AIGO funds met the 8% coupon until January 2017, and Mr B's account had been credited with that. Since January 2017, the Uniway Scheme has received no payments from the AIGO funds, despite numerous requests and discussions. It now appears that the assets of the AIGO funds may not support the full value of the loan notes. Park View was told that a reduced payment would be made by the end of February 2018.

305. In 2017, the claims on the Scheme amounted to almost £800,000. Pension Freedoms, and the ability to withdraw funds in full was never envisioned when the investments were originally made. The lack of liquidity is the responsibility of the fund managers,

Fidelis Global Asset Management Limited, and such large surrender requests were not anticipated.

306. Park View acted professionally, whilst operating in difficult circumstances and with limited information. When the funds become available, Mr B's transfer will happen, but this will be subject to pre-existing claims which will be handled first.

Mr C

307. It has been very difficult to address Mr C's complaint as his account of events conflicts with the information it held and there was no investment choice letter held on file for Mr C.

308. Mr C's funds were invested in FGW. It is unclear who informed Mr C that his funds were invested in cash with an 8% interest rate, but the correspondence shows that by 2016 Mr C was aware of the Dos Palm Oil investment. It is unclear who Mr C spoke to at the time, but by October 2014 the AIGO Natural Resources fund, which it appears was the investment Mr C had initially selected, was open to new investors but his funds had already been invested in FGW.

309. Mr C had been given misleading information by Deuten.

310. Mr C had been informed about the situation with FGW and White & Co. The novation of the FGW loan was considered the best way forward as the solvency of FGW was in question and it only represented a reduction of 10% in fund value.

311. At the time Mr C submitted his request to transfer, in February 2015, FGW was illiquid and it would have been very difficult if not impossible to transfer.

312. Deuten had failed to inform GBTS of Mr C's transfer request when it took over the administration of the Scheme in early 2016.

313. Until January 2018, all investments had met their obligations with regard to loan interest repayments and these had been credited to the members' individual funds. However, it now appeared that the underlying assets of all the funds, except the Dolphin Capital investment, would no longer support the value of the loan note.

B.2 Summary of Mr Shroff's position as the former Director of Ecroignard

314. Prior to becoming a director of Ecroignard he had many years' experience in financial services and was registered as CF-30 approved by the Financial Services Authority (now the Financial Conduct Authority)[30]. He had also completed the Trustee Toolkit certificate and was familiar with Part I of the Pensions Act 1995 and investment regulations.

315. He was introduced to the opportunity of Ecroignard by Mr Yajjadeo Lotun.

[30] https://register.fca.org.uk/s/individual?id=003b000000LVUJwAAP

316. He recalls that it was probably Yajjadeo Lotun who introduced him to FGW.

317. He heard about the AIGO Investment from Yajjadeo Lotun.

318. While the director of Ecroignard, he also worked with an investment management company, First International Group Plc.

319. The Uniway and Genwick Schemes were the only schemes that Ecroignard acted for.

320. His directorship of Deuten, Genwick Limited and Uniway Systems Limited was an error by the accountant who acted for all of the companies. When the error was identified it was immediately corrected.

321. He had no relationship with Ms Sandhya Kumari Surat, Ms Sandhya Sonah or Ms Roxanne Marie Poole.

322. Mr Harshal Shah also knew Mr Yajjadeo Lotun and it was Mr Lotun who introduced Mr Shah to the role at Deuten.

323. He is unaware of whether a Member Trustee was ever in office. Trustee meetings occurred monthly or as required and minutes were taken.

324. Full factsheets regarding the investments were made available to clients providing the required information. The performance of the investments was confirmed through the annual benefit statements issued by Deuten. These showed that the benefits and capital were intact over the period of his tenure and were supported by Net Asset Valuations provided by regulated and recognised HMRC exchanges.

325. The members were given a range of investments to choose from, half of which were WH Ireland funds which have “strangely not been mentioned”. All investments were approved by the investment manager and then included on the Investment Selection Sheet for the members to choose from. The WH Ireland funds were not taken up as they provided lower returns, but they were offered from an early stage.

326. All investments were regulated within their jurisdictions and listed on recognised HMRC exchanges. Legal advice was sought from Gateleys LLP and it confirmed that they were permissible investments complying with the relevant pension regulations. HMRC will have copies of these documents and they would be held on the CRM (client relationship management) system.

327. In assessing the investments, he, with the investment manager, relied upon a variety of factors including independent due diligence, extensive due diligence undertaken by SIPP companies and approval by the manager of the AIGO funds, Fidelis. Additionally due diligence was undertaken by independent financial advisers, although he was unsure who instructed those IFAs.

328. The WH Ireland investments were fully regulated by the FCA, as outlined in the due diligence. He had received a huge amount of due diligence from WH Ireland and met one of their representatives in London.

329. He is unsure why the WH Ireland investments were not mentioned in the Schemes' documents or by Park View, but they were included in the investment choice letter and supporting documentation provided by WH Ireland and available to members. These investments were available through both Schemes.

330. All of the investments were hosted on a HMRC recognised exchange in accordance with the recommendation provided by Gateleys LLP and from his understanding of the investment requirements. HMRC was informed of this.

331. The investments' net asset values were provided through the various exchanges on a monthly basis. The investments were monitored regularly with communications with Fidelis and others.

332. HMRC should be contacted for a copy of its file. It reviewed the schemes twice, looking at their formation, documentation, investments, corporate governance and the due diligence undertaken. HMRC's task was to ensure schemes were legitimate and it confirmed that everything was present and correct.

333. Mr Amul Mahendra Shah was the Scheme's investment manager and had been formally appointed as such. He was a highly qualified investment manager looking after £100m+ client funds with an impeccable record of investment and regulatory compliance. He had undertaken due diligence on Mr Shah in advance of appointing him as the investment manager. It was Mr Shah that approved the investments for the Schemes. He was paid as per the bank statements provided. Details of the contract would be included on the CRM system handed over at the end of his tenure.

334. The funds "were effectively asset backed by investments into precisely UK property [sic]". The "Funds went to Aigo and Fedelis Asset Manager in respect of property investments. Aigo would then invest into various property funds, which then took security back against the loans made to acquire property via various legal recourses [sic]."

335. The investments were permissible within an occupational pension scheme and accorded with regulations at the time.

336. Hugh James LLP, on the Trustee's behalf wrote to TPR to explain the schemes and how they were run. This would be verifiable by TPR. If the Schemes were not being run appropriately or the investments not suitable, why did TPR or HMRC not step in at that time and intervene?

337. Hugh James completed all of the Schemes' paperwork. Deuten instructed Hugh James and it was the client contact. "From memory to prepare all documentation required for the schemes to operate and to ensure that the schemes complied with all legal and regulatory requirements".

338. He was familiar with the Schemes' Trust Deed and Rules, and other documentation including the 2013 Scheme Rules.

339. As a responsible trustee, it was he who proactively contacted TPR to clarify certain issues. He and Deuten asked Hugh James LLP to contact TPR to clarify whether the schemes had been correctly set up and why there had been transfer delays into it. TPR was also asked whether there were any red flags against the Schemes.

340. He held regular meetings with Deuten which were minuted in the CRM and sent to HMRC. All record keeping was exemplary and up to date. All coupon payments were received “and transfers in/out were administered perfectly”.

341. The CRM was a system called Mortgage Keeper. The records held on the CRM were provided to the new administrators after Deuten ceased administering the schemes.

342. He is unaware or cannot remember who established the Scheme. His understanding was that the Schemes were set up to offer superior returns to existing pension arrangements for members.

343. Members were introduced to the Schemes by “various marketing companies”, but he was unaware how many and he had no relationship with them.

344. Any charges made by the Schemes were paid to Deuten.

345. He cannot remember who appointed Deuten or what its pension scheme administration experience was.

346. At the time he was appointed they were very new schemes without any investments. There was no indication of any maladministration on his appointment and Hugh James raised no concerns.

347. All investments were selected by the members and their own choice.

348. At the time that Mr C joined the Genwick Scheme in August 2013, only the FGW investment was available, and this was why there was no investment choice document. It is strange that Mr C is now complaining that he was not invested in the AIGO Natural Resources Fund given that only FGW was available and the AIGO Natural Resources fund only became available in October 2014. Mr C’s claim that he was told that the funds would be held in cash is ludicrous and he should provide written evidence that this is indeed the case. All details relating to Mr C’s interaction with Deuten would be on its CRM. None of the other members’ have alleged similar information provided by Deuten and this casts further doubt on what Mr C has said.

349. FGW was the sole investment at this time having been reviewed and found to be appropriate. Hugh James LLP confirmed that one investment was permissible.

350. He was made aware of FGW by Mr Yajjadeo Lotun. He cannot recall if FGW was regulated in any way, but significant due diligence was undertaken on all the investments.

351. Security was taken for the FGW loan via AIGO/Fidelis. FGW was considered suitable because all due diligence had been undertaken, was assessed by Mr Shah and offered decent return with “plenty of security”.

352. He cannot recall the details of the loan to FGW or the loan agreement with White & Co. He also cannot remember why he took no action against FGW for its failure to make interest payments until 27 January 2015.

353. Sufficient due diligence was undertaken on White & Co prior to the novation of the loan, but he cannot recall specifics. He cannot recall why security over White & Co's assets were not taken until 27 January 2016, and not immediately after the novation.

354. He cannot remember how the performance of White & Co was monitored after the novation or that AIGO Holdings PCC had registered a charge over it on 16 June 2015.

355. He first became aware of the AIGO funds through Mr Lotun. He had undertaken extensive due diligence on the funds and they were regulated by the Mauritius exchange. Additionally, it managed c. £1billion of funds and had done for many years.

356. The funds were 100% insured by AOB Insurance Limited. There was a copy of the insurance document in the due diligence and Mr Shah had seen this as had the investment manager. This was not a UK based company which is why it may not be on Companies House.

357. He received updates on FGW's performance from AIGO/Fidelis.

358. There was a lifestyle strategy implemented by Deuten using WH Ireland's investment offerings designed for lifestyling.

359. Mr C ought also to have received written confirmation of his transfer into the Scheme and the investment made, which would have been FGW.

360. It is strange that despite so many enquiries made by Mr C regarding the scheme, and the lack of written response, that he did not complain until September 2016 almost two years later. It appears that Mr C's account of the investment in cash conflicts with what actually happened, and his narrative is unreliable.

361. Following this, Mr C submitted a complaint to TPO in 2017, why was he not contacted to comment on the complaint at that time? It is unfair to bring the complaint to his attention now, shortly before an oral hearing. It was not until the full bundle was submitted to him that full details of Mr C's complaint were notified to him. Had this matter been brought to his attention in 2017 he would have had a fresher memory and the CRM would have been accessible to validate his arguments about the investment decisions. This delay affects his ability to respond to all of the complaints directed to him and for which he is now being asked to take responsibility for.

362. He questions the legal and regulatory process that has led to this scenario and disputed that the oral hearing should have proceeded when it did with such short notice allowed for him. This prevented him from being an effective defendant.

363. It is also clear that Mr Bessent was previously considered culpable by the Ombudsman and not he. This intended action against Mr Bessent would explain the extended delay in suggesting that he was responsible for the events that had occurred.

364. The reason Mr C's transfer was delayed was because the Genwick Scheme was audited by HMRC, taking a considerable amount of time, but which the Scheme passed. During this process, Deuten would have kept Mr C updated.

365. How can he be held at fault for the lack of documentation provided by Park View when it is clearly not his? It cannot be correct that he is responsible for record keeping following his tenure in perpetuity.

366. Additionally, he does not accept that there were no records of trustee meetings or due diligence carried out on the investments. These were maintained within the CRM and updated regularly as required. No trustee or administrator would take on relatively large schemes such as these without conducting due diligence in advance.

367. Another file within the CRM contained advice from the investment manager, details of the contracts and other relevant details. He cannot be responsible for the new administrator or trustees' failure to provide this or maintain the CRM

368. How can there be any possible personal liability when over the period of his tenure the investments maintained their full capital integrity and all coupons were paid? He cannot be responsible for events after his tenure.

369. There is no evidence of the losses suffered by the schemes or when the losses occurred.

370. He should have been given the opportunity to answer the Ombudsman's questions in writing and cannot have been expected to subject himself to questioning about events some 8 years previous without access to the questions in advance.

371. Fidelis and the AIGO fund managers should be questioned by the Ombudsman. An investigation into their involvement would be of material importance and would support his evidence.

372. The Ombudsman should seek the evidence submitted to HMRC about the investment. He had provided detailed answers to countless questions along with supporting evidence. A very senior HMRC investigator concluded that the schemes could operate as they had been.

373. The other former and subsequent directors of Ecroignard ought to have been requested to attend the oral hearing and investigated by the Ombudsman.

374. He is not trying to be difficult in his submissions to the Ombudsman, but he is not persuaded by the protocols being followed by TPO in its investigation of the case and has suffered multiple family bereavements recently.

B.3 Summary of Mr Waterfield's submissions

375. He was appointed as the director of Ecroignard in November 2017 at the request of his accountant, Mr Bessent, in order to set up a pension scheme for his own company. It was only subsequently that he became aware that Ecroignard was the Trustee of the Schemes and being investigated by the Insolvency Service.

376. Since then, he has cooperated with the Insolvency Service and discovered Mr Bessent was being investigated for fraud.

377. He faced difficulties in getting details of the Schemes because Mr Bessent was in jail and his colleagues at his accountancy practice would not deal with matters Mr Bessent was involved with.

378. Park View held all of the Schemes' information, and while he was initially able to speak with Ms Park, Park View seems to have disappeared.

379. There are unpaid bills at Ecroignard's offices, which were shared with Park View, and the landlord would not share mail with him.

380. The Schemes' auditor had resigned due to not being paid and doubts over the accuracy of the information it was receiving from Mr Bessent and Park View.

381. He did not have access to the Schemes' funds and was cooperating with the Insolvency Service, TPR, TPO and the Financial Services Compensation Scheme.

B.4 Summary of the Applicants' position

The Genwick Scheme

382. Mr C has said:

382.1. He transferred to the Scheme as it offered a Natural Resources fund which appealed to him. The transfers were delayed and when they eventually completed that fund was fully subscribed. Mr Shah of Deuten told him that the funds would be kept in cash until an appropriate investment became available, and in the meantime 8% interest would be applied.

382.2. When no appropriate investment became available, he sought to transfer out, but his requests were not acted upon, and he was later told that the funds had been invested in shares instead.

382.3. He has repeatedly tried to arrange a transfer but this has not happened. After Gleeson Bessent took over the Scheme it was just as evasive and failed to provide him with a transfer valuation or any explanations.

382.4. He is angry at money that has been lost and the fact that it was invested in shares against his intentions. He had wanted to avoid such volatile investments.

382.5. His health has deteriorated and he wishes to secure a better future for his wife should anything happen to him.

383. Mr GW has said:

383.1. The transfer was suggested by a Mr Barry Pitts, who was organising a debt management plan. Mr Pitts worked for a division of Security & Wealth. He was told that Hennessy Jones would assess the transfer and provide a view on whether it was viable.

383.2. He signed up to a five year investment which was due to complete in November 2019

383.3. Once the transfer had gone ahead, the main point of contact was Mr Shah of Deuten, who was hard to make contact with.

383.4. When Park View took over they did not assist him and would not allow contact with the Trustee. Everything was by written correspondence only.

384. Mr P has said:

384.1. He had not been receiving fund information or statements and was unsure how his pension was performing within the Genwick Scheme.

384.2. He applied for a transfer from the Genwick Scheme in March 2017, but was advised that this would take a minimum of a year. To date the transfer has not been made.

384.3. This matter involves a significant portion of his retirement fund and has been extremely distressing for him.

385. Mr S has said:

385.1. The last annual statement he received was dated 8 February 2018, which showed a value £258,513.90. The change of Trustee and Administrator caused concerns and further alarm bells were raised when requests for information were not responded to.

385.2. He was unable to retire due to the loss of benefits and he has had to continue to work due to the Trustee's failure to look after his interests.

385.3. He would like financial compensation and for Mr Shroff to be held account for the Scheme's failures.

386. Mr SW has said:

386.1. He is concerned for the security of his pension and would like the Scheme investigated.

<u>The Uniway Scheme</u>

387. Mr E has said:

387.1. He has repeatedly asked for a pension transfer without any action being taken and there is no evidence that the pension had been invested or any yield had been received.

387.2. He has lost £20,000 and this has impacted his health due to the stress.

Dalriada

388. In support of its complaint, Dalriada provided redacted example documents in relation to members joining the Scheme, including the following:

388.1. A blank Park View Genwick Scheme membership application.

388.2. A blank Deuten Services Uniway Scheme membership application.

388.3. A letter from Compass Investments Plus (**Compass**) dated 27 October 2014, describing the Schemes as a HMRC protected pension scheme. The letter says that Deuten was "fully licences [sic] and regulated by The Pensions Regulator (TPR) & HMRC". On this letter a correspondence address was provided for Mr Harshal Shah of Deuten Services Limited, 17-19 Maddox Street.

388.4. A letter from Compass dated 29 January 2015 requesting a proposed member register for a website called "Funding Store", which would allow Compass to classify them as a Sophisticated Investor.

Part C - Conclusions

389. The Applicants' complaints centre on the lack of information, the inability to transfer and the performance of the Scheme's investments. Dalriada has raised concerns about the appropriateness of the investments, the process of the investments being made and the administration of the Schemes.

390. For the avoidance of doubt, I have considered Dalriada's involvement in the Scheme since appointment and cannot see any evidence of maladministration on its part. Although it is a respondent to the complaint, I make no adverse findings about its involvement.

391. For the reasons set out in paragraphs 15-45 above, my conclusions will focus primarily on the period from June 2013 until 18 November 2015, the period of Mr Shroff's sole shareholding in, and directorship of, Ecroignard.

392. I will consider the Applicants' complaints under the following headings:

C.1 The Status and Structure of the Schemes

C.2 Mr Shroff's role as the director of Ecroignard Trustees Limited

C.3 Investment of the Scheme's Funds

C.4 The Pension Regulator's Code of Conduct

C.6 The Administration of the Scheme

C.7 Member consent and contributory negligence

C.8 Ecroignard and Mr Shroff's liability

C.9 Accessory Liability for dishonest assistance in a breach of trust

C.1 The Status and Structure of the Schemes

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

394. The Trust Deeds establishing the Uniway and Genwick Schemes, dated 9 March and 9 August 2013 respectively, are substantively identical and appointed Ecroignard Trustees Limited as the Scheme Trustee. Ecroignard remained the Trustee until 20 August 2020 when TPR appointed Dalriada with exclusive powers to the Schemes.

395. For the purpose of my decision, it is necessary to establish whether the Schemes were structured on a pooled basis or individually.

396. Relevant definitions as set out in the Schemes' Rules are:

> "**Fund**" means the assets for the time being held by the Trustees on the trusts of the Scheme."
>
> "**"Personal Account"** means that part of the Fund representing the contributions by or in respect of the Member and credits resulting from the transfer to the Scheme of a transfer value payment in accordance with Rule 23 together with investment returns (if any) but less any negative investment returns, investment expenses, and the expenses and costs that are deductible pursuant to Clause 18."

397. Clause 9 of the Trust Deed provides:

> "9. **Personal Accounts and Investment Alternatives**
>
> 9.1 The Trustees shall hold the assets in separate Personal Accounts. The Trustees shall ensure that the assets attributable to a Personal Account are at all times separately identifiable within the Fund. The liabilities attributable to each Personal Account shall then be met out of that Personal Account.
>
> 9.2 The Trustees shall open and maintain a Personal Account for each Member until the earlier of:..
>
> …
>
> 9.3 The Personal Account of a Member comprises:
>
> (a) The Member's contributions together with the investment return in relation to such contributions;
>
> (b) The Principal Company's or Participating Employer's contributions, if any, pursuant to Rule 8;

(c) Assets transferred to the Fund on behalf of the Member pursuant to Rule 13;

(d) Any other amounts credited to the Member's Personal Account by the Trustees; less

(e) Any deductions from the Member's Personal Account pursuant to Clause 9.4."

398. The above indicates that each member should have a separate Personal Account, based on their contributions and investment.

399. The structure of multiple individual funds within a scheme was considered in the case of *Dalriada Trustees v Woodward*[31] (**Woodward**), in which the defendants had submitted that the schemes in question were divided into sub-trusts, each member having his or her own fund under the schemes. The court found, per paragraph 32 of the judgment, that each scheme was 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 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."

400. The court in Woodward found that a member of any of the pension schemes 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."

401. I consider that as in the case of Woodward, the Scheme was established as a single trust in which notional individual funds were recorded. Although Clause 9 requires the individual accounts to be separately identifiable, there is no evidence that this extended to the establishment of specific sub-trusts on behalf of the members.

402. Additionally, the practical operation of the Scheme bank account does not suggest any segregation of the Scheme funds. Once received, the members' money was banked

[31] [2012] 086 PBLR (017) - [2012] EWHC 21626 (Ch)

collectively, in some instances invested collectively and investment returns were credited to the collective balance and reinvested again.

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

C.2 The background to the Schemes

404. Although I have been unable to establish a definitive background for the establishment of the Schemes, despite questioning a number of those individuals involved directly on the issue, there are a number of points that have been confirmed by more than one party and by the documentary evidence:-

404.1. Mr Mark Stephen and Mr Yajjadeo Lotun instigated the establishment of the Schemes. Mr Shroff, Mr Shah of Deuten and Mr Sonah, have confirmed that it was Mr Lotun that proposed their involvement in the Schemes. The AIGO Information Memorandum confirms the significant involvement of Mr Stephen, in his capacity as a director of HJL, in the business of the cells, and in the underlying investments. Ms Vidyotma Lotun was a director of Fidelis from 23 February 2010 onwards, which was also the Management Company and Secretary of FGAM. From 4 January 2016 onwards, Mr Lotun was a director of FGAM. Before 4 January 2016, Mr Sam Jacques Eddy Tong was sole director of FGAM and also a director of Fidelis.

404.2. 17-19 Maddox Street in London, appears to have been a hub for the operation of the Schemes and the various unregulated introducers, including HJL. Deuten, although having registered addresses elsewhere listed Maddox Street as its offices on customer facing documentation. I am not persuaded that this was a coincidence and it suggests a level of close coordination between ostensibly unrelated parties.

Additionally, I note that when Mr Shroff opened the Metro Bank Ecroignard Account in October 2013, he specified that there would be international transactions with Singapore and Mauritius. This implies that the destination of the investments had already been preselected. Reference to Mauritius would match the investment in the AIGO funds and FGW had a presence in Singapore. This suggests that Mr Shroff was already aware of the destination of Scheme investment.

C.3 Investment of the Scheme's Funds between June 2013 and November 2015

405. The Additional Applicants and Dalriada have raised concerns over the quality and security of the investments made by Ecroignard during the period of Mr Shroff's directorship. I have identified multiple issues with their appropriateness for a pension scheme of this type:-

C.3.1 The AIGO Master Loan Agreements

406. Although the AIGO Master Loan Agreements were stated to be "governed by and construed according to English law", AIGO Holdings and the AIGO Cells were based in Mauritius and subject to different corporate and regulatory regimes. Were the funds to become insolvent, there would be no recourse to redress through either the Financial Services Compensation Scheme or Financial Ombudsman Service.

407. The loans advanced under the terms of the AIGO Master Loan Agreements were highly illiquid. Each loan was for 10 years and there was a minimum redemption period of 12 months for early withdrawal. Further, the AIGO Board retained discretion to unilaterally extend the notice period by an additional 12 months in the event of illiquidity.

408. AIGO Holdings PCC was newly incorporated in April 2013, and had no operating history. Each Cell was also newly formed and had no assets besides the sums raised under the Lending Scheme.

409. The loans made under the AIGO Master Loan Agreements were unsecured. Under clause 9.3 of each agreement, the borrower undertook to ensure that a policy of default insurance was in place as from the Closing Date (defined as the date on which the total loan sum reached the borrowing cap or was sufficient to enable the Cell to commence its projects). However, it is clear that at the point each Loan Agreement was signed no policy of insurance was in place.

410. Additionally, each AIGO Master Loan Agreement was between AIGO Holdings and Ecroignard, as Trustee for the Uniway Scheme, not as Trustee for the Genwick Scheme. I have seen no evidence that the sums loaned to the AIGO Cells by the Genwick Scheme were made on any formal written terms.

411. The AIGO Information Memorandum disclosed the following about HJL:

    411.1. HJL would receive a commission of 5% of all amounts loaned to each Cell.

    411.2. Hennessy Jones was referred to as promoting the Lending Scheme and "is involved in the promotion of different types of asset purchase and finance arrangements to the UK pension market which fall outside of regulation by the FCA."

    411.3. The Information Memorandum states that Hennessy Jones was incorporated in 2013 by Mr Mark Stephen.

    411.4. Mr Stephen was referred to as a key member of the asset management and advice team of the AIGO CPF Cell. He was included as a member of the management team of the AIGO NRF Cell, alongside Jim Stephen, disclosed as Mr Stephen's father. Mr Stephen is included as the only member of the management team of the AIGO UKRPF Cell.

    411.5. Mr Stephen's experience and qualifications are set out on page 22 of the Information Memorandum. Although it refers to experience in various property markets and transactions, no experience relating to pension schemes or

investment by pension schemes is listed. Further, this section discloses that "Mark started his own specialist property investment company, Stark Enterprise Ltd."

412. It is clear from this information that the success of the Lending Scheme was highly dependent on the actions of a single recently incorporated company, HJL and of one individual, Mr Stephen.

413. The AIGO Investment Memorandum sets out a number of "example transactions," with the implication that the Cells would be able to source similar investments. However, it is clear that no such investments had been made at the point each Master Loan Agreement was signed.

414. The AIGO Information Memorandum disclosed that the Lending Scheme represented only a part of the current financial arrangements of the various Cells," indicating that other present or future obligations may rank in priority to sums advanced under the Master Loan Agreements.

415. The AIGO Memorandum also disclosed that the AIGO UKRPF Cell and the UK CPF Cell could raise further debt as part of their investment strategy, which would "increase the risk profile" and "amplify losses in the event of a decline on asset values".

416. It is evident from the AIGO Information Memorandum that there were also fund specific risks depending on the underlying assets, including: property risk; pricing, liquidity and valuation of properties; development risks; tenant default; economic and market risk; foreign exchange risk; commodity infrastructure investment risks; asset and business operation risk.

417. In the case of the Uniway Scheme, the Uniway 2013-2015 AIGO Loan Sum represented over 96 per cent of the investments made by Ecroignard prior to November 2015.

418. In the case of the Genwick Scheme, the Genwick 2013-2015 AIGO Loan Sum represented 33 per cent of the investments made by Ecroignard prior to November 2015.

419. The AIGO Master Loan Agreements were between each AIGO Cell and Ecroignard on behalf of the Uniway Scheme. I have seen no evidence that separate loan agreements were entered into on behalf of the Genwick Scheme. This is a substantial additional layer of risk as regards the Genwick Scheme.

420. On the basis of the factors set out in paragraphs 406 to 416 above, I find that the Total 2013-2015 AIGO Loan Sum represented an extremely high level of liquidity, regulatory, counterparty and operational risk to the Schemes. These risks were magnified further in the case of the Genwick Scheme as sums were loaned without even the benefit of written loan agreements.

C.3.2 The FGW Loan

421. Although the FGW Loan Agreement was stated to be "governed by and construed according to English law", FGW was incorporated and had its registered office in the British Virgin Islands. It is also notable that the Administrator was Fidelis, the contact at Fidelis was Ms Lotun, and the signatory on behalf of FGW also Ms Lotun.

422. The FGW Loan Agreement stated that the purpose of the loan was to invest in the "Project", defined as an investment in Aquilaria and Agarwood foresting projects in Fiji where FGW would acquire leasehold interests in land. It appears from those agreements that there were no underlying assets relevant to the Project owned by FGW and I have seen no evidence that any of the principals of FGW had any experience or expertise in managing geographically distant forestry projects.

423. It is also not entirely clear to which underlying investments the FGW Loan was applied, and sums may also have been applied to Dos Palm oil, the terms of which are not clear.

424. The FGW Loan Agreement provided for no liquidity. The final repayment date under the agreement was 10 years after the advance of the loan and there was a minimum redemption period of 12 months for early withdrawal. Further, FGW retained discretion to unilaterally extend the notice period by an additional 12 months in the event of illiquidity.

425. The FGW Loan Agreement provided for no security and an interest rate of 5% payable in arrears. I note that Mr Shroff has stated that there was "plenty of security" taken via AIGO or Fidelis. It is unclear to what security Mr Shroff is referring, but there is no evidence of any guarantee or other mechanism by which AIGO or Fidelis secured the obligations of FGW.

426. The Total FGW Loan Sum loaned under the FGW Loan Agreement represented over 34 per cent of the investments made by Ecroignard prior to November 2015.

427. It is also clear from the Sub Lease Agreement and the Land Asset Purchase Contract that it was not FGW which would be responsible for operating the plots. There is no evidence that FGW took any security for sums loaned by FGW to the sub lessors or operators WFM or World Forestry Fiji. It is an obvious consequence of this that the risk of the FGW Loan Agreement was magnified because its ability to repay the loan sum was entirely dependent on third parties over which neither the Genwick Scheme nor FGW appeared to have any control. In this context, it is notable that the plots were located in Fiji, WFM was registered in Monaco and that the Sub lease Agreement was governed by Fijian law.

428. The Land Purchase Contract also provides for what appears to be an excessive commission of 30% of the cost of each plot leased, payable to "the sales company," Ottingnon Ltd.

429. On the basis of the factors set out in paragraphs 421 to 428 above, I find that the sums loaned to FGW represented an extremely high level of liquidity, geographical, legal, counterparty and operational risk to the Genwick Scheme.

C.3.3 Dolphin Capital GmbH

430. I have not been provided with executed versions of the Loan Note Instrument or any Loan Certificates issued under that instrument. However, it is clear from the documents I have received, including the marketing literature, that:

430.1. Sums loaned to Dolphin Capital and its operating subsidiaries would be used to renovate and sell derelict properties located in Germany, taking advantage of purported tax reliefs available under German law;

430.2. The advertised rates of interest were extremely high, at between 12% and 13.8%. Further, at the time that the Loan Note Instrument was signed. It is also clear from the wording of the Loan Note Offer that it was only when a Certificate was issued that the *average* interest rate would be confirmed. So, under the terms of the Loan Note Instrument and the Loan Note Offer, the precise interest rate would be unknown until funds had already been transferred to Dolphin;

430.3. There was no ability to recall principal sums loaned to Dolphin before the expiry of the 5 year loan term;

430.4. Dolphin was not regulated by the FSA (as it then was);

430.5. The viability of Dolphin's business model relied on purported tax relief available in Germany and the execution of property redevelopment subject to German law and regulations; and

430.6. The sums loaned to Dolphin Capital were illiquid. In the context of the Scheme, this characteristic would have applied an additional layer of risk as the Scheme's other investments were also illiquid.

431. I acknowledge that the evidence suggests that sums advanced under the Loan Note Instrument appear to have been secured. However, even if security was registered, any security is only as valuable as the readily realisable value of the asset secured. Here, the secured assets were derelict properties in Germany, which required redevelopment. The value of any undeveloped property would necessarily have been substantially lower and less liquid than developed property, because that was the entire basis of Dolphin's business model. So, on the basis of the factors set out in paragraph 430 above, even if a first ranking charge was registered against the property to which Dolphin was applying the 2014-2015 Loan Sum to redevelop, I consider that this did not substantially reduce the extremely high level of liquidity, geographical, legal, tax, counterparty and operational risk to the Genwick Scheme.

432. The FCA reported in October 2020 that a number of companies in the German Property Group (as Dolphin became known) had entered bankruptcy proceedings in Germany.

433. I also note the comments of Nicholas Thompsell (sitting as a deputy judge in the High Court) in *Trafalgar Multi Asset Trading Company Limited v Hadley & Ors* [2023] EWHC 1184 (Ch) at paragraph 38:

"According to a news report provided to me [Dolphin] operated a business of buying old buildings in Germany at favourable tax rates, renovating them and renting them out. In the first few years, the business model seemed to work: investors were happy about the high interest rates and some real estate projects made progress. But it seems that after a while more money was being raised than could be invested and the arrangements became less of a genuine investment and more of a Ponzi scheme. Dolphin Capital offered commissions of around 20% to introducers of investments to it."

434. The duties imposed on pension scheme trustees in relation to investments are contained in: the pension scheme's documents, such as the scheme's trust deed and rules; Part I of the Pensions Act 1995 (the **1995 Act**); case law; and The Pension Regulator's Codes of Practice. I will examine each of these below.

C.4 Investment powers and duties under the Trust Deed and Rules

435. The relevant provisions of the 2013 Uniway Trust Deed and Rules and the 2013 Genwick Trust Deed and Rules, which govern the Schemes' trustee investment powers, are contained in Sections 8 and 9, set out in full at Appendix 2. The following clauses are relevant.

435.1. Clause 8.1:

"Subject to Clauses 8.2 - 8.8 the Trustees may invest or apply the Fund as if they were absolutely and beneficially entitled to the Fund, including but without limitation to, investing the Fund in any manner in any place in the world or in anything that would not be regarded as an authorised trustee investment provided that this does not prejudice the Registration of the Scheme.

435.2. Clause 8.2:

"Before making any investment the Trustees shall obtain and consider proper advice pursuant to sections 36 (3) and 36 (6) of the 1995 Act as to whether the investment is satisfactory having regard to the need for diversification of investments in so far as appropriate for the Scheme and the suitability to the Scheme of the investments of the description of the investment proposed and of the investment proposed as an investment of that description."

435.3. Clause 8.3:

"Any investments shall comply with the requirements and provisions of the investment Regulations as amended."

435.4. Clause 9.6:

"Subject to the provisions of this Clause 9, the trustees may provide access to investments which allow each Member to choose amongst different Investment Alternatives in which the value of the Member's Personal account and the contributions paid or credited in respect of it… may from time to time be

*invested…**in selecting and changing the range of Investment Alternatives available for Members, the Trustees shall comply with their duties under Sections 35 and 36 of the 1995 Act and the Investment Regulations**."*

435.5. Clause 9.7 defines "Investment Alternative" (see Appendix 2).

435.6. Clause 9.8:

"If investment Alternatives are offered by the Trustees, a Member may notify the Trustees of his or her choices of Investment Alternatives in respect of his or her Personal Account in such form and by such time as the Trustees shall from time to time require. If a Member fails to notify or chooses not to notify the Trustees of the member's choices of Investment Alternatives in the form or within the time required by the Trustees, the Trustees shall hold contributions paid or credited in respect of the Member in a Default Strategy of the Trustees' choice, or in such other Investment Alternatives as the Trustees shall at their sole discretion deem to be suitable."

435.7. Clause 9.16:

"Subject to:

*a) **the terms and conditions of any investment, including an insurance policy or contract with an insurance provider (as described in Clause 9.6)**;*

b) any restrictions which the Trustees may impose (as described in Clause 9.10); and

c) the changes to Investment Alternatives described in Clause 9.11

the Trustees must follow the Member's choice of Investment Alternative."

436. The effect of these clauses is that Ecroignard was able to offer a range of Investment Alternatives from which members could choose. In determining which investment alternatives to offer, Ecroignard was required to comply with Sections 35 and 36 of the 1995 Act. Although Ecroignard was required to follow the members' instruction, Ecroignard was subsequently entitled to change the range of Investment Alternatives without notice. Before making any investment, Ecroignard was required to seek "proper advice."

437. Accordingly, Ecroignard had discretion to allow and disallow investments and was responsible for ensuring that the offered Investment Alternatives were appropriate for the Scheme, on the basis of "proper advice", as well as compliant with statutory investment duties and duties under case law.

C.5 Statutory duties under the Pensions Act 1995 and the Investment Regulations

438. Section 34(1) of the 1995 Act, provides a trustee with a wide-ranging power "to make an investment of any kind as if they were absolutely entitled to the assets of the

scheme", subject to section 36(1) 1995 Act, and any restrictions imposed by the Scheme Rules.

439. Section 36(1) of the 1995 Act, requires a trustee to exercise his powers of investment in accordance with: (i) The Occupational Pension Schemes (Investment) Regulations 2005 (the Investment Regulations); and (ii) the 1995 Act, 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.

The Uniway Scheme

440. Scheme records suggest that the Uniway Scheme had 140 members.

441. Ecroignard appears to have made available to Uniway Scheme members as Alternative Investments under clauses 9.6 and 9.8 of the Trust Deed and Rules the three AIGO Master Loan Agreements and WH Ireland.

442. Section 35(1) of the 1995 Act requires a trustee to secure that a Statement of Investment Principles (SIP) is prepared and maintained. Section 35 requires a trustee to comply with the prescribed requirements for the format and content of a SIP set out in Regulation 2 of the Investment Regulations.

443. I have seen no evidence that a SIP was put in place prior to November 2015. I find that Ecroignard breached section 35(1). Ecroignard was required under clause 9.6 of the Trust Deed to comply with section 35 of the 1995 Act, so the failure to put in place a SIP also amounts to a breach of trust.

444. Regulation 4(1) of the Investment Regulations requires a trustee to exercise their powers of investment under section 34 of the 1995 Act in accordance with the provisions of Regulation 4.

445. The relevant sections of Regulation 4 are:

"*Investment by trustees*

…

(2) The assets must be invested—

(a) in the best interests of members and beneficiaries; and

(b) in the case of a potential conflict of interest, in the sole interest of members and beneficiaries.

(3) The powers of investment, or the discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole.

…

(5) The assets of the scheme must consist predominantly of investments admitted to trading on regulated markets.

(6) Investment in assets which are not admitted to trading on such markets must in any event be kept to a prudent level.

(7) The assets of the scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration."

446. As set out in section A.9.1 above, the only investments made by Ecroignard, as trustee of the Uniway Scheme, were the Uniway WH Ireland Investment and the 2013-2015 Uniway AIGO Loan Sum.

447. Regarding the Uniway WH Ireland investments, I have been provided with evidence that Holborn Financial Limited, a regulated independent financial adviser (**IFA**) has confirmed that it provided advice in relation to the WH Ireland discretionary portfolio management offering. As set out in paragraph 66 above, template investment choice documents appear to offer several specific WH Ireland funds as Investment Alternatives.

448. However, it is significant that the completed investment selection form that I have seen refers only to a "Default Fund" and not to any specific fund managed by WH Ireland. This demonstrates that specific WH Ireland funds were not offered as an Investment Alternative to all members.

449. While I accept that the Uniway WH Ireland Investment appears to have been made by Ecroignard on the basis of regulated financial advice, it amounts to only 0.04% of the total sum invested by Ecroignard. I consider that the Uniway WH Ireland investment represents no meaningful diversification of the Scheme's portfolio. Further, it appears that the WH Ireland Investment was effectively retained as cash in the Scheme's client account at WH Ireland before being returned.

450. The sums loaned by Ecroignard under the AIGO Master Loan Agreements account for 99.6 per cent of the total amount invested by Ecroignard on behalf of the Uniway Scheme. I concluded in paragraph 420 above that the 2013-2015 AIGO Loan Sum was an extremely high risk investment.

451. As set out in paragraph 150 above, each of counterparties to the AIGO Master Loan Agreements were cells of AIGO Holdings and the sums loaned under the agreements were effectively to a closely linked group of undertakings. By loaning the overwhelming majority of the Scheme's assets to the AIGO counterparties, I consider that Ecroignard failed to properly diversify the Scheme's assets and exposed the Uniway Scheme to an excessive concentration of risk. I find that, by lending over 99% of the assets of the Uniway Scheme under the AIGO Master Loan Agreements, Ecroignard breached Regulation 4(7) of the Investment Regulations.

452. Further, Regulation 4(5) requires a scheme's investments to consist predominantly of investments admitted to trading on regulated markets. Although the shares of AIGO UKRPF, CPF and NRF Cells appear to have been listed on the Mauritius Stock Exchange, none of the AIGO Master Loan Agreements were instruments tradeable on the Mauritius stock exchange or on any other regulated market. Under Regulation 4(6), investments not listed on a regulated market must be kept to a prudent level.

453. None of the investments made by Ecroignard were in investments admitted to trading on regulated markets, so this cannot be regarded as a prudent level under Regulation 4(6). I find the Ecroignard breached Regulation 4(5) of the Investment Regulations.

The Genwick Scheme

454. Scheme records suggest that 75 members joined before 18 November 2015.

455. Under Regulation 6 of the Regulations, Section 35 of the 1995 Act and Regulation 2 of the Investment Regulations, are disapplied where a scheme has fewer than 100 members. Under Regulation 7 of the Regulations, Regulation 4 is also disapplied where a scheme has fewer than 100 members. However, Regulation 7(2) requires that:

"the trustees of the scheme in exercising their powers of investment, and any fund manager to whom any discretion has been delegated under section 34 of the 1995 Act in exercising the discretion, must have regard to the need for diversification of investments, in so far as appropriate to the circumstances of the scheme."

456. As set out in paragraph 172 above, a total of £4,409,654.95 was invested by Ecroignard between June 2013 and November 2015. These comprised:

456.1. The Genwick 2013-15 AIGO Loan Sum (£1,454,656.96)

456.2. The FGW Loan Sum (£1,503,330.96)

456.3. The 2014-2015 Dolphin Investment (£1,415,811.96); and

456.4. The Genwick WH Ireland Investment (£35,855.07).

457. As set out in paragraphs 447 to 449 above with regard to the Uniway WH Ireland Investment, I accept that the Genwick Uniway WH Ireland Investment appears to have been made on the basis of regulated advice. However, the Genwick Uniway WH Ireland Investment also appears not to have been invested but to have retained as cash in WH Ireland's client account.

458. The Genwick WH Ireland Investment represented approximately 0.8% of the Genwick Scheme's investments. Approximately 33% of the Scheme's assets were loaned to the AIGO cells, 32% to Dolphin Capital and the remaining 34% to FGW. So, over 99% of the Scheme's assets were loaned to only five counterparties, three of which were cells of a single entity, AIGO Holdings. The Genwick Scheme's investments were extremely concentrated and undiversified.

459. Regulation 7(2) requires the trustee to have regard to the need for diversification, in so far as appropriate to the circumstances of the scheme. I have seen no evidence that the diversification of investment was considered and a conclusion was reached that it was appropriate for the Genwick Scheme's investments to be undiversified. Taking into account the circumstances of the Scheme, which would have required a high proportion of investments in liquid assets to ensure that requests for transfers out and pensions in payment could be actioned promptly, I find that Ecroignard breached Regulation 7(2) of the Investment Regulations.

C.6 Section 36(3) and (4) (Choosing investments: requirement to obtain and consider proper advice)

460. 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."*

461. Proper advice is defined by Section 36(6) of the 1995 Act as follows:

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

462. 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.

463. There is no direct documentary evidence of advice received by Ecroignard in relation to the AIGO Master Loan Agreements, the FGW Loan Agreement, the Dolphin Capital Investment, or sums loaned under those agreements.

464. Mr Shroff has submitted that he sought investment advice from an individual named Mr Amul Mahendra Shah. The Schemes' accounts show payments to Mr Shah personally with the transaction reference "IM Fees". Payments from the Uniway Scheme were made on 6 August and 17 September 2014, totalling £14,000 and from the Genwick

Scheme, £1,500 was paid on 6 August 2014. I also note that the October 2013 bank account application completed by Mr Shroff referred to anticipated approximate annual IFA costs of £15,000.

465. Mr Shah was contacted by my office to discuss his involvement with the Schemes and stated that he had not provided any investment advice on the Schemes' investments. It is difficult to reconcile this contrasting evidence. However, the payments from the Schemes indicate that Mr Shah was paid for some form of investment management.

466. The FCA register contains no record of regulatory approval for Mr Shah. If Mr Shah did provide investment advice in the UK, it would have amounted to a regulated activity within the meaning of FSMA. As he did not hold the required regulatory approvals at the relevant time, the advice would have contravened section 19 of FSMA, and would not have constituted "proper advice" for the purpose of section 36(3) of the 1995 Act.

467. Alternatively, under section 36(6)(b) of the 1995 Act, advice can constitute proper advice if Mr Shah was "reasonably believed by the trustees to be qualified in his ability in and practical experience of the management of the investments of trust schemes". I have seen no evidence that Mr Shah had such experience. Mr Shah claims highly generalised investment experience on his own website[32], but this does not equate to "practical experience of the management of the investments of trust schemes". Mr Shroff has provided no evidence on which he formed a reasonable opinion that Mr Shah had any such relevant experience. Without this evidence it is not possible to conclude that the advice constituted "proper advice for the purpose of section 36(3) of the 1995 Act.

468. Notwithstanding this, in addition to the requirement that the adviser be regulated by the FCA or was reasonably believed to have the necessary ability and experience, the advice must also have been provided in writing. Mr Shroff has submitted that written financial advice was retained in the Schemes' records and these were passed to Mr Bessent when he took over as director of Ecroignard. However, this must be balanced against Mr Shah's assertion that he provided no such investment advice.

469. Further, it is inherently highly unlikely that any competent financial adviser with appropriate experience of investing the assets of trust schemes would have positively recommended the portfolio assembled by Ecroignard in respect of the Schemes. As set out above in section C.3, each portfolio is illiquid and undiversified, lacked security, and concentrated risk to the creditworthiness of a small number of overseas creditors.

470. The payments to Mr Shah were made on 6 August and 17 September 2014, almost a year after the Schemes started investing funds. By this point:

    470.1. the Uniway Scheme had loaned a total of £1,756,940.65 to the AIGO UKRPF Cell, £309,032.50 to the AIGO CPF Cell, and £809,458.12 to the AIGO NRF Cell; and

[32] https://prosperitas.com.sg/our-team

470.2. the Genwick Scheme had loaned a total of £579,902.99 to FGW

(together, the Pre August-September 2014 Investments).

471. In the case of the Uniway Scheme, it is clear that Ecroignard had commenced lending to the AIGO Cells before the payment was made to Mr Shah. It is also striking that after payments were made to Mr Shah, the Uniway Scheme continued with precisely the same investment strategy after that date. This strongly suggests that, if advice was received by Ecroignard, then it must have concluded that not only were these appropriate investments or Investment Alternatives to offer to members, but that the Scheme should continue to concentrate its investments or continue to offer Investment Alternatives in precisely the same manner. It would be extraordinary if any proper advice would possibly have reached this conclusion given the nature of the counterparties to which the Uniway Scheme was lending, and the high risk of the investments, as set out above in section C.3.1.

472. In the case of the Genwick Scheme, Ecroignard had loaned substantial sums to FGW before payment was made to Mr Shah, and loaned further sums after this date. This strongly suggests that, if advice was received by Ecroignard regarding the FGW Loan Agreement, then it must have concluded that not only was this an appropriate investment, but that the Scheme should continue to loan sums to FGW. It would be extraordinary if any proper advice would possibly have reached this conclusion, given the high risk of the investment, as set out above in section C.3.2.

473. Prior to the payment to Mr Shah, the Genwick Scheme had made no payments to the AIGO Cells or to Dolphin Capital. Payments to each of the three AIGO Cells commenced on 29 October 2014, and payments to Dolphin Capital on 30 October 2014. This suggests that there was a substantial change in investment strategy after this point, and it is possible that the change in strategy was informed by advice received from Mr Shah. However, it would be extraordinary if this advice, if it constituted proper advice, would have concluded that maintaining the FGW Loan Agreement and then concentrating all further investment into the AIGO Cell and Dolphin Capital would be appropriate.

474. I note that of the total sum paid to Mr Shah only £1,500 was paid from the Genwick Scheme versus £14,000 from the Uniway Scheme. Given the higher number of investments made by the Genwick Scheme and the more complicated structure of the Scheme's investments, it is anomalous that such a low fee was charged relative to that charged to the Uniway Scheme.

475. It is also unclear why Ecroignard needed to seek advice specifically from Mr Shah. The Uniway Scheme had previously received advice from Holborn Financial, the authorised firm that had provided advice on the WH Ireland Investments. At that time Ecroignard already likely knew of the intended AIGO and FGW investments, as demonstrated by the bank account opening forms. It would have been more appropriate and effective for Ecroignard to have sought advice on the intended portfolio as a whole rather than piecemeal so the risk could be assessed on a Scheme wide basis. The fact that

Ecroignard did not request advice from Holborn Financial in respect of the whole portfolio is further support for the suggestion that it was highly unlikely that any competent financial advisor would have recommended it.

476. It is also significant that Mr Shah only received payments in a narrow period of time between August and September 2014. Section 36(3) of the 1995 Act requires a trustee to obtain and consider proper advice "before investing in any manner." I would therefore expect to see further evidence of fees paid to Mr Shah on each occasion that the Schemes made further investments.

477. The requirement for Ecroignard to obtain and consider proper advice is also set out in clause 8.2 of each Scheme's Trust Deed and Rules, set out at Appendix 2. It is notable that the wording of clause 8.2 requires Ecroignard to obtain and consider proper advice "before making any investment."

478. Further, when a trustee retains an investment, section 36(4) of the 1995 Act requires the trustee to:

> *"(a) 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*
>
> *(b) obtain and consider such advice accordingly."*

479. I would expect a trustee to have an ongoing relationship with the adviser, undertaking regular reviews, considering whether investments ought to be retained, and rebalancing the portfolio appropriately. Even if it was accepted that Mr Amul Shah had provided proper advice in a narrow period between August and September 2014, there is no suggestion that any further advice was sought before or subsequently.

480. I also note that under Clause 17.1 (b) of the 2013 Deeds, Ecroignard was required to appoint, "an investment manager… in accordance with section 47 of the 1995 Act and may delegate and may delegate [sic] to them decisions about the investment of the Fund;" Although the reference for the payments to Mr Shah was "IM Fees", I have seen no evidence that he was formally appointed as an investment manager, or any further payments.

481. It was not only a requirement for proper advice to be obtained, but also that it was considered. Even if Mr Shah did provide proper written advice to Ecroignard, it was under a duty to consider whether the investments or investment strategy recommended in that advice was appropriate for each Scheme. Ecroignard was established as a professional trustee company drawing fees for its work, and Mr Shroff was a finance professional with experience as set out at paragraphs 92 to 95 above. I consider that it ought to have been immediately apparent that any advice recommending the investments that were made by the Scheme was obviously deficient.

482. Mr Shroff has submitted that HMRC reviewed the Schemes twice, including considering "*their formation, documentation, investments, corporate governance and*

the due diligence undertaken", and its "*task was to ensure schemes were legitimate and it confirmed that everything was present and correct.*" However, while it is evident from the file that HMRC provided to me that it received Scheme and investment information, its comments in April 2024 explain that its interest in the scheme related specifically to possible pension liberation, concluding that there was no significant risk of pension liberation from the Schemes. Its role was not to authorise or regulate investments or trustees. In this context I find that HMRC's interaction with the Schemes at that time cannot be construed as implying that the investments made by the Schemes were appropriate or adherent to the relevant investment legislation or the Trust Deed and Rules.

483. Drawing the preceding points together, I conclude that:

483.1. The Pre August-September 2014 Investments were made without Ecroignard obtaining proper advice.

483.2. If Mr Shah did provide written advice to each Scheme, it was not "proper advice" under section 36(6)(a) of the 1995 Act because he did not hold the appropriate FCA permissions.

483.3. If the subsequent patterns of investment by Ecroignard reflected the content of written advice received from Mr Shah, that advice was so obviously deficient that no competent trustee would reasonably have believed that Mr Shah had the appropriate knowledge and experience of the management of the investments of trust schemes. It follows that the advice did not constitute proper advice under section 36(6)(b).

483.4. In any event, there is no evidence that Mr Shah provided any subsequent advice after September 2014, contrary to section 36(3) of the 1995 Act and clause 8.2 of the Trust Deed and Rules.

483.5. In the event that Mr Shah did provide proper advice that recommended an appropriate investment strategy for each Scheme, the continuing pattern of high-risk investment after that advice was given and, in the case of the Uniway Scheme, the continuation of precisely the same investment strategy, demonstrates that Ecroignard failed to consider that advice.

484. I find that, in respect of both the Uniway and the Genwick Schemes, Ecroignard breached the requirements of section 36 of the 1995 Act. Section 9.6 of the Trust Deed also required Ecroignard to comply with section 36, so its failure to do so also amounts to a breach of trust.

C.7 Delegation of the Trustee's power of investment

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

486. Section 34(4) of the 1995 Act, provides that trustees would 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]".

487. The isolated payments to Mr Shah have the reference "IM Fees", and this may represent the fact that he carried out some actions as the Schemes' Investment Manager. However, I have seen no investment management agreement or suggestion that there was one in place, and again, Mr Shah is absent from the FCA register and there is no evidence that he was appropriately experienced to manage the Schemes' funds. Accordingly, I find that he could not have been legitimately appointed as a fund manager.

C.8 Duties under case law

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

488.1. 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).

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

488.3. 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).

489. Looking further at the case of *Cowan v Scargill*, Megarry V-C held, 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."

490. 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...”

491. A trustee’s power to choose and make investments is a fiduciary power. As set out in *Cowan v Scargill* above, this power must be exercised in the best financial interests of beneficiaries. It was also confirmed in *Merchant Navy Ratings Pension Fund v Stena Line & Ors* [2015] EWHC 448 (Ch), that for a trustee to act in the best financial interests of beneficiaries it is necessary for that trustee to identify the purpose of 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”.*

492. A trustee is also under a trust law duty to conduct regular reviews of investments[33].

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

494. Mr Shroff has submitted that at the time he ceased to be director of Ecroignard all of the investments’ capital funds were preserved, were paying the coupons required and

[33] Nestle v National Westminster Bank plc [1994] 1 All ER 118, CA

on schedule. He considered that the funds were “effectively asset backed” into UK property and that he had taken the necessary actions to ensure that the Schemes were run and regulated effectively.

495. While the evidence does not clearly demonstrate that each Scheme’s investments had failed by November 2015, Mr Shroff’s submission that the investments were in any sense “effectively asset backed” into UK property is simply not accurate. As I have highlighted in paragraph 409 above, the sums loaned to the AIGO Cells under the AIGO Master Loan Agreements provided for no security. While it is the case that the proposed investment strategy of the UKRPF and, to an extent, the CPF Cells, set out in the AIGO Information Memorandum included investment into UK property, this is not the same as the Schemes holding UK property directly, which in any event would likely have been illiquid. The only relationship between the Uniway Scheme and the AIGO Cells was set out in the AIGO Master Loan Agreements. Under those agreements, the Uniway Scheme had no direct charge or other recourse to underlying assets held by the AIGO Cells. As stated in paragraph 420 above, I have no evidence that the Genwick Scheme even had the benefit of a written loan agreement with the AIGO Cells. This cannot be reconciled with Mr Shroff’s assertion that the Schemes were run and regulated effectively in the period preceding November 2015.

496. In respect of the FGW Investment by the Genwick Scheme, the loan did not provide for any security, and the underlying assets in which FGW invested were located in Fiji. Mr Shroff’s assertion that there was “plenty of security” is simply not supported by the documentation. Even if AIGO or Fidelis had provided some guarantee of FGW’s obligations, that would have further concentrated the exposure of the Genwick Scheme to counterparty risk given the sums loaned to the AIGO Cells by the Genwick Scheme.

497. FGW loaned money to White & Co, which appears to have invested directly in UK property. However, there is no indication that the sums loaned to FGW by the Genwick Scheme were in turn loaned to White & Co. Even if they had been, a loan to FGW which in turn was loaned to a property investment company, which in turn invested in UK property is self-evidently not the same as the Genwick Scheme holding UK property directly. Further, although the termination of the FGW Loan Agreement and the novation of the White & Co Loan Agreement occurred after Mr Shroff’s resignation as director, it would be extraordinary if the circumstances behind Mr Bessent’s decision to write to Mr Lotun, requesting acceleration of the loan, were completely unknown to Mr Shroff, given that it occurred only three months after his resignation.

498. The 2014-2015 Dolphin Loan may have had the benefit of security in Germany, but this is not equivalent to the Genwick Scheme owning UK property directly, or having a secured interest over identifiable property.

499. Before making these investments, Ecroignard had a fiduciary duty to invest in a manner that would promote the proper purpose of the Scheme. By offering illiquid high risk investments as Investment Alternatives to members and investing Scheme funds accordingly, I am not persuaded that Ecroignard had identified, or operated the Schemes in a manner consistent with, the fundamental purpose of a pension scheme.

500. Further, in the period between June 2013 and November 2015, I consider that the Schemes were used as vehicles to actively channel funds into a small number of linked high risk investments in which the same principals had economic interests.

501. It was disclosed in the AIGO Information Memorandum that HJL was acting as Introducer to the AIGO Lending Scheme, and that its remuneration was directly linked to the total amount raised. It was further disclosed that Mr Mark Stephen, a director of HJL, would act as: asset manager and adviser to the AIGO CPF Cell, fund manager of the AIGO NRF Cell, and fund manager of the AIGO UKRPF Cell. The father of Mark Stephen, Mr Jim Stephen, was also a member of the management team of the AIGO.

502. It was further disclosed that the investment strategy of the UKRPF Cell was to establish a joint venture with Kazai Capital Limited. Mr Mark Stephen was a director of Kazai Limited between May 2013 and March 2016. Details of Mr Mark Stephen's experience in property investment in the Information Memorandum included a reference to Stark Limited, a specialist property investment company, which he incorporated in 2006[34]. As set out in paragraph 157 above, both the AIGO UKRPF and CPF Cells loaned substantial sums to Stark Limited.

503. So, it is clear that HJL, Mr Mark Stephens and other entities in which Mr Mark Stephens or family members had an interest, were not only inextricably linked with the success of the Lending Scheme, but would also benefit financially from investment in the AIGO Cells. It is striking, although in this context unsurprising, that the Insolvency Service's investigation, though not accounting for every member, showed that in relation to the Uniway Scheme, 40 of the 70 members that responded were introduced to the Scheme by Hennessy Jones.

504. It was emphasised in the Information Memorandum that the Lending Scheme was specifically aimed at SIPPs and occupational pension schemes, but there is no characteristic of the Lending Schemes that would make it particularly suitable for pension scheme investment. On the contrary, the multiple factors set out in section C.3.1 above demonstrate that the investment was wholly unsuitable for pension schemes.

505. Mr Shroff has submitted that he was introduced to the opportunity of becoming a director of Ecroignard by Mr Yajjadeo Lotun. Once appointed as a director, Mr Shroff has submitted that he was introduced to Deuten, to the AIGO opportunity, and likely to FGW, also by Mr Lotun. Mr Shroff has also confirmed that he was aware that Mr Harshal Shah knew Mr Lotun and that he introduced Mr Shah to the role at Deuten.

506. Mr Shroff's submission is supported by the submissions of the principals and associates of Deuten, including Mr Harshal Shah, that Mr Yajjadeo Lotun introduced them to the opportunity at Deuten.

[34] No record appears on Companies House matching the details given in the AIGO Information Memorandum for Stark Limited, suggesting it was incorporated in a jurisdiction other than the United Kingdom.

507. It was disclosed in the AIGO Information Memorandum that Ms Vidyotma Lotun was a director of AIGO Holdings. Ms Lotun was also a director of Fidelis from 2010 onwards, which was not disclosed in the AIGO Information Memorandum. However, in clause 13.1 of the FGW Loan Agreement, it was stipulated that communications to FGW should be directed to the Administrator (Fidelis) for the attention of Ms Lotun.

508. Despite being a director of both AIGO Holdings and Fidelis, the AIGO CPF Agreement and the AIGO NRF Agreement were executed by Ms Lotun on behalf of AIGO Holdings. These agreements were not executed by Ecroignard, despite Ecroignard being a party to each agreement, but executed "on behalf of" Ecroignard by another director of Fidelis. The FGW Loan Agreement also appears to have been executed by Ms Lotun.

509. Combined with the clause of the FGW Loan Agreement, it was clear at the point that these documents were executed, that Ms Lotun was a principal of AIGO Holdings, Fidelis and FGW.

510. I am unable to establish the precise nature of the relationship between Mr Yajjadeo Lotun and Ms Vidyotma Lotun. However, I have seen evidence that they shared an address and are both directors of Universal Golden Fund, a Mauritius registered company with the same registered address as AIGO Holdings and Fidelis. I consider this to be sufficient evidence on which to conclude that they are at least associates. It also cannot have escaped Mr Shroff's notice that both shared the same last name.

511. Mr Shroff has admitted that the AIGO and FGW Investments, as well as the opportunity to act as director of Ecroignard, were all introduced to him by Mr Lotun. He also knew that Mr Harshal Shah had been introduced to Deuten by Mr Lotun. It was also clear from the AIGO Information Memorandum, the AIGO Loan Agreements, and the FGW Loan Agreement that a principal of AIGO Holdings, Fidelis and FGW was Ms Lotun, who appeared to be an associate of Mr Lotun. Yet, despite these clear indicators that the same related parties might have an undisclosed economic interest in, and motivation to introduce, the investments, Ecroignard proceeded regardless to offer investment in the AIGO Cells and investments through FGW as Investment Alternatives to members of the Schemes.

512. I accept that Mr Shroff might not have been aware of the full network of individuals and companies described in that decision. For example, it transpired that Mr Stephen was the sole shareholder of each of the AIGO Cells. However, there was sufficient contemporaneous evidence of the central role of Mr Mark Stephen and Hennessy Jones, and of the coordination of Deuten, Ecroignard, AIGO and FGW by Mr Lotun with the assistance of Ms Lotun, which would have made clear there was a considerable risk of the existence of a coordinated scheme to channel monies into specific investments. The fact that Ecroignard proceeded regardless to offer these as Investment Alternatives to members of the Schemes demonstrates a total failure to identify the proper purpose of either Scheme.

513. By doing so, I find that by loaning the Total 2013-2015 AIGO Loan Sum and the FGW Loan Sum, Ecroignard failed to identify and promote the proper purpose of both

Schemes. Indeed, the pattern of investment and the apparently predetermined nature of them suggests that the true purpose of the Schemes was to assist Mr Lotun and Mr Stephen in channelling monies towards investments in which Mr Stephen, and likely Mr Lotun, had economic interests.

514. I have based this finding on the evidence that was available to Mr Shroff and to Ecroignard when monies were invested by the Schemes between June 2013 and November 2015. I also note the findings of the Upper Tribunal in *Page & Ors v Financial Conduct Authority* [2022] UKUT 00124 (TCC) that the AIGO investments and Hennessy Jones' involvement in their design and implementation was part of a sophisticated structure of companies, including IFAs, unregulated introducers and pension administrators, intended to channel pension funds into the AIGO investments.

515. From at least August 2014, Deuten operated from the same Maddox Street address used by Hennessy Jones. Mr Shah has said that this office was used because of the reduced rent being offered by the landlord, however it cannot have been overlooked that it would have additional convenience and efficiencies by operating so closely with Hennessy Jones.

516. Although it has not been established that the same principals involved in AIGO and FGW had economic interests in Dolphin, I consider that the 2014-2015 Dolphin Loan Sum represented an excessive concentration of risk in a single overseas counterparty. The documentation I have seen provided for no liquidity and represented a substantial proportion of the funds invested by the Genwick Scheme. I find that by loaning the 2014-2015 Dolphin Loan Sum, Ecroignard failed to identify and promote the proper purpose of the Genwick Scheme.

517. To ensure that the Schemes' funds were invested for a proper purpose, Ecroignard was under a duty to conduct regular reviews of the investments. As set out in sections C.6 and C.7 above, Ecroignard failed to take proper advice or to conduct regular reviews of the investments. Any review would have revealed that the investments were wholly unsuitable for the purpose of the trusts.

518. In failing to invest in the best long term financial interests of the members, obtain appropriate advice, and to identify and promote the purpose for which the Scheme was established, I find that Ecroignard did not invest the Schemes' assets for a proper purpose. The investments made were high-risk, entered into without taking appropriate independent advice, with no regard to liquidity, 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.* By doing so it failed to meet the requirements set out in case law and failed in its equitable duty to exercise due skill and care in the performance of its investment functions.

519. With the exception of the WH Ireland Investments, I find that each of the Schemes' investments made by Ecroignard between June 2013 and November 2015 constitute a breach of trust.

C.9 The Pensions Regulator's Code of Conduct

C.9.1 Conflicts of interest

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

521. 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 Trustee. 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.

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

523. Pension scheme trustees also have a 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.

524. In the case of the Schemes, I have identified the following conflicts of interests:

524.1. HJL was introducing potential members to the Scheme with the intention for the Trustee to then invest the members' funds into investments which HJL would directly benefit from, in the form of a 5% fee, and indirectly, through the central involvement of Mark Stephen, a director of HJL, in the operation of the investments.

524.2. Mr Lotun, an associate of Mr Shroff, and who proposed his involvement in Ecroignard, would have benefitted through his association with FGAM and potentially through his association with Ms Lotun.

524.3. Deuten operated from the same offices as HJL and was offered a reduced rent.

525. There has been no explanation as to how these conflicts of interest were managed, and I consider that closeness between Mr Shroff and Mr Lotun, along with the obvious process of HJL referring members to the Uniway Scheme for subsequent investment in the FGW and AIGO investments was highly irregular. This was not coincidental and gave rise to a potentially serious conflict between the financial interests of the members and the financial interests of Ecroignard, Deuten and the various associated parties.

526. I have seen no evidence that Ecroignard took any steps to manage or record these potential or actual conflicts of interest. It may have been that the records have been lost, however it is extremely difficult to see how these conflicts can have been adequately managed given the direct benefit due to HJL and an associate of Mr Shroff.

On that basis, I find, on the balance of probabilities, that Ecroignard breached the requirements of section 249A of the Pensions Act 2004.

527. In addition, I find, on the balance of probabilities, that Ecroignard failed to act in accordance with the 2013 Code between June 2013 and November 2015. I find that failure to have regard to those Codes amounts to maladministration by Ecroignard and a breach of its fiduciary obligations.

C.9.2 Fees and charges on investment

528. Under the 2013 Code[35], once it had come into force in November 2013, trustees were required to understand the costs to which their investments were exposed and to ensure that those costs were documented (paragraph 99 of the Code).

529. Under paragraph 125 of the Code, trustees were specifically required to consider the impact of fees on the investment return and to check their level against applicable market comparators to ensure that they remained competitive.

530. I have identified the following identifiable deductions:

FGW	**Amount**
Ottingnon Limited	30%
Management Fees	4.5% per year

AIGO Funds	**Amount**
Hennessy Jones promotion fee	5%
Establishment fee	£54,500
UK Legal fees	Up to £102,500
Administration fee	£18,000 per year
Initial and annual Management Fee	1% and 0.5%
Custodian fee	£4,000 per year
Directors fees	£4,000 each per year

Dolphin Capital	**Amount**
Introducer fee	Up to 20%
Management Fees	Undisclosed

531. It is unclear what proportion Ecroignard would have to bear of the fees listed in the Information Memorandum, but as they are expressed as payable by investors, it is obvious that it could be up to 100% if Ecroignard was the only investor. It is also highly irregular that an investor would be expected to pay unspecified "establishment fees," legal fees and custodian and director fees directly for an investment fund, in addition to administration and annual management fees. It is notable that it was later acknowledged by the board of AIGO itself that costs needed to be reduced.

[35] The Pensions Regulator Code of Practice 13: Governance and administration of occupational trust-based schemes providing money purchase benefits

532. It is also prominently signposted in the AIGO Information Memorandum that the fee extracted by HJL for its role as an introducer was 5% of the total amounts invested. The Total 2013-2015 AIGO Loan Sum was £10,470,219.21, so HJL can be expected to have received, or were at least entitled to receive on the basis of the AIGO Information Memorandum, £523,510.96 of this sum in commission payments from AIGO.

533. I also note that between June 2013 and November 2015, fees charged by Deuten totalled £126,746.89 from the Metro Bank Genwick Account, and £117,706.67 from the Metro Bank Uniway Account. This appears to be inconsistent given that Uniway had approximately double the membership of Genwick.

534. I have identified the specific fees paid by the Applicants when joining the Schemes based on the information set out in section A.10 above:

Applicant	**Transfers on which fees were charged**	**Fee deductions**	**Banking charges**	**Retained cash**	**Investments**	**Effective fee percentage**
Mr C	£65,129.78	£2,280	£17.50	£482.50	FGW	4.27%
Mr E	£186,083.17	£1,152	£52.50	£448	3 AIGO Cells	0.88%
Mr P	£16,896.86	£608.29		£500	AIGO RPF, Dolphin	6.55%
Mr S	£258,809.17	£9,317.13		£500	3 AIGO Cells, Dolphin	3.8%
Mr GW	£224,836.15	£3,600		£4,100	3 AIGO Cells, Dolphin	3.4%
Mr SW	£27,412.05	£2,280		£500	FGW	10.14%

535. It is clear from the effective fee percentage above that the fees taken from one member's transfer varied substantially from others. Records provided to the Insolvency Service by Park View, corroborated by the Metro Bank accounts, confirm that this pattern of inconsistent fees is repeated across the membership of both Schemes.

536. To an extent, this variation arises from Deuten's practice at one stage of charging a fixed fee of £2,280 on each transfer in, which appears to represent a fee of £1,900 plus VAT. However, it is evident that this alone cannot explain the wide discrepancy in fees deducted from the transfers of Mr P, Mr S and Mr GW. Each of these applicants' transfer sums were invested in the same, or substantially similar, investments, yet substantially different fees were charged as an effective percentage of transfer value.

537. In the case of Mr P, it is not possible to establish why this fee was levied, as this figure does not correspond to the fee levels set out in either of the Genwick Tariff of Charges documents summarised in paragraphs 80 to 81 above.

538. Despite the discrepancies identified above, it appears that members were generally informed of the level of administration fee charged. In a letter dated 3 February 2015, Deuten informed Mr S that "administration fees of £9,317.13 (3% plus VAT) have now been deducted, and the remaining £249,492.04 will be invested by the Trustees [sic] shortly." However, as set out in paragraph 268 above, only the sum of £248,992.04 was transferred to the AIGO Cells and to Dolphin.

539. It is clear that the percentage of transfer values extracted in administration fees or retained as cash, on which Deuten or Ecroignard appear to have been able to draw without further notification to members, are in some cases excessive. Even had the investments performed as advertised to members, sums invested on behalf of members could, at best, only have barely achieved a positive return.

540. I find that Ecroignard breached paragraph 99 and 125 of the 2013 Code by failing to properly understand the costs to which its investments were exposed and failing to properly consider the impact of high fees on investment returns.

C.9.3 Administration of the Scheme

541. Between June 2013 and November 2015, Ecroignard was required, under section 249A(1) of the Pensions Act 2004, to "establish and operate internal controls which are adequate for the purpose of securing that the scheme is administered and managed in accordance with the scheme rules, and in accordance with the requirements of the law". "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."*

542. Additionally, paragraph 168 of the 2013 Code contained the following requirement concerning the appointment of service providers:

> *"168. Trustees should evaluate the suitability of all advisers and service providers prior to appointment. Trustees need to establish and document controls to manage the appointment of advisers and service providers and the delivery of information, advice and services provided by them. Trustees also need to establish and review what procedures and controls their advisers and providers have in place to ensure the quality and accuracy of the service they provide is suitable. Trustees should find out:*
>
> - *what professional indemnity cover they have?*
> - *what qualifications and accreditations they have and how they keep their professional knowledge up to date?*
> - *whether they have experience of dealing with schemes of a similar size and type to their scheme".*

543. The power to appoint an administrator was vested in Ecroignard under Clause 15 of the Trust Deed:

> *"The administration and management of the Scheme shall be vested in the Trustees who may delegate any of their functions (except that contained in Clause 20) to the Administrator."*

544. I have not been provided with any evidence, such as due diligence, as to why Deuten was appointed as the Schemes' administrator. It was a recently established company (February 2013) and administered no other pension schemes in the course of its operation. Mr Harshal Shah, the director, has said that he had no prior pension experience, but appointed a very experienced team to undertake the operational work.

545. The lack of experience in the industry is a significant concern as the decision to appoint Deuten appears to have been solely on the basis of Mr Shroff and Mr Shah's mutual introduction by Mr Lotun.

546. Further concerns about the appropriateness of Deuten as the Schemes' administrator stem from its physical proximity to the offices of HJL at 17-19 Maddox Street. It is inconceivable that it was a coincidence that both companies shared an address, and further suggests that Deuten was appointed not because of its experience in administering pension schemes, but because it was closely linked with Mr Lotun and HJL.

547. There also do not appear to have been proper procedures in place for the safe custody and security of the assets of the Schemes. It is striking that there is no loan agreement between the Genwick Scheme and any of the AIGO Cells documenting the Genwick AIGO Loan Sum.

548. Additionally, the AIGO NRF Master Loan Agreement and the AIGO CPF Agreement were signed not by Mr Shroff on behalf of Ecroignard, but by Fidelis, and signed on behalf of each AIGO Cell by Ms Vidyotma Lotun. Ms Lotun is a principal of Fidelis. This represents a serious failure by Ecroignard, as the AIGO CPF and NRF Agreements were effectively signed by representatives of a single party, Fidelis. No outside scrutiny was exerted by Ecroignard or Mr Shroff to ensure that the assets of the Uniway Scheme were being loaned on contractual terms that would ensure the safe custody and security of those assets.

549. Consequently, by failing to appoint and monitor a suitably experienced independent administrator, and by failing to put in place proper procedures to scrutinise and negotiate the terms of the AIGO CPF and NRF Agreements, I find that Ecroignard acted in breach of section 249A Pensions Act 2004 and the 2013 Code.

C.10 Member Consent and contributory negligence

C.10.1 Consent

550. 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).

551. 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."*

552. 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."*

553. Underhill and Hayton: Law of Trusts and Trustees,[36] [37]states that, for this principle to apply: the beneficiary must have: been "of full age and capacity at the date of such assent or release[38]"; "had full knowledge of the facts and knew what he was doing[39] and the legal effect thereof[40], though, if in all the circumstances it is not fair and equitable that, having given his concurrence or acquiescence, he should then sue the trustees, it is not necessary that he should know that what he is concurring or acquiescing in is a breach of trust (provided he fully understands what he is concurring or acquiescing in) and it is not necessary (though it is significant[41]) that he should

[36] Paragraph 1 of Article 95 of the 19th edition.
[37] 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).
[38] *Lord Montford v Lord Cadogan (1816) 19 Ves 635; Overton v Banister (1844) 3 Hare 503 at 506.*
[39] *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
[40] *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.
[41] *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].

himself have directly benefited by the breach of trust[42]"; and "no undue influence was brought to bear upon him to extort the assent or release."

554. 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."*

555. In this case, I have seen no indication that any of the Applicants were acting under the undue influence of another, and none of the Applicants have stated that there was any external compulsion in their decision to transfer their funds to the Scheme.

556. I consider it is significant that Mr Shroff's connections with Mr Lotun was not disclosed in any of the Scheme documentation.

557. Although the Applicants were aware and selected the investments by way of the investment selection form, given the involvement of unregulated introducers in the transfers into the Scheme, I am not persuaded that those introduced through that arrangement by Hennessy Jones and its partners would have been given the full detail of the close connections between the parties.

558. Although I have not seen copies of the Investment Selection Sheet completed by each Applicant, it is likely that each of the Applicants did select the investments listed because, with the exception of Mr C, I have not received complaints that an Applicant's funds were invested in the wrong investment or one which they had not chosen.

559. Regarding Mr SW, although he may have selected "First Global Wealth Limited Fund" on the Genwick Investment Selection Form, the FGW Loan Agreement is not a "fund" and, even though it appears that FGW may have invested the funds received from Ecroignard in Agarwood Plantations and in Dos Palm Oil, it is clear that this is not the same as Ecroignard investing in these assets directly. By loaning Scheme funds to FGW, Ecroignard was exposed not only to the performance of the underlying assets, but also the creditworthiness of FGW. The nature of the purported investment on the Investment Selection Sheet and the FGW Loan are fundamentally different, and there is no indication that Mr SW was aware of, or consented to, his funds being loaned to FGW.

560. Regarding Mr C, an element of his complaint is that his funds were not invested as he directed in the "natural resources investment." Although it is not entirely clear which investment is referred to, it is apparent from the Metro Bank Genwick Account that £62,349.78 from his first transfer was transferred to FGW. Mr C's second transfer of

[42] *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.

£16,830.06 appears not to have been invested but retained within the Scheme. So, even if the "natural resources investment" was based on the misapprehension that FGW was a natural resources investment, for the same reasons as set out above in paragraph 599 regarding Mr SW, there is no indication that Mr C consented to his funds being loaned to FGW.

561. Regarding the AIGO Investments selected by Mr E, Mr P, Mr S, and Mr GW, the Investment Selection Sheet described investment in each cell as a loan note yielding 8% per annum. Whilst this is a broadly accurate reflection of the interest rate set out in each Master Loan Agreement, I also take into account the Factsheet marketing documents for each of the three cells, which were circulated to prospective members. I find that on the balance of probabilities that the Additional Applicants were provided with these via unregulated introducers.

562. Each Factsheet states prominently that the "Return Frequency" was "Yearly" and under "Fund Charges," "None." Under the heading "accessing funds," "participants can request disinvestment at any time and funds are contractually required to be returned with pro-rata interest payment in a maximum of 12 months." Under the heading "Returns", there is a reference to "a bonus announced at Year 5 and paid at Year 10."

563. These statements do not accurately reflect, and present significantly more generous terms than, the true terms contained in each Master Loan Agreements and the Information Memorandum. As set out in section C.9.2 above, substantial fees and commissions were in fact payable. Clause 2.5 does confer on the Lender a right to serve an Early Withdrawal Notice but there is no provision for, or specific contractual entitlement to, interest accrued to the date of withdrawal to be paid. Although the bonus is not specifically described as a contractual entitlement, it is a prominently highlighted feature of the investment, yet there is no provision in the Master Loan Agreement or elsewhere referring to, or conferring a contractual entitlement to, the payment of any bonus.

564. I find that the description of the investment terms advertised in the Factsheets did not accurately reflect the true terms of the investment. When selecting the AIGO Cell investments, the members were not informed of the true terms of the investment and did not consent to those terms. It follows that the members did not consent to the breach of trust committed by Ecroignard, which I found at paragraph 484 above.

565. Even if my finding that each Applicant received the AIGO Factsheets is incorrect, there was no disclosure to members of the close connection between AIGO and Mr Lotun, or the introduction to Mr Shroff by Mr Lotun of the AIGO investments. This is of material significance given the central role of Ms Lotun in Fidelis and AIGO and of Mr Lotun in FGAM, and the direct incentive for the AIGO Investments to be promoted to members. I consider that, without knowledge of the close connection between Mr Lotun, Mr Harshal Shah and Mr Shroff, members could not be aware of the true nature of the arrangements through which the Investment Sheet offered the AIGO Investments as an investment choice. It follows that my conclusion at paragraph 564 above applies even if members were not provided with the AIGO Factsheets.

566. I consider that the Applicants who are members of the Schemes did not have full knowledge of the terms and underlying circumstances of the investments and consequently did not concur or acquiesce to Ecroignard's investments under the AIGO Master Loan Agreements, the FGW Loan Agreement or the 2014-2015 Dolphin Loan Sum, in breach of trust. So, I find the Applicants are not prevented from taking action against Ecroignard in respect of those breaches of trust.

C.10.2 Contributory negligence

567. I have found Ecroignard to have committed multiple breaches of trust, as set out in Sections C.7 and C.8 above.

568. 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'"[43].

569. It is further 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"[44]. I agree with this analysis and interpretation of the case law.

570. I found above at paragraph 519 that Ecroignard failed to exercise its fiduciary power of investment for a proper purpose and acted in breach of trust.

571. Therefore, Ecroignard and Mr Shroff cannot rely upon a defence of contributory negligence against liability for losses to the Scheme as a result of the breaches of trust committed by Ecroignard.

C.11 Ecroignard and Mr Shroff's liability

572. I shall now consider the effect of the statutory provisions under section 33 of the 1995 Act (**Section 33**), and also, to the extent that 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 Scheme's Trust Deeds. Finally, I shall consider Section 61 of the Trustee Act 1925 **(Section 61)** (assuming it applies), and the extent to which Ecroignard or Mr Shroff should be afforded relief from personal liability under its provisions.

C.11.1 Section 33 of the Pensions Act 1995

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

[44] 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.

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

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

574. Clause 14 of the Schemes' Trust Deeds sets out an indemnity and exoneration clause, (set out in Appendix 2). Additionally, the Application Forms completed by the Applicants contain wording to specifically indemnify Ecroignard from any claim in respect of investment decisions (set out in Appendix 3).

575. In relation to exoneration under the Trust Deeds, clause 14.3 explicitly limits the protection afforded under the clause to the extent required so as to comply with section 33 of the 1995 Act.

576. It has been confirmed that section 33 applies both to breaches of statutory investment duties and to a breach of the equitable duty to exercise due skill and care in the performance of the investment functions (*Dalriada Trustees v McCauley* [2017] EWHC 202 (Ch)).

577. 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.

578. A purposive interpretation of Section 33 requires indemnities (particularly a member indemnity) to be included. The impact of any indemnity would prejudice the member in consequence of his pursuing his right or remedy (section 33(2)(b)). To allow an indemnity under Section 33, especially if, following a hearing, I find dishonesty, would render Section 33 open to circumvention and ineffective in practice. As a matter of

public law policy where there has been dishonesty it cannot be correct to give effect to any indemnity.

579. 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 93 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".

580. On that basis, I find that Section 33 applies to both the exoneration clauses under the Deeds and the indemnity given by members on joining their respective Scheme[45].

581. This renders both the exoneration clauses and the indemnity ineffective in preventing Ecroignard from being held liable for any loss suffered by members in relation to the Ecroignard's breach of investment duties, imposed by statute (see Section C.5 and C.6) and/or common law (see Section C.8) by having committed the various breaches of trust that I have found it to have committed.

C.11.2 Accessory Liability

582. 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.

583. The test for accessory liability was set out by Lord Nicholls in *Royal Brunei v Tan [1995] UKPC 22* 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."*

584. 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.

585. It is not in dispute that the Genwick Scheme and the Uniway Scheme are trusts.

586. In relation to the Uniway Scheme, I found at paragraphs 484 and 519 above that the entry by Ecroignard into the AIGO Master Loan Agreements, and the sums subsequently loaned from the Uniway Scheme comprising the 2013-2015 Uniway AIGO Loan Sum were breaches of trust by Ecroignard.

587. In relation to the Genwick Scheme, I found at paragraphs 484 and 519 above that the entry by Ecroignard into the FGW Loan Agreement and the sums loaned from the Genwick Scheme comprising:

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

587.1. the 2013-2015 Genwick AIGO Loan Sum;

587.2. the FGW Loan Sum; and

587.3. the 2014-2015 Dolphin Loan Sum,

were loaned in breach of trust by Ecroignard.

588. In the context of dishonest assistance, "assistance" means conduct which in fact assists the commission of the breach of duty[46] and must enable the breach by the trustee to be committed.[47] Mr Shroff was the sole director and shareholder of Ecroignard between November 2013 and November 2015 and was the only person whose conduct was capable of assisting Ecroignard in committing the breaches of trust set out in paragraphs 484 and 519 above. It is not disputed that Mr Shroff selected each Scheme's investments based on his experience. Without selecting those investments, Ecroignard would not have loaned the sums set out in paragraphs 586 and 587 above in breach of trust.

589. Mr Shroff executed the AIGO UKRPF Agreement and the FGW Loan Agreement. Indeed, as sole director of Ecroignard, he was the only individual with the proper authority to do so. I acknowledge that Mr Shroff did not execute the AIGO NRF Agreement or AIGO CPF Agreement, and I have not seen an executed loan agreement relating to the Dolphin Loan Sum. As set out above at paragraph 548, I have seen no evidence that Ecroignard properly delegated authority to Fidelis Trust and Corporate Services to execute loan agreements on its behalf. Even if it had delegated authority in this manner, Ms Vidyotma Lotun was not only a director of Fidelis, but also executed the AIGO NRF and CPF Agreements on behalf of AIGO Holdings.

590. In any event, in relation to the corresponding parts of the total loan sums set out in paragraphs 149 and 172, that were paid from the Metro Bank Uniway Account and the Metro Bank Genwick Account in breach of trust, the Ecroignard Board Resolution resolved that all transactions required the authorisation and approval of Mr Shroff. So, it is clear that Mr Shroff's specific approval was required for each payment from the Metro Bank Uniway Account and the Metro Bank Genwick Account, even if he did not execute the AIGO NRF Agreement, the AIGO CPF Agreement or an agreement documenting the Dolphin Loan Sum. Without that approval, the payments in breach of trust from those accounts would not have been made. I find that, as the sole director and shareholder of Ecroignard and a signatory to the Metro Bank accounts, and in the case of the AIGO UKRPF Agreement and FGW Agreement, as a signatory to those agreements as well, Mr Shroff assisted Ecroignard in the commission of the breaches of trust I have identified.

591. Turning to the final element of dishonest assistance set out by Lord Nicholls, 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:

[46] *Madoff Securities International v Raven* [2013] EWHC 3147 (Comm).
[47] *Goldtrail Travel Ltd v Aydin* [2014] EWHC 1587 (Ch).

> *"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)

592. It was confirmed in the judgment of Lord Hughes in Ivey v Genting Casinos, atparagraph 62, that the law is now settled on the objective test for dishonesty set out by Lord Nicholls in *Royal Brunei*. At paragraph 74 of *Ivey*, it was held that the correct application of the test is as follows:

> *When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.*

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

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

594. It is evident from Mr Shroff's CV and from FCA records that he is a knowledgeable and experienced finance professional. During the period of his directorship of Ecroignard, he was authorised by the FCA to carry out the CF30 Customer function. He held a position at First International Group that involved asset allocation, risk assessment and risk policy implementation.

595. In the application form to WH Ireland, Mr Shroff indicated that Ecroignard had substantial experience of investing in equities, fixed interest instruments, and collective investment schemes. As the sole director and shareholder and, with the exception of a "part time administrative helper" (Freny Shroff) the only person who received regular payments from Ecroignard, I consider it reasonable to infer that Mr Shroff was referring to his own expertise in this form. Extensive experience was also referred to in the forms completed to open the accounts at Metro Bank, including the statement "Pension Regulator Certified trustee." Again, I consider it reasonable to infer that this experience refers to that of Mr Shroff, particularly as Mr Shah has acknowledged that he had little pensions experience.

596. The reference to “Pension Regulator Certified trustee” presumably refers to the modules of the Trustee Toolkit that TPR’s records show Mr Shroff to have completed. I note that several of these modules were passed with distinction.

597. Based on this level of knowledge and experience, I find that Mr Shroff understood that the fundamental purpose for which the assets of the Schemes were invested by Ecroignard was to ensure the provision of long term retirement benefits for beneficiaries. His experience also demonstrates that he knew the importance of identifying and considering the geographical, liquidity and counterparty risks of an investment, as well as the capability to assess such risks on behalf of a trustee of an occupational pension scheme.

598. With regard to Mr Shroff’s general motivation for acting in the way he did, it is evident from reconciling the Metro Bank Ecroignard Account records with payments made from the Metro Bank Uniway and Genwick Accounts that Ecroignard’s only source of regular income was from the Uniway Scheme and the Genwick Scheme.

599. As set in paragraph 57 above, a total of £48,000 was paid into the Metro Bank Ecroignard Account before November 2015. With the exception of £2,500 which appears to have been paid into the account by Mr Shroff’s employer at the time, £4,000 was paid from each of the Metro Bank Uniway and Genwick Accounts and £2,000 from the Barclays Bank Uniway Account. It appears clear that these payments represented fees paid to Ecroignard for work undertaken in respect of the Uniway and Genwick Schemes. The sums of £7,000 from another account in the name of Ecroignard and £30,500 from Deuten do not explicitly relate to the Schemes, but Deuten and Ecroignard had no involvement with any other pension scheme other than the Schemes, so I consider that these payments also related to work undertaken by Ecroignard in relation to the Schemes.

600. Between November 2013 and October 2015, Mr Shroff received regular fees from the Metro Bank Ecroignard Account, totalling £13,051.49. Freny Shroff also received regular payments totalling £22,900.00. As detailed at paragraph 59 above, the account was also frequently drawn upon during this period for substantial travel and hotel expenses within the UK and abroad, as well as office and IT equipment, including large purchases at Currys and the Apple Store. Without commenting on the appropriateness of these payments, which are ultimately a matter between Mr Shroff and Ecroignard, it is clear that Mr Shroff intended to run Ecroignard as a professional corporate trustee in return for fees, and to benefit personally from those fees. It is also evident that without member transfers into each Scheme, no fees would have been paid to Ecroignard. I find that Mr Shroff was motivated to act as director of Ecroignard by the prospect of personal financial gain.

601. Mr Shroff knew that as sole director of Ecroignard, he was the only person who had the authority to select and assess the merits of the investments made by the Schemes.

602. Regarding the AIGO Master Loan Agreements, Mr Shroff had actual knowledge that:

602.1. He had been introduced to Ecroignard, to AIGO, and to the Lending Scheme described in the Information Memorandum, by Yajjadeo Lotun;

602.2. He had also been introduced to Mr Harshal Shah and to Deuten by Yajjadeo Lotun;

602.3. He did not execute the CPF or NRF AIGO Agreements on behalf of Ecroignard but authorised loans to them regardless;

602.4. The AIGO Master Loan Agreements provided for no security, and there was no insurance policy in place when the agreements were executed;

602.5. The Lending Scheme described in the AIGO Information Memorandum was stated to be unregulated by the FCA;

602.6. The AIGO Information Memorandum disclosed that the investment manager was FGAM and the administrator Fidelis, and that Ms Lotun was the director of Fidelis;

602.7. Whilst a proportion of the share capital of AIGO Holdings and the AIGO Cells might have been listed on the Mauritius stock exchange, the Schemes did not invest in that share capital. Rather, the investment in the AIGO Cells was wholly via the AIGO Master Loan Agreements, which were unlisted bilateral loan agreements;

602.8. The terms of the loan agreements provided for a 12 month period before scheme funds could be recalled;

602.9. The AIGO Cells had been recently incorporated and had no trading history or track record of successfully executing the investment strategies advertised in the AIGO Information Memorandum;

602.10. There were extensive general and cell-specific risk factors disclosed in the AIGO Information Memorandum;

602.11. With the exception of the WH Ireland Investment, representing only 0.05% of the sum invested by Ecroignard on behalf of the Uniway Scheme, the entirety of the invested assets of the Uniway Scheme was loaned to the AIGO Cells;

602.12. No other investments were offered by the Uniway Scheme;

602.13. 33% of the invested assets of the Genwick Scheme were loaned to the AIGO Cells;

602.14. HJL was acting as an unregulated introducer to the Lending Scheme and was incorporated in 2013 as an advisory and promotional vehicle by Mr Mark Stephen;

602.15. Mr Stephen was also advertised in the AIGO Offering Memorandum as acting as an asset manager and advisor to the AIGO CPF Cell, and as a fund manager of the AIGO UKRPF and AIGO NRF Cells;

602.16. Members were being introduced to both Schemes by multiple unregulated introducers including HJL; and

602.17. One of the directors of AIGO Holdings was Vidyotma Lotun, as well as the signatory of the NRF and CPF Loan Agreements. The counter signatory to those agreements was not Mr Shroff, but a representative of Fidelis, of which Ms Lotun was also a director.

603. Applying the first limb of the test set out in *Royal Brunei* and *Ivey*, I have set out in paragraph 602 above the state of Mr Shroff's knowledge regarding the entry by Ecroignard into the AIGO Master Loan Agreements and the sums subsequently loaned by each Scheme to each AIGO Cell. I must decide, taking into account his knowledge and his experience and qualifications, whether he (subjectively) had a genuinely held belief that those actions were in the best financial interests of the beneficiaries and made for a proper purpose.

604. Mr Shroff had the appropriate level of knowledge and expertise to know that the sums loaned under the AIGO Master Loan Agreements presented an extremely high level of risk. Mr Shroff knew that Mr Lotun and Mr Stephen had central roles as architects of the overall structure by which funds were channelled from members into AIGO investments, and that Ecroignard and the Schemes played a key role in facilitating this process. He knew that Mr Lotun, through at least FGAM, Ms Lotun, through her directorships of AIGO Holdings and Fidelis, and Mr Stephen, through his interests in HJL and his role as asset or fund manager of each of the AIGO Cells, had a direct financial motivation to maximise investments in the AIGO Cells.

605. I acknowledge Mr Shroff's submissions to me that HMRC investigated both Schemes on two occasions and it concluded, in his words, that "everything was present and correct." I consider that it is unlikely that HMRC provided no explanation to him about the purpose of its investigation, which was narrow in scope and focussed solely on the risk of pensions liberation, rather than the Schemes' underlying investments. In the event that HMRC did not explain to Mr Shroff the purpose of its investigation, this would equally be unsupportive of any positive conclusion that there were no issues with the Scheme. In the absence of explanation from HMRC he would have known, from completing the Trustee Toolkit modules, that it is the Trustee who is responsible for ensuring the appropriateness of a scheme's investments. As HMRC put it in its communication with TPO, the conclusion that it reached was simply "that the receiving scheme[s] [are] registered with HMRC and [are] not subject to a deregistration notice… HMRC does not authorise or regulate investments or trustees."

606. I am not persuaded that the outcome HMRC investigations was the foundation of any genuine belief by Mr Shroff that the Schemes' investments were appropriate. I give some account for that fact that the period of time between making the investments and

responding to my investigation was a number of years, and that he may have formed a present belief about what his state of mind was at the time based on an erroneous recollection of the scope of the HMRC investigation. However, there is simply too wide a gap between the narrow conclusion reached in the HMRC investigation and Mr Shroff's reliance on that conclusion in justifying his actions to be credible.

607. Even if Mr Shroff had drawn a genuine, if erroneous conclusion from the HMRC investigations, I do not consider that this assists him. Given the multiple risk factors, irregularities and conflicts of interest identified in paragraph 602 above, of which Mr Shroff was aware, it is inconceivable that he was able to put all his experience and knowledge to one side, to disregard the obvious risks of proceeding, and to maintain even a subjective belief that proceeding was in the best financial interests of beneficiaries and for a proper purpose. I find that Mr Shroff did not genuinely believe the sums loaned under the AIGO Master Loan Agreements to be in the best financial interests of beneficiaries or made for a proper purpose. It follows that by procuring that Ecroignard offered loans to AIGO as an Investment Alternative, by signing the AIGO UKRPF Master Loan Agreement, and by approving each payment comprising the Total 2013-2015 AIGO Loan Sum, he acted dishonestly.

608. In the event that Mr Shroff was somehow able to maintain an unreasonable yet subjectively genuine belief that Ecroignard's actions were in the best financial interests of beneficiaries and for a proper purpose, I find that the objective standards of an ordinary decent person, in Mr Shroff's position, would have prompted that person to, before procuring that Ecroignard offered exposure to the AIGO Cells as an Investment Alternative, executing the RPF Master Loan Agreement and before approving transfers to the AIGO Cells:

608.1. Make substantial further enquiries about the links between Fidelis, FGAM, Mr Lotun, Ms Lotun, Mr Harshal Shah, Deuten and HJL;

608.2. Query the motivations of Mr Lotun, Ms Lotun, and Mr Stephen, and at the very least seek confirmation about their underlying economic interests in AIGO, FGW and the companies in which AIGO invested;

608.3. Seek independent advice on the merits of entering into the AIGO Master Loan Agreements and FGW Agreement, and at the very least:

608.3.1. Seek security under those agreements;

608.3.2. Execute the CPF and RPF loan agreements, and not to permit an unauthorised and conflicted third party to sign the agreements on his behalf;

608.4. Given the prevalence of unregulated introducers, particularly HJL, make enquiries as to what information prospective members had received;

608.5. Query why multiple prospective members were being introduced to the Schemes by multiple different introducers requesting their funds be invested in exactly the same investments;

608.6. Query Deuten's appointment as administrator given Mr Shah's lack of experience and insist on an administrator with appropriate experience being appointed; and

608.7. Seek further periodic advice as to the merits of concentrating the Uniway Scheme' investments entirely in loans to the AIGO Cells (with the minimal exception of the WH Ireland Investment).

609. Having done so, I find it is more likely than not that an ordinary decent person, in Mr Shroff's position, would have flatly declined to procure that Ecroignard offered exposure to the AIGO Cells as an Investment Alternative to members, to execute the UKRPF AIGO Agreement, to permit Ms Lotun and Fidelis to execute the CPF and RPF AIGO Loan Agreements, or to authorise any transfers from the Barclays Bank Uniway Account or from the Uniway and Genwick Metro Bank Accounts to the AIGO Cells under the AIGO Master Loan Agreements. Yet Mr Shroff took none of the actions that an ordinary decent person would have taken and proceeded regardless.

610. By failing to take any of the actions that an ordinary decent person would have taken in the same circumstances, I find that Mr Shroff failed to meet the objective standards of ordinary decent people. It follows that he acted dishonestly under the test set out in paragraph 592 above.

611. Regarding the FGW Loan Agreement, Mr Shroff knew that:

611.1. The terms of the FGW Loan Agreement were such that the Genwick Scheme loaned money to FGW, not to the underlying projects in which FGW may have invested.

611.2. The purpose of the loan agreement was stated to be to facilitate an investment in Aquilaria and Agarwood foresting projects in Fiji, in which FGW would acquire leasehold interests in land planted with trees.

611.3. Fidelis was the administrator, and communications to the borrower were instructed to be made to Ms Lotun.

611.4. Excessive commissions of 30% were payable to a "sales company", Ottingnon Ltd.

612. Applying the first limb of the test set out in *Royal Brunei* and *Ivey*, Mr Shroff was aware that the Genwick Scheme was not investing directly in the underlying investment, but loaning money to an overseas company which would in turn loan funds to the operators of the plantation investments, and in which Fidelis and Ms Lotun were involved.

613. Mr Shroff executed the FGW Loan Agreement so knew that the terms of the loan agreement were extremely generous. An interest rate of 5% per annum was payable

to the Genwick Scheme but, if the underlying investments had performed as advertised, FGW would have been able to profit by taking a turn between its obligation to pay the Genwick Scheme 5% and its receipt of compound annual returns of 15% and 20%.

614. My conclusion regarding the HMRC investigation set out in paragraphs 605 and 606 above applies equally to the FGW Loan Agreement. Even if Mr Shroff had drawn a genuine, if erroneous conclusion from the HMRC investigations, I do not consider that this assists him. Mr Shroff had the appropriate level of knowledge and experience to know that, even if the Genwick Scheme had invested directly in Agarwood Plantations, such an investment was entirely speculative and would have presented an extremely high level of risk to the Scheme. As it is, the sums loaned to FGW bore not only the risks of the underlying investment, but also an additional layer of counterparty risk from loaning the sums to FGW as an intermediary.

615. Given these obvious risk factors, the opportunity for FGW, one of whose principals was linked to AIGO, to profit from the difference in the interest rate payable versus the projected return, and the entirely speculative nature of the underlying investment, I find that Mr Shroff did not genuinely believe the sums loaned to FGW under the FGW Loan Agreement to be in the best interests of beneficiaries or made for a proper purpose. It follows that by procuring that Ecroignard offered loans to FGW as an Investment Alternative to members, by executing the FGW Loan Agreement, and by approving each payment comprising the FGW Loan Sum, he acted dishonestly.

616. In the event that Mr Shroff was somehow able to maintain an unreasonable yet subjectively genuine belief that Ecroignard's actions were in the best financial interests of beneficiaries, I find that the objective standards of an ordinary decent person, in Mr Shroff's position, would have prompted that person to, before procuring that Ecroignard offered exposure to FGW as an Investment Alternative, executing the FGW Loan Agreement and before approving transfers to FGW:

616.1. Query the structure of the Genwick Scheme loaning sums to FGW rather than to the underlying investments;

616.2. Seek extensive further information about the role of Fidelis and Ms Lotun in FGW, and confirmation of any economic interest each had in FGW or the underlying investments, and any links to the AIGO entities;

616.3. At the very least insist on the Genwick Scheme taking proper security;

616.4. Seek proper advice on the merits of exposing the Genwick Scheme to FGW and the underlying investments, and further periodic advice on the merits of concentrating the Genwick Scheme's investments in FGW;

616.5. Query why multiple prospective members were being introduced to the Schemes by multiple different introducers requesting their funds be invested in exactly the same investments; and

616.6. Query Deuten's appointment as administrator given Mr Shah's lack of experience and insist on an administrator with appropriate experience being appointed.

617. Having taken these steps, I find that it is more likely than not that an ordinary decent person, in Mr Shroff's position, would not have procured that Ecroignard offered FGW as an Investment Alternative to members, to execute the FGW Loan Agreement, or to authorise any transfers from the Metro Bank Genwick Account to FGW. Yet Mr Shroff took none of the actions that an ordinary decent person would have taken and proceeded regardless. It follows that he acted dishonestly under the objective limb of the test set out in paragraph 592 above.

618. With regard to the 2014-2015 Dolphin Loan Sum, it is clear from the promotional material that the business model of Dolphin was to use borrowed sums from UK investors to renovate and convert derelict listed properties in Germany into apartments, taking advantage of purported tax relief under German law. The unexecuted Loan Note Agreement specifies an interest rate of 13.8%. On its face, the business model being executed by Dolphin described in the promotional material has obvious geographical, legal and liquidity risk. The promotional literature emphasised that the investment was not authorised by the FCA.

619. It has also been widely reported since the collapse of Dolphin that the business model executed by Dolphin morphed over time into a ponzi scheme fraud.

620. However, balanced against this is the term of the Loan Note Agreement that all loaned sums were secured by a first ranking charge in favour of the Security Trustee, a party independent to Dolphin. The conditions to which the Security Trustee were subject were set out in Security Trustee Agreement, set out at Schedule 5 to the Loan Note Agreement. The Security Trustee Agreement was subject to German law, and the appendix in which beneficiary is defined is not included in the version of the Agreement I have seen. However, it is plausible (although not, in my view, reasonable) to infer, from the Agreement, that there was a first ranking security over the underlying assets in place.

621. I cannot safely conclude, on the balance of probability, that Mr Shroff held a subjective ungenuine belief that, by authorising each payment to Dolphin which comprises the 2014-2015 Dolphin Loan Sum, he was acting for a proper purpose in the best financial interests of the beneficiaries of the Genwick Scheme.

622. In applying the second stage of the Ivey test, I am cautious not to attribute to an ordinary decent person at the time, the benefit of subsequent knowledge of the widespread reporting regarding the collapse of the Dolphin Group (now the German Property Group) and its descent from what might have been a genuine (albeit extremely high risk) investment into fraud. It has been since widely reported that excessive commission rates of up to 20% were paid to introducers. I consider that an ordinary decent person, before the sums comprising the 2014-2015 Dolphin Loan Amount were transferred, would have:

622.1. Reviewed the information available;

622.2. Insisted on evidence that the security arrangements were genuine; and

622.3. Sought advice on the risks of concentrating the Genwick Scheme's exposure to Dolphin.

623. In the absence of substantive submissions from Mr Shroff on the 2014-2015 Dolphin Loan Sum, I consider that it was a highly imprudent investment for Ecroignard to make, even on the basis of information available in 2014 to 2015, when Dolphin appeared to be successfully executing a genuine business plan. Mr Shroff took no proper advice on concentrating Scheme assets and based on his knowledge and experience, it would have been apparent to him that the rates of interest on the 2014-2015 Dolphin Loan Sum were extremely high. The 2014-2015 Dolphin Loan sum was a misapplication of the funds of the Genwick Scheme that was not in the best financial interests of the Genwick Scheme's members.

624. However, given that the fraudulent nature of Dolphin's activities was not apparent at this stage, and was later actively concealed from investors, I consider that I cannot safely conclude that the conduct of an ordinary decent person at the time in Mr Shroff's position, on the balance of probabilities, would have differed from that of Mr Shroff. It would of course have been a highly persuasive factor to an ordinary decent person had it been discoverable that excessive commissions were being paid by Dolphin to introducers. However, despite this figure being widely reported, I have not been able to locate a contemporaneous document, or a clear reference to one, which confirms that Mr Shroff was, or ought to have been aware of the levels of commission, which suggests that it was actively concealed by Dolphin. Further, I have seen no suggestion that the first ranking charges were not in themselves genuine, but rather the extent of the fraud has reduced the value of those charges to, likely, zero.

625. Therefore, I find that Mr Shroff is not liable as a dishonest accessory to the 2014-2015 Dolphin Loan Amount made in breach of trust by Ecroignard.

626. Mr Shroff, acting as a trustee-director of Ecroignard, falls within my jurisdiction as a person responsible for the management of the scheme as a trustee (section 146(3) of the 1993 Act). A person who has procured or assisted a breach of trust is liable to account in equity for the breach of trust as though he were a trustee, this is known as constructive trusteeship, in the second sense as described in the case of *Williams v Central Bank of Nigeria* [2014] UKSC 10. Their lordships considered that the phrase "constructive trust" refers to two distinct concepts:

> "*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, if only as a matter of objective construction of their acts.*

> *They are true 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]*"*

627. Their Lordships also referred to the statement made by Ungoed-Thomas J in <u>*Selangor United Rubber Estates Ltd v Craddock (No.3)*</u> [1968] 1 WLR 1555:

> "*It is essential… to distinguish* [between] *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 for any failure in the duty so assumed), and so their status as trustees 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 beneficiaries, and (b) no trusteeship arises before, but only by reason of, the action complained of.*** [my emphasis]*"*

628. Mr Shroff dishonestly assisted in the misapplication of the Schemes' assets and so is liable to account in equity as if he were a trustee. But additionally, as a matter of objective construction and on the evidence, Mr Shroff also acted as a de facto trustee within the meaning of the first concept set out by their Lordships in *Williams* and *Selangor*.

629. Throughout the period of Mr Shroff's directorship, he continued to administer the Schemes' assets and to make investment decisions. Indeed, as sole shareholder and director of Ecroignard, he was the only person who could carry out such actions on behalf of the Schemes.

630. On the basis of the evidence, he was also a manager of each Scheme under section 146(1)(a) and (c) of the 1993 Act. Although Ecroignard was the appointed trustee, in reality it was Mr Shroff who was solely responsible for selecting investments and, with

the exception of Freny Shroff, whose role Mr Shroff described as “part time” and “administrative”, the only person able to take actions on behalf of Ecroignard.

631. Even if that were not the case, I find that Mr Shroff, as trustee-director was, from June 2013 to 18 November 2015, acting as an administrator under section 146(4A) of the 1993 Act. By entering into the UKRPF AIGO Loan Agreement, the FGW Loan Agreement and by authorising each payment from the Genwick and Uniway Bank Accounts, he carried out acts of administration. It follows that he is, in the alternative to my conclusions in paragraphs 626 and 630 above, within my jurisdiction as an administrator of the Schemes under section 146(4A) of the 1993 Act for the period between June 2013 and 18 November 2015 and so is still personally liable for the losses arising.

C.11.3 Section 61 of the Trustee Act 1925:

632. I found in paragraph 581 above, that Ecroignard is unable to rely on the exoneration clause in the Trust Deeds. Nevertheless, there remains for consideration Section 61, under which I may direct relief to Ecroignard or Mr Shroff wholly or partly of liability if, following investigation, it appears to me that: (1) Ecroignard acted honestly and reasonably; and (2) it would be fair to excuse Ecroignard or Mr Shroff from liability, having regard to all the circumstances of the case.

633. Having found in Section C.11.2 above that Mr Shroff dishonestly assisted in the breaches of trust committed by Ecroignard, and having regard generally to the circumstances of the case, I cannot see that the criteria set out in Section 61 can apply to his acts or omissions, or those of Ecroignard. Therefore, I find that Ecroignard and Mr Shroff 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.

Decision

634. Ecroignard has committed multiple breaches of trust and acts of maladministration, which have caused the loss of the members’ pensions.

635. Mr Shroff is personally liable to account in equity to the Schemes as a dishonest accessory in respect of the Total 2013-2015 AIGO Loan Sum and the FGW Loan Sum and, as set out at paragraph 628 above, acted as a constructive trustee of the Schemes, as well as a manager of the Schemes. I have also found in paragraph 631 above that he would in any event be personally liable for these actions as an administrator.

636. For the reasons set out in paragraphs 642 to 645 below, in relation to the AIGO investment, and paragraphs 652 to 654 below, in relation to FGW, I consider that those investments have no current monetary value. The point at which the loss resulting from a breach of trust ought to be calculated was considered by Lord Browne-Wilkinson in *Target Holdings v Redfern* [1995] 3 All ER at 796 g:

> *“A trustee who wrongly pays away trust money, like a trustee who makes an unauthorised investment, commits a breach of trust and comes under an*

immediate duty to remedy such breach. If immediate proceedings are brought, the court will make an immediate order requiring restoration to the trust fund of the assets wrongly distributed or, in the case of an unauthorised investment, will order the sale of the unauthorised investment and the payment of compensation for any loss suffered. But the fact that there is an accrued cause of action as soon as the breach is committed does not in my judgment mean that the quantum of the compensation payable is ultimately fixed as at the date when the breach occurred. The quantum is fixed at the date of judgment at which date, according to the circumstances then pertaining, the compensation is assessed at the figure then necessary to put the trust estate or the beneficiary back into the position it would have been in had there been no breach."

637. His Lordship went on to quote with approval the judgment of McLachlin J in *Canson Enterprises Ltd. v. Boughton and Co.* (1991) 85 D.L.R. (4th) 129, in the Supreme Court of Canada, on the measure of loss to be awarded as equitable compensation for breach of trust:

"A related question which must be addressed is the time of assessment of the loss. In this area tort and contract law are of little help. . . . The basis of compensation at equity, by contrast, is the restoration of the actual value of the thing lost through the breach. The foreseeable value of the items is not in issue. As a result, the losses are to be assessed as at the time of trial, using the full benefit of hindsight." (emphasis added).

…

"In summary, compensation is an equitable monetary remedy which is available when the equitable remedies of restitution and account are not appropriate. By analogy with restitution, it attempts to restore to the plaintiff what has been lost as a result of the breach, i.e., the plaintiffs loss of opportunity. The plaintiffs actual loss as a consequence of the breach is to be assessed with the full benefit of hindsight. Foreseeability is not a concern in assessing compensation, but it is essential that the losses made good are only those which, on a common sense view of causation, were caused by the breach." (emphasis added).

638. Commenting on the approach set out by McLachlin J in *Canson*, Lord Browne Wilkinson held that:

"In my view this is good law. Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach."

639. Lord Browne Wilkinson's endorsement of the approach in Canson was considered further and affirmed in *AIB Group (UK) Plc v Mark Redler & Co Solicitors* [2014] UKSC 58. In his judgment, Lord Toulson clarified Lord Brown Wilkinson's statement regarding Canson in Target Holdings as:

> *"Monetary compensation, whether classified as restitutive or reparative, is intended to make good a loss. The basic equitable principle applicable to breach of trust, as Lord Browne-Wilkinson stated, is that the beneficiary is entitled to be compensated for any loss he would not have suffered but for the breach."*

640. Lord Reed held at paras 133 to 135:

> *"Notwithstanding some differences, there appears to be a broad measure of consensus across a number of common law jurisdictions that the correct general approach to the assessment of equitable compensation for breach of trust is that described by McLachlin J in Canson Enterprises and endorsed by Lord Browne-Wilkinson in Target Holdings."*
>
> *…*
>
> *The measure of compensation should therefore normally be assessed at the date of trial, with the benefit of hindsight. The foreseeability of loss is generally irrelevant, but the loss must be caused by the breach of trust, in the sense that it must flow directly from it. Losses resulting from unreasonable behaviour on the part of the claimant will be adjudged to flow from that behaviour, and not from the breach. The requirement that the loss should flow directly from the breach is also the key to determining whether causation has been interrupted by the acts of third parties."*

641. Drawing these strands together, I consider that the correct approach to directing a remedy in this case is to first assess whether the actual loss suffered by the Schemes flows from the breaches of trust committed by Ecroignard during the period of Mr Shroff's directorship, without regard to the foreseeability of loss at the time the investments were made in breach of trust. By analogy to the date of trial, I consider a reasonable date to assess loss is the date of this Determination. I assess the loss of each of the investments made by the Trustees in paragraphs 642 to 659 below.

AIGO

642. A notice that Michael Saville and Kevin Hellard of Grant Thornton had been appointed as liquidators of AIGO PCC was published on 28 June 2018 in the London Gazette. I understand that this was on the application of Guiness Mahon. In a letter dated 10 January 2019, Mr Saville wrote to the Insolvency Service to notify it that, following the appointment of Mr Yuvraj Thacoor in Mauritius as receiver of the AIGO Cells, he was discharged in October 2018.

643. In subsequent correspondence between the Insolvency Service and Mr Thacoor, Mr Thacoor confirmed on 19 February 2019 that he had not received a claim in the liquidation from Ecroignard.

644. Following further enquiries from TPO, Mr Thacoor confirmed that the process of the liquidation is still ongoing due to the complexity of the case.

645. On that basis, I conclude that the Schemes' loans to the AIGO Cells have no present subsisting monetary value. I consider that the loss flows directly from the breaches of trust, for which, as I have found, Mr Shroff is liable personally to account in equity as a dishonest accessory. In the unlikely event that monetary value is recovered, and paid to the Schemes, is dealt with in my directions below.

646. A further issue arises in assessing the loss attributable to each Scheme as a result of the Total AIGO Investment. Throughout Mr Shroff's directorship of Ecroignard, separate accounts were maintained for the Genwick Scheme and the Uniway Scheme, from which payments to the AIGO Cells were made. However, from approximately May 2017 onwards it appears that only a single account at Yorkshire Bank was maintained for both Schemes, into which the Yorkshire Bank RPF, CPF and NRF Returned Sums were paid. It is not possible from the payment references to reconcile to which Scheme these sums were intended to relate.

647. In the absence of records which might assist me, the general principle where assets of two trusts are wrongfully mixed together is that the beneficiaries of each trust share pro rata in any gain or loss to the mixed fund[48].

648. On this basis, I consider it equitable to attribute the Yorkshire Bank RPF, CPF and NRF Returned Sums in a proportion equal to the proportion of the total loan sums loaned by each Scheme to each AIGO Cell as follows:

AIGO Entity	**Total Uniway Loan Sum**	**Total Genwick Loan Sum**	**Total Loan Sum (Uniway plus Genwick)**	**Uniway percentage of total Loan Sum**	**Genwick percentage of total Loan Sum**
UKRPF Cell	£4,934,555.07	£934,894.51	£5,869,449.58	84.07%	15.93%
CPF Cell	£2,429,351.24	£396,047.37	£2,825,398.61	85.98%	14.02%
NRF Cell	£2,154,424.21	£170,712.30	£2,325,136.51	92.66%	7.34%

649. I also consider that in order to establish the quantum of Mr Shroff's liability, it is necessary to attribute the sums calculated in paragraph 648 above proportionally between those sums loaned during Mr Shroff's directorship (13 June 2013 to 18 November 2015) and those sums loaned after 18 November 2015 as follows in respect of the Uniway Scheme:

AIGO Entity	**Uniway Loan Sum June 13-Nov 15**	**Uniway Loan Sum post Nov 15**	**Uniway percentage loan sum June 13-Nov 15**	**Uniway percentage loan sum post Nov 2015**
UKRPF Cell	£4,784,511.86	£150,043.21	96.96%	3.04%
CPF Cell	£2,285,378.71	£143,972.53	94.07%	5.93%
NRF Cell	£2,140,799.59	£13,624.62	99.37%	0.63%

[48] Sinclair v Brougham [1914] AC 398: Re Diplock [1948] Ch 465 at 533, 534, 539, CA

and the Genwick Scheme:

AIGO Entity	Genwick Loan Sum June 13-Nov 15	Genwick Loan Sum post Nov 15	Genwick percentage loan sum June 13-Nov 15	Genwick percentage loan sum post Nov 2015
UKRPF Cell	£901,870.94	£33,023.57	96.47%	3.53%
CPF Cell	£388,525.52	£7,521.85	98.10%	1.90%
NRF Cell	£164,260.50	£6,451.80	96.22%	3.78%

650. Applying these percentage allocations to the sums paid into the Yorkshire Bank account results in the following pro rata allocations of the Yorkshire Bank RPF, CPF and NRF Returned Sums for the period of Mr Shroff's directorship in respect of the Uniway Scheme:

AIGO Entity	Total Yorkshire bank returned sum	Uniway Percentage total	Uniway split of total pre Nov 15	Uniway split of total post Nov 15
		(84.07% of £461,897.89)	*(96.96% of £388,326.12)*	*(3.04% of £388,326.12)*
UKRPF Cell	461,897.89	£388,326.12	£376,518.43	£11,807.69
		(86.21% of £429,113.00)	*(94.07% of £369,947.41)*	*(5.93% of £369,947.4)*
CPF Cell	£429,113.00	£368,962.52	£347,096.41	£21,866.11
		(92.92% of £184,869.63)	*(99.37% of £171,773.08)*	*(0.63% of £171,773.08)*
NRF Cell	184,869.63	£171,296.44	£170,213.16	£1,083.28
			£893,828.00 (the Total AIGO Uniway 2013-2015 Yorkshire Bank Returned Sum)	**£34,757.08** (the Total AIGO Uniway post 2015 Yorkshire Bank Returned Sum)

and the Genwick Scheme:

AIGO Entity	Total Yorkshire bank returned sum	Genwick Percentage total	Genwick split of total pre Nov 15	Genwick split of total post Nov 15
		(15.93% of £461,897.89)	*(96.47% of £73,571.77)*	*(3.53% of £73,571.77)*
UKRPF Cell	461,897.89	£73,571.77	£70,972.97	£2,598.80
		(13.79% of £429,113.00)	*(100% of £59,165.59)*	*(0% of £59,165.59)*
CPF Cell	429,113.00	£60,150.48	£59,008.08	£ -

		(7.08% of £184,869.63)	*(100% of £13,096.55)*	*(0% of £13,096.55)*
NRF Cell	184,869.63	£13,573.19	£13,060.21	£ -
			£143,041.27 (the Total AIGO Genwick 2013-2015 Yorkshire Bank Returned Sum)	**£2,598.80** (the Total AIGO Genwick post 2015 Yorkshire Bank Returned Sum)

651. I have no further information on the reason why the Uniway Lambert Perrin AIGO Returned Sum, was paid into the Metro Bank Uniway Account on 31 December 2015. Given that the sum was paid shortly after Mr Shroff resigned, I consider it reasonable, on the balance of probability, to attribute this returned sum to the sums loaned to AIGO during the period of Mr Shroff's directorship.

FGW

652. I have found that Mr Shroff is personally liable to account in equity for the losses flowing from Ecroignard making the FGW Loan Sum in breach of trust. However, the measure of loss is complicated by the fact that Ecroignard, acting by Mr Bessent from January 2016 onwards, agreed to cancel FGW's (then) outstanding indebtedness of £1,516,081.68 under the FGW Loan Agreement in consideration for which FGW novated to Ecroignard the White & Co Loan Agreement and executed a Debenture in favour of Ecroignard over the assets of White & Co.

653. Joint Administrators were appointed to White & Co on 11 January 2018, and filed a Final Account at Companies House dated 17 January 2023 with a court order ending the administration and ordering that White & Co be wound up dated 6 January 2023. The Final Account confirmed that White & Co had granted a debenture comprising fixed and floating charges to Ecroignard on 27 January 2016 confirming indebtedness of £1,521,412. However, White & Co had also granted a previous debenture comprising fixed and floating charges to AIGO Holdings on 18 June 2015 confirming indebtedness of £5,167,648.00. In the Joint Administrators' Summary of Receipts and Payments, the sum of £1,462,936.69 was applied to redeeming White & Co.'s indebtedness to AIGO Holdings, but zero was applied to its indebtedness to Ecroignard.

654. Following the court order ending the administration, joint liquidators were appointed on 6 January 2023. On this basis, I conclude that the White & Co Loan Agreement and Debenture have no monetary value.

655. Putting aside the merits of Mr Bessent's actions, on which I do not make a finding, I consider that the correct approach to analysing the quantum of Mr Shroff's liability is that set out by Lord Toulson and Lord Reed in *AIB Group v Mark Redler [2014] UKSC 58*. The basic principle applicable to a breach of trust is that beneficiaries are entitled to compensation for loss that would not have been suffered but for the breach. The measure of compensation should be assessed at trial with the benefit of hindsight. The foreseeability of loss is irrelevant, provided that the loss is caused by the breach in the sense that it flows directly from it.

656. Following this approach, although the proximate cause of the loss to the Genwick Scheme is the insolvency and liquidation of White & Co. and there being insufficient assets in the administration to satisfy the security held by Ecroignard, this loss would not have occurred had the loans to FGW by Ecroignard (and dishonestly assisted by Mr Shroff) not taken place in breach of trust. An immediate liability to account in equity arose when Mr Shroff dishonestly assisted Ecroignard in authorising the payments totalling the FGW Loan Sum in breach of trust, and on the balance of probabilities, the novation would not have taken place had those breaches not occurred. It follows that the loss suffered by the Scheme flowed directly from those breaches.

657. In terms of the quantum of the loss resulting from the breaches of trust, the discrepancy between the FGW Loan Sum, the indebtedness referred to in the White & Co Novation Agreement and the total indebtedness referred to in the Summary of Receipts and Payments cannot be reconciled. It may be that payments were made for which there is no identifiable record. In any event, following the approach outlined in paragraph 656 above, I consider that the loss to the Genwick Scheme, as a result of Mr Shroff's dishonest assistance to Ecroignard's breaches of trust, must result in a loss to the Genwick Scheme of £1,462,936.69, the figure included in the Joint Administrators' Summary of Receipts and Payments (the FGW Loss).

658. It appears that the entirety of Dolphin's indebtedness to the Genwick Scheme was converted to equity in Vordere, so despite the collapse of Dolphin more broadly, I consider that this is not relevant to calculating the loss to the Genwick Scheme.

659. Regarding the Total Dolphin Loan Sum, I note the debt for equity swap that occurred in 2017, described at paragraphs 200 to 204 above. Without commenting on the merits of the decision to accept such a swap by Mr Bessent, on which I make no finding, it appears from the latest published price on Assetmatch that the Genwick Scheme's shareholding in Vordere has a small residual value equal to the Vordere Sum (£325,424.91). I acknowledge the practical difficulty of realising this value given the small volumes of trading in Vordere shares, and the fact that trading in Vordere shares has been temporarily suspended, but I cannot disregard the possibility that this value might be realised.

660. I calculate that the loss to the Genwick Scheme is £1,014,770.55, which comprises the Total Dolphin Loan Sum (£1,460,966.19) minus the Vordere Sum (£325,424.91) and the Dolphin Returned Sum (£120,770.73). I found in section C.11.2 above that Mr Shroff is not liable as a dishonest accessory to the payment of the Total Dolphin Loan Sum by Ecroignard in breach of trust. Ordinarily, I would direct that Ecroignard pay this sum into the Genwick Scheme, however, as Ecroignard is now in liquidation with the dissolution deferred until 10 May 2028, I do not consider that the Applicants will have any realistic prospect of enforcing a financial remedy against Ecroignard. So, I do not make a direction for Ecroignard to pay this sum into the Genwick Scheme.

661. My power to award redress, including those to recognise distress and inconvenience, derives from s151(2) of the 93 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…"*

662. 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 and going on to increase the award made by the then 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.

663. In the Smith judgment, Norris J specifically discussed (at para 31) the Ombudsman's then current Factsheet 'Guidance on redress for Non-Financial Injustice' and awarded £2,750 to reflect the severity of the maladministration (i.e. that it fell above the non-exceptional level).

664. 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 too, 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.

665. 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 even without/before considering the specific individual circumstances of the pension scheme members affected by the Appellant's actions over a number of years.

666. The circumstances of the complaint have clearly caused the Additional Applicants an exceptional level of distress and inconvenience. So, the awards below in paragraph 669, made within my jurisdiction under section 146(1)(a) of the 1993 Act, are in recognition of the injustice suffered in consequence of the maladministration by Mr Shroff. I find that this maladministration has had a severely deleterious effect on the Additional Applicants' lives and wellbeing, which is separate to the financial loss suffered by the Scheme or the Additional Applicants.

667. Within 28 days of the date of the Determination, Mr Shroff shall pay into the Uniway Scheme the sum of £7,262,120.18, which comprises:

667.1. The 2013-2015 Uniway AIGO Loan Sum (£9,210,690.16) minus:

667.1.1. the Uniway AIGO RPF Returned Sum (£336,141,80);

667.1.2. the Uniway AIGO CPF Returned Sum (£25,301.45);

667.1.3. the Uniway AIGO NRF Returned Sum (£119,076.99);

667.1.4. the Uniway Lambert Perrin AIGO Returned Sum (£566,963.35);

667.1.5. the AIGO Equity Fund Returned Sum (£5,858.26); and

667.1.6. the Total AIGO Uniway 2013-2015 Yorkshire Bank Returned Sum (£895,228.13);

plus Interest on the above sums at a rate of 8% per annum simple from the date of this determination to the date of payment.

668. Within 28 days of the date of this determination, Mr Shroff shall pay into the Genwick Scheme the sum of £2,513,915.81, which comprises:

668.1. The 2013-2015 Genwick AIGO Loan Sum (£1,454,656.96) minus:

668.1.1. The Genwick AIGO RPF Returned Sum (£2,484.90);

668.1.2. The Genwick AIGO CPF Returned Sum (£1,980.90);

668.1.3. The Genwick AIGO NRF Returned Sum (£13,426.52);

668.1.4. The Genwick AIGO Interest payment (£87,102.17); and

668.1.5. the Total AIGO Genwick 2013-2015 Yorkshire Bank Returned Sum (£143,235.12); and

668.2. the FGW Loss (£1,462,936.69) minus:

668.2.1. the FGW Returned Sum (£72,733.33); and

668.2.2. the White & Co Payment (£82,674.90).

plus Interest on the above sums at a rate of 8% per annum simple from the date of this determination to the date of payment.

669. After the sums set out in paragraphs 667 and 668 above have been paid into each Scheme, for the exceptional maladministration causing injustice, within 28 days of those sums being paid, Mr Shroff shall pay £5,000 to each of the Additional Applicants.

670. After the sums in paragraphs 667 to 669 have been paid, Mr Shroff shall be entitled to recover from Dalriada, subject to Dalriada recovering any outstanding administration fees from the Schemes, any sums paid to the Schemes or to Ecroignard in relation to the ongoing liquidation of AIGO Holdings PCC or the AIGO Cells.

Reporting to TPR

671. On issuing the Determination of this complaint and referral, I intend to pass a copy of it to TPR.

Anthony Arter CBE

Deputy Pensions Ombudsman
18 October 2024

Appendix 1

The Additional Applicants

The Pensions Ombudsman's Reference	Name of Additional Applicant
CAS-11824-F4H6	Mr C (continued by his estate)
CAS-37926-M2L2	Mr GW
CAS-27509-J8M1	Mr S
CAS-21515-K7D7	Mr P
CAS-40329-Q3P1	Mr SW
CAS-11929-H7V1	Mr E

Appendix 2

Relevant extracts from the Genwick Scheme and Uniway Trust Deed & Rules dated 9 August 2013.

8. Investment

8.1 Subject to Clauses 8.2 - 8.8 the Trustees may invest or apply the Fund as if they were absolutely and beneficially entitled to the Fund, including but without limitation to, investing the Fund in any manner in any place in the world or in anything that would not be regarded as an authorised trustee investment provided that this does not prejudice the Registration of the Scheme.

8.2 Before making any investment the Trustees shall obtain and consider proper advice pursuant to sections 36 (3) and 36 (6) of the 1995 Act as to whether the investment is satisfactory having regard to the need for diversification of investments, in so far as appropriate for the Scheme and the suitability to the Scheme of the investments of the description of the investment proposed and of the investment proposed as an investment of that description.

8.3 Any investments shall comply with the requirements and provisions of the Investment Regulations as amended.

8.4 Before making any investment in stocks share debentures debenture stock or other obligations of any Group Company, the Trustees shall satisfy themselves that the total value to the Fund of all stocks shares debentures debenture stocks and other obligations of such companies to be held by the Fund immediately following the making of such investment will be not greater than 5% of the total value of all the investments of the Fund as disclosed in the last audited balance sheet of the Fund.

8.8 The Trustees shall have power to delegate such of their powers under Clause 8.1 pursuant to section 34 of the 1995 Act on such terms and subject to such restrictions as the Trustees think fit.

9 Personal Accounts and Investment Alternatives

9.1 The Trustees shall hold the assets in separate Personal Accounts. The Trustees shall ensure that the assets attributable to a Personal Account are at all times separately identifiable within the Fund. The liabilities attributable to each Personal Account shall then be met out of that Personal Account.

9.2 The Trustees shall open and maintain a Personal Account for each Member until the earlier of:

(a) the date the Member's benefits become payable under the Scheme;

(b) the date the Member's benefits are transferred out of the Scheme; or

(c) the date of the Member’s death.

9.3 The Personal Account of a Member comprises:

(a) The Member’s contributions together with the investment return in relation to such contributions;

(b) The Principal Company’s or Participating Employer’s contributions, if any, pursuant to Rule 8;

(c) Assets transferred to the Fund on behalf of the member pursuant to Rule 13;

(d) Any other amounts credited to the Member’s Personal Account by the Trustees; less

(e) Any deductions from the Member’s Personal Account pursuant to Clause 9.4.

9.4 The Trustees may deduct the following amounts from a Member’s Personal Account:

(a) expenses relating to the management or administration of the Personal Account;

(b) the cost of purchasing annuities to secure pensions or benefits for or in respect of the Member;

(c) the value of the lump sum paid pursuant to Rule 11.1;

(d) the value of the sum transferred from the Fund on behalf of the Member; and

(e) any other sum that the Trustees are entitled to deduct from the Member’s Personal Account pursuant to the Definitive Trust Deed and / or the Rules.

9.5 The Trustees shall, in accordance with the Disclosure Regulations, provide each Member with a written statement after the end of each Scheme Year showing amounts credited to or deducted from his Member's Personal Account during that Scheme Year and the total of the Member's Personal Account at the end of that Scheme Year.

9.6 Subject to the provisions of this Clause 9, the Trustees may provide access to investments which allow each Member to choose amongst different Investment Alternatives in which the value of the Member's Personal Account and the contributions paid or credited in respect of it (or such smaller amount as the Trustees may specify) may from time to time be invested. The Investment Alternatives shall be subject to the terms and conditions of each investment, including any insurance policy or contract with an insurance provider entered into by the Trustees. Subject to such terms and conditions, in selecting and changing the range of Investment Alternatives available for Members, the Trustees shall comply with their duties under Sections 35 and 36 of the 1995 Act and the Investment Regulations.

9.7 An "Investment Alternative" means one or more of the following:

(a) a specifically described share, security, bond, property, fund or other investment (a "Named Investment");

(b) a generically described investment fund option (a "White Labelled Fund"):

(c) an option which, if selected by the Member, means that (without further direction from the Member):

(i) contributions paid or credited in respect of a Member will be invested in one or more Named Investments or White Labelled Funds; and

(ii) a Member's Personal Account will be switched (in whole or in part) from one Named Investment or White Labelled Fund to another in line with rules specified by the Trustees in advance for this purpose (a "Lifestyle Strategy"). The rules specified by the Trustees for this purpose may provide for contributions paid or credited in respect of a Member or the Member's Personal Account (or portions of them) to be invested in different Named Investments or White Labelled Funds depending on the Member's age; and

(d) one or more alternative strategies, which shall comprise such of the Investment Alternatives as described in (a), (b) or (c) above as the Trustees shall from time to time determine (collectively, the "Default Strategies")

9.8 If Investment Alternatives are offered by the Trustees, a Member may notify the Trustees of his or her choices of Investment Alternatives in respect of his or her Personal Account in such form and by such time as the Trustees shall from time to time require. If a Member fails to notify or chooses not to notify the Trustees of the Member's choices of Investment Alternatives in the form or within the time required by the Trustees, the Trustees shall hold contributions paid or credited in respect of the Member in a Default Strategy of the Trustees' choice, or in such other Investment Alternatives as the Trustees shall at their sole discretion deem to be suitable.

9.9 The Trustees may make or retain or change any investment of the funds of the Scheme in accordance with Clause 9.11 without prior reference to the Members and in respect of all or part of such part of a Member’s Personal Account in relation to which the member has not chosen one or more investment alternatives, in such percentage as the trustees see fit.

9.10 subject to any requirements as determined by the Trustees from time to time and the terms and conditions as are mentioned in clause 9.6 above, a member may:

(a) change an Investment Alternative into which future contributions paid or credited in respect with that member are made; and

(b) transfer the part of the Personal Account held in any Investment Alternative into a different Investment Alternative or Investment Alternatives

9.11 The Trustees may from time to time change the range of Investment Alternatives available without notice.

…

9.16 Subject to:

(a) the terms and conditions of any investment, including an insurance policy or contract with an insurance provider (as described in Clause 9.6;

(b) any restrictions which the trustees may impose (as described in tools 9.10; and

(c) the changes to Investment Alternatives described in clause 9.11

the Trustees must follow the Member's choice of Investment Alternative.

9.17 The Trustees shall have no liability to the Member or those claiming through him for any consequence of following the direction of the member in investing his Personal Account.

9.18 The Trustees shall further have no liability to the Member or those claiming through him for any consequence of following any choice or deemed choice of a Member in accordance with Clauses 9.14 – 9.15.

9.19 The exclusion of liability pursuant to Clauses 9.17 and 9.18 above is subject to the provision of Clause 14.1 (d).

13. Remuneration of Trustees

13.1. A Trustee or a director of a corporate Trustee may receive remuneration for his services to the Scheme on terms that are agreed between the Trustees and the Principal Company and should be treated as an expense under clause 18.

13.2 A Trustee that is a professional trustee shall be paid under clause 18 for any expenses incurred by it in acting as Trustee. The initial amount of such fee shall be agreed between the Original Trustee and the Principal Company before it takes office as Trustee, and between any additional or new Trustee with the Principal Company before the additional or new Trustee takes office as Trustee. The Original Trustee shall have the discretion to vary the amount of its fee agreement with the agreement of the Principal Company in the first 12 months after he takes office and at its sole discretion thereafter.

…

14. Trustees' Liability and Indemnity

14.1 A person who is a Trustee (or a director or employee of a corporate Trustee) shall not be personally liable for, or for the consequences of, any breach of trust whatsoever, except for a breach of trust caused by:

(a) fraudulent or other dishonest conduct;

(b) a wilful act or omission unless such act or mission was based on legal advice that such act or omission was in the best interests of the Members and Beneficiaries of the Scheme;

(c) negligence where the Trustee or corporate Trustee is in the business of providing trustee services for a fee; or

(d) breach of any duty to take care or exercise skill in the performance of investment functions when liability cannot be excluded or restricted under section 33 of the 1995 Act.

14.2 The protection given by this clause shall also apply to a former Trustee (or a director or officer of a body corporate which was a trustee or a former director or officer of a body corporate which is or was a trustee) of the Scheme as if he were a Trustee (or a director or officer of a body corporate which is a trustee);

14.3 The protection given by this Clause is limited to the extent required so as to comply with section 33 of the 1995 Act;

14.4 The Trustees, or the directors or employees of a corporate Trustee, shall be jointly and severally indemnified by the Participating Employers in respect of all liabilities incurred including those referred to in Clause 14.6, but such indemnity shall not extend to anything caused by any of the matters referred to in Clauses 14.1(a) – (d) go to the extent that there is insurance under clause 14.7 to provide the indemnity;

…

14.6 If or to the extent that the Participating Employers are unable to indemnify the Trustees, or the directors or employees of a corporate Trustee under Clause 14.4, the Trustees shall be indemnified out of the Fund in respect of:

(a) all liabilities incurred by them in the execution (or professed execution) of the trusts of the Scheme;

(b) the exercise (or professed exercise) of their powers and discretions under the Scheme; and

(c) all actions, proceedings, costs, expenses, claims, demands (including complaints to the Pensions Ombudsman) in respect of anything done or omitted in any way relating to the Scheme

Provided that this indemnity shall not extend to anything caused by the matters referred to in Clauses 14.1 (a) – (d) or any liabilities or premiums under Clause 14.7 and shall not apply to the extent that there is insurance under Clause 14.7 that will provide the indemnity.

14.7 Subject to Clause 14.9 the Trustees may insure:

(a) the Scheme against any loss caused by the Trustees, any director or officer of a body corporate which is a Trustee and any Administrator, agent or delegate lawfully appointed by the Trustees; and

(b) the Trustees and such other persons against liability for breach of trust not being a breach of trust referred to in Clause 13.1 [14.1] (a) - (d).

14.8 The Trustees shall not be indemnified out of the Fund in respect of fines or civil penalties in accordance with section 256 of the 2008 Act.

14.9 The premiums may be paid from the Fund except where the insurance policy includes the risk of the imposition of a fine or the requirement to pay a civil penalty or is otherwise prohibited by law.

15 ADMINISTRATION AND MANAGEMENT OF SCHEME

15.1 The administration and management of the Scheme shall be vested in the Trustees who may delegate any of their functions (except that contained in Clause 20) to the Administrator.

15.2 The Trustees shall cause proper minutes to be kept and entered in a book provided for the purpose of all their resolutions and proceedings and any such minutes of any meeting of the Trustees, if purported to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting, shall be receivable as prima facie evidence of the matter stated in such minutes.

15.3 Any notice to the Trustees may be given by sending it to the Trustees by post at the registered address of the Original Trustee or its successor where the Original Trustee is a company, or if not, at the registered office of the Principal Company and any notice so sent shall be deemed to be served 2 days following that on which it was posted.

15.4 The Trustees shall, in accordance with the Scheme Administration Regulations 1996, keep complete records of all matters essential for the administration of the Scheme and shall retain the books and records for at least 6 years from the end of the Scheme Year to which they relate.

15.5 The Trustees shall, in accordance with the Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 ensure they obtain, not more than 7 months after the end of each Scheme Year, a statement of accounts and balance sheet of the Fund which shall be audited by the auditor of the Scheme and an auditor's statement about contributions.

15.6 The Trustees shall, in accordance with the Scheme Administration Regulations 1996, keep records of all contributions or payments received by the Scheme identifying the nature or purpose of the contributions and the dates on which they were paid.

15.7 The Trustees shall, in accordance with section 87 of the 1995 Act, secure that there is maintained and, from time to time, revised a schedule of payments for the Scheme.

15.8 The Trustees shall, in accordance with section 49 (1) of the 1995 Act keep money received in a separate account with an institution that is authorised to accept deposits under the Financial Services and Markets Act 2000.

15.9 Subject to the powers, discretions and consents conferred on the Principal Company or the Participating Employers by the Definitive Trust Deed and the Rules or by law, the Trustees shall have all the powers necessary for the implementation of the Scheme and, unless otherwise provided in the Definitive Trust Deed and the Rules, they may exercise their powers as they think fit.

15.10 The Trustees may delegate and authorise sub-delegation of any of their powers and discretions under the Scheme to any person or to a committee composed of such persons as they may decide, on such terms as they think fit. They may, at any time, revoke any delegation made by them.

15.11 The Trustees shall, in accordance with section 113 of the 1993 Act and section 41 of the 1995 Act (together with any relevant regulations made under those sections) provide documents and other information to Members, prospective Members and Beneficiaries of the Scheme.

…

17. AUDITORS; ACTUARIES; ADMINISTRATOR; INVESTMENT ADVISOR AND LEGAL ADVISOR

17.1 The Trustees shall appoint:

(a) any Chartered Accountant (not being an employee of any Group Company) or firm of Chartered Accountants to be the auditor of the Scheme;

(b) an investment manager or two or more investment managers in relation to separate parts of the Fund in accordance with section 47 of the 1995 Act and may delegate and may delegate to them decisions about the investment of the Fund;

(c) any person authorised by the Financial Conduct Authority or an equivalent regulator in an EU Member State or any other person who the Trustees at their absolute discretion decide is suitably qualified to provide "proper advice" as defined by section 36 (6) of the 1995 Act for or on behalf of the Trustees or any Member and may fix or vary the remuneration of such persons or terminate or vary such appointments.

…

17.3 The Trustees may not act or rely upon the opinion or advice of any accountant, actuary, lawyer or other professional person in connection with any prescribed functions in relation to the Scheme unless the opinion or advice is provided by a person appointed by the Trustees;

18. EXPENSES

18.1 All expenses of and in connection with the administration of the Scheme, and any winding-up expenses shall be paid out of the relevant Members' Personal Accounts unless it is agreed between the Trustees and the Principal Company that any particular expense shall be paid by the one or more of the Participating Employers, or the Trustees elect to pay such expenses from the Scheme's Fund as yet unallocated to any Member's Personal Account. The Members' Personal Accounts cannot meet any expenses charged by the investment provider or providers in relation to the administration of investments held in the Members' Personal Accounts under Rule 25.

Schedule 1

Definitions

“Fund” means the assets for the time being held by the Trustees on the trusts of the Scheme.

“Investment Regulations” means The Occupational Pension Schemes (Investment) Regulations 2005.

“Personal Account” means that part of the Fund representing the contributions by or in respect of the Member and credits resulting from the transfer to the Scheme of a transfer value payment in accordance with Rule 23 together with investment returns (if any) but less any negative investment returns, investment expenses, and the expenses and costs that are deductible pursuant to Clause 18.

Appendix 3

Relevant extracts from an undated and unsigned Uniway System Scheme Application From:

"Member Declaration

…

(J) I understand that the Trustees determine which investments are appropriate for the Members of the Scheme to invest in and that if I do not confirm my instructions to the t

Trustees as to which funds the assets in my Member's Personal Account are to be invested in, the trustees will be obliged to invest elements of such assets in such investment funds in accordance with their Lifestyle Strategy. I understand that where I have nominated the investment funds in which to invest part or all of the assets in my Member's Personal Account, such investment decision is not the responsibility of the Trustees and they will not be liable accordingly in respect of such nomination made by me

Relevant extracts from the Genwick Scheme Application Form:

"MEMBER DECLARATION

….

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

MEMBER TRUSTEE NOMINATION

The Genwick Retirement Benefits Scheme is an Occupational Pension Scheme. Department of Work & Pensions legislation requires such a Scheme to have at least one Trustee who is a Member of the Scheme.

Trustees' Duties and Responsibilities

Trustees are responsible for ensuring that the Pension Scheme is run properly and that Members' benefits are secure. In fulfilling their role, Trustees must be aware of their legal duties and responsibilities. The law requires Trustees to have knowledge of, amongst other things, the law relating to pensions and trusts, the funding of Pension Schemes and the investment of Scheme assets.

…

In addition to these general duties, Trustees also have a number of specific duties and tasks that they must carry out. The main tasks are to ensure the following happen:

- The Pension fund is properly invested in line with the Scheme's investment principles and relevant law.

• Suitable professional advisers are appointed as running a Pension Scheme is complicated and often specialist advice will be needed.

Appendix 4

Extracts from the AIGO Information Memorandum

Under "Investment Advice", the Information Memorandum included the following:

"AIGO and HJ [Hennessy Jones] and the Investment Manager clarify that no part of this memorandum should be regarded as advice from any of them or from any other person to any pension scheme or pension investor as to the merits of the applicable pension scheme or of a transfer into another such pension scheme. The Trustees of any OPS, SIPP or SSAS are subject to a range of statutory and common law duties to seek specific investment advice on the merits of any investment scheme or arrangement offered to them for participation. AIGO is entitled to deal with each person entering into a Master Loan Agreement on the basis that that person has sought all necessary relevant investment advice prior to concluding the Master Loan Agreement in question."

Under "Pensions Regulatory Summary", the Information Memorandum included:

"HJ [Hennessy Jones], in its capacity as the marketing agent for AIGO, retained Gateley LLP to provide legal advice with respect to the law in relation to the investment powers, duties and obligations of the Trustees of OPS, SSAS and SIPP pension schemes. Furthermore, this advice has been given solely to HJ and to no-one else. This paragraph is not intended as a comprehensive summary of this area of the law, which is complex and involves consideration of statutory duties of pension fund Trustees and common law duties incumbent upon Trustees exercising investment powers.

As an essential preliminary matter, it is fundamental that Trustees considering participation in the Lending Scheme carefully consider their trustee duties (under the trust deed constituting their scheme and the law generally), as well as specific provisions relevant to their duties in relation to investment of the assets within their trusteeship. AIGO and HJ are not providing any advice to Trustees as to how the provisions of the law work and how, subject to those provisions, they should exercise their discretions. These are matters for competent financial and legal advice from independent sources. AIGO is, however, entitled to assume and does assume that where the Trustees of an OPS, SSAS or SIPP apply to participate under the Offer in the Lending Scheme, such advice has been taken.

The advice that AIGO and HJ have received in relation to OPSs may be summarised as follows:

- the OPS will generally operate subject to its Statement of Investment Principles:
- the Trustees are responsible for framing this in accordance with relevant provisions of the Occupational Pension Schemes (investment) Regulations 2005, and reviewing it from time to time;

- there is an obligation to seek "proper advice'' from a suitably authorised person to determine whether investments are being acquired in accordance with the Statement of Investment Principles;
- Trustees may appoint an Investment Manager, also appropriately authorised, to exercise investment discretion. The alternative is for Trustees to be authorised or exempt:
- Regulation 4 of the Investment Regulations 2005 sets out a variety of provisions that direct the manner of investment of the OPS's assets, and these include the premise that they are predominantly invested in regulated markets (defined in accordance with the C markets in the Financial Instruments Directive, or as otherwise recognised by HMRC, and subject to certain further requirements), and that where this is not so, the investments must be selected with "prudence"; and
- the "prudence" concept is subject to further guidance from the Pensions Regulator, as is the requirement for diversification of investments within the OPS.
- In principle, the Trustees of an OPS, and of an SSAS or SIPP (to whom some of these provisions apply through common law principles regulating the duties of Trustees), have the opportunity to consider an Application for participation in the Lending Scheme, subject to careful consideration of their overriding duties under the law as pension Trustees. It is particularly germane that the Stock Exchange of Mauritius is a regulated market for the purposes of the Investment Regulations 2005."

Under the heading Generic Risk Factors, the Information Memorandum included:

- The following is a summary of general or generic Risk Factors associated with entering into a Master Loan Agreement with, and/or advancing a Loan to, any of the Cells. Prospective Lenders may consider that these are more or less applicable to them in accordance with their personal circumstances, and are advised to seek professional advice in relation to participation, in particular where they consider that there are further or other risks that apply to them in their personal circumstances. No representation is made that the list below is definitive. Prospective Lenders should carefully consider the specific Risk Factors applicable to each of the Cells, which are addressed in the relevant places in Section III of this Memorandum.

- **New entity** - AIGO is a newly incorporated entity, with no previous trading or business history.

- **Regulation in Mauritius** - Under Section 97 of the Securities Act 2005 and Regulation 79 of the CIS Regulations 2008, AIGO is regulated in Mauritius as an Expert Fund. An Expert Fund is only available to "Expert Investors". An Expert Investor is an investor who makes an initial investment for his/her own account of no less than US$100,000 or its equivalent in any other currency. The Expert Fund is exempt from most ongoing obligations/regulations generally imposed on Public Collective Investment Schemes.

- **No involvement of regulated entities in the United Kingdom** - HJ is not regulated in the United Kingdom by the FCA. No business undertaken by HJ in relation to the Lending Scheme or AIGO is held out as being subject to the regulatory framework overseen by the FCA. No Lender participating in the Lending Scheme has recourse to the Financial Ombudsman Service or to the Financial Services Compensation Scheme.

- **Cell solvency risk** - any of the Cells may become insolvent. Moreover, as AIGO is a Mauritian company, insolvency will be subject to Mauritian law and the jurisdiction of the Mauritian courts, and while the law in Mauritius is substantially similar to that In England, it is not identical, and expense would be incurred
instructing Mauritian counsel for relevant advice.

- **Loans advanced to each Cell are unsecured financial obligations of that Cell** - all Loans advanced by Lenders to each Cell are and remain the unsecured obligations of that Cell, and in the event of its insolvency all Lenders rank as unsecured creditors of the Cell in question. Although AIGO will subscribe for an insurance policy in relation to each Cell, which will afford protection up to the Borrowing Cap for that Cell in the event of the Cell's insolvency or default, the policies in question will not afford Lenders interest lost as a result of such defaults. Moreover, because the policies will be subscribed for and issued to AIGO (in relation to the respective Cells), any claims administration is the responsibility of AIGO (which it may discharge through the use of appropriately selected agents). However, the insolvency of one or more Cells (a fortiori should all Cells become insolvent) may significantly impair AIGO's legal or practical capacity to make such claims and administer the distribution of moneys from the Insurance Company to affected Lenders.

- **Initial finance risk** - the Lending Scheme represents only a part of the current financial arrangements of the various Cells. AIGO has, or may have, other financial obligations from time to time (generally or in relation to one or more Cells), the satisfaction of which may rank in priority to the repayment of Loans under the relevant Master Lending Agreements.

- **No control over AIGO or any Cell** - Lenders have no equity in AIGO and no rights under its constitution to participate in Its operation. As such, they have no capacity to control the manner in which their Loans are deployed or in which AIGO conducts its business through the various Cells.

- **Cells do not cross-collateralise** - the segregated nature of the Cells means that If one should default, there is no basis under the constitution of AIGO or the laws of Mauritius for the assets or cash-positive value of any other Cell to be employed to relieve such default. This applies even where a Lender or Lenders are party to Master Lending Agreements in relation to two or more Cells.

- **Dependence on marketing of the Lending Scheme by HJ** - the amount of capital at the disposal of the respective Cells is determined by the success of HJ in promotion of the Lending Scheme. The minimum that AIGO considers that it needs to make a success of the Lending Scheme is £2m in relation to each Cell. As the Lending Scheme is not underwritten in any way, there is no guarantee that AIGO will be able to raise any capital at all. Prospective Lenders will be required to commit to advance Loans to each Cell with which they have a Master Lending Agreement, and for such moneys to be held in escrow (on a non-interest-bearing basis) by the Administrator until that Cell's Closing Date.

- **UK regulatory considerations** - under current law and regulation, AIGO and HJ have been advised that the Lending Scheme is not a collective investment scheme, nor any other product or service that the FCA regulates. Nor is HJ a provider of insurance mediation services in relation to its dealings with the Insurance Company. There is scope for these positions to be revisited by the FCA, in particular as the FCA is increasingly concerned about the level of complex and novel products that remain available in the market for investment by or on behalf of retail investors. It is not thought likely that the FCA would seek powers to regulate arrangements such as the Lending Scheme, but this cannot be ruled out. The effect of regulation cannot at this stage be estimated, but it would remain possible that the Lending Scheme would need in such circumstances to be wound up, forcing sales of properties at a time at which the best price could not be obtained.

- **Factors affecting the right to withdraw moneys advanced as Loans** - each Lender, under the terms of his/her Master Lending Agreement. has the capacity in principle to request that moneys advanced as Loans should be repaid. However, this is subject to a minimum of 12 months' notice in writing, and to the discretion of the Board in circumstances where, even with the benefit of such notice period, the Board considers that it would be impracticable for the Cell in question to achieve sufficient liquidity to repay the moneys in question without causing fundamental harm to its business or investment portfolio. The Board's discretion in this matter is absolute and final.

- **Insurance risk** - as disclosed on page 11, although it is AIGO's intention that the repayment of Loan principal moneys by the Cells should be insured against the risk of Cell insolvency or certain other defaults, it has not been possible to put such insurance in place prior to the issue of this Memorandum. Two risk factors flow from this. First, AIGO will use all reasonable endeavours to effect the relevant insurance, and to do so on the basis that the Master Insurance Contract for each Cell will insure repayment of the loan principal to that Cell whether made before or after the date of that Master Insurance Contract, there is currently no guarantee that insurance can be arranged (before or after the Closing Date). Secondly, inasmuch as there is currently no such insurance in place, were a Cell to default before insurance can be arranged in the terms discussed in this Memorandum, the Lenders to that Cell stand to lose potentially all of the moneys advanced by them as Loans to that Cell.

- **Tax consideration** – for investors that are OPSs, SSASs or SIPPs, under current UK tax law and regulation, all interest paid under any Master Loan Agreement is credited on a gross basis. There is no guarantee this tax treatment will be maintained, as tax laws, regulations, rates and policies are subject to change at any time.

- **Cells may issue new classes of share in the future** – at some future date the Board of AIGO may decide to issue further classes of shares in one or more of the Cells. If these shares carry a right to a dividend income, this income would come out of the same income pool used to pay the interest under the Master loan Agreements.

- **Winding-up of the respective Cells** - the intention is to wind up the Cells at or around the tenth anniversary of their respective Closing Dates, by which time the assets acquired by each of the Cells should all have been realised. It may prove impossible to realise all such assets, or to do so at prices that offer profitable returns to the Cells in question. In the circumstances, the Board retains the right to extend, unilaterally, the life of the Cell or Cells affected, and the Master Loan Agreements associated with those Cells, delaying the return of moneys advanced to their lenders.