Neutral Citation Number: [2023] EWHC 1184 (Ch)

Case No: BL-2020-000294

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Rolls Building
Fetter Lane
London, EC4A 1NL

Date: 19/05/2023

Before :

MR NICHOLAS THOMPSELL
sitting as a Deputy Judge of the High Court

- -

Between :

TRAFALGAR MULTI ASSET TRADING COMPANY LIMITED (IN LIQUIDATION)	**Claimant**
- and -	
(1) JAMES DAVID HADLEY	**Defendants**
(2) THOMAS WILLIAM GORDON BIGGAR	
(3) STUART NEIL CHAPMAN-CLARK	
(4) ANDREW CHRISTOPHER JONES	
(5) TITAN CAPITAL PARTNERS LIMITED	
(6) CGROWTH CAPITAL BOND LIMITED	
(7) WILLIAM MACFARLAND WRIGHT III	
(8) PINNACLE BROKERS LIMITED (IN LIQUIDATION)	
(9) MARK LLOYD	
(10) VIVERE FORTI INTERNATIONAL FOUNDATION	
(11) KIRSTY LOUISE PLATT	
(12) PLATINUM PYRAMID LIMITED (IN LIQUIDATION)	
(13) BENTLEY JARRARD THWAITE	

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Mr Justin Higgo KC and **Ms Belinda McRae** (instructed by **Kingsley Napley LLP**) appeared for the Claimant
Mr Andrew Jones appeared in person and on behalf of Titan Capital Partners Ltd

Mr Mark Lorrell (instructed by **Valemus Law**) appeared for Mr Mark Lloyd
Mr James Hadley appeared in person
Mr William Wright appeared in person and on behalf of CGrowth Capital Bond Ltd
Mr Bentley Thwaite appeared in person and on behalf of Platinum Pyramid Ltd

Hearing dates: 28 February – 31 March 2023

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR NICHOLAS THOMPSELL
sitting as a Deputy Judge of the High Court

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INTRODUCTION

1. For most people brought up in the United Kingdom, the word "Trafalgar" denotes a triumph - our most famous naval victory. For the unlucky individuals ("**the pension investors**") who were persuaded to transfer their pension monies, often originally in very safe defined benefit schemes, for investment into an investment fund bearing that name, the word represents a disaster - the loss of much of these pension monies.

2. This case deals with the circumstances leading up to those losses, although the case is not brought by the pension investors themselves. It relates to an action brought by liquidators on behalf of Trafalgar Multi Asset Trading Company Limited ("**Trafalgar**" or "**the Claimant**"), the company that held the assets of the fund in which these pension monies were ultimately invested.

3. Trafalgar is a Cayman Islands subsidiary of Trafalgar Multi Asset Fund Segregated Portfolio ("**the Fund**"). Trafalgar was established as the company through which the Fund made and held its investments.

4. The Fund, also a Cayman Islands entity, comprises a segregated portfolio of the Nascent Fund SPC ("**Nascent**"), an open-ended exempted company registered as a segregated portfolio company pursuant to section 4(3) of the Cayman Islands Mutual Funds Law. As is noted on the front of the Offering Supplement produced in relation to the Fund, such registration does not involve any substantive supervision of the Fund by the Cayman Islands government or the Cayman Islands Monetary Authority and there is no compensation scheme imposed on or by the government of the Cayman Islands available to investors in the Fund.

5. The Fund and Trafalgar were established in late 2013. The First Defendant, James Hadley ("**Mr Hadley**"), worked with Custom House to set up Trafalgar as an investment structure.

6. Mr Hadley, acting with others, arranged for the pension investors to transfer their pension monies into Qualifying Recognised Overseas Pension Schemes ("**QROPS**") and to instruct the pension trustees of those QROPS to invest the proceeds into the Fund.

7. The Claimant is pursuing various causes of action against a number of defendants relating to investments made by Trafalgar. The Claimant contends that there was an unlawful conspiracy and/or conspiracies to injure Trafalgar and that it has various causes of action in relation to these arrangements.

8. In brief, the Claimant's contention is that its Board was deceived into believing that Mr Hadley was an honest investment manager making genuine investments in Trafalgar's commercial interests whilst in reality, each of the major investments (or, on the Claimant's case, "purported investments") made were unlawful, uncommercial transactions which no honest investment manager would ever have contemplated. They were either demonstrably fictitious, or the product of undisclosed self-dealing into newly-established companies either owned or controlled by Mr Hadley or his co-conspirators. It is Trafalgar's case that the relevant 'investments' were designed as the vehicle for

extracting and misappropriating pension funds from the Fund for the unlawful benefit of the Defendants.

9. The relevant purported investments of which the Claimant complains comprise:

   i) the transfer of a total of £9.5 million notionally to acquire unsecured loan notes issued by Quantum Global Capital Limited ("**Quantum**");

   ii) the transfer of £1.5 million to acquire an unsecured bond issued by the Fifth Defendant, Titan Capital Partners Limited ("**Titan**");

   iii) the transfer of £6 million to acquire unsecured bonds issued by Momentum Property Partners (1) Limited ("**Momentum**");

   iv) the transfer of £1.3 million in December 2015 to acquire shares in a Gibraltarian company, Shawcross Holdings Limited ("**Shawcross**"); and

   v) finally, the transfer of £5.46 million and Trafalgar's remaining 'assets' in Quantum, Shawcross and Momentum between March and July 2016 to acquire bonds issued by CGrowth Capital Bond Limited, the Sixth Defendant ("**CGrowth**"). It is the Claimant's case that this was done in an effort to conceal the four prior unlawful transactions from Trafalgar's Board, and to preserve control of the Fund for Mr Hadley and his co-conspirators' benefit and also that it was procured through bribery.

10. The Claimant also considers that the subscriptions made by Trafalgar of £1 million and further subscriptions made by Quantum (using funds received by Trafalgar) of more than £7.5 million to acquire loan notes issued by a company called Dolphin Capital GmbH ("**Dolphin Capital**") were also made in furtherance of the conspiracy with the motive of earning commissions for the conspirators.

2. PARTIES AND PERSONS INVOLVED

11. In view of the large number of parties and persons involved in this matter, it is helpful to compile a list of the more prominent parties and persons referred to in this judgment with some general indication of their role or alleged role in this matter (which should be taken as that and not as findings of the Court). This is as follows.

Referred to as	Party/Person	Role
"AIP Worldwide"	N/A	Trading name used by Mr Lloyd.
"Ana Paul Bebe"	SMRL Ana Paul Bebe	Mining company in Peru. One of the CGrowth Underlying Borrowers.
"Mr Biggar"	Thomas Biggar	The Second Defendant. Worked with Mr Hadley as a financial adviser and in relation to VAM.

Referred to as	Party/Person	Role
"Mr Butler"	Dermot Butler	Director of Nascent and of the Fund.
"Capita Oak"	Capita Oak Pension Scheme	Pension scheme investigated by the Serious Fraud Office and in which Mr Hadley, Mr Chapman-Clark and Mr Talbot (amongst others) have been publicly implicated.
"Mr Caruana "	Kevin Caruana	Director of Nascent and of the Fund and Trafalgar from 1 January 2016 to 17 August 2016.
"Mr Chapman-Clark"	Stuart Chapman –Clark. Now goes by the name of "Stuart Grehan".	The Third. Associate of Mr Talbot and worked with him and Mr Hadley. Has also used the names 'Simon Campbell', "Stuart Clark" and "Jack Myton".
"CGrowth"	CGrowth Capital Bond Limited	Sixth Defendant. Issuer of the CGrowth Bonds.
"CGrowth Bonds"	N/A	Bonds issued by CGrowth and invested in by Trafalgar.
"CGrowth Underlying Borrowers"	Powder River, Project Partners International and Ana Paul Bebe	Borrowers of the proceeds of bonds from CGrowth to finance oil and mineral extraction activities.
"Custom House"	Custom House Global Fund Services Limited	Fund administrator regulated in Malta. Created Nascent, and acted as administrator to the Fund.
"Daswani"	Daswani & Co	Gibraltar firm of solicitors. Received and distributed funds on behalf of Shawcross.
"Dolphin Capital"	Dolphin Capital GmbH	Received funds from Trafalgar and Quantum.
"Mr Doran"	Ian Doran	Special investigator for Trafalgar and involved with the audit team for Trafalgar.
"Mr Stephen Doran"	Stephan Doran	Liquidator of Trafalgar.

Referred to as	Party/Person	Role
"Essential Finance"	Essential Finance Group Limited	Received funds from Quantum. Understood to be a company in the ownership of or associated with Mr Chapman-Clark and/or Mr Talbot.
"Fides"	Fides Limited	The Cayman Company that acted as the corporate director of VAM from VAM's creation until replaced by Mr Hadley as director on 3 June 2016.
"GPL"	Global Partners Limited, later renamed as "Tourbillon Limited"	Acted as principal appointing NBCL as its authorised representative. A Gibraltarian firm regulated by the Gibraltar Financial Services Commission. Passported into the UK under the Insurance Distribution Directive and possibly also the Markets in Financial Investments Directive.
"Graylaw"	Graylaw International Limited	Received funds from Quantum (and from Capita Oak). Owned by Livestrong of which Mr Talbot and Mr Chapman-Clark are beneficiaries.
"International Business Formation"	International Business Formation Limited	Received funds from Quantum. Company owned by Ms Platt. Received funds from Quantum.
"Mr Jones"	Andrew Jones	The Fourth Defendant. Managing director/sole director of Titan and owner of 10% of the shares in Titan.
Joseph Oliver	Joseph Oliver Mediação de Seguros, Lda	Acted as principal appointing NBCL as its authorised representative. A Portuguese firm regulated by the Instituto de Seguros de Portugal. Passported into the UK under the Insurance Distribution Directive.

Referred to as	Party/Person	Role
"Mr Keeling"	Barrie Keeling	Worked for Mr Lloyd in recruiting pension investors. Also used the alias "Brian Robinson".
"London and Colonial"	London & Colonial Assurance	Trustee of some of the QROPS which took pension transfers from pension investors and invested them in Trafalgar.
"Mr Lightfoot"	Timothy Lightfoot	Employee of PPL; director and indirect shareholder of VAM from approximately 23 August 2016.
"Law Debenture"	The Law Debenture Trust Corporation Plc	Received funds from Quantum into two escrow accounts opened for Quantum and Trafalgar.
"Mr Lloyd"	Mark Lloyd	The Ninth Defendant. Worked under the tradename AIP Worldwide and later through Pinnacle to find pension investors.
"Momentum"	Momentum Property Partners (1) Limited	Received funds from Trafalgar in return for a loan note. Company beneficially owned by Mr Hadley.
"Nascent"	Nascent Fund SPC	A multi-manager umbrella fund established in the Cayman Islands. One of its cells was the Fund.
"NBCL"	Nationwide Benefit Consultants Ltd	Company formed by Mr Hadley and acted as a financial adviser under an appointed representative agreement with Joseph Oliver between 29 May 2014 and 8 April 2016. Also traded as "The Pension Reporter".
"NCBL"	Nationwide Corporate Benefits Ltd	Company formed by Mr Hadley. Employed Mr Biggar.
"Pinnacle"	Pinnacle Brokers Limited	The Eighth Defendant. Maltese company owned by Mark Lloyd which operated to channel pension investors towards Trafalgar.

Referred to as	Party/Person	Role
"Powder River"	Powder River Resources Inc	Wyoming company engaged in oil extraction. One of the CGrowth Underlying Borrowers.
"Proactive"	Proactive Administration Solutions Limited	English company owned by Mr Hadley. Received funds from Titan and from PPL.
"Project Partners International"	Project Partners International	Mining company in Peru. One of the CGrowth Underlying Borrowers.
"PPL"	Platinum Pyramid Limited	The Twelfth Defendant. Company owned by Mr Thwaite. Acted for CGrowth under a Consultancy Agreement and a Receipt and Disbursement Agreement in negotiating Trafalgar's subscription in the CGrowth Bonds and in receiving subscription monies. Original intended purchaser of VAM from Mr Hadley.
"Ms Platt"	Kirsty Louise Platt	The Eleventh Defendant. Represented TPT and had a role in the Shawcross transactions.
"Quantum"	Quantum Global Capital Limited	Seychellois company. Received funds from Trafalgar by way of subscription monies for a loan note.
"Mr Reinert"	Richard Reinert	Director of Nascent, the Fund and Trafalgar.
"Shawcross"	Shawcross Limited	Issuer of shares in return for a subscription by Trafalgar. Understood to be in the ultimate ownership of, or associated with, Mr Chapman-Clark.
"Sovereign"	Sovereign Trust International	Trustee of some of the QROPS which took pension transfers from pension investors and invested them in Trafalgar.

Referred to as	Party/Person	Role
"STM"	STM Fidecs	Trustee of some of the QROPS (under the name "STM GIB Pension Transfer Plan") which took pension transfers from pension investors and invested them in Trafalgar.
"Stonecross"	Stonecross Holdings Limited	Company owned by Mr Talbot.
"Store First"	Store First Limited	Company offering investment opportunities in storage units; linked to Capita Oak. Understood to have a relationship with Mr Talbot whereby he would introduce investors on the basis of commissions.
"Sycamore Crown"	Sycamore Crown Limited	Company understood to be in the ultimate ownership of Mr Chapman-Clark. Used by Mr Chapman-Clark to introduce investors to Capita Oak. Identified in Quantum's business plan as the party that would introduce borrowers to Quantum (although it went into liquidation before Quantum started operating).
"Mr Talbot"	Stephen Michael Talbot. Also uses the name "Michael Talbot"	Engaged Mr Lloyd/Pinnacle to introduce pension investors to Mr Hadley. Owner of Transeuro and Stonecross; and had a beneficial interest in Graylaw. Implicated in Capita Oak pension scheme.
"Mr Thwaite"	Bentley Jarrard Thwaite	Thirteenth Defendant. Director of PPL.
"Titan"	Titan Capital Partners Limited	Fifth Defendant. Received funds from Trafalgar in return for the issue of loan notes.

Referred to as	Party/Person	Role
"TPT"	TPT Corporate Management Ltd	A corporate services provider based in St Kitts & Nevis that acted as the nominee shareholder and corporate director of Shawcross, and which is understood to have been acting on behalf of Mr Chapman-Clark.
"The Fund"	Trafalgar Multi Asset Fund Segregated Portfolio.	A segregated portfolio of Nascent. Operated as an open-ended investment fund holding its investments through Trafalgar.
"Thurlstone"	Thurlstone Management Services Limited	Company controlled by Mr Hadley and involved in the Capita Oak arrangements.
"Trafalgar" or "the Claimant"	Trafalgar Multi Asset Trading Company Limited	The Claimant. Operating Company for the Fund, holding and dealing with the Fund's investments.
"Transeuro"	Transeuro Limited	Company owned by Mr Talbot. Paid Mr Lloyd for the introduction of pension investors to Mr Hadley. Also involved in recruiting investors for Capita Oak.
"VAM"	Victory Asset Management Limited	The company established to act as investment manager to the Fund.
"VAM CI (Bahamas)"	Victory Asset Management CI Ltd (Bahamas)	Bahamian company owned by Mr Lightfoot to which VAM CI UK's rights to acquire VAM were assigned.
"VAM CI (UK)"	Victory Asset Management CI Ltd	UK company incorporated by Mr Thwaite on 1 June 2016 and purchaser of VAM from Mr Hadley under a share purchase agreement.
"Vivere Forti"		The Tenth Defendant. Panamanian Foundation. The subject of a settled proprietary claim from the Claimant against property owned by this company that was said to

Referred to as	Party/Person	Role
		have been acquired, for Mr Chapman-Clark with the use of monies that Mr Hadley had procured to be transferred in relation to the Shawcross transaction.
"Mr Wright"	William Macfarland Wright III	The Seventh Defendant. Director of CGrowth and President/CEO of Powder River.
Mr Wright of Alhaurin Wealth	Mr Terry Wright (no relation to the Seventh Defendant)	Principal of Alhaurin Wealth, for whom Mr Lloyd and Mr Keeling had previously worked.

3. The FACTS

12. The factual basis underlying the various claims made by Trafalgar are lengthy but, for the most part, they are not in dispute. They may be summarised as follows:

3.1 Background – Previous investment schemes including Capita Oak

13. Mr Talbot, Mr Chapman-Clark, Mr Hadley and Mr Biggar had all worked together previously on recruiting and dealing with pension investors to arrange for their pension monies to be transferred to a new pension arrangements (through pension schemes with the names Capita Oak and the Henley Retirement Benefit Scheme) with a view to their investment in specific investments, primarily in Store First (an unregulated investment in the form of property interests in storage pods).

14. Mr Hadley accepted in his evidence that he met Mr Talbot in the second half of 2011 and that he arranged for a lawyer to set up the pension schemes at Mr Talbot's instruction and was paid commission by Transeuro for this work. Mr Hadley also accepted that he controlled Thurlstone, a company which paid commission rebates on pension transfers made under the Capita Oak scheme and that one of his companies had a role in transferring assets out of the Henley Retirement scheme.

15. It seems that the Capita Oak and Henley Retirement Benefits arrangements worked in a similar way to the arrangement for recruiting investors to Trafalgar as is discussed below. They have resulted in huge losses to pensioners and to investigations being made by the Serious Fraud Office.

16. Introducers recruited investors via advertisements and encouraged individuals to invest their pension funds in Store First, with the promise of guaranteed 8% returns, a 25% tax-free pay-out at age 55, as well as a 5% pay-out from Thurlstone (the company controlled by Mr Hadley). Investors were referred to a financial adviser recruited by Mr Talbot or Mr Chapman-Clark. The financial adviser then introduced the customers to a pension

scheme (the Capita Oak or Henley Retirement Benefit Scheme) that would go on to invest the pension monies in products sold by Store First or another company which promised high returns to the pension investors. The purpose of these arrangements was to generate a very large commission to Mr Talbot or Mr Chapman-Clark or a company associated with one of them. Store First paid on some £33 million of those funds by way of commissions to Transeuro, Mr Talbot's company. The promised returns were unsustainable and the investors in these pension schemes lost much of their money.

17. The issues with the Capita Oak scheme were beginning to emerge at the point at which Mr Hadley, and some of those involved with him in the Capita Oak scheme, including Mr Biggar, Mr Chapman-Clark and Mr Talbot, sought to establish Trafalgar. Certainly this was public information by late 2014 when the BBC published an article about Capita Oak.

18. Those who follow the Law Reports may recognise this essential pattern as being one that has been before the Courts on several occasions notably in the cases of *Adams v Options Sipp UK LLP (Financial Conduct Authority intervening)* [2020] EWHC 1229 (Ch) ("***Adams***") (which also appears to have involved Mr Chapman-Clark and Mr Wright of Alhaurin Wealth) and Financial *Conduct Authority v Avacade and others* [2021] EWCA Civ 1206 ("***Avacade***").

3.2 The Creation of the Fund and of Trafalgar

19. According to Mr Hadley, Mr Hadley was approached by Mr Talbot and Mr Chapman-Clark to set up a fund in the summer of 2013. Trafalgar emerged as a proposal from Mr Talbot (whom Mr Hadley understood to be in some sort of partnership with Mr Chapman-Clark). Mr Talbot wanted Mr Hadley to set up for him an investment fund that he could use to funnel money to commission-paying investments. It was proposed that Mr Hadley, though an investment management company set up for these purposes, would act as investment manager to the fund, but would invest in investments nominated by Mr Talbot which would pay Mr Talbot, or his company, a commission for investment. This would then be used (in part) to pay any introducers for their work in recruiting the pension investors.

20. Mr Hadley looked for a suitable vehicle for these arrangements and found one in the form of the Nascent umbrella fund structure. Nascent provided "turnkey" arrangements for such a fund, and its investment management company, to be established.

21. Nascent was an umbrella platform launched in June 2012 by Custom House, a fund administrator regulated in Malta. As its name suggests, Nascent was a structure designed for start-up fund managers. It was intended to provide a cost-effective way for investment managers to establish investment funds as the central overheads of fund administration could be shared across a number of funds established for different fund managers. As the central administrative overheads would be spread between different funds run by unconnected fund managers, overheads would be lower than starting up a stand-alone new investment fund.

22. A clever feature of the design was that each fund would establish a subsidiary company (in this case, Trafalgar) which would hold and, through its appointed investment manager, deal with investments. If the arrangement was successful, it was envisaged that

that company could then come out of the Nascent arrangements and be operated as an independent fund in its own right.

23. Around July 2013 Mr Hadley entered into talks with Custom House to establish a fund for investors that he would find for the fund. Mr Hadley's evidence was that Mr Talbot funded the initial set-up fee that Mr Hadley paid via Thurlstone.

24. These talks resulted in the establishment of the Fund and, on 20 January 2014; the incorporation of Trafalgar. This was closely followed by the creation of VAM on 22 January 2014. On the same day Fides agreed to become a corporate director of VAM on the terms of what was referred to as a "Management Agreement" that also provided for Fides to provide certain administrative services to VAM. These duties did not include conducting VAM's role as investment manager to the Fund.

25. Shortly after this, early in March 2014, the Fund produced a prospectus-like document referred to as an "Offering Supplement" that, together with an Offering Memorandum relating to Nascent as a whole, described the Fund and its offering of Class C non-voting redeemable shares. This document was officially the basis on which investments on the Fund were to be marketed, although there is no evidence or suggestion by anyone that this document was provided to any of the pension investors who requested investment in Trafalgar. It is likely, however, that it would have been seen and relied upon by the pension trustees that would make the investments for the benefit of the pension investors such as Sovereign, STM and London & Colonial.

26. The Offering Supplement described amongst other things:

    i) the Fund's investment objective, which was "*to achieve absolute income and capital growth independent of stock, bond and property markets using simple but strict risk management with asset diversification*";

    ii) the Fund's investment philosophy, policies and strategies which were described as follows:

    > *"In order to achieve the investment objective, the [Fund] will operate a diversified investment strategy. The diversified investment strategy will give the [Fund] the possibility of profiting from both income yielding and capital growth investments. The Investment Manager may take equity or debt positions and may use derivative products and/or financial instruments if appropriate.*
    >
    > *The [Fund] will take income and growth positions in exchange traded companies, fixed interest securities, directly and indirectly held property and international companies.";*

    iii) the fact that the Fund was not subject to any investment, borrowing, leveraged or currency restrictions;

    iv) risk warnings, including a warning in capital letters that the Fund's "*INVESTMENT PROGRAM IS SPECULATIVE AND ENTAILS SUBSTANTIAL RISKS*" and a detailed (but somewhat generic) enumeration of particular risks relating to the Fund's lack of operating history and risks arising from particular types of investment that the Fund might acquire;

v) the Fund's borrowing powers, which allowed the Fund to borrow a percentage of the Fund's total net assets "*in a manner commensurate with reasonable risk management to provide full redemption/repurchase payments or short-term borrowing, not to exceed 90 calendar days*";

vi) arrangements for monthly valuations and for a monthly "Dealing Day" at which shares in the Fund could be issued or redeemed at a price related to the net asset value of the Fund as measured on the previous business day; and

vii) the Investment Manager, identified as being VAM: it was disclosed that VAM's director was Fides and the directors of Fides were identified with a short description of their experience. No mention was made of Mr Hadley or of Mr Biggar.

27. The directors of the Fund are not the subject of this action, and this point was not raised with them, but even so I feel that I must observe that that it is unfortunate, to say the least, that they allowed the Offering Supplement to go out to investors in the Fund providing the misleading impression that the fund management would be carried out by the directors of Fides, when it was always the intention that those directors would play no positive role in the investment management: this would be conducted by Mr Hadley and Mr Biggar. Had the names of Mr Hadley and Mr Biggar been mentioned in the Offering Supplement, this might well have been seen by the pension trustees that made the investments into the Fund, and would have raised questions as they would have recognised Mr Hadley and Mr Biggar as the persons who had introduced the pension investors to them.

28. The Offering Supplement appears to have been slightly premature, as the investment management agreement between the Fund and VAM was signed only on 28 March 2014. This agreement provided for VAM to be appointed as investment manager, subject to the control of and review by the Board of Nascent. It included provisions for requiring the consent of the Board of Nascent as follows:

> "The Investment Manager shall not, and shall procure that no Associated Persons of the Investment manager shall deal with the [Fund] as beneficial owner on the sale or purchase of investments to or from the [Fund] except on a basis approved by the Board from time to time or without the consent of the Board otherwise deal with the Company as principal"

(although this was subject to certain limited exceptions).

29. The investment management agreement included delegation provisions allowing VAM:

> "… in the performance of its duties and in the exercise of any of the powers and discretions vested in it hereunder to act by responsible officers for the time being appointed for that purpose and to employ and pay an agent to perform or concur in performing any of the services required to be performed hereunder"; and
>
> "The Investment Manager shall be entitled to delegate its functions, powers, discretions, privileges and duties hereunder or any of them to any person, firm or corporation approved by the Board and any such delegation may be on such terms and conditions as the Investment Manager thinks fit …"

30. The investment management arrangements were botched in two ways.

31. First, although the assets were to be held and dealt with by Trafalgar (as I understand it for Trafalgar's own benefit and not as trustee for the Fund), Trafalgar was not a party to the investment management agreement, neither was it mentioned as a beneficiary of the agreement.

32. Secondly, although it was clearly always the intention of the Fund, Trafalgar, VAM, Mr Hadley and Mr Biggar that Mr Hadley and Mr Biggar would undertake the investment management as agents for VAM, no actual delegation or appointment appears to have been made in this regard.

33. I will comment further below on the effect that these mistakes have had on the various investments that Mr Hadley and Mr Biggar made on behalf of Trafalgar.

34. The Fund and Trafalgar commenced operations on or around 1 June 2014.

3.3 Fundraising

35. Investors were found for the Fund in the following manner. Under arrangements that he had with Mr Talbot and Mr Chapman-Clark, Mr Lloyd, and a small team recruited by him, operating either under his tradename AIP Worldwide or later for his company Pinnacle, worked to generate leads as follows:

    i) Mr Lloyd would design targeted advertisements on Google. The advertisements were directed at UK residents who might have funds to invest, primarily from existing occupational or money purchase pension funds.

    ii) Mr Lloyd's team would follow-up any enquiries generated by the advertisements, discuss with the pensioners their objectives, and at an appropriate moment, suggest an investment via QROPS or SIPPs in Trafalgar. This was discussed by reference to a brochure which had been provided to Mr Lloyd by Mr Chapman-Clark, and as far as the Court could ascertain, had been drafted and produced by Mr Chapman-Clark and/or Mr Talbot or people working for them.

    iii) The brochure bore no resemblance to the Offering Supplement. It described the Trafalgar investment opportunity by reference to various classes that might be invested in, including Store First, hotels, alternative energy investments and student accommodation.

    iv) Mr Lloyd considered that investors were generally told that AIP Worldwide or Pinnacle would receive a commission from investments made, although he did not think that the amount of this commission (or any additional commission that might be received by Mr Talbot or Mr Chapman-Clark or their companies), would have been disclosed.

    v) The potential investors were very frequently offered an inducement to invest in the form of a share of the commission to be received by AIP Worldwide/Pinnacle amounting to 5% of the amount invested, and therefore would be likely to have realised that the overall commission received by AIP Worldwide or Pinnacle would have been in excess of 5%.

vi) Mr Lloyd was adamant that no advice was given in these interviews and he was supported in this by Mr Keeling. The purpose of the interview was to present the investment opportunity and to pass the investor onto the next stage. Whether this role did involve advice is discussed further below.

vii) Those who showed interest were passed on to Mr Hadley and Mr Biggar to obtain advice from an "IFA". AIP Worldwide/Pinnacle helped undertake a fact find about the investor and the investor's attitudes to investments and ask questions to populate an application form according to a template produced by GPL which would then be send would assist the investor together with the Trafalgar brochure, and the IFA in completing an application form. These documents were passed on to Mr Hadley and Mr Biggar who proceeded to provide advice to clients on the proposal. More consideration about their role in this and the financial services regulatory implications of this are discussed below. However, I will mention now the key difference of opinion between Mr Lloyd and Mr Hadley as to the scope of the "IFA" recommendation:

a) Mr Hadley's evidence was that acting as IFA, he and Mr Biggar were advising only on the suitability of the pension transfer to a QROPS i.e. the suitability of the pension wrapper, and in providing information about the investment return that would need to be achieved under the new pension arrangements compared with the investor's existing arrangements. Crucially, Mr Hadley argued that it was outside the scope of the exercise to form any recommendation in relation to investment in the Fund. As far as Mr Hadley was concerned, the investor had selected the Fund on the basis of the information (and he would say recommendation) provided by AIP/Pinnacle; whereas

b) Mr Lloyd's evidence (supported by that from Mr Keeling) was that he had understood that the IFA would be advising both on the pension transfer and on the investment within the new pension wrapper into Trafalgar.

viii) It appears that in the overwhelming majority of cases the recommendation was to open a QROPS with one of the QROPS providers with which Mr Hadley had made arrangements to receive these investments. These QROPS operators had indicated that they would accept self-directed instructions by the owner of the QROPS product to invest in Trafalgar, and indeed created a product that was specifically earmarked for investments in Trafalgar. In excess of a hundred pension investors were persuaded to invest in this way comprising something like £25 million of investment.

36. Mr Hadley accepted that he and Mr Biggar approached the three of the pension scheme operators whose members invested in Trafalgar, Sovereign, STM and London & Colonial and arranged for them to set up pension schemes tailored to accept an investment in Trafalgar.

3.4 First investments

37. The Fund's first investments comprised a small value of traded investments and a larger £1 million investment in Dolphin Capital.

38. According to a news report provided to me this German company 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. It may be understood that Mr Talbot and/or Mr Chapman-Clark received commissions of at least this amount and that all or part of their commissions were passed on to Mr Lloyd.

3.5 The Quantum Investment

39. The next significant investment was the investment in Quantum. Quantum was incorporated in the Seychelles on 27 January 2014 as an international business company, although it described itself in its business plan as a "r*egistered investment fund established to provide secure returns for investors, by providing loans to businesses underpinned by asset security*". It had a corporate director (Tosca Nominees Limited) and a corporate secretary (TOC Nominees Limited). According to its business plan the shares were held by a "*Panamanian Foundation*". It is understood by the Claimant and by Mr Hadley to be a company owned directly or indirectly by Mr Chapman-Clark. According to its business plan Quantum operated in the renewable energy and infrastructure sectors as "*a vehicle for making loans and holding the associated bond funding instruments*".

40. Quantum's business plan stated that it relied on Sycamore Crown Limited undertaking "*all sourcing, reviewing and assessing of individual lending opportunities*". This is a company of which Mr Chapman-Clark was director, and had been heavily involved in the 'Capita Oak' pensions misselling arrangement, having received £3.39 million from Transeuro. It entered into a creditors' voluntary liquidation on 11 September 2014, eight days before Quantum's loan note instrument was issued. It ceased to trade on 22 May 2014, two months before the business plan (dated July 2014) was allegedly published.

41. The business plan disclosed a 20% marketing fee that would be paid to introducers, to be advertised over the initial five year term of the bond.

42. In August and September 2014 arrangements were made for Trafalgar to purchase loan notes issued by Quantum. First (because, it seems, that Quantum did not have a bank account), an escrow account was opened (on 27 August 2014) by Trafalgar and Quantum with Law Debenture. Following the subscription this was effectively used as Quantum's bank account.

43. The Loan Notes issued by Quantum were unsecured. They had a 5 year term and paid interest at 6%, payable annually except that 50% of the interest payable on the first anniversary of the note was to be deferred until the second anniversary.

44. It may be noted that this investment was high risk as it involved lending unsecured to a new company with no apparent business, no track record and no identified directors or management.

45. In his oral evidence Mr Hadley was questioned about what investigations were undertaken in relation to this company and why it was thought to be a good investment for Trafalgar. His answers were unconvincing.

46. As to due diligence, it seems that he relied on discussions with Mr Chapman-Clark and the extremely anodyne business plan which merely identified investment areas that Quantum might invest into and included an unsubstantiated projection of the profits it might make. The business plan did not identify who would be choosing, monitoring and managing the investments. It did not identify any individuals as its Board of directors. There was an indication that the investments would be sourced by Sycamore Crown, but if proper due diligence have been carried out, Mr Hadley might have found out that that company had gone into liquidation by the time the investment was made.

47. As to the attractions of this particular investment, all that Mr Hadley could point to was that he liked the prospects of the particular sectors in which Quantum was to invest, and it may be presumed that he thought Mr Chapman-Clark would be able to source investments in these sectors. He could give no reason for preferring this particular investment proposition, rather than, say an established fund or lender investing in these sectors, other than commenting that deal sizes for direct investment in the sector were larger than Trafalgar was choosing to commit to this investment. It is difficult to understand how this issue was cured by making the investments indirectly through Quantum.

48. Mr Hadley's explanations for the rationale for the investment are entirely unconvincing. It is clear that in choosing this investment he was favouring the honouring of his obligations to Mr Talbot and Mr Chapman-Clark over the interests of the Fund. Neither is there an innocent explanation as to why Mr Hadley, if he read the business plan and saw that commissions of 20% were to be paid out on an investment, did not, as any diligent investment manager would do, try to obtain that commission for the benefit of Trafalgar, or at least try to negotiate that commission.

49. The arrangements for loan notes to be paid for and issued were unconventional and seem to have evidenced a high degree of trust between the parties, rather than an arm's-length arrangement, as payments were made after notes were issued:-

    i) a loan note for £750,000 was issued to Trafalgar on 19 September 2014;

    ii) only on 24 September 2014 was a further £750,000 transferred from Trafalgar into the Escrow Account;

    iii) on 6 October 2014, ahead of receipt of the full amount of the second subscription, Quantum issued a second loan note for £1.75 million;

    iv) on 16 October 2014 - some 10 days later - there was a further transfer of £1.75 million from Trafalgar;

    v) on 1 December 2014 Quantum issued a third Loan Note for £7 million;

    vi) only on 18 December 2014, some seventeen days later, was there further £7 million transferred from Trafalgar into a second Escrow Account (the first having been closed once it had a zero balance).

50. The total amount paid by Trafalgar into the escrow accounts totalled some £9.5 million.

51. Under the escrow arrangements with Law Debenture, as he accepted, Mr Hadley knew about and assented to the payments being made out of the escrow accounts. Of these amounts, only some £7.593 million can clearly be accounted for as having been invested by Quantum. These amounts were invested in further notes issued by Dolphin Capital via two transactions on 16 October 2014 (£1.993 million) and 18 December 2024 (£5.6 million). These no doubt also afforded to Mr Chapman-Clark the usual 20% commission that Dolphin Capital was paying to introducers of subscriptions to it.

52. The only other payments that could possibly be thought to have been made by Quantum for investment purposes were to a company called Essential Finance Limited, a company also believed to be associated with Mr Talbot. The Claimant considers this was also a vehicle for benefitting Mr Talbot, although Mr Hadley claims that this was understood by him at the time to have some investment rationale. This company received a payment of £150,000 on 19 February 2015 and a further payment of £100,000 on 2 April 2015.

53. The remainder seems to have been paid away in fees and commissions.

54. The payments out of the first escrow account included payments to Mr Lloyd totalling £450,000 comprising:

    i) a payment of £50,000 on 25 September 2014;

    ii) a payment of £50,000 on 10 October 2014;

    iii) a payment of £350,000 on 20 October 2014;

55. Five payments were made from the second escrow account to Pinnacle, a company owned by Mr Lloyd, comprising:

    i) a payment of £186,127.80 on 22 December 2014;

    ii) a payment of £56,773.72 on 21 January 2015;

    iii) a payment of £195,000 on 24 March 2015;

    iv) a payment of £129,000 on 22 April 2015;

    v) a payment of £200,000 on 12 April 2015;

56. A payment of £50,000 was made out of the escrow account to Transeuro, a company owned by Mr Talbot on 10 October 2014.

57. Other payments were made from the escrow accounts include:

    i) a payment of £170,000 on 22 December 2014 to Graylaw, a company understood to benefit Mr Talbot and Mr Chapman-Clark;

    ii) a payment of £210,000 on 2 April 2015 to International Business Formation, a company owned by Ms Platt who worked for the corporate services provider that served Mr Chapman-Clark.

58. The £7.593 million of payments to Dolphin Capital was admitted by Mr Chapman-Clark to be "*a deviation from the business plan*". He claimed that Trafalgar consented to this (perhaps having regard to the fact that Mr Hadley had signed off on the payment for this), but nevertheless when this investment was more widely discovered, Mr Hadley and/or Mr Biggar, purportedly on behalf of Trafalgar took steps to unwind this by insisting that the Dolphin Capital investments be transferred to it and an amount equal to the face value of these investments be deemed repaid on the Quantum bond.

59. This was necessary as this departure by Quantum from its business plan over-exposed the Fund to Dolphin Capital. Mr Hadley had already invested £1 million of Trafalgar's money into a Dolphin Capital bond at 13.8%. Also, if the Fund's money was to be invested in Dolphin it could have been invested directly by Trafalgar. Doing this indirectly left Trafalgar with added counterparty risk on Quantum whilst leaving Quantum to profit by taking a turn between its obligation to pay coupons at 6% to Trafalgar and its receipt of interest from Dolphin Capital at 8%.

60. I note also that the Dolphin Capital investment was (even assuming that Dolphin Capital was a sound investment, as it proved not to be) also uncommercial for Quantum. This is because it would not be unlikely to have left Quantum with sufficient revenue to meet its obligations – after Quantum had paid away the 20% of what it received by way of commissions, it is difficult to see how making 8% on 80% (= 6.4%) of the monies it had received from Trafalgar would support both the 6% interest payments due on 100% of those monies and Quantum's operating expenses.

61. After Mr Hadley had procured the Quantum investments in Dolphin Capital to be assigned to Trafalgar at their face value, this left an unaccounted for balance of £1.907 million in Quantum that was unrepresented by any assets within Quantum.

62. On 5 May 2015 Quantum assigned the loans that it held in Dolphin to Trafalgar in return for forgiveness of the Quantum Loan Note to the extent of the face value of the Dolphin Capital loans transferred. Once it had done this it had no visible means of repaying the remainder of the outstanding Quantum Loan Notes.

3.6 The Titan Investment

63. The next significant investment was in Titan. Titan was incorporated in England and Wales on 16 February 2015 as a private limited company with capital of £1,000. Mr Jones was its only director. It was owned as to 10% by Mr Jones and as to 90% by Cavendish Corporate Investments Limited within Cell 332. Cavendish was an annuity provider and had established Cell 332 for the benefit of Mr Hadley or his family.

64. It is not disputed that Titan, at least as far as Mr Jones was concerned, was genuinely seeking to develop a business of secured bridge finance lending and had taken preparatory steps for such a business although at the relevant time it had not commenced lending.

65. Trafalgar subscribed £1.5 million in loan notes issued by Titan on 20 May 2015 (i.e. around three months after Titan had been formed). The loan notes were unsecured. They had an indefinite term, being redeemable at the option of the issuer on 20 business days' notice but otherwise only on an event of default. They paid interest at 6%, payable annually save that the first payment was to be made on 31 December 2016 and Titan had

a right to defer interest payments for up to 12 months or three months (there were two clauses allowing deferment in differing terms). The notes were not transferrable. Titan could unilaterally decide to defer the date on which the loan note is redeemed by two years.

66. Again these terms do not at first glance seem a very attractive investment given the risk involved in lending unsecured to a new company.

67. The subscription proceeds were paid into an account that Titan had with Metro Bank and the Court was provided with details of the payments made out of that account. These included, in addition to payments that appear to be to commercial counterparties, a number of payments over a year to Mr Jones. Mr Jones explained these, I consider convincingly, as being due to him as his salary as the person working to develop the business, at an annual rate of £60,000 per year, which, Mr Jones explained was reduced by his forbearance in agreeing not to claim in full a salary agreed with Mr Hadley of twice that amount until Titan was starting to make a profit.

68. Payments were made out of the account to Mr Hadley or to companies owned by Mr Hadley. These included:

    i) a transfer of £75,000 to Proactive, Mr Hadley's company, on 26 August 2015; and

    ii) a transfer of £1581.20 to Mr Hadley for "marketing activities" on 1 April 2016.

69. In connection with the CGrowth transaction, as is explained in more detail below, under a letter dated 3 June 2016 signed by "Victory" on behalf of VAM, Trafalgar purportedly accepted the sum of £1.36 million paid to "*the co-ordinates as advised*" to discharge the loan note and all outstanding interest up to date (an amount in excess of £90,000). The advised "co-ordinates" can be presumed to be PPL in its role as settlement agent to CGrowth, as a payment was made out of Titan's account to PPL on 3 June 2016 of £1.36 million.

70. On the same date, a payment of £20,000 was made from PPL back to Titan's account. Mr Jones explained, and I accept his explanation, that this was because he had insisted that rather than paying over all of Titan's available cash by way of redemption for the loan notes, £20,000 should be kept back to meet winding –up costs such as tax and his outstanding salary (but not it seems the payment in lieu of notice to which Mr Jones would have been entitled). He had been told that it was more convenient for this to be done by means of a repayment from PPL rather than amending the arrangements for the discharge of the loan note as this had already been documented.

71. On 6th June, Mr Hadley signed a letter from VAM in its capacity as fund manager for Trafalgar confirming that the loan note principal (of £1.5 million and all accrued interest (amounting to £90,493.15) had been fully discharged and no further liability remained from Titan to Trafalgar. The letter recorded further that this reflected an agreement with CGrowth which had issued bonds in favour of Trafalgar "*incorporating the received consideration from yourselves*".

72. The circumstances of this arrangement also are considered below.

3.7 The Momentum Investment

73. Momentum was incorporated in England and Wales by D & A Nominees Ltd (its sole shareholder) on 9 April 2015 with a share capital of £1. D & A Nominees Ltd is a subsidiary of Druces LLP. Details of Momentum's directors on incorporation are not all available as they were removed by the Registrar of Companies from the public register on the grounds that they were invalid or ineffective. However a Mr Paul Stewart was appointed as a director on 13 April 2015. The registered office of the company became that of Druces LLP on 27 April 2015.

74. It appears that Mr Hadley was the 100% ultimate beneficial owner ("**UBO**") of Momentum. It is clear that Mr Hadley and Mr Biggar were involved in the incorporation of Momentum since they had, prior to the incorporation of Momentum applied to open its bank account. Mr Hadley represented to the solicitor at Druces (which set up the property structure through which Momentum would invest) that he was the ultimate beneficial owner. Mr Hadley did not deny that claim in his formal Defence.

75. At one point during the trial, he suggested that he had only agreed to be named as the UBO for form's sake – he had regarded Momentum as being the property arm of Trafalgar and, by inference, Trafalgar as being its beneficial owner. I do not accept this claim and I think it is clear from all the circumstances, including from the way that Mr Hadley was able to deal with Momentum's assets without reference to the corporate nominee director of Momentum, that Mr Hadley was, and was regarded by all concerned as the UBO, and that that was his intention.

76. On 20 July 2015 Trafalgar subscribed (or purported to subscribe) £6 million in a loan note issued by Momentum. The loan note was unsecured and there was no negative pledge preventing others being granted security. There were no reporting obligations and no financial covenants. It was repayable after 5 years with an automatic extension for a further two years unless the Noteholder served a 6 months' notice to prevent this. It paid interest at 7%, payable annually save that the first payment was to be deferred for a year. The notes were not transferrable.

77. The Loan Note was created without reference to D&A Nominees (the corporate director of Momentum). Whilst D&A Nominees was informed in August 2015 that funds had been transferred to Momentum in relation to an abortive acquisition of commercial property, and was later informed in December 2015 that funds had been provided by Trafalgar for the acquisition by Momentum of its interest in the Derby property, it remained unaware of the issue or existence of loan note itself until all funds had been transferred out of Momentum and the matters which give rise to the present claims began to emerge.

78. The investment in a new start-up with no track-record and with no equity backing to speak of was clearly risky. In the context that this was a self-dealing arrangement - Mr Hadley, on behalf of Trafalgar, lent money to a company of which he was the UBO, this transaction is clearly tainted by Mr Hadley's conflict of interest in the matter. There is no evidence that he tried to clear this conflict of interest with Trafalgar.

79. Payments out of the account again involved payments to Mr Lloyd's company, Pinnacle, comprising some £528,748.40. This arose because Mr Hadley considered that he should meet the promises made by Mr Talbot or Mr Chapman-Clark to pay the commissions

they had promised to Mr Lloyd. Momentum had had no part in promising these commissions and had no reason to pay them.

80. Other amounts were transferred to solicitors' client accounts in connection with the purchase of a commercial property in which Momentum had an interest, and three residential properties, which were not owned by Momentum completed in the name of an SPV, and without any record of Momentum's interest.

81. As with Titan, Momentum was brought into an arrangement with CGrowth. Transfers of £841,224.88 on 18 March and £2,902,602.58 on 24 March 2016 were made to PPL (which again was acting as CGrowth's settlement agent to receive monies). On 27 June 2016 Momentum received a letter headed "*Notice of Satisfaction of Loan Note Instruments*" which confirmed that loan note instruments with an outstanding capital balance of £2,256,172.54 plus accrued interest in the amount of £271,501.46 was discharged in full at full value. The Notice recorded that the consideration provided by Momentum included (it may be assumed alongside the cash mentioned) "*the rights and privileges to the net benefits and proceeds*" of four identified properties. It explained that in return for receipt of this consideration, CGrowth was issuing bonds to Trafalgar.

82. Momentum was placed into a creditors' voluntary liquidation on 5 April 2017. Trafalgar proved in the liquidation.

3.8 The Shawcross Investment

83. Shawcross was incorporated in Gibraltar on 9 June 2015 by a corporate nominee firm, TPT Corporate Management Ltd, which also acted as a corporate director to Shawcross. Shawcross was incorporated with a share capital of £12. It is the understanding of Mr Hadley that it was incorporated on the instructions of Mr Chapman-Clark and that the corporate director acted on instructions from Mr Chapman-Clark, so that Mr Chapman-Clark became its shadow director.

84. Shawcross was held out as having a lending business in making secured investments in the renewable energy and infrastructure sectors, using a near identical business plan to Quantum. Mr Hadley explained in his oral evidence that this was indeed intended to operate as a successor to the Quantum business.

85. On 23 December 2015, Trafalgar transferred £1.3 million to Daswani, a law firm acting on behalf of Shawcross, as it seems Shawcross had no bank account of its own. The £1.3 million was, according to Mr Hadley, intended for a subscription of shares in Shawcross.

86. At about the same time TPT and Trafalgar signed a shareholders' agreement. The agreement was signed on behalf of Trafalgar apparently by Mr Biggar, although he did not indicate in which capacity he was able to sign on behalf of Trafalgar. It seems that the shareholders' agreement had been drafted by Daswani, who had sent an invoice addressed to "Mr Hadley and John Hall c/o JDH Pensions, and presumably were drafting on behalf of both sides. Mr Hadley had very little memory of what instructions Daswani was working to, and claims to have had little to do with these arrangements. In fact the shareholders' agreement that was produced was remarkably one-sided, against the interests of Trafalgar.

87. The agreement recorded that TPT was holding 12 shares and that Trafalgar was making a subscription of £1.3 million (although oddly it did not set out how many shares

Trafalgar would get for that subscription). There is no evidence available from disclosure or at the Gibraltar company registry that any Shawcross shares were ever issued to Trafalgar, and it appears that no share certificate was issued at the time.

88. Although Trafalgar was by several orders of magnitude the largest subscriber, it had next to no control rights under the shareholders' agreement. Under the agreement, the Board of Shawcross was to comprise TPT as its director, although TPT had the right to appoint up to two other independent directors. (Oddly, however, the agreement included quorum provisions for Board meetings which required either TPT or Trafalgar or another director appointed by TPT to be present.) The agreement did not include any list of reserved matters that would require Trafalgar's consent – there was only a list of matters requiring the approval of the chairman (which was to be TPT *ex officio*, unless TPT agrees to appoint another director as chairman). This list of matters included matters that would normally be reserved to the shareholders (such as reorganisations of share capital) rather than to a board or a chairman of the board.

89. Nevertheless, £1.3 million was received into the Daswani client account opened for Shawcross. This client account was then utilised as if it was Shawcross's bank account. Various payments were made out of the account, almost none of which were explainable as *bone fide* investments made by Shawcross. These included payments to Emma Hawkins (Mr Chapman-Clark's girlfriend) of £8,500 and to Mr Biggar (£40,000). Larger payments went to First Choice Formations Limited (an English company owned by Ms Platt); and to Wilkes Partnership and to JA Mayhall (for which I have seen no explanation).

90. Mr Chapman-Clark provided no information about these transactions in his Defence and provided no witness statement. However, in correspondence he recognised that there is "*ambiguity surrounding the transaction*". His explanation for the payment of £1.3 million was not that there was a genuine share purchase or subscription arrangement in a start-up investment business. Instead, he said that the transfer was "*made on request of marketing fees owed to my group companies by Trafalgar … for the introduction of investors*".

91. Given the clear lack of care taken in documenting this transaction; the lack of due diligence and lack of any commercial reason to invest in Shawcross and given what later happened to the monies within Shawcross, I accept this explanation in preference to Mr Hadley's suggestions that this was a *bona fide* investment that he expected to benefit Trafalgar.

92. The Shawcross shares were also swept into the CGrowth transaction, being exchanged at their full subscription price of £1.3 million in return for which CGrowth issued bonds to that value. By that point, the cash remaining in Shawcross had reduced to around £100,000.

3.9 The suspension of the Fund

93. On 22 and 24 March 2016, the Board of Trafalgar suspended Mr Hadley's authority as a signatory on Trafalgar's brokerage and bank accounts and required any proposed transactions to be approved by a member of the Board. The background to that drastic step was the auditor's discovery that there was a potential deficit in the Quantum investment. During Trafalgar's audit for the year ending March 2015, the auditors were

unable to obtain satisfactory evidence as to Quantum's use of £1.907 million of the £9.5 million that Trafalgar had purportedly lent to Quantum.

94. Mr Hadley represented to the Board in December 2015 that his "review" of the Quantum investment in March 2015 had led to the discovery that Quantum had not adhered to their business plan, having invested £7.533 million into Dolphin Capital bonds (i.e., everything but £1.907 million). This was disingenuous (at the very least), as Mr Hadley had been aware of the Dolphin Capital bond investment by Quantum at the time it was made – he signed off on the payment out of the Law Debenture escrow account.

95. Mr Hadley repeatedly represented that he did not know what Quantum had done with the money that had not been invested in Dolphin Capital, and did not know whether it had been lent out. This was untrue. Mr Hadley had himself procured all the payments out of Quantum as the co-signatory to the escrow account with Law Debenture, and so knew precisely where the missing money had gone to.

96. In the event, and in the light of the uncertainty surrounding the recoverability of the £1.907 million, the Board resolved in January 2016 to suspend the calculation of the Net Asset Value ("**NAV**") of the shares of the Fund, and thus any subscription into or redemption of shares, until the shares could be fairly valued.

97. The Board of Trafalgar then sought to get to the bottom of what had happened in Quantum, and began to investigate the other transactions into which Mr Hadley had transferred Trafalgar's funds, namely Titan, Momentum and Shawcross.

98. A particular concern of the Board, was that the vast majority of the Fund's assets had been transferred by Mr Hadley into long-term illiquid positions, and that the suspension of the NAV might trigger a run on the Fund and leave the Fund unable to meet redemption requests.

99. Mr Hadley did not accept this view, considering that the part of Trafalgar's investments that was held in illiquid securities, amounting to around 10% of the value of the Fund should be sufficient for this purpose.

100. Whilst these investigations by the Board were ongoing, on 21 March 2016, Custom House became aware of public reports linking Mr Hadley to alleged pension frauds and this increased the Board's level of concern.

101. After the suspension of Mr Hadley's authority to operate the brokerage and bank accounts on 22 and 24 March 2016, Mr Hadley (and VAM) could only effect transactions on Trafalgar's accounts with the Board's express approval.

3.10 The CGrowth Investment

Background

102. The circumstances surrounding the CGrowth investment have already been explored by the Court in the course of Trafalgar's successful summary judgment/ strike-out application in relation to its bribery claims. The facts specifically relating to that bribery claim are summarised at [3] to [11] of the Court of Appeal's judgment in this matter (*Trafalgar Multi Asset Trading Co. Ltd v Hadley and ors* [2022] EWCA Civ 1639).

103. By way of a more general introduction, the transaction arose through discussions between Mr Hadley and Mr Thwaite of PPL. PPL was acting as a consultant to CGrowth in relation to the marketing of bonds to be issued by CGrowth.

104. CGrowth was a company that had been set up to raise monies on a joint venture basis for three oil and mineral extraction companies:

    i) Powder River (an oil extraction company within the same group as CGrowth);

    ii) Ana Paula Bebe, which was looking to develop a lime mine in Peru; and

    iii) Project Partners International, which was looking to develop a mine mining various types of ore, also in Peru.

105. I will call Powder River, Ana Paula Bebe and Project Partners International the "**CGrowth Underlying Borrowers**".

Commission arrangements for PPL

106. CGrowth had appointed Mr Thwaite's company, PPL, to undertake structuring arrangements for the bonds and gave it authority to recruit introducers. Under CGrowth's agreement with PPL, PPL was entitled to an initial commission and administration fees of between 28% and 29% of capital introduced (but this would be reduced if PPL appointed an introducer by an amount equal to the introducer's commission). PPL acted as the settlement agent for funds coming in for subscriptions and took its commissions out of those amounts, and settled the amount of any other introducer before passing this on to the CGrowth Underlying Borrowers.

107. Mr Thwaite argues that it was the CGrowth Underlying Borrowers that were responsible for the payment of its commission. However, PPL's only agreement was with CGrowth itself. It appears that CGrowth had an arrangement with the CGrowth Underlying Borrowers that these commissions would be borne by them, and this is how they were accounted for. No documentation was provided for this agreement and it was not documented for example in the CGrowth Powder River Secured Loan Agreement or clearly expressed in the Joint Venture Agreement among the CGrowth Underlying Companies. Nevertheless, I think the correct interpretation to put on these arrangements is that PPL's entitlement to a commission arose from its agreement with CGrowth and CGrowth was indemnified for these commissions by the CGrowth Underlying Companies. As an accounting matter, it may be correct that the commission was regarded as being borne by the CGrowth Underlying Borrowers, but this does not affect the legal relationships. These were between CGrowth and PPL and then between CGrowth and the CGrowth Underlying Borrowers, but not directly between the CGrowth Underlying Borrowers and PPL.

108. As a matter of how the cash moved, this was taken off the top by PPL before CGrowth or the CGrowth Underlying Borrowers received any proceeds of bond sales, so from a practical standpoint the legal responsibilities for payment are moot. Nevertheless, I consider that the correct legal analysis is that CGrowth was the party responsible to PPL for the payment of these fees. I labour this point only because PPL tries to make much of the argument that it was not CGrowth that paid its commissions, but this is not true either from a practical or a legal viewpoint.

Bond subscriptions

109. The CGrowth bonds involved subscriptions (or on the Claimant's argument, purported subscriptions) in bonds issued by CGrowth in return for the vast majority of the remaining cash in Trafalgar plus all that remained of Trafalgar's investment in Momentum and Titan, and the remaining interest in the Quantum loan notes and in the Shawcross shares.

110. There were essentially four tranches of CGrowth bonds. Putting aside the question, discussed further below, as to whether these bonds were validly issued, they were as follows.

111. In March 2016, CGrowth issued:

    i) a 3-year bond for £5 million of consideration comprising £3.1 million in cash and an assignment of the Quantum loan receivable (therefore valued at £1.9 million); and

    ii) a 5-year bond for £2.3 million comprising cash of £1 million and an assignment of the shares in Shawcross valued at their original subscription value of £1.3m.

112. On 3 and 6 June 2016 CGrowth issued two further bonds in a cumulative sum that mirrored the value of Trafalgar's investment in Titan (including interest):

    i) one for £1,360,000. This was paid for by Mr Hadley procuring that Titan transfer £1.36 million to PPL for the account of CGrowth; and

    ii) secondly for £230,493.15. This latter sum was the difference between the sum of £1,360,000 and the rest of the capital and interest outstanding in relation to Titan. Essentially no consideration was paid for this bond.

113. As noted above, £20,000 of the above amounts was returned to Titan.

114. On 22 June 2016 CGrowth issued a further bond for an amount of £2,527,674 and agreed to accept as consideration:

    i) a deposit of £50,000 (which was to be added to the balancing cash payment if not paid);

    ii) the properties which had been acquired with part of the funds transferred to Momentum, and which were estimated collectively to realise £1,165,000);

    iii) (inexplicably) the redemption of a further CGrowth bond with a value of £401,972.60; and

    iv) what was described as a "balancing cash payment" of up to £425,701.40, to the extent that a payment was necessary after properties bought with the Momentum subscription had been sold.

115. On 27 July 2016 CGrowth issued a further bond for an amount of £129,333.30 purportedly following a reconciliation between all parties in respect of the consideration.

116. CGrowth confirmed in writing that the aggregate quantity of bonds issued as at 22 June 2016 was £11,547,500.45, notwithstanding receipt of only £5,460,000.90 of cash. CGrowth backdated the July Bond to 22 June 2016, to represent that it formed part of the consideration for the June Bond.

The established bribery claim

117. In brief, Trafalgar's bribery claim against Mr Hadley (as succinctly put by Ms Young of Kingsley Napley, solicitors for the Claimant) was that:

> "… at the very time that Mr Hadley was organising to commit Trafalgar to contracts with CGrowth and obliged to act in the exclusive best interests of Trafalgar, Mr Hadley was seeking personally to benefit from the sale of VAM to the agent of CGrowth, with whom he was negotiating the CGrowth contracts. Mr Hadley put himself in a position where the personal benefits he stood to gain from the sale of VAM to PPL/Mr Thwaite conflicted with his fiduciary obligations to Trafalgar."

118. The bribery claim was based on the fact that there had been no disclosure of a consultancy agreement between PPL and CGrowth dated 4 November 2015 ("**the 2015 Consultancy Agreement**"), under which PPL was entitled to receive 29% of all bond subscription monies paid by Trafalgar and that whilst (a) Mr Thwaite was carrying out his mandate for CGrowth by negotiating with Mr Hadley to introduce Trafalgar as bond subscriber, and (b) Mr Hadley was engaged in committing Trafalgar to invest in CGrowth's bonds, (c) they also negotiated and agreed that Mr Hadley would sell VAM to PPL. As its owner, Mr Hadley was set to gain financially from the sale of VAM.

119. Trafalgar had asserted that two bribes were paid. First, Mr Hadley (or his nominee) received £100,000 from PPL on 21 March 2016, five days after signing the contract that finally committed Trafalgar to purchase CGrowth bonds with a face value of £7.3 million, for which the consideration included payment of £4.1 million (which was to be paid to PPL) and the transfer of other assets to CGrowth ("**the March Bond Transaction**").

120. Second, Mr Hadley had received a further payment of £400,000 on 6 June 2016, 5 days after Mr Hadley had signed two CGrowth bond purchase forms which committed Trafalgar to pay £1.36 million to PPL in respect of two further CGrowth bonds ("the **June Bond Transaction**").

121. The relevant Defendants' case was that these payments were a deposit for the anticipated sale of VAM to PPL. Trafalgar had asserted that the payments were made from the traceable proceeds of the March and June Bond Transactions i.e. with its money. Trafalgar argued that this motivation for the payments was irrelevant. Mr Hadley placed himself in a position of conflict when he committed Trafalgar to the bond transactions whilst also arranging the sale of VAM to PPL, and the nature of the conflict was not disclosed to Trafalgar to enable it to consider whether it wished to proceed with the transactions notwithstanding the conflict.

122. The Court of Appeal accepted that the bribery claim was made out and could be determined on a summary basis. It was common ground amongst the parties to that application that Mr Hadley owed Trafalgar the obligations of a fiduciary, but the

Defendants involved put forward two defences to the bribery claim. These defences were described as "**the timing defence**" and "**the knowledge defence**".

123. The timing defence was that the payments alleged to be bribes were made after the CGrowth bond transactions were entered into and therefore could not have amounted to an inducement in relation to these transactions. The Court of Appeal accepted the Claimant's contention that Mr Hadley and Mr Thwaite must have entered into negotiations before the execution of the contract for the March Bond Transaction on 16 March 2016 and that the second bribe was promised before the execution of the June Bond Transaction on 1 June 2016.

124. The knowledge defence was that Trafalgar was aware of discussions to purchase VAM in early 2016 and must have been aware that payments would be made towards the purchase of VAM.

125. The Court accepted the Claimant's argument that these facts, even if true, were insufficient to satisfy the defence of informed consent in respect of Mr Thwaite's payment to Mr Hadley of funds derived from Trafalgar in connection with that intended sale.

126. Applying the test for summary judgment (as referred to at [38] of that judgment and the principles relating to bribery (as referred to at [39] to [43] of that judgment), the Court of Appeal determined that both the timing defence and the knowledge defence were fanciful. In particular, the knowledge defence failed on the grounds that there were no pleadings or disclosure that the commission payments had been disclosed as would be necessary to rely on the knowledge defence (which required fully informed consent to the transaction). Accordingly the Court allowed the appeal and ordered that (amongst other things):

    i) the Claimant be entitled, at its election, to enter judgment against Mr Hadley in respect of its claims that Mr Hadley had received sums of £100,000 on 18 March 2016 and £400,000 on 6 June 2016 and held the same on trust for the Claimant;

    ii) in the event of such an election Mr Hadley must account for his dealings with the said property and pay over the sums due on the taking of that account;

    iii) the defences of PPL and Mr Thwaite in respect of the Claimant's bribery claims be struck out and judgment on liability be entered against PPL and Mr Thwaite in respect of those claims, with damages to be assessed.

127. No order was made against CGrowth, but, as I explain further below, an implication of the Court of Appeal's finding was that any actual authority that Mr Hadley may have had in relation to the CGrowth transactions was vitiated by the finding of bribery against it.

4. The Case to date

4.1 Matters already settled

128. The Claimant was originally pursuing several separate but linked causes of action against some thirteen Defendants.

129. The Claimant has settled its claim against the Second Defendant, Mr Thomas Biggar and has obtained judgment against the Tenth and Eleventh Defendants, Vivere Forte International Foundation and Ms Platt. Ms Platt was ordered to pay the Claimant the sum of £779,803.04 and to pay costs assessed at £88,637.07. Vivere Forte was obliged to transfer of property in south-west London and to pay costs assessed at £75,000.

130. One of these causes of action relates to the allegation of bribery against Mr Hadley, CGrowth, Mr Thwaite and PPL discussed above. The Claimant applied for summary judgment on this cause of action and to strike out the defence of these Defendants relating to this allegation. This application was heard by Mr Ian Karat sitting as a Deputy Judge of the High Court. Deputy Judge Karat dismissed this application in his judgment dated 22 March 2022 ([2022] EWHC 641 (Ch) which was supplemented by a further judgment dated 11 April 2022 ([2022] EWHC 919(Ch). However, his decision was the subject of the successful appeal I have described above.

131. The First Defendant asked the Court of Appeal for leave to appeal to the Supreme Court in respect of this decision. Permission was refused on 5th January on the grounds that the case raises no issue of general public importance and an appeal would not have reasonable prospects of success.

132. On 12 January 2023 the First Defendant, Mr Hadley, lodged an application to the Supreme Court appealing the decision of the Court of Appeal. Separately on 13 January 2023 Mr Thwaite lodged an application on behalf of himself and PPL to the Supreme Court also appealing the decision of the Court of Appeal on different grounds. The Claimant later served notices of objection to both applications.

133. The Supreme Court provided its decision on the application before it for leave to appeal on 18 April 2023. It refused that permission.

4.2 Adjournment applications

134. In view of the application to the Supreme Court, Mr Thwaite (for himself and PPL), with the support of Mr Hadley and Mr Wright made an application for adjournment at the Pre-Trial Review before Mr Richard Spearman KC sitting as a Deputy Judge of the High Court. Deputy Judge Spearman refused that application, noting that if (as he expected) that application was disposed of before trial, then, if the application was refused there was no case for delaying the trial, whereas if it was accepted then the trial judge could consider a question of adjournment again.

135. On the afternoon of Friday 24 February 2023, the last working day before the commencement date of the trial, I received a further application for adjournment on same grounds, it being the case that the Supreme Court had not determined the application for leave to appeal, and it seemed unlikely that they would do so before Easter. After careful consideration, I refused this application and proceeded with the trial.

136. Around halfway through the trial Mr Thwaite (for himself and PPL) and Mr Wright (for himself and CGrowth) - but this time not Mr Hadley - made yet a further application ("**the 14 March Application**") in two parts, essentially amounting to two freestanding applications.

137. The first part sought a short adjournment on the grounds that there had not been time to review information filed late by Mr Hadley following his receipt of them back from the Serious Fraud Office (as I discuss further at [151] below) and there had been no disclosure of information that may be on electronic devices that had been returned to Mr Hadley.

138. After hearing from the relevant parties, I considered it appropriate and proportionate to allow a few days' adjournment for the parties to have a chance to consider the new material. I made an order for this and to require Mr Hadley to apply the search terms that had been ordered for use for electronic disclosure so as to make a further disclosure of what was available on the electronic devices that had been returned to him by the Serious Fraud Office.

139. In ordering this I was mindful in particular that there was a good chance that the new disclosure material might include information that might be of benefit to Mr Jones and/ or Mr Lloyd, and a lesser chance that it might include information that might be of benefit to Mr Wright and CGrowth, although I considered that there was a much lesser chance that there could be anything of use to Mr Thwaite and PPL. Although the Claimant was resisting the application, I considered that the Claimant also might benefit from a chance to obtain further disclosure from the electronic devices and more time to review the information disclosed on paper.

140. The second application that formed part of the 14 March Application was based on a contention that the Claimant had deliberately misrepresented the evidential position before Deputy Judge Karat and before the Court of Appeal. The applicants invited me to determine that matter and meanwhile to adjourn the current proceedings.

141. I agreed to consider this part of the 14 March Application. I did not consider there was any question that it was for me to determine matters that had been determined by the Court of Appeal – this needed to be dealt with through the appeal to the Supreme Court, or through asking the Court of Appeal to reopen their hearing under CPR 52.30 or, following *Thakkar v Gracefield Developments Ltd and others* [2019] UKSC13, by means of a new hearing. However, with some reservations, as the question of adjournment on similar grounds had already been considered by Deputy Judge Spearman and by me, I agreed to hear why the applicants considered that the position had been changed such that this matter should be considered once more.

142. I gave directions for the applicants to produce a more detailed explanation of the case (either by means of the witness statement or a skeleton argument) and agreed to hear this matter at a remote hearing on 17 March 2023.

143. On examining the applicants' claims at that hearing I found that they were unable to point to any statement that could be considered, within its context, a misrepresentation and certainly none that could be considered a fraudulent misrepresentation. I dismissed the application and awarded costs against the Applicants on an indemnity basis (see *Trafalgar Multi Asset Trading Company Limited v Hadley and others* [2023] EWHC 651 (Ch)). I recorded the Court's displeasure that they had sought to impugn the professional reputation of the professionals involved on a basis that was entirely without merit.

5. THE CIRCUMSTANCES OF THE TRIAL

5.1 Representation

144. The Claimant was ably represented at trial by Mr Higgo KC and Ms McRae, supported by the law firm Kingsley Napley and clearly had deployed very ample resources in investigating and documenting their case. I must record my thanks to the Claimant's legal team for the excellent presentation of their case and for the production of well-indexed and hyper-linked electronic bundles. Without the considerable work that the Claimant's legal team put into this I would not have been able to deal with the complexity of this case within the time allowed. Mr Lloyd was represented by Mr Lorrell, instructed by Valemus Law. The other Defendants were not represented and appeared in person (save that Mr Thwaite represented PPL as well as himself; Mr Wright represented CGrowth as well as himself; and Mr Jones represented Titan as well as himself).

145. Mr Chapman-Clark did not appear in person or through any representative. He informed the Court that he would not be appearing. He gave the Court no reason for his non-appearance. He did not request an adjournment and I saw no reason to grant one on the grounds of his failure to appear. He remained free at any time to attend and join in the proceedings and I confirmed with the Claimant's legal representatives that he would be sent transcripts and any new evidence as it arose.

5.2 Applications and Orders

146. Various applications were made during the course of the trial.

147. I have already mentioned at [132] onwards the adjournment application that I received on the Friday evening, before the first day of the trial on the following Monday and which I heard and dismissed on that Monday.

148. I have also mentioned at [136] onwards the further applications by certain of the Defendants for adjournments, which led to me allowing a short adjournment for the parties to review late disclosure by Mr Hadley and my refusing a longer adjournment, after dismissing allegations that the Claimant and its legal team had misled the Court.

149. An application had been made by the Claimant raising objections based on non-compliance with Practice Direction PD57AC to a form of witness statement made by Mr Thwaite. I approved an agreed redacted version.

150. The Claimant had made an application for disclosure of financial information held by CGrowth or Mr Wright. This was not formally adjudicated upon but was dealt with informally by Mr Wright promising to send some documentation which he held upon his return to the United States during the course of the trial.

151. A further order was needed to consequent upon Mr Hadley informing the Court, towards the beginning of the trial, that he was holding a large body of information in paper form and on various devices. This body of information had not been available to him at the time of his main disclosure as it then was being held by the Serious Fraud Office, but it had been returned to him in January, several weeks before the commencement of the trial. I made orders for the information to be made available and, on the application of certain of the Defendants, adjourned the trial for a few days so that this information could be considered by the parties.

152. During the course of the trial, it emerged that the Claimant's unlawful means claim would involve allegations concerning the commission of offences under the Financial Services and Markets Act 2000 (as amended) ("**FSMA**"). Whilst Mr Higgo, for the Claimant, considered, and I agreed, that it was not strictly necessary to amend the Claimant's Particulars of Claim for the Claimant to raise these matters, I indicated that I would be open to their making such an amendment, having in mind that it would be much better for the Defendants to understand fully the case alleged against them in this regard. The Claimant applied for such an amendment and I granted that application and also allowed each of the affected Defendants to file an amended Defence and a further witness statement if they thought fit.

5.3 Privilege against self-incrimination

Relevance of the privilege

153. Mr Higgo, quite properly, drew the attention of the Court and of the Defendants to the implications of the amendments to the Claimant's Particulars of Claim in relation to the Defendants' privilege against self-incrimination.

154. Section 14 of the Civil Evidence Act 1968 has recognised and modified a long-standing privilege recognised by the common law that, subject to exceptions, a person is not obliged to give evidence that might incriminate that person (or that person's spouse). The section provides as follows:

> "**Privilege against incrimination of self or spouse or civil partner**
>
> 14. - (1) The right of a person in any legal proceedings other than criminal proceedings to refuse to answer any question or produce any document or thing if to do so would tend to expose that person to proceedings for an offence or for the recovery of a penalty—
>
> (a) shall apply only as regards criminal offences under the law of any part of the United Kingdom and penalties provided for by such law; and
>
> (b) shall include a like right to refuse to answer any question or produce any document or thing if to do so would tend to expose the spouse or civil partner of that person to proceedings for any such criminal offence or for the recovery of any such penalty."

155. The position under the Civil Evidence Act is modified by various statutes.

Modification by the Fraud Act 2006

156. One of the most important of these modifications arises under the provisions of section 13 of the Fraud Act 2006, which is in the following terms:

> **13 Evidence**
>
> (1) A person is not to be excused from—
>
> (a) answering any question put to him in proceedings relating to property, or
>
> (b) complying with any order made in proceedings relating to property, on the ground that doing so may incriminate him or his spouse or civil partner of an offence under this Act or a related offence.

> (2) But, in proceedings for an offence under this Act or a related offence, a statement or admission made by the person in —
>
> (a) answering such a question, or
>
> (b) complying with such an order,
>
> is not admissible in evidence against him or (unless they married or became civil partners after the making of the statement or admission) his spouse or civil partner.
>
> (3) "Proceedings relating to property" means any proceedings for—
>
> (a) the recovery or administration of any property,
>
> (b) the execution of a trust, or
>
> (c) an account of any property or dealings with property,
>
> and "property" means money or other property whether real or personal (including things in action and other intangible property).
>
> (4) "Related offence" means—
>
> (a) conspiracy to defraud;
>
> (b) any other offence involving any form of fraudulent conduct or purpose."

157. When I refer in this judgment to a "**related offence**", I am referring to an offence within the definition of section 13(4) as set out above.

158. The Claimant partly bases its case on the conduct of certain of the Defendants which, if proved to a criminal standard, might be considered to give rise to certain criminal offences. Such offences, for the most part, would either fall within the ambit of the Fraud Act 2006, or if they do not, would fall within the definition of a related offence. As a result, and as these proceedings are clearly proceedings relating to property, section 13 applies in respect of those offences. As we have seen, section 13 has the effect that:

    i) the Defendants may not refuse to answer questions or provide information in reliance on the privilege against self-incrimination;

    ii) however, to the extent that they do answer questions or provide information, that information could not be used in the course of any criminal trial based on an offence under the Fraud Act 2006 or any "related offence" as defined in section 13(4)".

Should the FSMA breaches be regarded as "related offences?

159. However, the late amendment to the Claimant's Particulars of Claim particularised and brought into focus allegations of conduct on the part of Mr Hadley, Mr Lloyd and Pinnacle that may breach the so-called "general prohibition" included in section 19 FSMA by undertaking a regulated activity without being authorised to undertake that activity or exempt from that requirement. Breach of the general prohibition is made a criminal offence by section 23 FSMA.

160. The Claimant also clarified its allegations against Mr Hadley of breaches of section 24 FSMA. Section 24(1) makes it an offence for a person to hold himself out as being an authorised person or an exempt person or behaves in a way that is likely to be understood

as indicating that he is an authorised person or an exempt person. Section 24(2) provides a defence for the accused if the accused can show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

161. Mr Higgo asked me to consider, particularly in the light of the decisions in *Kensington International Ltd v Republic of Congo* [2007] EWCA Civ 1128 ("***Kensington***") and in *JSC BTA Bank v Ablyazov and others* [2009] EWCA Civ 1124 ("***Ablyazov***"), how the potential prospect of a prosecution against these Defendants based on these criminal offences should be treated under section 13.

162. In *Kensington*, Moore-Bick LJ (with whom the other judges at this hearing in the Court of Appeal agreed) noted (at [36]) that, whilst section 13 was to be strictly construed, it is clear that it does remove the privilege against self-incrimination in the context in which it applies. However, he accepted that there was uncertainty in relation to the precise range of proceedings to which it applies.

163. Moore-Bick LJ considered (at [49]) that

> "the essence of fraud is deception of one kind or another coupled with injury or an intention to expose another to a risk of injury by means of deception"

and accordingly that

> "in order to for an offence to involve some form of fraudulent conduct or purpose it must involve an element of deception".

164. I consider it therefore to be established law that where an offence does not involve an element of deception, the offence would not be one to which section 13 of the Fraud Act 2006 applies to modify the privilege against self-incrimination.

165. In many cases there will be no difficulty in recognising whether section 13 applies, as the offence will or will not clearly on its face be an offence involving fraud or at least an element of deception.

166. In other cases there may be offences which may or may not involve an element of deception. With such cases, the question arises whether the Court should:

i) consider in the abstract only the necessary constituents of the offence, so that if the offence is not one where an element of deception is involved in the offence, the offence will not be regarded as a related offence even if fraud or deception is alleged in the particular case under consideration; or

ii) have regard to the circumstances which are alleged to give rise to the alleged offence, so that if the particular circumstances involve deception, then the offence may be regarded as a related offence.

167. This question has arisen previously before the Courts in relation to one offence that may or may not involve an element of deception. This is the offence created by section 328(1) of the Proceeds of Crime Act 2002 ("**POCA**") which applies when a person

> "enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property buy or on behalf of another person."

168. Whether this offence could amount to a related offence for the purposes of section 13(4) of the Fraud Act 2006 was considered by the Court of Appeal in *Ablyazov*. This question had been touched on, but not determined, in *Kensington*.

169. Moses LJ delivered the unanimous verdict of the Court in *Ablyazov*. It was clear that he had found the question a difficult one. He noted (at [11]) the "*extraordinarily broad*" ambit of section 328 and found (at [12]) that there was "*considerable difficulty in identifying the essential characteristics of an offence under section 328*". At paragraph [13] he found that it was difficult "*to eschew any reference to the factual context in which the claim to privilege is asserted*"; and (at [14]) considered that it was difficult to see why the claimant could not argue that the criminal property was derived from fraud and that in the particular circumstances the relevant defendant's conduct which might fall to be charged under section 328 was fraudulent.

170. At [15] the judge complained that:

> "In the context of an urgent appeal, it is faintly ridiculous that this Court should be required to give a binding ruling whether Moore-Bick LJ's approach in the *Kensington* case requires this Court to identify the essential characteristics of section 328, applicable in every case, particularly when the participation of the fourth and fifth defendants, if proved, is so obviously fraudulent, and the identity of who it is said to fear prosecution remains, as yet, so nebulous."

171. Despite these misgivings, however he went on (at [16] and [17]) to determine the matter as follows:

> "16 But this appeal has been heard as a matter of urgency, and a speedy resolution is required before a further inter partes hearing. For that reason I am prepared to accept the application of Moore-Bick LJ's approach to section 328 and that the Court should confine its attention to what may be discerned as the essential characteristics of that offence.
>
> 17 For the purpose of this appeal I am, accordingly, prepared to accept that Flaux J [the judge at first instance] erred in looking beyond what he described as the "technical ingredients of the offence" and basing his conclusion, at least in part, on the facts of the potential offence."

172. In deliberately confining his reasoning that required "*for the purposes of this appeal*", it would appear that Moses LJ was inviting later judges to consider this matter anew. One can see that there may be good reasons that this matter should be considered anew including the point noted at [14] made by counsel for the claimant in that case, Mr Smith QC (as he then was) that there was an absurdity if those who are thought to have defrauded the bank of its property may be deprived of their privilege against self-incrimination but not those who assisted in its retention and concealment.

173. Nevertheless, in the face of clear guidance from the Court of Appeal in *Kensington* and of that approach being followed again by the Court of the Appeal in *Ablyazov* , I consider that I am bound to follow Moore-Bick LJ's approach in *Kensington* and identify the *essential characteristics* of the offence in question to determine whether it is a relative offence, rather than more broadly, consider whether fraud or deception is alleged in the particular alleged commission of the offence.

174. Under the *Kensington* approach one must therefore seek to analyse the essential characteristics of any given offence. In viewing these two characteristics the question is whether the offence has as its essential characteristic some form of fraudulent conduct or purpose, which in turn requires the offence to involve" *an element of deception*".

175. In my view, the offence under section 24 FSMA has essentially three elements to it:

    i) that the accused was not authorised to undertake regulated activities or exempt;

    ii) that the accused held himself out as being authorised or exempt or behaved in a manner that would have given that impression; and

    iii) the accused is unable to avail himself of the defence that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

176. Whilst within the drafting of section 24 the first two elements are in one subsection and appear to define the offence, and the third point is in a separate subsection setting out a defence, in my view the section needs to be read as a whole. The precise way in which the offence is drafted should be subservient in the analysis to the overall sense of the offence. In taking this approach, I consider I am taking a similar approach to that followed by Snowden LJ when he delivered the unanimous judgment of the Court of Appeal in *The Financial Conduct Authority v Ferreira* [2022] EWCA Civ 397 (see [30] to [40]).

177. Looked at this way, it is clear to me that the alleged breach of section 24 FSMA is an offence involving an element of deception. This is evident from its heading "*False claims to be authorised or exempt*" and from the essential nature of the claim. Whilst it is possible that the offence could be committed without an element of deception if a person committed it unwittingly through a failure to take reasonable precautions to commit the offence but nonetheless had a genuine belief that he was authorised or exempt, that will be the minority of cases and does not in my view affect the essential nature of the offence as one involving an element of deception and therefore, in my view, a relative claim.

178. The offence under section 23 FSMA similarly has essentially three parts to it:

    i) that the accused was not authorised to undertake regulated activities or exempt;

    ii) that the accused nevertheless carried out regulated activities or purported to do so; and

    iii) that the accused is unable to avail himself of the defence that he took all reasonable precautions and exercised all due diligence to avoid committing the offence.

179. It is less obvious that the section 23 offence of breaching the general prohibition involves an element of deception. It could be argued that the essential nature of the offence is that

of undertaking an activity without a required authorisation (or exemption) and that this could be done without any element of deception. With many such offences that would be true – it would be wrong to find that the offence of driving a car without a driving licence should be regarded as having an element of deceit as part of its essential nature.

180. However, I do not consider that this analysis holds good in relation to the offence in section 23 FSMA. First "*purporting*" to be authorised is of itself an offence within the section, and clearly involves an element of deception where this is undertaken in the knowledge (or blind-eye knowledge) that the matter purported is false. Secondly, acting in breach of the general prohibition will, in almost all cases, inevitably involve misleading counterparties, who would not otherwise deal with the offender.

181. As with section 23, there may be some cases where the offence could be committed without dishonesty (because the accused is able to avail himself of the defence that he took all reasonable precautions and exercised all due diligence to avoid committing the offence) but these in my view would be rare and do not affect in my view the essential nature of the offence as one that of its nature will generally involve deception and so is a relative offence.

182. I reach the views set out above in relation to section 23 and section 24 with some hesitation as the point was not fully argued before me and I can see the force of an alternative argument based on the proposition that either of these offences could be committed without any dishonesty by someone who had taken all reasonable precautions and exercised all due diligence to avoid committing the offence. It could be argued that the principle to be taken from the treatment in both *Kensington* and *Ablyazov* of section 328(1) POCA is that if an offence can be committed without fraud being involved, then it is never a relative offence.

183. Nevertheless, I prefer my own formulation as set out at paragraph [174]. This seems to be more closely allied to the intent of the Fraud Act provisions, which is to encourage disclosures being made in trials about property where there is fraud or deception. It would frustrate that intent if the Courts were to take a rigid view that an offence is not a relative offence if the offence can be committed without involving deception, even if in the vast majority of cases the offence would involve deception and is aimed at cases involving deception.

184. The case for section 24 involving an element of deception and so being a relative offence may be considered stronger than that for section 23. Nevertheless, I think there are practical arguments to avoid making a distinction between the two sections and this fortifies me in my conclusion that they should both be treated the same – as relative offences.

185. To do so avoids one of the difficulties in following the *Kensington* approach that is especially pertinent in the circumstances under consideration. This is the difficulty that the same facts may support a variety of different criminal offences, some involving deception (so that they are to be considered as relative offences) and others not. It may be difficult to differentiate on a question-by-question basis as to whether a question or requirement for a document must be answered because it relates to a relative offence, or whether the privilege against self-incrimination still applies because it relates to an offence that is not a relative offence.

186. This is a particular difficulty with section 23 and section 24 as they have overlapping elements. As I have set them out above, the first and third elements of the offences are for all practical purposes identical and the second element overlaps - it is difficult to see much of a difference between "holding out" and "purporting" and, as I argue above, the act of undertaking regulated activities in practice can be regarded as almost always involving an element of deception.

187. If one were to conclude that section 24 was a relative offence but section 23 was not then the result would be that defendants accused of breaches of both sections:

    i) could be required to answer questions or produce documentation where such answers or documentation might incriminate them in relation to the offence under section 24 FSMA (ie whether that they held themselves out as being authorised or exempt or behaved in a manner that would have given that impression; and whether they took all reasonable precautions and exercised all due diligence to avoid committing the offence); but

    ii) could not be required to answer questions or produce documentation where such answers or documentation might incriminate them in relation to a breach of the general prohibition, and therefore an offence under section 23(1) FSMA.

188. The clash between these two differing principles would need to be resolved in favour of the privilege against self-incrimination if a question posed, or documentation requested, was relevant both to a relative offence and another offence that is not a relative offence. Where the two offences overlap as greatly as is the case with section 23 and section 24, the result is likely to be a forensic nightmare. This seems to me another reason for treating both offences in the same way - as relative offences.

189. During the trial I provided the parties with guidance about the privilege against self-incrimination reflecting the analysis above, but warned them that my conclusions in relation to section 23 and 24 amounting to a relative offence could not be taken as the final word on this point, as the point had not been fully argued before me.

190. I was satisfied that each of the Defendants understood this position and gave evidence in the light of this.

6. EVIDENCE

191. The written evidence available to the Court was voluminous, but originally was lacking some key documentation because Mr Hadley had been unable to disclose a great deal of his material as it had been seized by the Serious Fraud Office. He is to be criticised for having received this material back in January and only disclosing this to the Court and the other parties once the trial had begun. However, with the three-day adjournment that I allowed for the parties to consider this new material, I do not consider that this prevented any party from being able to make its case.

192. The Court had witness statements, and heard oral evidence, from the following witnesses:

6.1 The Claimant's witnesses

Mr Butler

193. Mr Butler was the founder of Nascent; and a director of the Fund and of Trafalgar. He gave evidence about the circumstances of the creation of the Fund and of his understanding of its dealings. He was relaxed in the witness box and I believe that he answered all questions to the best of his ability. However, it was clear that he was not greatly involved in the day-to-day workings of the Fund, and understandably has limited recall in relation to issues.

Mr Reinert

194. Mr Reinert was another director of the Fund and of Trafalgar. His evidence covered a similar scope to Mr Butler and I consider that he also was answering to the best of his ability, albeit again with limited recall.

Mr Caruana

195. Mr Caruana was the managing director of Custom House and between 1 January 2016 and 17 August 2016 had been a director of the Fund. He had been more active than the other directors in dealing with the circumstances of the Fund leading to, and following the suspension of net asset value by the Fund. He again answered to the best of his ability and whilst his recall was little better than the other directors it was, understandably, still not perfect.

General comments on the directors' evidence

196. In my view nothing much of value emerged from the cross-examination of the directors.

197. Mr Hadley tried to suggest through his cross-examination that the problems experienced by the Fund arose from the directors not providing sufficient support to him and Mr Biggar, and essentially for not stopping him doing what he did.

198. It does appear to me that, whilst the directors did act decisively and appropriately once they became aware of problems in the Fund, the directors took a very light view of duties while all appeared to be going well with the Fund. They were content to receive oral reports of what the Fund had invested in, without requiring any written explanation or, it seems, any investment rationale or evidence of due diligence. Also it is difficult to understand what due diligence they could have performed on Mr Hadley and Mr Biggar that would have persuaded them that these individuals had the right experience and infrastructure to be running a substantial investment fund.

199. Taking all these points together, from what I have seen (an important caveat, since the directors were not on trial), it would seem that the directors might be criticised for not keeping a firm grip on the Fund – even allowing that the expectations of fund directors may have been lighter during the relevant period (2013-2016) and that standards in the Cayman Islands may be more relaxed than they are in London. Nevertheless, nothing in the conduct of the Fund's directors can be considered to provide anything by way of an excuse or defence against the claims brought against the Defendants.

Mr Doran

200. Mr Doran was an external accountant and business adviser with many years of experience of working with Custom House, and an excellent relationship with Mr Butler. Whilst he was not the appointed accountant for the Fund and for Trafalgar, he was involved in its accounting, and once problems began to emerge he was appointed as a special adviser to investigate those problems. Stephen Doran of Mr Doran's firm was appointed as liquidator of Trafalgar and Mr Doran dealt with the day to day operation of that liquidation.

201. He gave evidence about circumstances of the investigation of Trafalgar the Fund's investments and also gave information about the recoveries that had been made on behalf of Trafalgar during the liquidation. He too answered to the best of his abilities, albeit not with perfect recall.

Mr Rowe- Expert witness

202. Mr Jeremy Rowe BSc DipPFS LLAA, is a consultant at Paladin Financial Experts. Mr Rowe is a financial planner with over 25 years' financial service expertise, who has been active in the SIPP market since 1998 and considers himself a pension transfer specialist. He was engaged by the Claimant as an expert witness to provide evidence about proper level of commissions for references to a financial adviser or for subscriptions into a fund – it having been averred by Mr Lloyd that commissions at the level of 20% were normal in his experience.

203. Mr Rowe summarises his findings in his report as follows:

> *"*73. I found no evidence to suggest that a 20% commission was standard or market level for the introduction of leads. On the contrary, I found these levels of fee to be up to 4000% of the fees charged elsewhere by a similar charging model. …
>
> 75. Given the regulatory requirements for financial advisers, qualifications, and ongoing continuing professional development, it does not seem plausible to suggest that an adviser or an entity promoting SIPPs or particular investments that could be made through SIPPs would agree to pay 20% of the value of funds invested into a SIPP in order to acquire an introduction, or that they would advise a client to do so."

204. His view on this is undoubtedly correct, and there was nothing in a challenge made by Mr Hadley that the introductions were to QROPS rather than to SIPPS.

205. The relevance of his evidence was, however, challenged by Mr Lorrell, on the basis that his client, Mr Lloyd, who was receiving the 20% commissions had (according to his own evidence) not understood that the commissions were payments for introductions to a financial adviser or to a fund, but rather were for introductions to underlying unregulated investments such as Store First and that it was Mr Lloyd's experience that commissions of 20% were usual in those circumstances.

206. Whilst I see Mr Lorrell's point on this, and I discuss this further below, the fact was that Mr Lloyd's role was to introduce investors to a financial adviser in respect of a pension arrangement to invest in an investment fund. Anyone working on the periphery of financial regulation would understand that commissions, in this context, are subject to

regulation, and might be expected to inform himself about the levels of commission that were customary and allowed by regulation in this context. Mr Rowe's evidence establishes that had he done so, Mr Lloyd would have been disabused of the idea that a 20% commission was appropriate in this context.

6.2 The Defendants' witnesses

Mr Hadley

207. I did not find Mr Hadley to be a good witness. Whilst it is to be expected that he would not remember things happening several years ago, and I accept that he had difficult personal circumstances at the time and that this may have affected the extent of his involvement in the business, none of this explains why he appeared to have sharp recall in relation to many details where they were neutral or positive to his case, whereas his recollection was curiously absent where the likely response to a question was one which might be damaging to his case.

208. I do not believe him when he claimed not to remember many important matters, such as whether he told Joseph Oliver, one of the principals appointing his firm as an appointed representative that he was acting as the fund manager for the Fund.

209. Nevertheless, his evidence was helpful to the Court in that it did clear up some matters that were not clear from the written evidence, including that he was frank that he did create the Trafalgar structure at the behest of Mr Talbot and that he had discussions with Mr Talbot and Mr Chapman-Clark about the Fund structure and about individual investments.

210. Generally, I considered that Mr Hadley understood more of his duties, and what is involved in being an investment manager, than he was willing to admit. For example, rather than accepting what a conflict of interests is, he maintained that he had understood that there was no problem in having conflicting interests as long as one was making an investment that he considered would be in Trafalgar's interests. He also, in my view, pretended not to understand the difference between investing in a company that owned property and investing on a basis that is secured on property to justify false statements that he had made to the Fund directors about investments being secured. When I compare this sort of statement with his quick and acute ability to find points that supported his case, I consider that his expressed naivety at what was expected of him was more feigned than genuine.

211. Mr Hadley mentioned that he suffers from attention deficit disorder, and I tried to make allowances for that in providing breaks at particular times and not allowing the days on which he was giving evidence to run over. I believe that these steps taken by the Court, along with an appropriately non-confrontational approach being taken by Mr Higgo in cross-examining Mr Hadley, were helpful in ensuring that Mr Hadley was given the best opportunity to present his case.

Mr Jones

212. Mr Jones presented himself as being an honest and straightforward individual who had got involved in what he had thought to be an honest business venture and was only before the Court because he had trusted Mr Hadley.

213. I consider that he gave his witness evidence honestly and straightforwardly, although he was somewhat angry and flustered at times. Certainly I consider that all the circumstances suggest that he was not motivated by greed for quick profits as was the case with some other of the Defendants – he was in my view genuinely trying to make a go of the Titan business.

214. I consider that he was untainted personally by the arrangements with Mr Talbot and Mr Chapman-Clark. Although there had been a previous proposal for the ownership of the Titan business that did involve companies which he later found out represented those people, this had not been proceeded with and Mr Jones did not know anything of Mr Talbot and Mr Chapman-Clark until these proceedings commenced.

215. Crucially I believe him on his central claim to have been told by Mr Hadley that Mr Hadley had raised his conflict of interest with Trafalgar and it had been waived.

216. This seemed to me to be reasonable on what I accept to be his understanding of Mr Hadley's role (whom he took to be that of a representative of the investment manager) and of the investment manager's role, which he had understood to be that of finding investments that it would bring to Trafalgar for approval by the directors of the Fund. Whilst this understanding was not correct, I consider that he was reasonable in assuming that the investment manager would get approval for substantial investments in advance and would be subject to better scrutiny as well as a clear framework for dealing with conflicts of interest (as Mr Jones would have encountered in the properly-run financial services firms he had worked for in the past).

217. Mr Higgo paints a much darker picture of Mr Jones pointing out those points where he had been less than forthcoming in providing information to the Claimant and pointing to inconsistencies in his statements that suggested he might not have been always truthful. I discuss these matters further below.

Mr Keeling

218. Mr Keeling was relaxed in the witness box and gave his evidence honestly and straightforwardly. His evidence was helpful in establishing the *modus operandi* of Mr Lloyd's operations and was entirely consistent with that given by Mr Lloyd (but not worryingly so to suggest collusion in the evidence they were giving).

Mr Lloyd

219. Mr Lloyd also gave his evidence honestly and straightforwardly. He was clearly feeling pressure - I think the proceedings had caused him to realise his role in what had turned out to cause losses for the pension investors and that there was a degree of guilt about this – although, as I discuss further below, at the time he had genuinely believed that he was doing nothing wrong.

Mr Wright

220. Mr Wright, I am satisfied, generally did his best to give his evidence honestly but he clearly was not prepared for the line of questioning that he received about the commerciality of the CGrowth arrangements and appeared flustered when faced with forensic questioning on the details of the financing and financial projections. Whilst I

generally accept his evidence, I have doubts about his evidence of what he had understood in relation to the insurance cover that was said to have been put in place to support the CGrowth bonds.

Mr Thwaite

221. Mr Thwaite was confident both as a witness and as an advocate in his own cause. He gave straightforward answers to the questions put to him.

7. MR HADLEY'S AND MR BIGGAR'S WANT OF AUHORITY

7.1 Actual authority

222. The question whether Mr Hadley and Mr Biggar had any authority to contract on behalf of Trafalgar, given that they had not been formally appointed by VAM was originally a major point in the Claimant's case. I consider this point to have much less importance now. This is because, by and large, the findings I make concerning conspiracy, breach of fiduciary duty and bribery will generally allow Trafalgar to disclaim any contracts or transactions made by Mr Hadley or Mr Biggar, even where these were made with actual authority.

223. *Lysaught & Co Ltd v Falk* (1905) 2 CLR 421, 439 ("***Lysaught & Co Ltd v Falk")*** establishes that it is not within the scope of an agent's authority to bind his principals by a contract which, although made ostensibly on their behalf, is common to the knowledge of the other party, really made for his own benefit:

> "Every authority conferred upon an agent, whether express or implied, must be taken to be subject to a condition that the authority is to be exercised honestly and on behalf of the principal. That is a condition precedent to the right of exercising it, and, if that condition is not fulfilled, then there is no authority, and any act purporting to have been done under it, unless in dealing with innocent parties[1], is void."

224. Nevertheless, the point as to whether, absent any breach of fiduciary duty, bribery or other wrong-doing, Mr Hadley anyway had no authority has a bearing across this case and it is important that I should address it.

225. As I have noted above, the investment management arrangements were botched in two ways.

226. First, although the assets were to be held and owned by Trafalgar, Trafalgar was not a party to the investment management agreement. This point was not raised by the Claimant or by any of the Defendants but seems to me to be an important consideration when we are looking at the question of authority to deal with Trafalgar's assets.

227. Secondly, as has been raised by the Claimant, although it was clearly always the intention of the Fund, Trafalgar, VAM, Mr Hadley and Mr Biggar that Mr Hadley and Mr Biggar

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[1] The saving provision "*unless in dealing with innocent parties*", is suggested by *Bowstead and Reynolds* (see at 3-012) as being properly taken as an allusion to the concept of apparent authority rather than actual authority – but either way it will have the same effect in relation to the matters now being considered.

would undertake the investment management as agents for VAM, no actual delegation or appointment appears to have been made in this regard.

228. The Claimant has been clear about its position in relation to authority:

i) Whereas authority was granted to VAM, there is no evidence that the directors of VAM granted any authority to Mr Hadley or to Mr Biggar to deal on the part of the Fund. In the absence of any such express authority, they had no such actual authority.

ii) In relation to apparent authority, the Claimant says that neither the Fund nor Trafalgar held out Mr Hadley and Mr Biggar as having authority and if these individuals represented themselves as having authority to deal on behalf of Trafalgar, that is not a representation that can be relied upon as against Trafalgar.

iii) Notwithstanding these points, Trafalgar did appoint Mr Hadley and Mr Biggar to the bank mandate for Trafalgar's funds, and as the holders of this post they both owed the duties of a fiduciary, and it is this appointment that allows the Claimant to make complaints about breach of fiduciary duty on the part of Mr Hadley (and Mr Biggar).

229. I agree with the Claimant that generally, silence is incapable of giving rise to actual authority, unless there is further indication from the principal that they acquiesce to the agency. In *Freeman and Lockyer v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 ("***Freeman and Lockyer***"), Diplock LJ (as he then was) said (at paragraph [50]):

> "…to confer actual authority would have required not merely the silent acquiescence of the individual members of the Board, but the communication by words or conduct of their respective consents to one another…".

230. Further authority, if needed, can be found in the case of *MVV Environment Devonport Ltd v NTO Shipping GMBH & Co KG* [2020] EWHC 1371 (Comm) (4 June 2020). In that case the Court rejected the defendant's argument that it had implied authority, based on the fact that the claimant was copied into 33 emails, naming the claimant as the shipper under bills of lading and had raised no objection to this. The judge rejected the proposition that implied actual authority could arise from the claimant's silence saying at [33]:

> "…assent is not to be inferred from silence, unless there is further indication that the putative principal acquiesces in the agency… The reasons for this are close to obvious. Authority to enter into a contract on behalf of another is authority to commit that other to legal obligations to a third party without qualification and thus is not lightly to be inferred when there is no express agreement to that effect. Further, silence or inactivity is inherently equivocal and thus requires something else in the surrounding circumstances to negative that equivocality."

231. What might establish consent was put at more length by Lord Pearson in *Garnac Grain Co Inc v HMF Faure and Fairclough Ltd* [1968] AC 1130:

> "The relationship of principal and agent can only be established by the consent of the principal and the agent. They will be held to have consented if they had agreed to what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it … But the consent must have been given by each of them, either expressly or by implication from the words and conduct.
>
> Primarily one looks to what they said and did at the time of the alleged creation of the agency. Earlier words and conduct may afford evidence of a course of dealing in existence at that time and may be taken into account more generally as historical background. Later words and conduct may have some bearing, though likely to be less important."

232. Actual authority may be implied from the wording of an express appointment or implied from the circumstances. In *Hely-Hutchinson v Brayhead Ltd* [1968] 1 Q.B. 549, Lord Denning MR relied on *Freeman and Lockyer* and then went on to say:

> "[Actual] authority may be express or implied.
>
> It is express when it is given by express words, such as when a Board of directors pass a resolution which authorises two of their number to sign cheques.
>
> It is implied when it is inferred from the conduct of the parties and the circumstances of the case, such as when the Board of directors appoint one of their number to be managing director. They thereby impliedly authorise him to do all such things as fall within the usual scope of that office."

233. It is acknowledged on all sides that Mr Hadley (and I think Mr Biggar) were intended to have full authority as investment managers within the terms of the VAM investment management agreement. Furthermore, and importantly, it is recognised that at all relevant times the directors of Trafalgar had understood that Mr Hadley and Mr Biggar had been endowed with this authority. They may have understood this because they were unaware of the "documentary error", but nevertheless that is the mutual understanding that they had with Mr Hadley and Mr Biggar.

234. It is telling that, at the point that the documentary error was found, the reaction of Mr Butler was not to question why Mr Hadley thought that he had authority and to seek to undo any investments that Mr Hadley had made without authority. Instead it was to suggest that this matter should be regularised.

235. It is the position, then, that Mr Hadley (and Mr Biggar) were, with the full knowledge of the directors of Trafalgar, making investment decisions on behalf of Trafalgar. They had no problem (until they became aware of the various conflicts of interest that I have enumerated above) with this position and (until they became aware of such matters) took no steps to complain about the position.

236. There was, then, a mutual understanding between Trafalgar and Mr Hadley and Mr Biggar that the latter individuals would exercise a discretionary investment mandate on behalf of Trafalgar, and I think this understanding was that this would be according to the terms of the investment management agreement provided to VAM.

237. Further, it is clear that Trafalgar did provide express authority to Mr Hadley and Mr Biggar in relation to the operation of the bank account. The question in this case, therefore, is not whether Trafalgar provided authority to them - it is the extent of the authority provided. In the circumstances, were Mr Hadley and Mr Biggar justified in thinking that the authority provided to them personally extended not merely to dealing with Trafalgar's money but also in making the investment decisions on behalf of Trafalgar leading to such dealings? In other words, were the circumstances such as to establish an understanding and implied agreement for Mr Hadley and Mr Biggar to manage Trafalgar's assets?

238. I consider that to the answer to this question must be "Yes", given the full circumstances that:

    i) there was a common intention between the Board of Trafalgar and Mr Hadley and Mr Biggar that they should have this authority;

    ii) as a matter of fact, Trafalgar had appointed no other investment manager (VAM having been appointed by the Fund rather than by Trafalgar); and

    iii) there was no suggestion that, in applying Trafalgar's money, Mr Hadley and Mr Biggar were required to wait for instructions from anybody else in determining how Trafalgar's cash was to be disbursed– they were themselves given full discretion on this matter.

239. This last point is of particular importance. If Mr Hadley and Mr Biggar had express authority to disburse Trafalgar's cash without recourse to anyone else, there must be implied into that authority the additional authority to make the bargain that led to that disbursement of cash.

240. If Mr Hadley and Mr Biggar had the authority to make the investments in the first place, did this extend to dealing with the Fund's investments once they had been made? On balance my answer to this point also is "yes" based on consideration of the course of dealing.

241. In *Ukraine v Law Debenture Trust Corp Plc* [2018] EWCA Civ 2026 ("***Ukraine***"), Gloster LJ (at [79]) made the following observations in relation to implied actual authority:

> "(4) Implied actual authority connotes the circumstances, falling short of express words, in which the principal authorises the agent to enter into transactions.
>
> (5) A common example of implied actual authority occurs when the principal appoints the agent to a position, such as chief executive of a company, which is generally understood to confer authority to enter into transactions of the type in question.
>
> (6) Implied actual authority may also occur where, without being appointed to such a position, the agent enters into transactions as if he had been so appointed and the principal communicates its approval of the agent acting in this way… This type of implied authority derives from a course of conduct by the agent, which with full knowledge is approved by the principal. It was by this type of authority that the defendant company was bound in *Hely-*

> *Hutchinson v Brayhead Ltd* and, in the view of Diplock LJ, could have been bound in *Freeman & Lockyer*.
>
> (7) Ostensible authority may arise from any circumstances in which the principal holds the agent out as having authority to enter into the transaction in question on behalf of the principal.
>
> (8) Circumstances giving rise to implied actual authority will generally also give rise to ostensible authority. "Generally they co-exist and coincide, but either may exist without the other and their respective scopes may be different": *Freeman & Lockyer* at p.502 *per* Diplock LJ. So, for example, a chief executive of a company will have both implied actual authority and ostensible authority to enter into transactions generally understood to be within the authority of a chief executive. However, if in a particular case the chief executive's authority is limited in a way of which the third party has no notice, for example by a requirement imposed by the Board for prior Board approval, the chief executive will not have implied actual authority but will have ostensible authority.

242. Whilst I am mindful of the dangers of extrapolating too far from one particular type of implied authority (that of a managing director) to another, nevertheless I think the principle of course of dealing applies here also, given:

    i) the circumstances I outline above as to the intentions of the parties;

    ii) that Mr Hadley and Mr Biggar had express authority to deal with Trafalgar's cash and the implied authority to make the bargains that brought about such cash payments; and

    iii) that they had been agreeing investment transactions on Trafalgar's part within such express and implied authority were reporting the investments to Trafalgar without any complaint ensuing.

243. In these circumstances, I consider it a reasonable conclusion that this course of dealing provided the implied authority to deal further with the investments acquired. These circumstances go well beyond an imputation of implied authority merely by silence.

244. There is a complication in applying the logic above when one considers the way that some of the transactions were documented. Transactions were generally signed off not as "*Trafalgar, by its agent Mr Hadley (or Mr Biggar)"* or "*by Mr Hadley (or Mr Biggar) as agent for Trafalgar*", but rather they were generally signed off in the name of VAM – with the double difficulty that we have seen that those individuals had not been appointed by VAM and VAM had not been appointed by Trafalgar.

245. Nevertheless, however these transactions were signed, it is clear that they had been *agreed* by Mr Hadley and/or Mr Biggar. That, in my view, is sufficient to have caused them to be binding on Trafalgar – absent any considerations of the types mentioned in *Lysaught & Co Ltd v Falk* that might vitiate their implied actual authority on other grounds: a very important caveat in relation to the case before me.

246. My conclusion is that, had Mr Hadley and Mr Biggar been acting honestly and genuinely and single-mindedly on behalf of their principal, Trafalgar, so that *Lysaught & Co Ltd v Falk* did not apply, Trafalgar would be bound by the contracts they made on its behalf.

However in in the transactions outlined above *Lysaught & Co Ltd v Falk* did apply, with the result that Trafalgar is entitled to disclaim such contracts except in favour of a third party that is innocent of the wrong-doing and able to rely on Mr Hadley or Mr Biggar as having apparent authority.

7.2 Apparent authority

247. A principal is not bound by an agent's act done in excess of apparent or actual authority or where the third party is on notice that the agent may be exceeding his/her authority or, as we have seen from *Lysaught & Co Ltd v Falk*, is acting dishonestly or against the interests of the principal. Any act done under such authority is void unless ratified by the principal.

248. In the case of CGrowth, there can be no apparent authority based on any representation or any course of dealings as CGrowth was aware (through its agent, PPL) (see further below and in particular at [592(iii)]) of Mr Hadley's conflicts of interest, had no reason to understand those conflicts of interest to have been disclosed, and therefore could not have relied even on an express representation by Trafalgar of Mr Hadley's authority, as they would have known it to have been vitiated by an undisclosed conflict of interests.

249. In the case of Titan I have concluded (see in more detail at [439] onwards) that Mr Hadley's actual authority was vitiated by his conflict of interest, and originally Titan had no representation from Trafalgar that it could rely on as clothing him in apparent authority. However, by the time he dealt with Titan in relation to the redemption of the loan notes, Trafalgar had allowed a course of dealing to arise which did provide Mr Hadley with apparent authority to negotiate that redemption and, by doing so, impliedly ratified the original subscription. Accordingly, I consider that Titan can rely on Mr Hadley's apparent authority in these regards.

250. As regards Dolphin Capital, Quantum, Momentum and Shawcross, these companies were not participants in this trial, I will not make a finding against them. They will be free to challenge my analysis with any further evidence if the occasion arises for this, but I will say, that on the evidence before me:

    i) as regards the Quantum and Shawcross transactions, Mr Hadley's implied actual authority was vitiated by his conflict of interest arising from the Original Conspiracy (as I define this term at [298]);

    ii) the evidence before me did not include any suggestion that any representation was made by Trafalgar to any of these companies that would allow it to claim apparent authority;

    iii) even if such a representation can be shown as having been made or implied, as with CGrowth, I cannot see that there can be apparent authority based on any representation or any course of dealings because each of those companies, with the possible exception of Momentum and Dolphin Capital, were controlled by participants in the Original Conspiracy and so were aware of Mr Hadley's conflicts of interest and therefore could not have relied even on an express representation by Trafalgar of Mr Hadley's authority, as they would have known it to have been vitiated by an undisclosed conflict of interests;

iv) the same analysis probably goes for Dolphin Capital as it seems likely one could impute to it the motivations of Mr Talbot if he was acting as its agent in obtaining a subscription from Trafalgar;

v) the same analysis probably also goes for Momentum as it seems that, in its dealings with Trafalgar, its decisions were made by Mr Hadley acting as a shadow director or as a *de facto* director such that his knowledge and motivations should be imputed to Momentum.

8. LEGAL PRINCIPLES

8.1 Bases of Claims

251. The Claimant is pursuing several claims, based on various causes of action.

252. I set out below the main points that the Claimant needs to show to demonstrate a claim on such bases as well as an explanation of certain statutory offences said to have been engaged by the Defendants' actions. Save where otherwise specifically referenced, much of this summary is derived from the leading authority *'Civil Fraud'* edited by Grant & Mumford (First Edition, with First Supplement).

8.2 Unlawful Means Conspiracy

253. As I explain in more detail below, the Claimant alleges that the transactions described above involve one overarching unlawful means conspiracy and/or a number of separate unlawful means conspiracies.

254. The requirements for establishing an actionable conspiracy to injure a claimant by unlawful means were described as follows by Nourse LJ in the Court of Appeal decision in *Kuwait Oil Tanker Co v Al Bader* [2000] 2 All ER (Comm) 271 ("***Kuwait Oil Tanker***") at [108]:

> "A conspiracy to injure by unlawful means is actionable where the claimant proves that he has suffered loss or damage as a result of unlawful action taken pursuant to a combination or agreement between the defendant and another person or persons to injure him by unlawful means, whether or not it is the predominant purpose of the defendant to do so."

255. This passage was quoted by Cockerill J in her decision in *FM Capital Partners Ltd v Marino* [2018] EWHC 1768 (Comm) at [93] and she expanded on the elements of the cause of action involved at [94] as follows:

> "94. The elements of the cause of action are as follows:
>
> i) A combination, arrangement or understanding between two or more people. It is not necessary for the conspirators all to join the conspiracy at the same time, but the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of: *Kuwait Oil Tanker* at [111].

ii) An intention to injure another individual or separate legal entity, albeit with no need for that to be the sole or predominant intention: *Kuwait Oil Tanker* at [108]. Moreover:

a) The necessary intent can be inferred, and often will need to be inferred, from the primary facts – see *Kuwait Oil Tanker* at [120-121], citing *Bourgoin SA v Minister of Agriculture* [1986] 1 QB: *"[i]f an act is done deliberately and with knowledge of the consequences, I do not think that the actor can say that he did not 'intend' the consequences or that the act was not 'aimed' at the person who, it is known, will suffer them*".

b) Where conspirators intentionally injure the claimant and use unlawful means to do so, it is no defence for them to show that their primary purpose was to further or protect their own interests: *Lonrho Plc v Fayed* [1992] 1AC 448, 465-466, [1991] B.C.C. 641 ; see also *OBG v Allan* [2008] 1 AC 1 at [164-165] ("***OBG v Allan***").

c) Foresight that his unlawful conduct may or will probably damage the claimant cannot be equated with intention: (see *OBG v Allan* at [166]).

iii) In some cases, there may be no specific intent to harm but intention to injure results from the inevitability of loss: see Lord Nicholls at [167] in OBG v Allan , referring to cases where:

'The defendant's gain and the claimant's loss are, to the defendant's knowledge, inseparably linked. The defendant cannot obtain the one without bringing about the other. If the defendant goes ahead in such a case in order to obtain the gain he seeks, his state of mind will satisfy the mental ingredient of the unlawful interference tort.'

iv) Concerted action (in the sense of active participation) consequent upon the combination or understanding: *McGrath*[2] at [7.57].

(v) Use of unlawful means as part of the concerted action. There is no requirement that the unlawful means themselves are independently actionable: *Revenue and Customs Commissioners v Total Network* [2008] 1 AC 1174 at [104] ("***Total Network***").

(vi) Loss being caused to the target of the conspiracy."

95. However, a person is not liable in conspiracy if the causative act is something which the party doing it believes he has a lawful right to do: *Meretz Investments NV v ACP Ltd* [2007] EWCA C iv 1303; [2008] Ch 244, per Arden LJ (paragraphs [126]-[127]) and Toulson LJ (paragraph [174]); *Digicel v Cable & Wireless* [2010] EWHC 774 (Ch) at Annex I, paragraphs [117]-[118] (Morgan J)."

256. The unlawful means must have been instrumental in causing the loss (see, for example, the speech of Lord Walker of Gestingthorpe in *Total Network* at [95]).

257. As regards the element of unlawful means, it is settled that unlawful means may include: "*a criminal action, a breach of contract, a director's fiduciary duty to a company or*

[2] Cockerill J was referring here to *McGrath, Commercial Fraud in Civil Practice* (2nd edition)

fraud" and more widely breach of fiduciary duty or bribery (see, for example, *Fiona Trust v Privalov* [2010] EWHC 3199 (Comm) ("***Fiona Trust***") at [69].

258. Since *Racing Partnership v Done Bros Ltd* [2020] EWCA Civ 1300, [2021] Ch 233 ("***Racing Partnership***"), it is settled law that, a claimant need not demonstrate that the defendant knew that the unlawful acts relied upon were unlawful, but he/she must know of the relevant facts that render the acts unlawful. However, blind-eye knowledge will suffice (see at [159]).

259. "Blind-eye knowledge" is a phrase used by the Courts, no doubt harking back to the story of Nelson at the Battle of Copenhagen. The story is that Nelson ignored a signal (conveyed by flags) to disengage by placing his telescope to his blind eye, in effect deliberately choosing to remain ignorant of what he suspected his commanding admiral's order might require him to do. It is an appropriate story to remember in the context of a case named after Nelson's later victory at Trafalgar.

260. In the context of offences involving dishonesty, the Courts will find blind-eye knowledge in a party where there is:

    i) the existence of a suspicion that certain facts may exist; and

    ii) a conscious decision to avoid taking any steps to confirm their existence (see *Manifest Shipping Co Ltd v Uni-Polaris Insurance Co Ltd (The Star Sea)* [2001] UKHL 1, [2003] 1 AC 469 ("***Manifest Shipping***").

261. The existence of the suspicion is to be assessed subjectively by reference to the beliefs of the relevant person. As Lord Scott of Foscote put it at [116]:

> "In summary, blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist. But a warning should be sounded. Suspicion is a word that can be used to describe a state-of-mind that may, at one extreme, be no more than a vague feeling of unease and, at the other extreme, reflect firm belief in the existence of the relevant facts. In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. To allow blind-eye knowledge to be constituted by a decision not to enquire into an untargeted or speculative suspicion would be to allow negligence, albeit gross, to be the basis of a finding of privity[3]. That, in my opinion, is not warranted by section 39(5)."

8.3 Breach of fiduciary duties

262. The classic definition of a fiduciary is found in the judgment of Millet LJ in *Bristol and West Building Society v Mothew* [1998] Ch 1, 18A-C and E-F:

[3] In this context "privity" meant whether the party in question was to be regarded as privy to the decision to send an unseaworthy ship to sea for the purposes of s39(5) Marine Insurance Act 1906.

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. … The nature of the obligation determines the nature of the breach. The various obligations of a fiduciary merely reflect different aspects of his core duties of loyalty and fidelity. Breach of fiduciary obligation, therefore, connotes disloyalty or infidelity…"

263. Approving the judgment of Millet LJ, Lady Arden JSC in *Children's Investment Fund v Attorney General* [2020] UKSC 33, [2022] AC 155 at [44]-[45] explained the essence of fiduciary duties as follows:

> "… the key principle is that a fiduciary acts for and only for another. He owes essentially the duty of single-minded loyalty to his beneficiary, meaning that he cannot exercise any power so as to benefit himself. … '*the distinguishing obligation*' of a fiduciary is that he must act only for the benefit of another in matters covered by his fiduciary duty. That means that he cannot at the same time act for himself."

264. Accordingly, the core fiduciary duties are:

i) the '**no conflict duty**': fiduciaries must not place themselves in (or remain in) a position where their duty to their principal conflicts (or may conflict) with their personal interests; and

ii) the '**no profit duty**': fiduciaries must not make profit from their position, unless it is authorised by their principal.

8.4 Dishonest assistance

265. The claim of dishonest assistance is, put simply, "*a liability in equity to make good resulting loss [which] attaches to a person who dishonestly procures or assists in a breach of trust or fiduciary obligation*". See *Royal Brunei Airlines v Tan* [1995] 2 AC 378, 392.

266. In the context of an underlying claim of breach of fiduciary duty, there are thus three elements:

i) A breach of fiduciary duty by another party.

ii) That the defendant procured or assisted in that breach of duty. This means that the conduct, which is more than minimal, must in fact assist the breach. This does not require the Court to assess the precise causative significance of the conduct; the causation requirement is that loss resulted directly from the breach of duty, not the

act of assistance. The claimant must at least show that the defendant's conduct "*has made the fiduciary's breach of duty easier than it would otherwise have been*" (see *Group Seven v Notable Services* [2019] EWCA Civ 614, [2020] Ch 129, ("***Group Seven***") at [110(1)] *per* Henderson, Peter Jackson and Asplin LJJ, quoting Underhill & Hayton, *Law of Trusts and Trustees*, 19th edition).

iii) Dishonesty.

267. The test for dishonesty is a two-part test. In finding dishonesty, the Court must assess:

i) the defendant's actual state of knowledge or belief as to the relevant facts; and

ii) whether, in the light of that state of mind, the defendant's conduct is dishonest, judged objectively (i.e., by the standards of 'ordinary decent people') (see, for example, *Group Seven* at [58]).

268. In commercial transactions dishonesty has for these purposes been equated with, or closely allied to, what is commercially unacceptable. It should not, however, be equated with recklessness.

269. It will typically be dishonest for a defendant to assist in a transaction in which money is applied in a way that he/she knows not to be authorised (as was the case, for example, in *Royal Brunei Airlines v Tan* [1995] 2 AC 378, see at page 393).

270. The defendant need not know the full details of the fraud, of the breach of duty, or of the existence of the underlying fiduciary relationship (see *Barlow Clowes International v Eurotrust International Ltd* [2005] UKPC 37, [2006] 1 WLR 1476, at [28]. Rather,

> "it is sufficient if he knows or suspects that the transaction is such as to render his participation dishonest" (*Madoff Securities International Ltd v Raven* [2013] EWHC 3147 (Comm), at [351].

271. Blind eye knowledge, as explained above, may suffice (see for example, *Manifest Shipping* at [112] and [116] and *Group Seven* at [59] to [60]).

8.5 Unconscionable receipt

272. *Civil Fraud* edited by Grant & Mumford, sets out at paragraph 13-043 the main elements needed to satisfy a claim in knowing/unconscionable receipt. They may be summarised as follows:

i) the disposal of the claimant's assets in breach of fiduciary duty;

ii) the defendant's beneficial receipt of the claimant's assets (or their traceable proceeds); and

iii) the defendant's knowledge that the assets are traceable to a breach of fiduciary duty.

273. Unlike a claim of dishonest assistance, the claimant need not prove that the defendant was dishonest. The relevant question is whether the defendant had such knowledge as to

render it unconscionable to retain the benefit of the receipt of the claimant's assets (see *BCCI v Akindele* [2001] Ch 437 ("***Akindele"),*** at page 455.

8.6 Bribery

274. The law has a particular repugnance for bribery. Lord Templeman vividly expressed this when in *A-G for Hong Kong v Reid* [1994] 1 AC 324 (at 330H) he said:

> "Bribery is an evil practice which threatens the foundations of any civilised society."

275. The key threshold for the application of the civil tort of bribery is the creation of a potential conflict of interest. As Christopher Clarke J put it in *Novoship (UK) Limited v Mikhaylyuk* [2012] EWHC 3586 (Comm), at [106]:

> "the essential character of a bribe is, thus, that it is a secret payment or inducement that gives rise to a realistic prospect of a conflict between the agent's personal interest and that of his principal".

276. As Briggs J (as he then was) explained in *Ross River Ltd and another v Cambridge City Football Club Ltd* [2007] EWHC 2115 (Ch) at [204]:

> "The essential vice inherent in bribery is that it deprives the principal, without his knowledge or informed consent, of the disinterested advice which he is entitled to expect from his agent, free from the potentially corrupting influence of an interest of his own."

277. Briggs J went on to quote Millett J (as he then was) in *Logicrose Ltd v Southend United Football Club* [1988]1 WLR 1256 at 1260–1261 when he said:

> "'It is immaterial whether the agent's mind had been affected or whether the principal has suffered any loss as a result: "the safety of mankind requires that no agent shall be able to put his principal to the danger of such an inquiry as that": [*Parker v McKenna* (1874) 10 Ch App 96 at 124–125, [1874–80] All ER Rep 443 at 456].'"

278. In *Petrotrade v Smith* [2000] 1 Lloyd's Rep 486 ("***Petrotrade***") David Steel J provided the following definition of a bribe under the civil law:

> "For the purposes of the civil law a bribe means the payment of a secret commission, which only means: (i) that the person making the payment makes it to the agent of the other person with whom he is dealing; (ii) that he makes it to that person knowing that that person is acting as the agent of the other person with whom he is dealing; and (iii) that he fails to disclose to the other person with whom he is dealing that he has made that payment to the person whom he knows to be the other person's agent."

279. The elements of the tort can thus be summarised as follows:

    i) benefit to an agent: a benefit (or promise of a benefit) is conferred to an agent;

ii) the creation thereby of a real or potential conflict of interests: the recipient is thereby put in a position where his/her duties to the principal and his/her own interests might conflict;

iii) knowledge of relationship: the provider of the benefit knows that the recipient is acting as an agent; and

iv) secrecy: the benefit is secret from the principal.

280. As a result of the law's particular abhorrence of bribery, the Courts have developed a number of principles which are applied once a payment or benefit has been classified as being a bribe. These include:

i) an irrebuttable presumption that the agent was influenced by the bribe (see *Shipway v Broadwood* [1899] 1 QB 369 ("***Shipway***"); *Otkritie International Investment Management Ltd v Urumov* [2014] EWHC 191 (Comm) ("***Okritie***"), at 68(ii));

ii) the Court will not investigate the briber's motive (see *Anangel Atlas Compania Naviera v IHI* [1990] 1 Lloyd's Rep 167, at page 170);

iii) it is immaterial whether the parties thought that they were doing anything wrong (*Shipway);*

iv) it is not necessary to show that the principal in fact suffered any loss as a result of the bribe (*Parker v McKenna* (1874) 10 Ch App 96; *Otkritie*, at 68(iii)).

281. However, to establish a bribe, the claimant must show that the briber knew that the payee was acting as an agent: see sub-paragraph (ii) of the definition from the *Petrotrade* case set out above. The level of knowledge required was considered in *Logicrose Ltd v Southend United FC* [1988] 1 WLR 1256. The Court considered the degree of knowledge which the briber must possess of the existence of the agent's personal interest and accepted a submission that:

> "nothing less than actual knowledge or wilful blindness will suffice. In particular, constructive knowledge will not do. Parties to negotiations do not owe each other a duty to act reasonably, but only to act honestly".

8.7 Vicarious liability for bribery

282. The principles of vicarious liability are well-recognised as applying in the context of the tort of bribery. In short, if a third-party briber has paid or promised to pay the benefit in the course of his agency, his/her principal will be vicariously liable. Such liability does not depend on whether the principal specifically authorised the bribe, or was (or should have been) aware of it. What matters is whether the act done by the agent was in the course of the authority given to him/her (see, for example, *Hamlyn v John Houston* [1903] 1 KB 81, 85 (Collins MR); *The Ocean Frost* [1986] 1 AC 717, 743B-745C); and *Petrotrade.*

8.8 Corrupt arrangements and rescission

283. The effect of corrupt arrangements in providing a remedy of rescission is illustrated by case of *UBS AG v Kommunale Wasserwerke Leipzig* [2017] EWCA Civ 1567 ("***Kommunale Wasserwerke (CA)****").*

284. In that case, the respondent customer (KWL) of the bank (UBS) argued that it was entitled to rescind credit protection arrangements concluded with the bank as a result of a bribe made (without the bank's knowledge) by the bank's financial advisers to KWL's managing director.

285. The Court of Appeal first noted at [157] that a claim is a claim for an equitable remedy, so that:

> "Where a prima facie right to rescission is demonstrated, the Court nonetheless retains what is traditionally called a discretion to refuse it where it would be unfair or disproportionate, or to afford some other more suitable remedy, such as equitable compensation or an account."

286. Although the Court of Appeal overturned the trial judge's conclusions that the financial advisers had been acting as agents for the bank when the bribe was paid (so that vicarious liability did not apply), the Court found that the bank had been a joint tortfeasor with the financial advisers so that the bank's conscience was affected by the bribe, with the consequence that it would be inequitable to resist rescission (see at [116]).

287. The Court, relying on ***Logicrose***, stated (at [113]) the relevant legal principle as follows:

> "… Where a party to an intended transaction deals with the other party's agent secretly and behind his back, and dishonestly assists that agent to abuse his fiduciary duties to the other party so as to bring that transaction about, then the first party's conscience may be affected not merely by the particular form of abuse by the agent of which it actually knew, but also by any other abuse which the agent chose to employ to bring about the transaction with the first party."

8.9 Breach of the restriction on financial promotion

288. In relation to the unlawful means conspiracy, some of the unlawful means pleaded by the Claimant relate to offences under FSMA. The first of these I shall deal with relates to the restriction on financial promotion.

289. Section 21 FSMA at the time provided as follows:

> "**21 Restrictions on financial promotion**
>
> (1) A person ("A") must not, in the course of business, communicate an invitation or inducement to engage in investment activity.
>
> (2) But subsection (1) does not apply if-
>
> (a) is an authorised person; or
>
> (b) the content of the communication is approved for the purposes of this section by an authorised person.
>
> (3) In the case of a communication originating outside the United Kingdom, subsection (1) applies only if the communication is capable of having effect in the United Kingdom."

290. Engaging in investment activity as defined in subsection (8) of section 21 to mean:

> "(a) entering or offering to enter into an agreement the making or performance of which by either party constitutes a controlled activity; or
>
> (b) exercising any rights conferred by a controlled investment to acquire, dispose of, underwrite or convert a controlled investment."

291. A "*controlled activity*" is one specified as such in The Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (the "**FPO**"). Schedule 1 to that order sets out a list of controlled activities which include, amongst others (I paraphrase):

    i) at paragraph 3, acquiring or selling securities or contractually based investments;

    ii) at paragraph 4(1), making arrangements for another person to acquire or sell securities and certain other types of investments;

    iii) at paragraph 4(2), making arrangements for another person to acquire or sell securities or certain types of investments;

    iv) at paragraph 7, advising a person in his capacity as an investor or potential investor on the merits of acquiring or selling a particular investment that is a security or a contractually based investment.

292. For these purposes, pursuant to paragraph 28 of Schedule 1, the term "*security*" includes, among other things, stocks and shares, instruments creating or acknowledging indebtedness, units in a collective investment scheme (a term that would encompass the Fund) and rights in a personal pension scheme.

8.10 Breach of the general prohibition

293. The other instance of illegality cited by the Claimant against various of the Defendants relates to breach of the "general prohibition" contained in section 19(1) FSMA this provides as follows:

> **"19 The general prohibition.**
>
> (1) No person may carry on a regulated activity in the United Kingdom, or purport to do so, unless he is—
>
> (a) an authorised person; or
> (b) an exempt person.
>
> (2) The prohibition is referred to in this Act as the general prohibition."

294. Under section 23 FSMA, a person who contravenes the general prohibition is guilty of an offence (although it is a defence for the accused to show that he took all reasonable precautions and exercised all due diligence to avoid committing the offence - see section 23(3)).

295. For these purposes a "*regulated activity*" is an activity that is specified in The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (as amended) (the "**RAO**") and is carried on by way of business.

296. The regulated activities that various of the Defendants are, or may be, said to have engaged in which caused them to have breached the general prohibition are:

i) The activity specified in article 53 RAO of providing advice to a person in his capacity as an investor or potential investor on the merits of acquiring or selling certain types of investment including a security. I will call this activity "**advising on investments**".

ii) The activity specified in article 25(1) RAO of making arrangements for another person to acquire or sell certain types of investment including a security. I will call this activity "**arranging deals in investments**".

iii) The activity specified in article 25(2) RAO of making arrangements with a view to another person acquiring or selling certain types of investment including a security. I will call this activity "**making arrangements with a view to deals in investments**".

iv) The activity specified in article 37 RAO of managing assets belonging to another person in circumstances involving the exercise of discretion. This is a specified kind of activity if the assets consist of or include any investment which is a security or a contractually based investment or if the assets may consist of or include such investments, and either have at any time since 29th April 1988 done so, or the arrangements have at any time been held out as arrangements under which the assets would do so. I will call this activity "**investment management** ";

v) The activity under article 64 RAO of agreeing to carry on any of the activities specified in the RAO (with certain exceptions, which do not include the activities listed above).

297. As with the FPO, the RAO defines (at article 3(1)) a "*security*" to include amongst other things stocks and shares, units in a collective investment scheme and rights under a personal pension scheme.

9. THE ORIGINAL CONSPIRACY

9.1 The conspiracy claims

298. The Claimant asks the Court to accept that:

i) Mr Hadley, Mr Talbot and Mr Chapman-Clark were the primary architects of an unlawful means conspiracy (along with Mr Biggar). The Claimant calls this the "overarching conspiracy", but I prefer to refer to it as the "**Original Conspiracy**".

ii) Mr Lloyd/ Pinnacle joined the conspiracy through their agreement with Mr Talbot/Transeuro, and later Mr Hadley, to fundraise in a manner that would direct pension investors towards the Fund and to receive commissions from companies against which they had no right to receive money as occurred in the Quantum and Momentum transactions.

iii) Mr Jones/Titan later joined the conspiracy through their involvement in the Titan and CGrowth transactions.

299. The Claimant argues in the alternative that each of Mr Lloyd/Pinnacle and Mr Jones/Titan entered into separate conspiracies by participating in the transactions in which they were involved. I will deal with points (ii) and (iii) separately below. I will

first deal with point (i): the central allegation of the unlawful means conspiracy between the original parties to this, Mr Hadley, Mr Talbot, Mr Chapman-Clark and Mr Lloyd.

9.2 The combination between Mr Hadley, Mr Talbot and Mr Chapman-Clark

300. It is clear that Mr Hadley, Mr Talbot and Mr Chapman-Clark had all acted together in order to set up the Fund and the arrangements for obtaining investors for the Fund, and extracting commissions from the investments that the Fund (through Trafalgar) would make.

301. As noted above, Mr Hadley was approached by Mr Talbot and Mr Chapman-Clark to set up a fund. Mr Hadley was also aware that Mr Talbot and Mr Chapman-Clark were also liaising with Sovereign about introducing pension investments to the new fund.

302. It was also accepted by Mr Hadley that he had meetings with Mr Chapman-Clark, Mr Talbot, Mr Biggar, Mr Fox, and maybe a Mr Lumsden. (I note from the judgment in *Avacade* that Mr Talbot and a Mr Fox were involved in the similar scheme described in that case.) From the extracts that the Court saw from Mr Hadley's notes, and from Mr Hadley's answers about what these notes concerned, these discussions included discussions regarding the design of what the new fund would invest in and how commissions would be earned by various parties.

303. Mr Hadley also agrees that he understood that Mr Talbot, Mr Chapman-Clark and Mr Lloyd "*would get commissions from the underlying investments of the fund*".

304. Mr Hadley was frank that he regarded himself as setting up the Fund on behalf of Mr Talbot and had agreed with Mr Talbot that he and Mr Biggar would "*take some direction from* [Mr Talbot] *as to what the fund invested in*" and that "*we agreed that Victory* [i.e. VAM] *would consider it*", i.e., investing in investments suggested by Mr Talbot.

305. I suspect that Mr Hadley was underplaying the extent to which he considered himself to be bound merely to consider investment suggestions made by Mr Talbot. From what the Court has heard concerning the original instructions, and from what transpired, it seems far more likely that the understanding was stronger than that, and that in principle he would agree for Mr Talbot to direct the investments, perhaps subject to a right on his part to veto the suggestions if he thought they would not withstand scrutiny by the Board of the Fund. Mr Hadley later fell out with Mr Talbot, and I suspect this related to dissatisfaction on behalf of Mr Talbot that Mr Hadley was not obeying his orders as he had expected.

306. Whether or not this suspicion is correct, the arrangement certainly constituted a continuing conflict of interest for Mr Hadley in relation to his duties to the Fund, to Trafalgar and to VAM. In my view, the Fund's investments into Dolphin Capital, Quantum and Shawcross were only explicable as a result of Mr Hadley (and perhaps also Mr Biggar) preferring his perceived obligation to do as Mr Talbot wished, to the duty they had to the Fund and Trafalgar to make viable investments in reputable companies on commercial terms. It is clear that these investments were not properly researched and, as I have indicated above each of them involved, at the very least, substantial risks for the Fund as an investor, and were on commercial terms that no investor, and certainly no professional investment manager would consider for more than a moment.

307. By the time of the Momentum transaction I consider that Mr Hadley was starting to break away from the Original Conspiracy – albeit still with an immense conflict of interest relating to his self-dealing. However, as he accepts that he used Momentum's money to make payments to Mr Lloyd's company Pinnacle to satisfy obligations of Mr Talbot and of Mr Chapman-Clark to Mr Lloyd, I think that this transaction too should be regarded as having been brought about as part of the Original Conspiracy.

308. The Titan and CGrowth transactions were not conducted as part of the conspiracy but could not have happened without it. When we come to discuss remedies, I will hear argument as to whether the conspirators within the Original Conspiracy should face the consequences of these losses also.

309. As regards Mr Hadley, Mr Talbot and Mr Chapman-Clark, I do not think it could be clearer, that they were all participants as conspirators in a combination or agreement.

9.3 The intent to damage Trafalgar

310. Neither can there be any doubt that they intended to injure Trafalgar. The whole point of the arrangements was to profit from the Fund or, as the arrangements were ultimately set up, from Trafalgar making investments that it would not otherwise make, on uncommercial terms and involving substantial risks, in order to generate commissions from the underlying investments to be received by participants in the conspiracy. The loss to the Claimant was the inevitable consequence of the gains looked for by the conspirators so that the principle that Cockerill J had taken from *OBG Ltd v Allan* as mentioned at [255(iii)] above applies directly.

311. Mr Hadley's defence that there was no intention to injure the Fund or Trafalgar and all of the investments were commercial and intended to benefit Trafalgar bears no credence whatsoever. Furthermore, even if it were true, there would still be substantial injury to Trafalgar as it will have been denied the independent, unbiased advice that it had a right to expect from its fund manager.

9.4 Unlawful means

312. As regards the element of unlawfulness, the arrangements are so rife with illegality and other types of unlawfulness, that one hardly knows where to begin. Putting aside any illegality relating to the position of Mr Lloyd/Pinnacle, which I will deal with below, I consider that the arrangements between Mr Talbot, Mr Lloyd and Mr Chapman-Clark involved at least the following elements of illegality, each of which contributed to the implementation of the conspiracy:

i) Unlawful financial promotion

The preparation and issuance by Mr Talbot and/or Mr Chapman-Clark of an investment brochure that was clearly intended to be used as a financial promotion in relation to the Fund in breach of the restriction under section 24 FSMA on issuing or communicating a financial promotion that has not been approved by an authorised person.

ii) Pretence of providing independent advice

Mr Hadley and Mr Biggar purporting to act as independent financial advisers, acting in the unbiased interests of the pension investors who were referred to them,

when in fact they were highly motivated and incentivised to direct investors towards the Fund, and were acting on behalf of the Fund and its investments. This was unlawful, as a fraud on those investors.

iii) Breach of financial services regulation

It was unlawful also as it involved multiple breaches of the regulations which they were obliged to observe as appointed representatives acting on behalf of an authorised person, originally GPL, a firm regulated in Gibraltar, and later Joseph Oliver, a firm regulated in Portugal - both of which firms had passported their regulatory permissions into the United Kingdom.

The Court heard no evidence as to what the regulatory rules were in Gibraltar and in Portugal, but it would be astonishing if these rules did not include a requirement to disclose conflicts of interest and not to purport to be offering independent financial advice when you stood to benefit from a particular outcome of the advice.

Mr Hadley accepted that, as they were operating in the United Kingdom, they were obliged to operate under the FCA's rules (as local regulator) as well as the rules of the regulators in Gibraltar, and later Portugal. This failure to disclose these conflicts of interests breached both the FCA's Conduct of Business Rules (COBS), and its Principles for Business (PRIN).

It is an interesting question as to whether breach of FCA rules, or those of an overseas regulator, could by themselves provide the unlawfulness element of an unlawful means conspiracy. However, given the other elements of illegality I have enumerated, I do not need to rely on any conclusion on this point.

iv) Breach of appointed representative agreements

We did not see the appointed representative agreements entered into with GPL or Joseph Oliver, but it is inconceivable that these were not breached by the failure of Mr Hadley and Mr Biggar to disclose the conflicts of interest either to those respective parties or in breaching regulatory rules. As I have noted above, breach of contract, even if the Claimant is not a party to the contract, can provide the unlawfulness element of an unlawful means conspiracy.

v) Breach of the general prohibition in managing investments in the UK

It is clear that Mr Hadley and Mr Biggar were acting or purporting to manage investments on behalf of VAM and/or Trafalgar, and unambiguously did so by way of business within the United Kingdom. As such they were undertaking investment management in breach of the general prohibition under FSMA.

It appears that Mr Hadley relied on an assumption that, as they were acting on behalf of Cayman institutions, they would not require any authorisation in the United Kingdom, and that if they did require authorisation Custom House would have told them about this. This defence does not help Mr Hadley. He could only escape a breach of the general prohibition if he could show that he was within section 23(3) FSMA by having taken all reasonable precautions and exercised all due diligence to avoid committing the offence. There is no suggestion or evidence that he had done so.

vi) *Breach of the general prohibition in providing investment advice*

It is arguable whether Mr Hadley and Mr Biggar and/or Mr Hadley's company NBCL were, notwithstanding the appointed representative agreements, acting in breach of the general prohibition in providing investment advice and/or arranging deals in investments and/or making arrangements with a view to deals in investments.

From what can be discovered from public documents at this point it seems that GPL was at the time regulated by the Financial Services Commission in Gibraltar with permissions to provide investment and pensions advisory services. Assuming that there was an appointed representative agreement, and that this covered the services provided, then, whilst Mr Hadley and Mr Biggar were acting under the auspices of that appointed representative agreement they were not breaching the general prohibition. However:

a) it appears that Mr Biggar may have commenced providing investment advice before being appointed as an appointed representative;

b) it appears that Mr Hadley and Mr Biggar may have continued providing investment advice under their appointed representative agreement with GPL after 6 February 2014 when GPL had prohibited them from originating any further business, and before they operated within NBCL under the appointed representative agreement with Joseph Oliver, which became effective on 29 May 2014;

c) it is unclear whether the permissions that Joseph Oliver had would have covered the advice that Mr Hadley was providing. Joseph Oliver's permissions were limited to insurance mediation/distribution. This does not include pension transfers or investment advice. Joseph Oliver represented to the Financial Ombudsman that "*neither NCBL nor Joseph Oliver was authorised to give investment advice in the UK under its passported permissions*". It is Mr Hadley's case that the firm was only advising on pension transfers. He argued that the advice given was limited to whether moving an existing pension to a QROPS was a good idea, and whether the pension scheme being offered (for example Sovereign) was a suitable scheme for the investor: it did not encompass any advice on the merits of directing an investment into Trafalgar. In my view this argument is not sustainable since:

(i) This clearly was not apparent to any outside party: we saw evidence from proceedings before the Ombudsman that investors consider that they have been advised on Trafalgar by Mr Biggar or Mr Hadley; furthermore the Ombudsman agreed with this assessment.

(ii) The documents demonstrate that Mr Hadley and Mr Biggar were giving recommendations to the client, or at the very least, presenting information with an element of value judgment or comparison. Mr Hadley accepted that he was advising on the critical yield and the pension report for the Sovereign scheme also made it plain that Mr Hadley and Mr Biggar were advising on the critical yield for the

bespoke Trafalgar plan. I accept Mr Hadley's evidence that that report was purely based on assumptions as to returns that were mandated at that time by the FCA. Even so, the suitability letters specifically represented Mr Hadley's belief that the critical yield was achievable saying in suitability letters "*I believe the critical yield is achievable … I believe the transfer to a QROPS is right for you*". Taken with the knowledge that the intended investment within the QROPS was the Fund, this would have been read by any investor as a recommendation that that recommendation encompassed the Fund/Trafalgar as well as the QROPS itself.

(iii) Mr Biggar contemporaneously represented that "*The IFA will recommend the Trafalgar fund alongside many others for their clients*".

313. As regards the question of what constitutes advising on investments for the purposes of Article 53 RAO, the Court of Appeal in ***Adams*** shed some light on this subject. At [75] Newey LJ said:

> "It is plainly the case that the simple giving of information without any comment will not normally amount to "advice". On the other hand, I agree with Judge Havelock-Allan QC that the provision of information which "is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision of the recipient" is capable of constituting "advice". I also agree with Henderson J that "any element of comparison or evaluation or persuasion is likely to cross the dividing line". I would add that "advice on the merits" need not include or be accompanied by information about the relevant transaction. A communication to the effect that the recipient ought, say, to buy a specific investment can amount to "advice on the merits" without elaboration on the features or advantages of the investment."

314. The suitability letters advised the clients to transfer into a QROPS wrapper (be it Sovereign or STM) for which Mr Hadley had agreed a bespoke package where investment would be placed only in Trafalgar. Mr Hadley confirmed that his original expectation was that Sovereign would transfer all pension monies to Trafalgar. Indeed, the Sovereign application form referred specifically to Trafalgar. Mr Hadley accepted that clients he referred to Sovereign had pre-selected Trafalgar.

315. The same is true of STM. The application equally referred to Trafalgar. Mr Hadley told STM "*that we had – or expected – a flow of clients to come through and that they would be investing in the Trafalgar Multi Asset Fund*". Indeed, STM passed a resolution on 17 March 2014 that approved investment only in Trafalgar.

316. At least one individual investing in Trafalgar understood Mr Hadley's critical yield report to be recommending Trafalgar, as is recorded by a decision of the Financial Ombudsman when looking at one instance of the misselling involved in this:

> "I am aware that neither the pension transfer report nor the suitability letter make specific recommendations about TMAF, only the transfer to QROPS. But, the transfer and the investment in the fund were closely related. In effect, this was all part of one transaction".

317. Mr Hadley appeared to accept this saying in his oral evidence:

> "In terms of the transactions, they were part of the same transaction, weren't they? Because the investment happened through the application form to transfer the pension."

318. The investment in Trafalgar was inextricably bound up with the investment in the QROPS. When the Court has looked at similar schemes for routing investment monies into an underlying investment via a pension wrapper (see *Adams* at [58] to [68]) the Court has found that the advice and arrangements for the investment must, in what has been referred to as "*a single braided stream of advice*", be taken as referring to both stages of investment. I find the same to be true in this case also.

319. Taking all these points together I consider that Mr Hadley and Mr Biggar were giving investment advice not only on the QROPS pension wrapper but also on the investment into the Fund and therefore outside the scope of their principals' permissions at least in the case of Joseph Oliver, and probably in both cases outside the scope of what the appointed representative agreements allowed them to do.

320. The unlawful means described above, in my view, form a necessary element of the conspiracy and directly contributed to the losses suffered by Trafalgar. Those losses could not have been sustained without the pension investors having been persuaded to transfer their pension monies to the Fund. Had those investors understood the full extent of these arrangements, and in particular the large commissions being earned, they would be unlikely to have invested. They inevitably would have learned this had the arrangements been set up properly by honest individuals complying with their duties and with applicable regulation. Furthermore, had Mr Hadley and Mr Biggar not been so ready to accept the multiple conflicts of interest involved in these arrangements, there would be no corruptly-motivated investments and no losses to Trafalgar.

9.5 Conclusion in relation to the Original Conspiracy

321. In conclusion, as regards the Original Conspiracy, I consider that the Claimant's allegation of an unlawful means conspiracy is fully made out. The Claimant's losses from the Original Conspiracy must include any losses it incurred from its involvement in Dolphin Capital, Quantum, Momentum and Shawcross.

322. It is less clear whether the Claimant's losses from the Original Conspiracy, taken by itself, also deal with any losses arising from the Claimant's involvement in Titan or CGrowth as these arrangements do not appear to have been within the original scope of the Original Conspiracy - Mr Hadley by this time had fallen out with Mr Talbot and there is a good argument that at this point Mr Hadley was no longer operating for the benefit of the original conspirators but, insofar as he continued to damage the Fund's interests was acting on his own behalf, or under the terms of a separate conspiracy.

323. Nevertheless, as the effect of the Original Conspiracy was to place pension investors funds into the hands of Mr Hadley so that he could disburse them in ways that would benefit the conspirators, including himself, the fact that Mr Hadley continued to do so for his own purposes after he had fallen out with other of the original conspirators be seen as a harm to Trafalgar brought about by the Original Conspiracy, and therefore something for which all the original conspirators should be fixed with responsibility. I will hear further argument on this point when we come to discuss remedies.

324. I deal below separately with the question whether Mr Lloyd should be regarded as part of the Original Conspiracy or as part of any further conspiracy.

10. MR LLOYD'S INVOLVEMENT

10.1 How Mr Lloyd became involved

325. Mr Lloyd first became involved in a business of introducing potential investors to investments working for a Mr Wright in a business which traded as Alhaurin Wealth, where he took responsibility for web-based marketing. This Mr Wright is unconnected to the Seventh Defendant in the current case and I will refer to him as "**Mr Wright of Alhaurin Wealth**". Whilst working for that business, Mr Lloyd became aware of Mr Talbot and Mr Chapman-Clark, whom he understood as representing Store First – a major source of commissions to Alhaurin Wealth.

326. In the summer of 2012 Mr Lloyd resigned from Alhaurin Wealth to set up his own business of advertising online to obtain clients whom he then would introduce to investment companies and regulated financial advisers. This would be on the basis that he would receive a commission once the investment had completed. He traded as a sole trader under the business name of AIP Worldwide, or AIP. He later operated through companies called Steel River Associates and Pinnacle.

327. He later acquired employees, first his brother-in-law Mr Chris Bernard and later Mr Keeling. At this point he was dealing with companies that included Asia Teak, Verdant Australian Farmland (as investee companies) and dealing through a financial advice company called Choices Financial Solutions. This company later put him in touch with Dolphin Capital who in turn put him in contact with financial advisers called The Pensions Specialist Limited (which was a firm authorised by the FCA until September 2003) .

328. Mr Lloyd became involved in the Trafalgar arrangement as a result of his existing association with Mr Talbot, Transeuro and Store First. Mr Lloyd and his employee, Mr Keeling, actively sought out a relationship with Mr Talbot to introduce business to Store First. Mr Lloyd reached an oral agreement with Mr Talbot (and/or his company Transeuro), by which he (through his trading name AIP Worldwide and thereafter his company Pinnacle would introduce clients to an IFA for onward investment into Store First. This would entitle him to a 20% commission, payable by Transeuro from the invested funds upon completion of the investment. Before that most of his business involved introductions to Dolphin Capital via The Pension Specialist for which he received a commission of 15% upon the investment being made, with a further 5% deferred and payable if the investor remained invested for a 12 month period.

329. Mr Lloyd started working with Mr Talbot on this basis towards the end of 2013 and received his first commissions from Transeuro at the end of 2013 and the start of 2014 for investments into Store First.

330. Sometime in the second half of 2013, Mr Talbot told Mr Keeling that he was setting up an investment called Trafalgar Multi-Asset Fund and this would incorporate future Store First investments. Mr Lloyd understood that this was not a UK regulated investment: it was a Cayman Islands incorporated unregulated alternative investment fund. Mr Lloyd understood that Mr Talbot, via his company, Transeuro, would receive commissions from

the underlying investment companies (as he had done with Store First) once investments had completed by the Trafalgar fund. He understood that 10% of the funds had to remain in cash within the Trafalgar fund so his commission of 20% would be paid on the remaining 90% of funds being invested.

331. The process for recruiting investors has already been described above, and this description is entirely consonant with the evidence given by Mr Lloyd and by his witness, his former employee Mr Keeling.

10.2 Was Mr Lloyd a conspirator in the Original Conspiracy?

332. The Claimant asserts that Mr Lloyd and Pinnacle joined the Original Conspiracy through their agreement with Mr Talbot and Transeuro, and later Mr Hadley to fundraise for the Fund and to receive commissions for successfully introducing clients to the Fund from companies from which they had no right to receive money, including through the Quantum and Momentum transactions.

333. Mr Lorrell, on behalf of Mr Lloyd, argues that the Claimant has not shown enough to implicate Mr Lloyd and Pinnacle in any such conspiracy.

334. As mentioned at [255] above, one of the elements of an unlawful means conspiracy is that, as Cockerill J put it:

> "the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of".

335. Essentially, Mr Lloyd's case is that he was not a knowing participant in an unlawful means conspiracy – if anything he was a tool of the conspirators, in particular, of Mr Talbot. Whilst he readily admits to his role in recruiting investors, and to the receipt of commissions based on investments that Trafalgar made, this, in Mr Lorrell's submission, is not enough for him to be said to be acting in concert in perpetrating a conspiracy to harm Trafalgar.

336. Mr Lorrell's first argument in this regard is, in my view, based on a mischaracterisation of Trafalgar's case. In his closing skeleton, he states that the Claimant relies on the 20% commission paid as the main indicator to Mr Lloyd that the monies being offered were from unlawful means. In response to that allegation, he argues that Mr Lloyd was used to getting commissions of that sort of level. Whilst many of the companies paying such levels of commission have now been found to be Ponzi schemes, or something akin to a Ponzi scheme, at the time Mr Lloyd did not understand that, he was therefore innocent in accepting commissions at this level, and furthermore, the fact that he obtained the commissions from, what he believed to be, the agent of the underlying investee (Mr Talbot/Transeuro).

337. Mr Lorrell's argument does not do justice to the strength and subtlety of the argument put for the Claimant. It is not merely the size of the 20% commission that should have caused Mr Lloyd to think about these arrangements, but all of the surrounding circumstances. Even accepting Mr Lloyd's case (as I do) that he was unaware of the precise structure of the Fund and Trafalgar, and in particular of Mr Hadley's involvement in managing (or purporting to manage) Trafalgar's investments, Mr Lloyd knew, or should have known, had he not turned a blind eye to the arrangements that gave rise to his commission, that:

i) he was due to receive a substantial commission from Mr Talbot/Transeuro;

ii) that commission depended on (a) a so-called independent financial adviser (which he understood to have been recruited by Mr Talbot) recommending investment into a personal pension that would invest into the Fund; (b) the Fund being persuaded to invest 90% of its assets in underlying investments that would pay Mr Talbot/Transeuro a commission in excess of 20%;

iii) the pension investors were being procured to enter into these arrangements on the basis of an investment brochure that had not been approved by any FSMA-authorised person and did not disclose that commissions based on in excess of 20% on 90% of what they invested would be paid out by investee companies who had an arrangement with Mr Talbot – severely reducing the potential scope of the investments that may be made by the Fund and greatly increasing the risk involved in the investment (it being obvious to anybody that only companies that were not able to raise funding from more conventional sources would be willing to pay such a commission);

iv) had the true picture regarding the commissions been known to the investors they would have been very unlikely to invest.

338. Furthermore, Mr Lloyd received payments in many cases not direct from a bank account operated by Mr Talbot or by Transeuro, but as to £450,000 paid to him and £766,901.52 paid to Pinnacle from an escrow account with the Law Debenture Trust that had been set up in relation to Trafalgar's investment in Quantum; and as to some £528,748.40 paid from Momentum. I consider that there was another element of blind-eye knowledge involved in Mr Lloyd accepting receipt of these monies from these unexpected sources without making more thorough enquiries into what was involved.

339. In other words, Mr Lloyd knew, or must be considered to have blind-eye knowledge, that the scheme by which he would be paid his commissions would involve multiple conflicts of interest; investors were basing their decision making on an unlawful financial promotion that provided inadequate disclosure of the financial arrangements, and (according to Mr Lloyd's understanding) advice from a financial adviser nominated by Mr Talbot and likely to be subject to a conflict of interests. Furthermore, he blinded himself to the source of his payments when the circumstances of their receipt should have put him on notice that there was something amiss.

340. Mr Lorrell makes the point that it appears that Mr Lloyd did not believe that he was doing anything unlawful, and I accept this. Apart from his own witness statement and oral evidence, which I accept have been given honestly and with no intention to hide any of his involvement, this is evidenced, amongst other things, by his openness in disclosing his own contact details to pension investors, his not hiding behind a screen of nominee arrangements relating to corporate arrangements in companies set up in countries where it is difficult to establish ownership (as was the case with Mr Talbot and Mr Hadley); using his own personal bank account for the purposes of the arrangements; and introducing some 20 or more retired Metropolitan Police officers into the arrangements.

341. Nevertheless, since *Racing Partnership* (see at [144] and the survey of prior case-law preceding that paragraph) it is clear that it is not a necessary element of an unlawful means conspiracy to show that the conspirator knew that the unlawful acts undertaken as

part of the conspiracy were unlawful. It is enough that he is involved in the conspiracy and knows of the facts that render it unlawful.

342. In my view Mr Lloyd knew enough to have realised that the arrangements whereby he got his commission were only going to occur in circumstances that must involve damage to the Fund or any company such as Trafalgar through which the Fund traded. He did so in conjunction with an arrangement with Mr Talbot, and later with Mr Hadley and as such, I consider he is implicated in the Original Conspiracy.

343. As noted at [255] above, it is not necessary for Mr Lloyd to have joined the conspiracy at the same time as the other conspirators, and I do not consider that it is necessary for him to be aware of all elements of the conspiracy or the role and identity of all those involved in it. It is enough that he knew what he knew, and should have realised what he knew that the result of the arrangements was likely to harm the Fund, and/or any company through which it traded by causing the Fund to be invested in investments that were made with a view to benefiting someone else, and denying it the unbiased and undivided loyalty it was entitled to receive from its investment manager.

344. Having established Mr Lloyd is involved in the Original Conspiracy, I will deal with the ways in which he was involved in unlawful acts which further the conspiracy.

10.3 Did Mr Lloyd breach the restriction on unapproved financial promotions?

345. The first issue is I think unarguable. Mr Lloyd, or rather staff working for Mr Lloyd or for Pinnacle, clearly were in breach of the restriction on financial promotion contained in section 21 FSMA.

346. There is no doubt that in providing pension investors with the investment brochure relating to Trafalgar, Mr Lloyd's staff were communicating an invitation or inducement to engage in investment activity and that that communication was capable of having, and indeed did have, effect in the United Kingdom.

347. It is clear that the investment brochure and oral representations made by Mr Lloyd's team based on the investment brochure were provided with a view to all or any of the following:

i) inducing investments into the Fund;

ii) inducing personal pension schemes to be taken out in order to allow investment into the Fund; and/or

iii) inducing the recipients to obtain advice on personal pensions and/or investments in the Fund; and/or

iv) inducing the recipients to enter into arrangements to acquire personal pensions or units in the Fund.

348. Each of these activities are controlled activities. Therefore communicating the brochure and these oral representations constituted breaches of the financial promotion restriction.

349. The FPO includes within it numerous specifically targeted exemptions that can apply in certain circumstances, but no one has suggested that any of these exemptions apply in this case and I cannot see that any of them would be available.

350. These breaches were central to the conspiracy to recruit investors to the Fund with a view to investing their money in a way that would benefit the participants in the conspiracy, as it appears that the pension investors relied heavily on the brochure in putting in motion the arrangements that would lead to investments being made into the Fund on their behalf. Mr Lloyd and Pinnacle, through employees for which they were responsible, undertook these breaches, and therefore contributed further instances of illegality to the conspiracy.

351. From his reaction during the trial, it would appear that Mr Lloyd was unaware of the financial promotion restriction (although he had some awareness of the general prohibition). Whilst this lack of awareness perhaps goes to the degree of culpability involved on his part, and on that of Pinnacle, it does not absolve him of the offence. Neither does it help him in defending himself against his involvement in an unlawful means conspiracy, given what I have already said as the effect of the decision in *Racing Partnership*.

10.4 Did Mr Lloyd provide investment advice under article 53 RAO?

352. The other instances of illegality of which Mr Lloyd and Pinnacle are accused relate to breach of the general prohibition contained in section 19(1) FSMA.

353. The Claimant's position is that Mr Lloyd and his staff were giving investment advice in breach of the general prohibition. Mr Keeling's evidence, accepted by Mr Lloyd, was that AIP/Pinnacle had telephone discussions in which they explained the benefits of investing in Trafalgar to the client, including the prospects of returns (in other words, gave information containing value judgments or comments on the investment and/or recommendations). Mr Higgo suggests on behalf of Trafalgar that the Court should infer from this and from the financial incentives at play, that AIP/Pinnacle encouraged clients to invest in Trafalgar.

354. Mr Lloyd is adamant in denying this and considers it was made clear at all times that his staff were not able to provide advice, and did not intend to do so. They were clear that their role was to introduce pension investors to a financial adviser who would provide the advice.

355. In making Trafalgar's case on this point, Mr Higgo has referred me to the consideration provided in *Adams* as to what constitutes advising on investments for the purposes of Article 53 RAO. That case involved a similar scheme for investment via a pension fund into store pods provided by Store First (and indeed involved Mr Lloyd's previous employer, the Mr Wright of Alheurin and a "Mark Talbot" whom I understand to be Mr Talbot).

356. I have already quoted (at [313] above Newey LJ's explanation in *Adams* of what constitutes financial advice. His conclusions are to my mind confirmed when one considers the later legislative changes that were made to the RAO with effect from 3 January 2018 following HM Treasury's consultation "*Amending the definition of financial advice*". Article 53 was amended so that the specified activity, when applied to regulated firms (but only regulated firms) applied only when the advice included what was defined as "*a personal recommendation*". This confirms that before this change, and

following this change as regards firms that are not regulated, investment advice includes something falling short of a personal recommendation. A personal recommendation is defined at length in the revised version of the RAO with the main ingredients being (I paraphrase) that the recommendation is made to a person in that person's capacity as an investor or potential investor (or an agent for such a person); the recommendation is to acquire or sell an investment; and the recommendation is presented as suitable for the person to whom it is made, or is based on a consideration of the circumstances of that person.

357. Mr Keeling's evidence suggests that Mr Lloyd's staff did discuss the benefits of a pension transfer he said he would "*explain to them the benefits of making that transfer and that eventual investment*", although he also said that "*we didn't really talk about the investment. It was more about the QROPS itself. So we did have a brochure that we would send out, but we didn't really talk about the investment so much"*. He also suggested that he would tell clients about the intended yield on the Trafalgar Fund and also when filling in the fact find would discuss the client's attitude to pension risk.

358. Mr Higgo invites me to rely on these facts, and on the fact that AIP/Pinnacle must have done a sufficiently convincing sales pitch to persuade the client to select Trafalgar to suggest that Mr Lloyd's staff crossed the line between merely providing information to that of providing advice by providing an element of comparison, evaluation or persuasion. He may be right, but on the information available to me, I do not think the case is made out on a balance of probabilities of investment advice having been given.

359. Whilst it seems that Mr Lloyd did not understand very much about financial services regulation in the United Kingdom, I am satisfied that he was aware that it was unlawful for him or his staff to provide advice without being regulated and would have instructed his staff to make it clear that they were not providing investment advice. Whilst I must, and do, accept the very helpful guidance provided in *Adams* and in the cases referred to in it, it seems to me that the question (whether particular statements which include or imply recommendation amount to advice) must be viewed in the context in which they are given. I consider that a relevant factor here is whether the recipient of the statement would have understood this as being advice given to that recipient, or would have considered it as being something else, such as a sales pitch.

360. In the case of Mr Hadley and Mr Biggar it was clear that the context was that the pension investors were receiving investment advice. In the case of Mr Lloyd I think Mr Lloyd's staff were clear that they were not giving investment advice. Relevant to this point is the way that AIP and later Pinnacle held itself, which I consider was on a consistent basis that its role was to introduce an IFA to give advice and at every opportunity disclaimed any idea that it was giving advice itself.

361. Of course, it would be a rogue's charter if someone could get away with providing regulated advice without being regulated and merely cover their activity by including somewhere in the small print a statement that they were not providing advice. But that was not the case here. As far as I can ascertain, Mr Lloyd's team was clear that their role was to introduce investors to a regulated (or at least an exempt) financial adviser to receive advice, and that investors should be relying on that advice and not anything said by them. I think that is how the pension investors would have understood their role.

362. This provides a crucial distinction between the arrangements here, and the arrangements in *Adams*, where no advice was given by anyone at any stage before the investor was handed on to the personal pension provider. Although the introducer in that case (CLP) agreed with the personal pensions provider not to provide advice, it was clear that advice had been very directly provided by that introducer; that the pensions investor in that case had understood this as being advice; and that the personal pensions provider itself was not providing advice.

363. By contrast, in our current case the pension investors were in every case being handed on to an investment adviser who did take responsibility for providing advice at least in relation to the QROPS private pensions. Mr Lloyd says, and I believe him, that he thought the financial adviser (Mr Biggar, Mr Hadley or Mr Hadley's company NBCL) was advising both on the QROPS and on investment into the Fund. It appears from the Financial Ombudsman decision I have referred to above that at least some investors thought that also, and that this also was the conclusion of the Financial Ombudsman. This is also my conclusion.

364. In the context that Mr Lloyd and his staff took some pains to explain that they would not give advice and referred pension investors on for advice I do not think it is safe for me to conclude that they were giving advice, and on the balance of probabilities I will take it that they were not.

365. In taking this view, I am paying full regard to the decision of Mr Adam Johnson, sitting as a Deputy Judge of the High Court (as he then was) in *Avacade*. In that case, he took the view that, even though the introducer involved (Avacade) positioned itself as an "*alternative investment distribution company*" and was clear that it was not regulated, that the pensions summary and "*relevant pension market information*" that it provided did not "*constitute financial advice or a recommendation in any way*" and recommended that clients seek financial advice from a recommended financial adviser, the Deputy Judge considered that it had provided expressions of opinion and recommendations that amounted to investment advice. He considered the question (at [347] onwards) whether one should regard the messages contained in the various calls as part of an Avacade sales pitch, rather than as part of an exercise in the giving of advice. He made a distinction between (i) assuming an advisory relationship and (ii) giving advice for the purposes of article 53 RAO. He acknowledged that Avacade had not been engaged as an adviser and had not assumed any responsibility to advise, but considered that this was not the question saying (at [350(iv)]):

> "iv) Instead, the question is a more straightforward and narrower one. It is simply whether exchanges with consumers took place which, on their proper construction, can be said to qualify as “advice” within the scope of the restriction on article 53 of the RAO. Although the nature or basis of the relationship between the parties is relevant to that question (the answer would be very straightforward if there were an advisory relationship), it seems to me it is not and should not be determinative. Activity corresponding to advice which in truth falls within the perimeter of regulated activity defined by article 53 can no doubt occur in unexpected places, including in the context of relationships which the parties have chosen to characterise as non-advisory, or which might accurately be described for other purposes as not engaging any common law duty of care."

366. As regards the test for article 53 RAO, he said (at [350(v)] to [350(vii)]):

> "(v) … that involves looking at the substance and not the form of what has happened, in light of the language in the Order.
>
> (vi) To put it another way, there is every reason to suppose that article 53 is there to ensure not only that someone seeking to act as an investment adviser is properly authorised, but also to ensure that where a salesman expresses views which in substance are really advice about the merits of buying or selling particular investments, steps can be taken by the Regulator.
>
> (vii) The real question is therefore whether something which can fairly be described as having the quality and character of advice on the merits of buying or selling securities has been given. In my view, the answer to that question in this case is yes."

367. I would not go so far as the Deputy Judge in suggesting that when a salesman lauds a financial product and the customer would have understood this as being a sales pitch, it is necessary in order to protect consumers, to treat what is said as investment advice so as to bring the general prohibition into play. Consumers are already protected by the financial promotion restriction from receiving invitations or incitements concerning financial products or services that have not been approved by an authorised person. Nevertheless I acknowledge the point being made here that, where investors are objectively found to have been giving advice, the fact that this is in a sales context rather than in the context of an expressly advisory appointment does not prevent the advice falling into the regulated activity of giving investment advice.

368. Even so, the context in which things are said remains important in construing whether, in that context, the statements made have the quality and character of advice on the merits of buying or selling securities. I do not think that we can take from *Avacade* a principle that this context can be entirely ignored.

369. Where there is not an express recommendation (as I think Deputy Judge Adam Johnson found in *Avacade* – see at [301], which refers to "*explicit or implicit advice and/or recommendations*") but the Court is asked to infer a recommendation from an "*element of comparison or evaluation or persuasion*" to use the words of Judge Havelock-Allan QC as quoted at [313] above, it remains, in my view, appropriate to look at the context when considering whether what is said should be construed as amounting to investment advice.

370. In such cases it is more appropriate, I consider, to take a more rounded approach. This still involves looking at what is said and seeing whether it can be considered as including an element of recommendation, evaluation or persuasion so as to constitute advice. However in such cases, it involves also looking at the circumstances in the round to consider whether a reasonable investor would have understood himself to have been receiving advice.

371. In this context, disclaimers by the putative adviser would be relevant, but not determinative if a reasonable person would nevertheless have understood himself to be receiving advice. It would also be highly relevant whether before any investment decision was taken the investor was required (rather than merely advised or allowed) to

take investment advice from a regulated (or exempt firm) who would take responsibility for the advice.

372. Applying this approach, I consider that Mr Lloyd and his team and Pinnacle were not providing investment advice.

10.5 Did Mr Lloyd undertake an activity specified under article 25 RAO?

373. If Mr Lloyd and his team and Pinnacle were not providing investment advice, they certainly were assisting with arrangements for the investment into a personal pension, and arguably for the investment into Trafalgar. At the very least this would have involved making arrangements with a view to deals in investments (under article 25(2) RAO), and it could further be argued that they were arranging deals in investments under article 25(1) RAO. The facts here are similar to those found in *SimplySure Ltd and another v Personal Touch Financial Services Ltd* [2016] EWCA Civ461 ("***SimplySure***") where the Court of Appeal found that similar activities clearly were within article 25(2) RAO and reserved its position as regards article 25(1) RAO.

374. The distinction between the activities covered by article 25(1) and those covered by article 25 (2) RAO is not always clear in practice.

375. One important distinction is that article 26 RAO applies to limit the ambit of article 25(1), but not article 25(2). Article 26 provides:

> **"Arrangements not causing a deal**
>
> 26. There are excluded from article 25(1) arrangements which do not or would not bring about the transaction to which the arrangements relate."

376. The consequence of article 26 is to limit the ambit of article 25(1) by imposing a causal requirement. As was noted by Newey LJ in *Adams* at [93], it is less clear quite what that requirement is. A conclusion in *Adams* (at [95]) after a review of the authorities was that:

> "That arrangements must be such as to "bring about" a transaction does not mean that they must "necessarily result" in the transaction taking place …".

as well as conclusions (at [97]) that:

> "… it is important to focus on the words "bring about". However, I would add that, as used in article 26, these words imply… "causal potency …".
>
> and
>
> "Whether or not arrangements "bring about" a transaction is not to be judged simply on a "but for" basis, but neither is a "direct" connection inevitably required."

377. In *Adams*, on the facts involved in that case, the Court of Appeal found that there was a sufficient link between the actions of the introducer and the ultimate investor to find the article 26 exclusion did not apply and article 25(1) did apply.

378. However, the facts in that case were different in that there was no intermediate step of advice being received from a financial adviser interposed between the actions of the introducer and the subscription into a personal pension. This changes the analysis.

379. On this point, it is appropriate to consider an earlier passage (at [19]) within *Adams* where Newey LJ referred to (and I think considered he was following) a passage in the decision of the Court of Appeal in *SimplySure* delivered by Sir Stanley Burnton which (at [26]) approved as correct passages in the FCA's Perimeter Guidance Manual which stated:

> "**PERG 5.6.2**
>
> The activity in article 25(1) is carried on only if the arrangements bring about, or would bring about, the transaction to which the arrangement relates. This is because of the exclusion in article 26 of the Regulated Activities Order (Arrangements not causing a deal). Article 26 excludes from article 25(1) arrangements which do not bring about or would not bring about the transaction to which the arrangements relate. In the FCA's view, a person would bring about a contract of insurance if his involvement in the chain of events leading to the contract of insurance were important enough that, without it, there would be no policy. Examples of this type of activity would include negotiating the terms of the contract of insurance on behalf of the customer with the insurance undertaking and vice versa, or assisting in the completion of a proposal form and sending it to the insurance undertaking. Other examples include where an insurance undertaking enters into a contract of insurance as principal or an intermediary enters into a contract of insurance as agent."
>
> "**PERG 5.6.4**
>
> Article 25(2) may, for instance, include activities of persons who help potential policyholders fill in or check application forms in the context of ongoing arrangements between these persons and insurance undertakings. A further example of this activity would be a person introducing customers to an intermediary either for advice or to help arrange an insurance policy. The introduction might be oral or written. By contrast, the FCA considers that a mere passive display of literature advertising insurance (for example, leaving leaflets advertising insurance in a dentist's or vet's waiting room and doing no more) would not amount to the article 25(2) activity."

380. Following this judicially-approved guidance, I consider that the activities undertaken by Mr Lloyd's team and by Pinnacle cannot be regarded as bringing about the investment for the purposes of the exclusion in article 26. The imposition of a separate step of advice by the appointed representative of an authorised firm (albeit one of dubious independence) is in my view sufficient to make it appropriate (on a balance of probabilities based on the evidence heard by the Court) to characterise Mr Lloyd's team's involvement to fall within article 25(2) (within the guidance in PERG 5.6.4 quoted above) rather than within article 25(1).

381. Nevertheless, it is clear that Mr Lloyd's team were at least undertaking the regulated activity specified in article 25(2), and the issue remains whether this put Mr Lloyd and Pinnacle in breach of the general prohibition.

10.6 Were the activities excluded under article 33 RAO?

382. On behalf of Mr Lloyd and Pinnacle, Mr Lorrell has put up three arguments as to why this would not be a breach of the general prohibition.

383. The first is based on article 33 RAO which provides an exemption in relation to the offence under article 25(2) in the following terms:

> "**Introducing**
>
> 33. There are excluded from article 25(2) arrangements where —
>
> (a) they are arrangements under which persons ("clients") will be introduced to another person;
>
> (b) the person to whom introductions are to be made is—
>
> (i) an authorised person;
>
> (ii) an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt; or
>
> (iii) a person who is not unlawfully carrying on regulated activities in the United Kingdom and whose ordinary business involves him in engaging in an activity of the kind specified by any of articles 14, 21, 25, 37, 40, 45, 51, 52 and 53 (or, so far as relevant to any of those articles, article 64), or would do so apart from any exclusion from any of those articles made by this Order; and
>
> (c) the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate."

384. Mr Lorrell argues that the purpose of the introduction was to introduce the pension investors to Mr Hadley and Mr Biggar and later to NBCL, each of which was at the appropriate time an exempt person acting in the course of the business comprising a regulated activity in relation to which that person was exempt. They were exempt as a result of the appointed representative agreements discussed above. This then brings the arrangements within article 33.

385. There are three reasons why I think that Mr Lloyd and Pinnacle cannot rely on this argument:

i) As we have seen (at [312(vi)] above) there were gaps in the period during which Mr Biggar (in particular) and Mr Hadley were covered by an appointed representative agreement. Furthermore, the appointment by Joseph Oliver was limited to the scope of that firm's passported permissions. These included permissions for advice in taking out a personal pension, but did not include permissions that would allow advice on an investment in a collective investment scheme such as the Fund. Mr Lloyd had understood that advice would be given on the Fund investment, and I have determined at [319] above that the advice did cover the Fund investment. Accordingly, NBCL was not exempt in respect of such advice as a result of its appointment by Joseph Oliver. It is unclear whether the same is true in relation to the appointment of Mr Hadley and of Mr Biggar by GPL as we have not been able to establish what permissions were passported by that firm.

ii) Given that Mr Lloyd knew that the financial adviser he was referring to have been selected by Mr Talbot and must have been motivated to recommend a pension transfer to one of the QROPS, with a view to investment in the Fund, he cannot

have relied on the financial adviser to which his team was referring pension investors as being independent;

iii) Article 33 does not exempt all arrangements where there is a reference to an independent financial adviser. The purpose of the arrangement must be:

"the provision of independent advice or the independent exercise of discretion in relation to investments generally or in relation to any class of investments to which the arrangements relate".

The second part of this phrase "*in relation to investments generally or in relation to any class of investments to which the arrangements relate*" qualifies both the reference to "*independent advice*" as well as the reference to "*independent exercise of discretion in relation to investments*". This reading was confirmed by the Court in *Avacade*– see [54] and [55]. In the current case the reference to a financial adviser was not for the purposes of independent advice in relation to investments generally or in relation to any class of investments. It was for advice in relation to a particular proposal for investment in the Fund via a personal pension. This, by itself, in my view is sufficient of itself to take the arrangements outside the scope of article 33.

10.7 Is there a defence under section 23(3) FSMA?

386. The second defence that Mr Lorrell relies upon is based on section 23(3) FSMA, which provides a defence if the person accused of an authorisation offence shows "*that he took all reasonable precautions and exercised all due diligence to avoid committing the offence*".

387. Mr Lloyd produced a witness statement in which he explained the steps he had taken to avoid committing an offence. I am satisfied that Mr Lloyd thought about the question of whether his employees would be giving investment advice and did his best to avoid this. Mr Lloyd says he did take some steps to check the Financial Services Register to check that Mr Hadley and Mr Biggar had been duly appointed as appointed representatives and made some other checks about of these individuals and of NCBL. Given that I have found him to be a reliable and truthful witness generally, I am disposed to believe him on this point.

388. The question arises, however, as to whether this was enough. Mr Lorrell argues that, in judging what constitutes all reasonable precautions and all due diligence, I should have regard to as to Mr Lloyd's lack of knowledge of the technicalities involved in financial services regulation. I disagree. Mr Lloyd knew that he was potentially operating in a regulated field and it is no defence to say that he was ignorant of what was required of him to operate in the way that he did. He could have, and should have, obtained legal advice from an appropriate specialist if he wanted to operate just outside the perimeter of financial services regulation.

389. It seems to me that a person who wants to rely on the defence that he took all reasonable precautions and exercised all due diligence to avoid committing an offence, where he is relying on the fact that he is a mere introducer within the exclusion under article 33 RAO, should at the minimum be able to show that he has done the following things:

i) satisfied himself, with the benefit of legal advice if necessary, that what he is doing is within article 33. As noted above, article 33 is not as wide as Mr Lloyd (if he ever thought about it) assumed, and if he had taken legal advice he would have known that;

ii) check on the Financial Services Register that the person he was referring for advice was authorised or exempt (or otherwise able to provide advice without breaching the general prohibition) and check that the authorised person (or in the case of an appointed representative, the principal who had appointed that appointed representative) had the correct permissions to provide the relevant advice;

iii) if he is relying on the person being exempt as a result of being an appointed representative, he should either ask to see the appointed representative agreement, or at least obtain direct from the appointed representative's principal an acknowledgement that the scope of the appointment included providing the relevant advice;

iv) check that the person he was referring for advice could be regarded as an independent financial adviser in relation to the matter for which the advice was given; and

v) periodically recheck that there is no change in the information discovered by the steps taken above.

390. Whilst Mr Lloyd did some of these things, he did not do them all. If he had done, he would have received advice that article 33 did not provide cover for what he was doing and he would also have discovered the shortfalls identified above in the extent to which Mr Hadley, Mr Biggar and NBCL were able to rely on an exemption as an appointed representative.

391. I therefore consider that Mr Lloyd cannot rely on the defence under section 23(6).

10.8 Were the activities excluded as being not conducted in the UK?

392. The third defence is that Mr Lloyd was not undertaking these arrangements in the United Kingdom. He and his team were operating from Spain and later Malta.

393. This defence would not help Mr Lloyd had I found that his team were undertaking investment advice. It is clearly established that the activity of providing investment advice is conducted where the advice is received. See *Financial Services Authority v Bayshore Nominees Ltd & others* [2009] EWHC 285 (Ch) ("***Bayshore***"), which related to so-called "boiler room" activities (i.e. where investors are persuaded to buy shares of little intrinsic value at an inflated price, often from unregulated "brokers" based overseas).

394. In that case, Floyd J addressed the question of where the activity of providing investment advice takes place. Is it where the adviser is located or is it where the investor is located? Or both?

395. In this regard, he noted three considerations. The first was that it would be "somewhat odd" if the prohibition on providing investment advice without being duly authorised could be avoided by the adviser locating himself outside the jurisdiction. The second

was that was an exclusion within the RAO (he was referring to article 72 RAO) that excludes investment advice where it is given by an overseas person as a result of a "legitimate approach" contemplates the possibility of an overseas person being within the ambit of the section. He stated his third conclusion as follows:

> "The third consideration, which in my view is decisive, is that when one looks at RAO 53, one sees that the core of the prohibition is in relation to the receipt of the advice. The act of advising cannot possibly be completed until the investor has received it. Therefore, it seems to me that either the activity of advising is being carried on both at the location of the adviser and the investor or that it is being carried on exclusively at the location of the investor. In either case (and it is not necessary for me to decide which it is) the activity is within the prohibition.

396. Although this was an *ex tempore* judgement given at first instance, I find it extremely useful in two regards. First, in establishing where the activity of giving investment advice is to be considered to be taking place if advice is received by an investor in the United Kingdom from a person providing the advice from overseas. Secondly, I think it correctly characterises the approach that needs to be taken when considering where any particular regulated activity is being carried out where there is a cross-border element. One must have regard to what the activity involves and to the objectives of the regulatory regime. I think this is helpful in taking us beyond the somewhat anodyne guidance given by the FCA in its Handbook at PERG 2.4.6G:

> "A person based outside the United Kingdom may also be carrying on activities in the United Kingdom even if he does not have a place of business maintained by him in the United Kingdom (for example, by means of the internet or other telecommunications system or by occasional visits). In that case, it will be relevant to consider whether what he is doing satisfies the business test as it applies in relation to the activities in question."

397. In relation to the place of activity point, Mr Lorrell cited the Court of Appeal decision in *Financial Services Authority v Fradley & Woodward* [2005] EWCA Civ 1183, 2005 WL 3157652 ("***Fradley***"). He referred in particular to a passage in the judgment of Arden LJ at [53] to [54], which is as follows:

> "52. The FSMA does not contain an exhaustive description of what constitutes the carrying on of business within the United Kingdom. All that section 418 … provides is that the requirement is to be satisfied in certain specific cases if it would not otherwise be so satisfied. This case is not within those cases. Accordingly, the Court is left with the question whether the activities described above (so far as not disputed), of themselves, constituted the carrying on of business in the United Kingdom. FSMA does not require that the entirety of a business activity be carried on in the United Kingdom. If it did, it would be open to obvious abuse.
>
> 53. In my judgment, it is sufficient if the activities in question which took place in this jurisdiction were a significant part of the business activity of running the CIS (if any) constituted by the betting services offered by 147 and TBPS. In this case, the communications with clients and prospective clients, and the maintenance of a bank account and an accommodation

> address, all of which took place in the United Kingdom, were all business activities. In my judgment they were of sufficient regularity and substance to constitute the carrying on of business here even after Mr Fradley moved his own office to Ireland in April 2003 and gave instructions by post or internet from there. I leave open the question whether the requirement for carrying on business within the jurisdiction can be satisfied in any other case."

398. As with *Fradley*, none of the circumstances set out in section 418 FSMA are relevant in our current case (and I need not therefore trouble to recite its provisions), and so the question is whether the activities of themselves constituted the carrying on of business in the United Kingdom. Mr Lorrell argues except for one thing (that communications with clients were conducted with customers who were in the United Kingdom), none of the features that were relied upon in *Fradley* as providing a nexus with the United Kingdom apply in our current case.

399. It must be noted, however, that *Fradley* was concerned with an entirely different regulated activity - that of operating a collective investment scheme. Arden LJ considered various of the elements involved in operating a collective investment scheme, and considered that sufficient important elements were happening within the United Kingdom (communications with clients and prospective clients, the maintenance of a bank account and an accommodation address) to say that the activity was being operated with sufficient regulatory and substance to be regarded as carrying on business in the United Kingdom.

400. That is not to say that the same elements are needed when one is considering whether a different regulated activity should be regarded as being carried on within the United Kingdom. The point needs to be looked at in relation to the regulated activity involved. As we have seen from *Bayshore* in relation to investment advice, the key question is where the advice is received. One might add, for example in relation to the regulated activity of arranging regulated mortgage contracts, the FCA takes the view that where an overseas person is arranging a mortgage on residential land in the United Kingdom and the borrower is normally resident in the United Kingdom, the territorial limitation in the definition of regulated mortgage contract carries most weight in determining whether UK regulation should apply: it is likely that the arranger will be carrying on regulated activities in the United Kingdom (see the guidance in the FCA Handbook at PERG 4.11.4).

401. How then should we consider territoriality where the activity in question is one of the activities specified in article 25 and the key element bringing the activity into the scope of article 25 involves an introduction (either direct to the issuer of the investment so that article 25(1) is engaged or indirectly via a financial adviser so that article 25(2) is engaged)? I conclude, that in such cases where the crucial element of the arrangement is the introduction, then key elements to be considered to determine the place of the activity include where the parties introduced to one another are situated. If they are both situated in the United Kingdom, then it would be difficult to argue that the introduction, and therefore the article 25 arranging activity has not taken place in the United Kingdom. I conclude this somewhat tentatively, as this point was not fully argued before me, and is not apparent from (or contradicted by) the cases that were cited to me. Nevertheless, the solution appears to me to concord with the logic in *Bayshore*.

402. For completeness, I should mention that, even if the conclusions above are incorrect as regards the place of the "*arranging*", another consideration arises in relation to the activities specified by article 64 RAO (agreeing to carry on and activity of the kind specified by other provisions of the RAO, with certain exceptions). I did not hear argument on how to apply this provision, in the current case where the agreement with investors for Mr Lloyd and his team and/or Pinnacle was, it seems, concluded by telephone. Having already found against Mr Lloyd in relation to his territorial argument concerning article 25 RAO, I do not need to reach a finding on this point, and will not do so beyond saying that my instinct, before hearing argument, would be to treat this in the same way as Floyd J in *Bayshore* addressed the question of where cross-border telephone advice was provided and find either that the activity of advising is being carried on both at the location of the adviser and the investor or that it is being carried on exclusively at the location of the investor.

10.9 Were the activities excluded by article 72 RAO (overseas persons)?

403. Mr Lorrell, I think without too much conviction, suggested that, even if Mr Lloyd and Pinnacle were carrying out specified activities in the United Kingdom, they might be able to rely on article 72 RAO. Article 72(3)-(7) provides as follows:

> "(3) There are excluded from article 25(1) arrangements made by an overseas person with an authorised person, or an exempt person acting in the course of a business comprising a regulated activity in relation to which he is exempt.
>
> (4) There are excluded from article 25(2) arrangements made by an overseas person with a view to transactions which are, as respects transactions in the United Kingdom, confined to—
>
> (a) transactions entered into by authorised persons as principal or agent; and
>
> (b) transactions entered into by exempt persons, as principal or agent, in the course of business comprising regulated activities in relation to which they are exempt.
>
> (5) There is excluded from article 53 the giving of advice by an overseas person as a result of a legitimate approach."
>
> (6) There is excluded from article 64 any agreement made by an overseas person to carry on an activity of the kind specified by article 25(1) or (2), 37, 40 or 45 if the agreement is the result of a legitimate approach.
>
> (7) In this article, "legitimate approach" means—
>
> (a) an approach made to the overseas person which has not been solicited by him in any way, or has been solicited by him in a way which does not contravene section 21 of the Act [ie FSMA]; or
>
> (b) an approach made by or on behalf of the overseas person in a way which does not contravene that section.

404. In my view it cannot be said that the pension investors were recruited by Mr Lloyd and his team or Pinnacle "*as a result of a legitimate approach*". Mr Lloyd had clearly solicited enquiries for a specific investment by placing adverts. These adverts must be construed in their context as being invitations or inducements to engage in investment activity, and

there is no suggestion that they were approved by an authorised person or came within an exemption under section 21 FSMA.

405. I therefore consider that the exclusions in article 72 are not available to Mr Lloyd or Pinnacle.

10.10 Conclusions in relation to Mr Lloyd's activities

406. To conclude in relation to Mr Lloyd's activities, I have found that there is no doubt that Mr Lloyd and Pinnacle breached the restriction in section 21 FSMA in relation to financial promotions and (on a balance of probabilities) that he has also breached the general prohibition in relation to article 25(2) FSMA. These breaches provide further instances of unlawfulness in relation to the unlawful means conspiracy that I have found among Mr Lloyd and Pinnacle and the other members of the Original Conspiracy. For the same reasons I have given at [320] above, these further instances of unlawful means, in my view, form a necessary element of the conspiracy and directly contributed to the losses suffered by Trafalgar.

407. I accept that Mr Lloyd probably did not understand that he was breaching the law in these regards, but this makes no difference to the fact either of his involvement in the Original Conspiracy or his breaches of the offences under FSMA.

11. THE TITAN TRANSACTION

11.1 Claims relating to Titan

408. I have summarised above the basic facts concerning the Titan transaction. The Claimant makes a number of claims based on these facts:

    i) First, against Mr Hadley, the Claimant alleges a breach of fiduciary duty and a conspiracy with Mr Jones.

    ii) Secondly, against Mr Jones, the Claimant alleges dishonest assistance and conspiracy.

    iii) Thirdly, against Titan itself, the Claimant alleges dishonest assistance; knowing receipt and conspiracy.

409. I will take these in turn. However first I should consider an overarching questions: how far can I rely on Mr Jones' witness evidence? Most of these claims turn on the motives, knowledge and intention of Mr Jones and so this is a key point.

11.2 The allegations of dishonesty against Mr Jones

410. The Claimant has cast doubts on Mr Jones' presentation of himself as an honest and upright person, alleging Mr Jones to have demonstrated a want of honesty on prior occasions.

411. The first of these points I will deal with is that Mr Jones did not disclose his involvement in establishing the originally proposed Titan vehicle, in another company "Titan Specialist Finance Limited" until asked about it in cross-examination.

412. I accept Mr Jones' explanation that he did not see this as relevant as the proposal for this company was not proceeded with. That company never traded and had no dealings with Trafalgar. I do not find anything that is surprising or dishonest in Mr Jones' failure to deal with this in his evidence before being asked about it.

413. The second of these points was that Mr Jones was inconsistent in statements he made about his knowledge of CGrowth at the time of the redemption of the loan notes, apparently having a clearer memory in 2016 than he claimed to have at trial.

414. I do not find this surprising or evidence of dishonesty. At trial he was angry at the accusations made against him of dishonesty and flustered at what was (understandably given what needed to be got through) rapid-fire questioning by Ms McRae. I think that he felt that he was being led into saying more about his recall of dates than he could remember. I ascribe these circumstances, rather than any motive of dishonesty, to any inconsistencies between his evidence at trial and matters he had been able to recall seven years earlier under calmer circumstances.

415. The third point was that Mr Jones, when disclosing bank accounts, had redacted a reference to the £20,000 payment from PPL to Titan on 3 June 2016. The Claimant says that there can be no adequate explanation for this as Titan's receipt of monies from PPL at the time of the £1.36 million transfer was plainly relevant to the issues before the Court.

416. As to the substantive importance of the £20,000, I consider that this has been fully explained as is set out at [70] above and I cannot see anything in the incident itself that evidences any dishonest dealings on behalf of Mr Jones (although I can see why the Claimant might have originally seen it as such before it had the benefit of this explanation).

417. As regards the allegation that the redaction of this amount was deliberate and dishonest, I find Mr Jones' defence that he did not think it was relevant to be just about believable. Mr Jones may not have understood the significance that the Claimant was putting on the payment (being suspicious that it was some kind of incentive payment for the benefit of Mr Jones). As I do not think Mr Jones had anything to hide in relation to this point I am disinclined to base any finding of dishonest withholding of information on this point.

418. The fourth of these points, relates to Mr Jones's response to questions raised by Trafalgar's Request for Information in November 2020, where Mr Jones and Titan gave information, verified by a statement of truth that included:

> "The shares in Titan held by Cavendish Cell 332 are a matter of record. Andrew Jones and Titan had no knowledge of the structure or purpose of Cavendish Cell 332, nor were Andrew Jones or Titan aware of the ultimate beneficial ownership of any assets held within Cavendish Cell 332."
>
> and
>
> "Andrew Jones and Titan had no knowledge of the structure or purpose of Cavendish Cell 332."

419. Mr Jones justifies these statements on the basis that he had no definitive knowledge of the ultimate beneficial owner of Cavendish Cell 332. He did not have "knowledge". He had only opinions and beliefs.

420. Certainly Mr Jones had a strong basis for such opinions and beliefs. When Titan was being created Cavendish had asked Mr Jones to:

> "make sure that Mr Hadley's shares are referenced in the name of Cavendish Corporate Investments ... Cell 332".

421. Furthermore Mr Jones had previously felt confident enough in such beliefs to write letters in April 2016 to Titan's lawyer representing variously that:

> "James Hadley is the ultimate beneficial owner of the 90% shareholding in Titan"
>
> and
>
> "There is only one class of share which is owned 10% by me and 90% by Cavendish Corporate Investments -Cell 332. Cell 332 is a pension contract of which James is the beneficiary."

422. Mr Jones submits that if the Claimant wished an answer by reference to Mr Jones' to recollections of his opinions or beliefs at that time, as opposed to his definitive knowledge of the ultimate beneficial owner, then that question should have been specifically posed.

423. If that was Mr Jones' thinking, this legalistic and unhelpful approach to the Request for Information process does not reflect well on him. Whether or not one judges his responses as truthful or not, they were disingenuous and unhelpful in relation to a key point in the case.

424. Nevertheless, I will have regard to the difficulties he had as an unrepresented litigant in person who could not check with his lawyers whether he was correct in taking such a legalistic view on a point where he no doubt would have been advised to answer more frankly and helpfully. I will give him the benefit of the doubt that he did not intend an outright lie.

425. Taking all these accusations together, whilst they cause me to approach Mr Jones' evidence with more caution than I might otherwise have done, I am not persuaded that the Claimant has established a pattern of untruthfulness such that I should reject his testimony as to his beliefs and motivations where there is nothing to contradict them.

11.3 Breach of fiduciary duty by Mr Hadley

426. It appears that Mr Hadley's plan was to establish Titan in a manner similar to Quantum - Mr Hadley himself explains that it was intended to be a second Quantum - but, it can be inferred, for his own benefit, instead of for that of Mr Talbot and Mr Chapman-Clark. It seems that there was originally a proposal that Mr Talbot and Mr Chapman-Clark would be amongst the shareholders of Titan but this proposal was not proceeded with, presumably as a result of a falling out between Mr Hadley and Mr Talbot. Instead the shareholders of Titan were the Cavendish Cell and Mr Jones.

427. Whether he understood it or not, Mr Hadley had a conflict of interest, which he did not disclose to the Board of the Fund or Trafalgar.

428. Whatever his position in relation to the management of the assets on behalf of the Fund and Trafalgar, it is clear that he had been placed in a position of trust in relation to the bank accounts which were used to make the investment in Titan on behalf of Trafalgar. He breached that trust when, without taking any steps to deal with his patent conflict of interest he undertook an investment in Titan, a company in which 90% of the shares were being held for his benefit.

429. Mr Hadley accepted that 90% of the shares in Titan were being held by an insurance company called Cavendish. Cavendish was "*an insurance company providing annuities*". The 90% Titan shareholding were being held in Cell 332. Whilst Mr Hadley quibbled at the description of him as the ultimate beneficial owner of the Titan shares (on the basis that the assets were an asset of the insurance company and Mr Hadley had no legal or equitable interest in them), Mr Hadley accepted that the value of the annuity that he would expect to get from Cavendish would be directly linked to the value of the Titan shares at the point that he took the annuity (which would have been many years later than the events in question). If the value of the Titan shares went up, he would get a bigger annuity. He confirmed that Titan was a company from which he intended to benefit in the future. This is patently enough by itself for Mr Hadley to have had a conflict of interests in relation to and dealings in the Fund.

430. Furthermore, Mr Hadley must be considered a shadow director of Titan, and as such had duties that conflicted with those of Trafalgar.

431. It seems that Cavendish allowed Mr Hadley to exercise control over Titan. Certainly Cavendish allowed Mr Hadley to appoint Mr Jones as the managing director. Mr Hadley must have considered that he had control of Titan at a day-to-day level as when he was negotiating for the sale of VAM to a company controlled by Mr Thwaite he was content to allow the draft Share Purchase Agreement to include a clause that he would procure that that "*Titan* [will] *deal with lending decisions as* [VAM] *shall direct*". This control could not have been available to VAM as a consequence of the Titan loan notes, and must be something that Mr Hadley thought that he could provide by means of his position as a shadow director. (One might note in passing that, in agreeing this Mr Hadley would have been creating a further conflict of interest between his duties, as a shadow director, to Titan and his contractual liability to the purchaser of VAM).

432. It could not be clearer that Mr Hadley's involvement in Titan created a conflict of interest when he was dealing on behalf of the Fund and Trafalgar in making an investment into Titan.

433. Mr Hadley claims not to have understood that his involvement in Titan would put him in a position of conflict of interest. More than once during the trial he explained that his view had been that there was no conflict of interest, whatever his interest in an investee company, as long as when investing, he expected Trafalgar to benefit. I think he now understands that this is not the case. His professed ignorance of his fiduciary duties is of no assistance to him in this matter.

434. Furthermore, I have doubts as to whether this was a view that he genuinely held. At one point Mr Reinert emailed Mr Hadley asking him to "*confirm there are no relationships between Titan, Momentum, CGrowth, Victory Asset Management or any of their principals*". Mr Hadley falsely responded "*I can confirm (again) that there is no relationship between Titan, Momentum, CGrowth and VAM*". This was not an honest

response. Mr Hadley should have answered that he stood to benefit from 90% of the shares of Titan and was the beneficial owner of 100% of the shares of Victory Asset Management. His lack of frankness on this point suggests that he did understand that he had a conflict of interest.

435. I doubt also that Mr Hadley could genuinely have considered that this investment was in Trafalgar's interests. I have already commented (at [65] to [66] above) on the lack of commerciality on the investment by Trafalgar in Titan. Essentially Trafalgar was providing almost all the seed capital for this new and unproven venture. The business plan prepared by Mr Jones showed a forecast that it would operate at a loss for year one, and showed no particular strategic advantages for the business, which was creating from scratch a lending platform and a client base and had only one employee (Mr Jones) with no specific experience in the business of bridging lending. If it were successful, Trafalgar would get back its money and a good, but not spectacular, interest return for the risk taken. If it was unsuccessful, Trafalgar could lose all of its money in the investment whilst its shareholders would lose only the tiny nominal amount of share capital that had been subscribed by them.

436. The Claimant invites me to conclude, and I do conclude, that the fact that Mr Hadley arranged for this investment to be taken on by Trafalgar can only be explained by a wish to benefit himself.

437. I therefore fully accept that the Titan investment involved a grave breach of fiduciary duty on the part of Mr Hadley. In essence, it involved self-dealing on his part – he was laying out Trafalgar's money by way of a loan to a company in which he had 90% commercial interest.

438. A similar breach of fiduciary duty is to be laid at Mr Hadley's door when (acting for or at least purporting to act for Trafalgar), he procured that the loan notes would be redeemed at less than their face value, and gave instructions to Titan to make the payment not to Trafalgar, but rather to CGrowth as part of the CGrowth transaction. Again, to do this without disclosing his interest in Titan to the directors of Trafalgar and getting their consent to this further self-dealing transaction was also a breach of fiduciary duty on his part. The CGrowth transaction generally has been established to be tainted by bribery and that taint also applies to the element of that transaction regarding procuring the repayment of the Titan notes.

11.4 Mr Hadley's actual and apparent authority

439. As we have seen above, the effect of *Lysaught & Co Ltd v Falk,* an effect of this breach is to vitiate Mr Hadley's actual authority to bind Trafalgar to purchase the notes. Also the findings against him as to bribery in relation to the CGrowth transaction vitiate his actual authority to instruct the redemption of the notes by reference to a payment to CGrowth.

440. I said that I would deal more fully with the question whether nevertheless Mr Hadley still had apparent authority to undertake these transactions in the eyes of Titan and of Mr Jones.

441. This cannot be the case as regards the original loan note subscription. Titan relied entirely on Mr Hadley's say-so as to the extent of his authority. If his actual authority was vitiated by his conflict of interest, Titan could not fall back on any representation

from Trafalgar itself as providing Mr Hadley with apparent authority, or to estop Trafalgar from denying that Mr Hadley had authority. Although Trafalgar may have expressly or impliedly represented to Mr Hadley that he had authority, and I have found at least an implied representation to him that can form the basis of implied actual authority (had such authority been exercised in Trafalgar's interests), Trafalgar made no such representation to Titan or to Mr Jones.

442. As regards the redemption of the loan note, by that time Titan had dealt with Trafalgar in respect of the original loan note subscription and Trafalgar had raised no question about Mr Hadley's authority. At that stage, I think Titan would be entitled to regard Trafalgar as having impliedly endorsed Mr Hadley's authority to deal with Titan on behalf of Trafalgar. *Bowstead and Reynolds on Agency* (see at 8-013) accepts that a course of dealing may give rise to apparent authority citing for example *Freeman & Lockyer* at page 503. Diplock LJ there said:

> The representation which creates "apparent" authority may take a variety of forms of which the commonest is representation by conduct, that is, by permitting the agent to act in some way in the conduct of the principal's business with other persons. By so doing the principal represents to anyone who becomes aware that the agent is so acting that the agent has authority to enter on behalf of the principal into contracts with other persons of the by permitting the agent to act in some way in the conduct of the principal's business with other persons of the kind which an agent so acting in the conduct of his principal's business has usually " actual " authority to enter into."

443. There the question related to the authority of a managing director, but the point could also be extended to that of a fund manager in relation to dealings in fund investments where that fund manager originally had actual implied authority, but had vitiated this (without the knowledge of the third party relying on the authority) by an undisclosed conflict of interests.

444. Titan could not rely on this if Titan itself knew of an unresolved conflict of interest, however as I discuss further below, Titan was not aware of an unresolved conflict of interest.

445. The logic above leads us to the conclusion that Mr Hadley had neither actual nor apparent authority to cause Trafalgar to enter into the Titan loan notes but did have apparent authority to order the redemption of the loan note and the payment of the proceeds of redemption to CGrowth (and the consequent discharge of liability in favour of Titan. This apparently creates a paradox, as the first conclusion would render the loan notes void, but the second conclusion would be that they had been validly repaid.

446. This paradox is resolved by the consideration that when Mr Hadley dealt with the notes by requesting their redemption, with apparent authority, that action must also be considered as a ratification upon which Titan could rely of the original subscription of the notes.

447. The effect of this ratification than was that Titan is to be regarded as entitled to rely on both the instruction to redeem the loan notes and the original subscription of the loan notes.

11.5 Were Mr Jones and Titan part of the Original Conspiracy?

448. The Claimant has alleged that Mr Jones was brought into what it refers to as the "overarching conspiracy" but which I have referred to as the Original Conspiracy. I do not see that there is any evidence of this.

449. First there is no evidence that Mr Jones understood the wider arrangements involved in the Original Conspiracy – he appears to have known nothing of the arrangements whereby pension investors' monies were directed into the Fund or the proposal to direct the Fund's investments towards underlying investments that would pay large commissions to the conspirators in the Original Conspiracy.

450. Secondly, there is no suggestion that he was involved in routing any of the proceeds of the Titan loan notes towards Mr Lloyd or Mr Talbot or Mr Chapman-Clark. Whilst there was at one stage a proposal for Mr Talbot and Mr Chapman-Clark to become shareholders in another company "Titan Specialist Finance Limited", this was not proceeded with.

451. Mr Jones' involvement (and that of Titan itself) in the "Titan" incorporation and business that did proceed should be seen as falling outside the Original Conspiracy. Mr Jones did not (and neither do I think did Titan, or even Mr Hadley in respect of the Titan investment) share the same object as the other conspirators who were parties to the Original Conspiracy.

11.6 Were Mr Jones and Titan part of another unlawful means conspiracy?

452. In the alternative, the Claimant alleges that there was a separate conspiracy between Mr Hadley and Mr Jones and Titan to damage Trafalgar by unlawful means.

453. In the Claimant's Re-Re-Amended Particulars of Claim it is alleged (amongst many other things) that Titan had no genuine business purpose; that the Titan loan notes instrument was a fictitious document created in order to justify a transfer to Titan of Trafalgar's funds; and that Mr Jones knew that there was no basis on which any investment in unsecured bonds issued by Titan was in Trafalgar's commercial interests.

454. During the trial the Claimant rowed back from some of these statements in its Particulars of Claim, which had been made before it had the full documentation, and accepted that it would not submit that Titan never intended to trade or was an entirely fictitious operation, but nevertheless it pursued an unlawful means conspiracy based on the intention to deprive Trafalgar of its entitlement to disinterested advice on the part of its agent, Mr Hadley.

455. I have set out at [254] to [260] a summary of the essential aspects of an unlawful means conspiracy claim.

456. The first is a combination, arrangement or understanding between two or more people. I think it is established that there were arrangements between Mr Hadley, Mr Jones and Titan. Mr Jones at a very late stage raised a point concerning the corporate veil, suggesting that, as his actions were all as shareholder and director of Titan, the Court should not look behind Titan to fix him with individual liability. I do not think that this consideration assists him as it misses the point that he is being personally accused for actions that he personally took and which amount to a conspiracy and other alleged

dishonest dealings which I deal with further below. The corporate veil will not protect him in such circumstances.

457. The second is an intention to injure another individual or separate legal entity. The third is loss to the claimant. The matters that fall to be considered in these regards include:

i) The acceptance of the proceeds of the Titan Loan Notes

458. The acceptance of the subscription monies for the Titan loan notes would only evidence an intention to injure Trafalgar if it was the intention or expectation of the putative conspirators that the loan notes would not be repaid. I do not consider that there is any evidence of this.

459. Certainly as regards Mr Jones, I consider he was genuinely trying to make a go of the Titan business, and hoped that the generous terms as to deferment of interest and potential deferment of capital repayment under the Titan loan notes would provide sufficient time to develop a profitable business which would allow the notes and all interest due on the notes to be repaid in accordance with their terms. Whilst one can, and I do, criticise the commerciality of the investment from Trafalgar's viewpoint, in considering Mr Jones's motivations one must consider what he believed and understood. He believed in the prospects for the business sufficiently to give up his previous occupation as a self-employed adviser to invest his time in the Titan business. He believed that the business plan was being scrutinised by the Board of the Fund. The purport of his evidence was that it did not occur to him as odd that someone else also would believe in the business sufficiently to invest what he understood to be a small fraction of the Fund's assets in a proposal that he was willing to make the sole basis for his livelihood.

460. I consider that he believed that he was offering a genuine investment opportunity in a business that had prospects of success and which the Fund/Trafalgar would independently evaluate on its own merits. I cannot find that, with such beliefs, he could be regarded as having an intention to harm Trafalgar or the Fund on these grounds.

461. Mr Hadley's motives are more difficult to read, but I believe that he also hoped to make a success of the business, sufficiently to allow the Titan loan notes to be repaid. This of course does not absolve him from the breach of fiduciary duty that I have found, but may prevent a separate finding of an unlawful means conspiracy on the ground of this particular putative harmful intention.

462. As regards Titan's motives, Titan had no mind of its own, and one has to find its motive by attributing to Titan the motives of another. The case-law on how one attributes motive and knowledge to a company is profuse and not always internally consistent. The leading case on this question is *Meridian Global Funds Management Asia Ltd v The Securities Commission* [1995] 2 A.C. 500 ("***Meridian Global***"). In that case, Lord Hoffman identified three possible sources for “rules of attribution” in for a company:

i) the primary rules of attribution, based essentially on company law and a company's articles of association or other constitutional documents;

ii) the rules of attribution in the law of agency, which may deem a principal to have the knowledge or intent of its agent; and

iii) special rules of attribution, generally imposed to ensure that the law works as is intended in a particular case, and especially when one is considering particular statutory breaches.

463. As regards Titan, the primary rules of attribution would normally attribute to a company the knowledge and intentions of its Board of directors (ie that of Mr Jones, its sole director). Mr Jones also may be considered to be the sole agent of Titan. It has not been argued that there is any special rule of attribution that is applicable here and no such argument comes to mind.

464. Mr Hadley is the only other person whose knowledge and intentions could be imputed to Titan. This would be on the grounds that, although he was not an agent of the company or its *de jure* director, he may be considered a shadow director.

465. A shadow director is not a director. The phrase is defined in section 251 Companies Act 2006 in relation to a company as "a *person in accordance with whose directions or instructions the directors are accustomed to act*". Falling within the definition of a shadow director does not give a person any rights in relation to the company but makes that person subject to certain of the duties of a director.

466. I consider that where an action is taken as a result of a direction given by a shadow director and followed by a board that is accustomed to obeying the directions of the shadow director, the intentions and knowledge of that shadow director should be imputed to the company. However I have not been referred to, or come across, any case where a company has been imputed to have the knowledge or intentions of its shadow director in any other circumstances and the point has not been argued before me.

467. I consider that in the case of Titan that the loan note issuance resulted from a direction given by Mr Hadley. I believe that Mr Jones as the sole director of Titan was willing to do this without any such direction to enter into this transaction and made the decision as sole director on the grounds of his understanding of Titan's interests rather than as a result of any direction by Mr Hadley. I will not therefore impute to Titan Mr Hadley's knowledge and intentions on this point. I will consider therefore that Titan's motives should be taken as being those of must be those of its only *de jure* director and employee, Mr Jones.

468. Accordingly I do not think that the Claimant can establish an intention on the part of Titan to harm the Claimant in this regard.

469. Neither is it absolutely clear that the investment into Titan of itself damaged the Claimant. Titan was not given a fair chance to see if Mr Jones could make a success of Titan and it is at least arguable that the losses that definitely were sustained by the Claimant arose not from the original investment but rather from the decision to wind up the investment early and to transfer the amount to be repaid to CGrowth, rather than repaying them to Trafalgar.

ii) The early repayment of the loan notes

470. I comment below about Mr Hadley's motives in relation to the CGrowth transaction, one incident of which was making the arrangements for the early repayment of the Titan loan notes at less than their face value, and paying this amount to CGrowth as part of the

CGrowth transaction, rather than to Trafalgar itself. On a charitable interpretation, he saw the CGrowth transaction as an opportunity to undo the damage caused to Trafalgar by the previous transactions involving Quantum, Momentum and Shawcross. On a less charitable interpretation he entered into the transaction in order to hide the damage caused to Trafalgar by those previous transactions. Overall, I consider that he hoped to benefit Trafalgar but was over-eager in entering the transaction with insufficient due diligence and closed his eyes as to whether the CGrowth offering was too good to be true.

471. It cannot be ignored however, that he was also motivated by the bribe established by the hearing before the Court of Appeal. I also discuss a further bribe when I discuss the CGrowth transaction below.

472. As regards Mr Jones' motive I see no reason to believe that he was entering into these arrangements with a view to damaging Trafalgar. He had understood that the impetus from this transaction came from Trafalgar itself, and he had been told by Mr Hadley that it arose because of a wider transaction involving the sale of the Fund. It cannot be said that he was acting in this with any intention to damage Trafalgar or the Fund – he thought he was acting on its instructions.

473. I am satisfied that Mr Jones was in no way an instigator of these arrangements, and indeed if the matter had been left to him they would not have happened since he would have wished to carry on trying to make a success of Titan. It was only when Mr Hadley told him that neither the Fund/Trafalgar nor Mr Hadley himself were willing to continue to back the venture that he acceded to the proposal for an early repayment. He gained nothing from the repayment - quite the opposite. He lost his job, the prospect of any return from his 10% shareholding and all that he had been working for months to achieve. He secured repayment of his outstanding salary, but this was no advantage to him - he would have equally received this had he not agreed to the redemption of the loan. He did not get any compensation for loss of office or early termination of his service contract.

474. As regards Titan's intentions I consider that, again, its intention must be taken as being the same as those of Mr Jones. I do not think in this case that Mr Jones was acting at the direction of Mr Hadley as shadow director. Whilst Mr Jones may have considered he had little choice in the matter, given the withdrawal of support from the Fund and from Mr Hadley, I am satisfied that he was the one who made the decision to accept the request (with the modification that he insisted that £20,000 be kept back from the proposed amount to be repaid in order to allow Titan to meet its obligations on winding up). His intention and knowledge should be imputed to Titan.

475. Whilst in this case there is no doubt that Trafalgar suffered loss as a result of the early repayment of the Titan loan notes and that repayment being routed towards CGrowth, in the absence of a common intention between Mr Jones and Mr Hadley to damage Trafalgar through the repayment arrangements, I do not think that I can find an unlawful means conspiracy based on the facts of this arrangement.

iii) The intention to deprive Trafalgar it of its entitlement to disinterested advice on the part of its agent, Mr Hadley

476. The head of intention and loss that the Claimant principally relies on as the basis of an unlawful means conspiracy in relation to Titan is the intention to damage Trafalgar by depriving it of its legal entitlement to disinterested advice on the part of its agent.

477. This head of intention and loss breaks down, into two separate points:

i) that the putative conspirators intended to benefit from Mr Hadley causing Trafalgar to invest in Titan without disclosing his conflict of interest to Trafalgar as a person with a substantial commercial interest in Titan; and

ii) that the putative conspirators went further in intending Mr Hadley to be influenced by means of the payments to Proactive discussed below, creating a further conflict of interest

in each case with the effect of depriving it of its legal entitlement to disinterested advice on the part of its agent, Mr Hadley. I will deal with these points separately.

11.7 Was there a conspiracy to hide Mr Hadley's share interest?

478. Dealing first with the first point as regards Mr Hadley, I have no doubt that his intentions were to act for the Fund and Trafalgar in relation to his undisclosed conflict of interest without disclosing it and he had the requisite knowledge and intention for his part in the alleged conspiracy.

479. As regards Mr Jones, I consider that he had no such intention. I accept his evidence that he spotted the conflict of interests and challenged Mr Hadley to deal with it and trusted Mr Hadley when he said that he done so.

480. The Claimant raises the point that Mr Jones, should have gone further in making sure that the conflict of interests had been disclosed by contacting the directors of the Fund/Trafalgar directly and by putting a clearer and more accurate statement of the ownership of Titan into the business plan. His failure to make such a disclosure in the business plan, or separately, must be taken as evidencing an intention to harm Trafalgar by hiding the conflict of interests.

481. I do not accept these arguments. My belief is that Mr Jones was judging Mr Hadley by his own standards and assumed, that as an honest man, Mr Hadley would have done what he said that he had done, and furthermore that he would have been subject to effective supervision.

482. Mr Higgo for the Claimant also drew my attention to an incident where Mr Jones was considering providing a bridging loan to a loan applicant who was offering security on a home owned by someone not benefitting from the loan and where Mr Jones was concerned that the intermediary had a conflict of interests. In that case Mr Jones would not accept the intermediary's assurance that that person had properly consented to the arrangement. Mr Higgo invited me to take from that that Mr Jones knew that it was inadequate to rely on the person with a conflict of interest to report that the conflict had been discharged.

483. I could extract no such conclusion from the incident as in that case Mr Jones had reasons not to trust the intermediary whereas it was clear that he did trust Mr Hadley. Rather, I take from the incident the conclusion that Mr Jones invited me to take from it: that Mr Jones would act with principle when he realised that the occasion demanded it.

484. I consider therefore that, Mr Jones lacked the requisite knowledge and intention to be regarded as having taken part in the alleged conspiracy to hide Mr Hadley's interest in Titan from the Fund.

485. Again I impute to Titan Mr Hadley's knowledge and intentions and consider that Titan did not have the requisite knowledge and intention for its part in such a conspiracy.

11.8 Was there a conspiracy to bribe Mr Hadley?

486. The second point relates to the question of the payments made to Proactive and to Mr Hadley. It was forcefully argued by Mr Higgo on behalf of the Claimant that Titan, with the connivance of Mr Jones, should be regarded as having bribed Mr Hadley by giving to his company, Proactive, a contract to provide services to Titan, and making an initial payment for those services of £75,000 only a few days after Trafalgar had subscribed the Titan loan notes and also made a further payment of £1,581.20 to Mr Hadley for expenses.

487. The Claimant did not advance a claim for bribery against Mr Jones or Titan in its Particulars of Claim (or in any of the amendments made to it). The point was raised for the first time in the Claimant's closing skeleton argument. Mr Higgo, for the Claimant accepts that the point was raised too late in the day for a free-standing bribery claim to be considered by the Court. I consider that Mr Higgo is correct in doing so in view of the precedent provided by *Lombard North Central plc v Automobile World (UK) Ltd* [2010] EWCA 20 where the Court of Appeal found it unsafe for the first instance judged to have allowed an unpleaded claim to be argued after all the evidence had been taken.

488. Accordingly I shall make no findings about a bribery claim as such. However I will consider the circumstances of these payments in the context of the alleged unlawful means conspiracy.

489. In this context, the allegation is that Mr Hadley, Mr Jones and Titan intended Mr Hadley to be influenced by these arrangements to bring about Trafalgar's investment into Titan, creating a further and separate undisclosed conflict of interest and having the effect of depriving Trafalgar of disinterested advice and dealings on the part of its agent, Mr Hadley.

490. Mr Jones' evidence on this point was simply that he had no such intention. He had awarded the contract to Mr Hadley's company Proactive purely because he needed the services of that company and because he had looked around and Proactive offered the services at a much lower price than any other service provider that he could find. It did not occur to him that this could be viewed as a bribe because he considered that Proactive would be fully earning its money. He allowed the payment to Mr Hadley of expenses as he considered them to be legitimate expenses incurred on behalf of Titan.

491. I accept Mr Jones' evidence as to his motivations. I accept that it simply did not occur to him that these arrangements created a further conflict of interest for Mr Hadley.

492. Having regard to Mr Jones' substantive intentions and belief, I cannot find in them any motivation to harm Trafalgar. If he thought about the effect of this on Trafalgar at all, he would have considered that the arrangement would benefit Trafalgar as the services received from Proactive would provide the support needed to allow Titan to trade and generate the profits needed to repay Trafalgar.

493. These arguments would not be of much help to Titan if it was facing a claim in bribery as such (as I have described it at [274] to [279] above) as intent to damage is not needed to establish a bribery claim. But no such claim has been pleaded. Intent is a key element in relation to a claim for an unlawful means conspiracy and I do not consider that Mr Jones had any intention to damage Trafalgar or to benefit at Trafalgar's expense from the arrangements. He may have been negligent in not understanding that these arrangements created a further conflict of interests for Mr Hadley, but I consider he is innocent of any intention to damage Trafalgar.

494. For the same reasons given above, I consider that Mr Jones's intentions must be attributed to Titan and that Titan also had no intention to damage Trafalgar.

495. A further difficulty that Trafalgar has in this part of its case is in showing loss. It is very difficult to see that the arrangements with Proactive did have the effect of depriving Trafalgar of its legal entitlement to disinterested advice from Mr Hadley. It had already been deprived of disinterested advice from Mr Hadley as a result of Mr Hadley's interest in Titan.

496. Given that I have not found any ill intention on the part of Mr Jones, or of Titan, and I have not found any loss, I do not find an unlawful means conspiracy in relation to this point or in relation to any of the transactions involving Titan.

11.9 Dishonest assistance

497. I have set out at [265] to [266] a summary of the essential aspects of a claim of dishonest assistance.

498. The first element is that there is a breach of fiduciary duty by another party. This point is made out as I have established that Mr Hadley, both in bringing about Trafalgar's investment into the Titan loan notes and in arranging for them to be repaid at less than their face value, was acting in breach of his fiduciary duties by not declaring his conflict of interest in relation to his interests in Titan.

499. The second element is that the defendant procured or assisted in that breach of duty. I think it is clear that both Titan (by issuing and later repaying the loan notes) and Mr Jones (by acting as a director of Titan in procuring these matters) must be regarded as having assisted the breach.

500. The third element is the element of dishonesty. To make a finding of dishonest assistance the Court must conclude that the defendant's conduct is dishonest, applying the standards of ordinary decent people.

501. The Claimant's case against Mr Jones as to dishonesty is that Mr Jones knew that Mr Hadley had a conflict of interest and did not take the steps that an ordinary decent person would take to check that the conflict of interest had been cleared by the Board of Trafalgar.

502. As I have already discussed, I accept Mr Jones' evidence that he challenged Mr Hadley about Mr Hadley's conflict of interest arising from his commercial interest in Titan and obtained assurances from Mr Hadley that this had been dealt with. He thought he was dealing with an honest man, and his business experience was in reputable companies where conflicts of interest will always be dealt with.

503. Applying the two-stage test for dishonesty I have outlined at [267] I cannot see that with the beliefs that he had, that Mr Jones' or Titan's conduct would be regarded as dishonest, judged objectively, by the standards of 'ordinary decent people'.

504. Neither do I think that he breached the standard required of an ordinary decent person in failing to trust the instruction he considered to have been given by Trafalgar's representative (Mr Hadley) as to where to pay away the amounts repaid on the Titan loan, given the explanation that he had received.

505. Further, as already discussed above Mr Hadley's actions in relation to the grant of a contract to Proactive and a payment being made under that contract, this did not, I am satisfied, amount to dishonesty as such on the part of Mr Jones or Titan, given that it did not cross Mr Jones' mind that this arrangement could amount to a bribe and it was not motivated by a intention to induce Mr Hadley to cause Trafalgar to invest. He was acting, according to his own lights, in the interests of Titan.

506. In this context, I think a good cross-check (although by no means an infallible one) as to whether the threshold for finding dishonesty has been crossed would be to consider whether the arrangements would (on a balance of probabilities) be considered to be in breach of the offence of bribing another person under the Bribery Act 2010. For this offence to apply the putative briber must offer, promise or give a financial or other advantage to another person and either intend the advantage to be given to that person:

> "(i) to induce a person to perform improperly a relevant function or activity, or
>
> (ii) to reward a person for the improper performance of such a function or activity"

or to know or believe that:

> "the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity."

507. I do not consider that Mr Jones, or therefore Titan, had any such intention, knowledge or belief so as to bring the arrangements within section 1 Bribery Act 2010 and this provides some further support for my view Mr Jones' and Titan's role in this regard did not involve as dishonesty by the standards of ordinary decent people.

11.10 Unconscionable receipt

508. I have set out at [272] to [273] a summary of the essential aspects of a claim for unconscionable receipt.

509. The first element is the disposal of the claimant's assets in breach of fiduciary duty. Some £1.5 million of Trafalgar's cash was disposed of when Mr Hadley brought about Trafalgar's investment into the Titan loan notes and this has been established as being in breach of fiduciary duties on the part of Mr Hadley. The first element therefore is satisfied.

510. The second element is the defendant's beneficial receipt of the claimant's assets. Clearly Titan received this cash from Trafalgar and so the second element is satisfied.

511. The third element is the defendant's knowledge that the assets are traceable to a breach of fiduciary duty. *Akindele* provides guidance on the degree of knowledge required – Nourse LJ provided a sweeping survey of the state of the authorities on this question (see page 450 at G onwards) before stating (at E on page 455) the relevant test as being that:

> "the recipient's state of knowledge must be such as to make it unconscionable for him to retain the benefit of the receipt."

512. He hoped that such a simple formulation would enable the Courts to give common-sense decisions in the commercial context in which claims in knowing receipt are made.

513. In our current case I have concluded that the state of knowledge of Mr Jones, and therefore of Titan, was that Mr Jones understood that Mr Hadley had a conflict of interests (having an interest in 90% of the shares of Titan) but believed that this had been discussed with, and approved by the Trafalgar Board. I do not consider it unconscionable for Titan, with that state of knowledge to have retained the benefit of the receipt.

514. As regards the grant of contract to Proactive, the question of unconscionable receipt is determined by what I have already found. Titan (through its controlling mind, Mr Jones) understood that Mr Hadley had fiduciary duties to Trafalgar, but it did not understand that the arrangement to grant a contract in favour of Mr Hadley's company created a further breach of fiduciary duty and had no dishonest motive in making this arrangement. I have concluded that Mr Jones' conduct would not be regarded as dishonest, judged objectively, by the standards of 'ordinary decent people'. I consider that it cannot be regarded as unconscionable either.

12. THE CGROWTH TRANSACTION

515. The Claimant makes a number of overarching submissions in relation to the CGrowth on transactions.

12.1 No legitimate commercial rationale for Trafalgar

The Claimant's case on commercial rationale

516. The Claimant argues that, having regard to the position of Trafalgar and the Fund at the time of investment into CGrowth, the investment could not be justified by reference to Trafalgar's commercial needs.

517. At this point, the Fund had suspended its net asset value calculations and the issuance and redemption of units in the Fund. Its directors expected that when this suspension was lifted it was very likely that there would be a run on the Fund, and therefore what the Fund required at this stage was further liquidity. The directors conveyed this view to Mr Hadley. Had the directors known that there was a proposal to invest the best part of the remaining cash within the Fund into another illiquid asset, they would have been horrified, and the more so if they learned that Mr Hadley had had an opportunity to redeem the Fund's illiquid assets within Titan and Momentum, but had used this opportunity instead to purchase CGrowth bonds.

518. A further doubt that might be placed on whether the CGrowth transaction really was in the interests of Trafalgar arises when one considers that the Fund was supposed to be following a "diversified investment strategy" and to be managing risk. The result of the

CGrowth investment was that the vast majority of the investments held by Trafalgar would comprise the investment in the CGrowth and the investment in Dolphin Capital - both speculative investments and a huge concentration of risk for what was meant to be a diversified portfolio.

519. It is clear that Mr Hadley conducted very little due diligence on an investment that will be recognised by any investment manager as being highly speculative, given that the ability to repay this investment depended on the ability of an oil company to increase greatly its production and two other mineral extraction companies to commence production, and for all to sell profitably the oil and minerals to be extracted.

520. It appeared from the records that a due diligence pack regarding the CGrowth opportunity was not sent to Mr Hadley electronically until 7:38 PM on the day before Mr Hadley contends that he had agreed the CGrowth transaction in principle.

521. Mr Hadley counters this with the contention that he may have received documents in paper form before that. Certainly Mr Hadley and PPL had been discussing the possibility of a transaction since February 2016 or perhaps slightly earlier. I think it likely that some information was provided to him in those meetings, but I strongly doubt whether this would amount to a full disclosure of due diligence material that would be sufficient to justify an investment of this size. Especially when dealing with a specialist area such as mineral extraction, and where the activity is taking place in an overseas jurisdiction, one would expect that expert advice would be sought to assist in due diligence. There is no evidence of this even being considered.

522. Furthermore, the material in that pack was woefully inadequate for an investment manager to form a view about the viability of the investments. There was no financial information about the Peruvian companies at all and what information there was about the oil company (Powder River) showed oil being extracted in tiny volumes and at a substantial loss. Investment in mining concerns would normally need to be backed up by expert's reports and budgets covering the cost of extraction and it is clear that Mr Hadley had no access to anything of the sort and did not seek any such information.

523. The Claimant has put forward two explanations for Mr Hadley's eagerness to proceed with this investment given this lack of commercial rationale.

524. First, and primarily, it was motivated by Mr Hadley's intention to cover up his previous misappropriations of funds.

525. Secondly, it was procured by bribes.

526. The Court of Appeal has already found that Mr Hadley's independence was compromised by the payments that he received and was to receive for the sale of VAM.

527. There emerged during the trial also that PPL executed an introducer agreement appointing Mr Hadley's company, Proactive, as an introducer to CGrowth bonds on 14 March 2016, entitling it to 20% commissions on future bonds and £500,000 on the March Bonds. A commission payment of £100,000 was made under the agreement apparently in relation to an invoice dated 18 March 2016.

528. It appears that this agreement was later voided by PPL, in favour of different arrangements under the sale agreement relating to VAM. I understand these new arrangements to have recharacterised the £100,000 payment made to Mr Hadley as a deposit in relation to the sale of VAM. Even so, the Claimant argues that, given the date of this invoice the commission agreement cannot have been voided until 18 March 2016, after completion of the March CGrowth bond transactions. This timing is not challenged by Mr Thwaite's oral witness evidence – he accepted that it was voided close to, but likely after, 18 March 2016. The payment when made was, therefore the Claimant submits, a bribe.

529. It is clear as regards this payment, that:

    i) PPL was acting on behalf of CGrowth;

    ii) that PPL knew that Mr Hadley had fiduciary duties to Trafalgar; and

    iii) that there is absolutely no suggestion that Mr Hadley had disclosed this arrangement to the directors of Trafalgar and the Fund.

    I agree therefore that these arrangements constitute a separate head of bribery from that already found by the Court of Appeal, and clearly is one for which CGrowth has vicarious liability.

530. There is no pleadings issue that CGrowth can complain of in relation to this newly discovered instance of bribery. Bribery has long been a central feature of the Claimant's case and, if anything, the discovery of this new characterisation of the payment of £100,000 as being paid under these introducer arrangements takes the facts closer to the allegations originally made by the Claimant in relation to this payment.

531. Whilst there can be some question about whether PPL was acting on behalf CGrowth, when PPL (as the Court of Appeal found) bribed Mr Hadley through the arrangements for the purchase of VAM, there can be no such question concerning the introducer agreement. This was signed by PPL on behalf of CGrowth acting under the express authority of PPL's Consultancy Agreement with CGrowth.

532. I have already explained at [282] onwards how the principle of vicarious liability applies where a principal appoints an agent. Following this principle, CGrowth must be considered vicariously liable for this bribe, whether or not it had any independent knowledge of it.

Mr Hadley's professed rationale

533. Mr Hadley's explanations of his motives at this point may be summarised as follows. He considered that, rather than covering up losses made in relation to the earlier investments, this was a way of making good those losses in the best interests of Trafalgar. CGrowth was prepared to give value, in its issuance of the CGrowth Bonds for the book value of the investments (including for accrued but unpaid interest) in Titan, Quantum and Shawcross, essentially swapping assets that were known to be impaired for loan notes that Mr Hadley considered would be worth their full face value and which he expected would be performing.

534. He gave as his reason for his confidence in the performance of the CGrowth bonds the fact that insurance had been procured in respect of the bonds. He had considered that all risk in the CGrowth transaction had been transferred to the large insurer, AON, with a policy endorsed to Trafalgar.

535. It is difficult to gauge the genuineness of Mr Hadley's belief that there was insurance in place that in effect guaranteed the repayment of the CGrowth bonds. The proposition was inherently improbable.

536. Whilst it is credible that an insurance company might offer insurance over the continuance of an established stream of revenue, it is highly improbable that an insurance company would insure the success of a speculative venture to ramp up production at an oil field and open or reopen currently unproductive mines. Generally insurance companies only offer insurance where the prospect of loss is small. The speculative nature of the endeavours involved here obviously involved a substantial level of risk that the projects would not generate enough cash flow to repay the loans (especially when you consider the extent of the repayment and interest obligations that CGrowth was taking on compared with the cash it would receive, as discussed further below).

537. Even if an insurance company would be willing to do this, the commercial expectation must be that it would only be on the basis of a very high premium representing a substantial percentage of the monies guaranteed (or otherwise perhaps through being given security over a blocked cash deposit). The effect of either a high premium or cash being placed into a blocked account would have the effect that CGrowth, and the companies underneath CGrowth, would receive little net benefit from the cash borrowed once the 29% or 30% commission had been taken off, the interest coupon had been paid and the insurers' demands had been met. Such effects would defeat the purpose of the fundraising.

538. Furthermore, if interest and repayment on the CGrowth bonds genuinely was guaranteed by AON, it is not credible that CGrowth would have needed to offer such a high coupon, and such generous commission arrangements to raise funds, and certainly incredible that it would be willing to accept impaired assets in return for an issuance of bonds. There would be no difficulty in finding investors ready to lend on the basis of a 10% coupon that was backed by an effective guarantee from AON.

539. The inherent unlikeliness of such arrangements working both for the insurer and for CGrowth would mean that any honest fund manager would need to take pains to understand whether this offer – which was apparently, and as it turns out actually was, too good to be true – was in fact true.

540. Mr Hadley was relying principally on a letter from a Mr Thomas McBeath representing AON Risk Solutions confirming that AON had:

> "... developed and placed an insurance and risk management program for the operations of CGrowth Capital, comprised of oil operations in the US and to mines in Peru.
>
> The attached draft certificate of insurance provides evidence of the coverages and bondholder rights. Those bondholder rights include loss payee and additional insured with respect to policies, so control of proceeds occurs."

541. The letter made clear that the insurance had not yet been put in place.

542. The letter confirmed that the overall objectives of these arrangements were:

> "Protect the:
> - Assets
> - Revenue Stream(s)
>   - Including protection of lender interest and principal payment obligations
> - and Liabilities of the Corporation.
>
> Any remaining potential exposures to the Corporation shall not be able to produce a damaging blow to the Balance Sheet, where the organization has difficulty continuing its business and meeting its financial obligations."

543. The letter had attached to it a draft certificate of insurance which confirmed the heads of loss that were to be covered. These included:

i) in relation to Powder River, "Commercial General Liability"; Umbrella Liability"; "Operators Extra Expanse"; and

ii) in relation to the Peruvian companies (which seem to have been taken together for this purpose), "Commercial General Liability; "Umbrella Liability"; and "Property, with Business Interruption".

544. Importantly, the draft policy clearly only covered one year (March 2016 to March 2017) and was subject to liability caps (with a reference to a general aggregate which was not explained in the Schedule). At the end of the schedule there was a statement in bold capitals stating that the policy contained clauses "WHICH MAY LIMIT THE AMOUNT PAYABLE".

545. These heads of loss covered were not further defined in the draft schedule, and can only be understood in conjunction with the policy document itself. There is no suggestion that Mr Hadley sought or read the policy document.

546. Mr Hadley is adamant that he understood this letter and schedule as confirming that AON would insuring CGrowth against its potential inability to repay its liabilities, and that Trafalgar, as a person noted as having an interest in the policy would directly benefit from this. The points that the insurance covered only one year, and appeared to be subject to limits beyond those included in the schedule, were not raised with him during the trial, but are each something that one might expect to have been addressed by him if he had genuinely and properly been looking out for Trafalgar's interests.

547. Given, the inherent improbability that AON would provide such cover, and the descriptions of the heads of loss that were covered, I would not have read this letter, taken with the draft schedule, that way. I would have taken from these documents that the insurance covered various risks that might interrupt whatever revenue stream the CGrowth Underlying Borrowers might have already achieved, but not that it would make up the income if they fail to achieve a sufficient revenue stream to meet CGrowth's obligations to Trafalgar. Trafalgar was covered as a person noted on the policy, and therefore could have recourse to the proceeds of any insurance claim, but this did not

mean that the insurance covered making good shortfalls in income not arising from specific risks such as property damage or fire.

548. Based on a much later interview that Trafalgar's appointed investigators Doran and Minehane had with Mr McBeath, the author of the letter, it appears that my reading would have been correct. Mr McBeath confirmed that:

i) the "Commercial General Liability" element was essentially third party liability cover for bodily injury or property damage (insurance limit of US $1m per occurrence);

ii) the "Operator Extra Expense" cover (for Powder River) was principally to insure the operators of the oil wells against blow outs, explosions and fire.

iii) the Peru policy had "Property with Business Interruption "cover instead of "Operator Extra Expense" cover which insures against fire and explosions (note the Peru mines are not operational); and

iv) the "Umbrella Liability" cover was merely a top up that sits over all the policies to enhance the overall individual limits of specific cover (insurance limit of USD10m per occurrence).

549. When asked whether the repayment of bonds and interest were insured under the "Umbrella Liability" cover against an event of default under the bonds, he was clear that they were not. Indeed Mr McBeath said that he had no idea of the level of investment by Trafalgar in CGrowth.

550. Mr McBeath also said in his interview that he had been under an "*element of pressure*" to write the letter. It is unclear where any such pressure would have come from. The only people known to have been communicating with Mr McBeath about the insurance were Mr Thwaite, his associate Mr Lightfoot and Mr Wright. Mr Thwaite has denied that he placed any pressure on Mr McBeath and has stated that he could not understand why Mr Lightfoot would have done so. Mr Wright also denied placing any pressure on Mr McBeath.

551. Whilst the circumstances invite suspicion, I do not think that I have enough information to conclude that any individual placed Mr McBeath under pressure based solely on this hearsay evidence.

552. The Claimant avers that in the circumstances it is unnecessary for the Court to seek to resolve quite how and by whom AON were pressurised to write the letter that it wrote since Mr Thwaite and Mr Wright nevertheless permitted AON’s letter to be advanced as a basis for justifying the March CGrowth bond transactions and could have had no honest basis for doing so.

553. I do not agree with this reasoning. In the absence of evidence that Mr McBeath was pressured by someone representing CGrowth, and in the absence of established specific references of misrepresentation made by or on behalf of CGrowth as to the meaning of that letter or the extent of the insurance coverage, I do not think I have enough to find wrongdoing on this particular point.

554. Despite the inherent unlikeliness of this, I accept that Mr Hadley did think that the insurance covered more than it did.

555. Mr Hadley, may have had some lingering doubts, as he required a legal opinion on the matter. There was obtained for him a legal opinion from a Canadian law firm, Opara Law PC. The legal opinion was very short and next to useless. It confirmed that the letter from AON Risk Solutions was indeed a letter from that firm and that:

> "the contents of the documents, and the explanation of the benefits covered are, in our opinion, as AON Risk Solutions, the issuer of the documents, state."

556. Essentially, the legal opinion said only that the documents say what they say. It offered no assistance in interpreting what they say. I cannot see what comfort Mr Hadley would have taken from this.

557. Given that it appears he was relying entirely on the insurance as his reason for thinking that the CGrowth Bonds would be repaid, it was in my view at least negligent of him not to make further enquiries as to the extent of cover of the insurance. Indeed, he took no steps to see that the cover was actually put in place at the point that the CGrowth bonds were issued - and it appears that this did not occur until weeks later.

558. Even if he had genuinely understood the letter he had received as saying that AON would in effect guarantee the repayment of the bonds, I consider that he turned a blind eye to the possibility that this inherently improbable proposition, which suited him so well in providing at least an apparent answer to Trafalgar's missing net assets, might not be as it had seemed to him.

Conclusions regarding Mr Hadley's motives

559. In summary on this point, whilst I consider on balance that Mr Hadley probably did consider that the CGrowth transaction was in the best interests of Trafalgar, having regard to the insurance arrangements, and the ability it provided to dispose of problematic assets, I think that in reaching this conclusion he was essentially fooling himself. He was paying no attention to the real needs of the Fund for liquidity, or its stated investment policy of diversification, and rushing into an investment that on its face (on his understanding of the insurance arrangements) was too good to be true.

560. His eagerness to grasp at this particular straw was in part motivated by his concern to protect himself from Trafalgar enquiring further into what had happened to Trafalgar's money that had been paid out previously in uncommercial investments, and must be taken also to have been motivated by bribes in the form of the introducer agreement that his company was party to and the established bribe relating to the sale of VAM.

12.2 No legitimate commercial rationale for CGrowth

561. The Claimant argues further that CGrowth also could not have regarded the arrangements as a legitimate transaction, where it was borrowing money for a legitimate purpose in the expectation that it would be able to repay these borrowings.

562. In particular, the Claimant considers that the elements of the transaction that included the acceptance of non-cash assets (including the shares in Shawcross and the loan receivables

in Momentum) were wholly uncommercial. CGrowth, and the CGrowth Underlying Borrowers, had no need and no use for these assets and it was inexplicable why CGrowth would issue a bond paying 10% in order to acquire (in the case of the Quantum loan notes) an impaired asset paying 6%. In the case of the loan notes issued in relation to the Titan receivable, these were clearly issued in a face value that was greater than the consideration provided by Titan - £1.36 million of cash from Titan bought Trafalgar CGrowth bonds with a face value of over £1,590,493.

563. The transaction was negotiated principally by Mr Thwaite (acting through his company PPL) on behalf of CGrowth. Mr Thwaite was under no illusions as to the value of the assets proffered. He considered that the assets transferred were "horrendous" - although Mr Wright denies hearing this term at the time. My impression, however, is that Mr Wright was optimistic that there was value in these assets, albeit that on the basis of the understanding he would have had from Mr Thwaite this might be difficult to recover and that their value might not equal the full amount deemed to be paid for these assets.

564. It is clear that CGrowth performed very little due diligence on these assets - indeed the transaction was conducted at breakneck speed, allowing little time for due diligence or reflection. Once the CGrowth bonds had been issued, CGrowth took no steps to obtain value from these non-cash assets – there is no evidence that it contacted Quantum, or that it checked the Shawcross share register or obtained any share certificate. If it had done this it would have discovered that no share certificate had been issued to Trafalgar. Furthermore, it seemed that at one point CGrowth and Mr Wright were contemplating entering into an Option Agreement which, if signed, would have ensured that they could not obtain value for the three-year period of their original bond.

565. Mr Higgo put forward some calculations to underline the uncommercial aspects of this transaction for CGrowth and to demonstrate that when one takes into account the commissions paid, and the fact the bonds were issued at full value in respect of impaired and illiquid assets, it is difficult to see how CGrowth thought that it could use the money that it received from the bonds in order to generate a sufficient profit for it to be able to repay the bonds and pay the coupon due on them.

566. His calculation in relation to the March CGrowth bonds was as follows: in exchange for £2.87m (after commissions), CGrowth and the companies underlying CGrowth were agreeing to undertake an obligation to pay £730,000 in interest a year for three years and to repay capital of £5m after three years. In other words, just to be able to afford their finance costs they would need to generate £7.19m from £2.87m – a straight line profit of 50%.

567. Mr Wright and Mr Thwaite challenged these mathematics. Mr Thwaite points out that the CGrowth bonds were in fact 10 year bonds, but with a break clause exercisable by the bondholder at three or five years (he would say on average four years). As Mr Thwaite and Mr Wright point out, CGrowth was in addition receiving whatever could be recovered from the Quantum loan notes (which we know had no assets but Mr Wright may not have realised this at the time) and from the Shawcross shares (which we now understand to have had only around £100,000 in cash at that time plus possibly some other investments, but again which Mr Wright may have believed had some greater value in them at the time).

568. Mr Wright in his closing skeleton argument suggested that the total actual and realistically recoverable cash equivalent added together across all the CGrowth bond transactions came to more like a value of £8,980,500 and points out that no commission was paid on the non-cash element of the subscription. Whilst his conclusions about recoverable amounts may be in part based on recoveries that Trafalgar was able to make based on equitable claims that would not have been available to CGrowth, his figures serve to demonstrate the complexity of determining now what value CGrowth would have considered then it was getting for its bonds.

569. Despite the very pertinent arguments put forward by Mr Higgo based on the economics of these arrangements, I do not think that I can find on a balance of probabilities that that CGrowth had an intent to take Trafalgar's money and not pay it back.

570. CGrowth denies that the loans were uncommercial from its viewpoint. Mr Wright accepted that he knew there would be difficulties in raising cash from the assets transferred, and that he might not get full value from them, but nevertheless in the round thought the deal helpful to (as he put it in his closing skeleton argument) "*kick start*" the CGrowth bond issues.

571. I consider that Mr Wright was unduly, perhaps recklessly, optimistic in whatever projections he had relied upon for the CGrowth Underlying Borrowers being able to ramp up production and make sales so as to be able to pay back the amounts owing on the CGrowth bonds as they became due. However, I cannot conclude that there was no intention to meet the liabilities on the bonds when I have regard to the fact that he was willing for Powder River to provide security over its assets and the other CGrowth Underlying Borrowers were also willing to provide security over their assets. These assets were said, according to the bond offer document, to include assets valued at their acquisition cost of US$ 5.5 million in the case of Powder River, gross assets of proven and probable reserves of in excess of US$32.16 million in the case of Ana Paula Bebe and a net project value of US$ 62.5 million in the case of Project Partners International. Whilst these figures might be taken with a pinch of salt, it is credible that these assets had a greater value than the amount borrowed. Accordingly, my conclusion was that Mr Wright and CGrowth were guilty of undue optimism rather than of a dishonest intent.

572. Mr Wright underestimated the extent to which the assets offered were impaired, and may have allowed his judgement to be clouded by his keenness to get the bond issue away. But I do not think it is established, on the balance of probabilities, that Mr Wright expected to be unable to find a way of meeting these obligations. I think that he may have optimistically considered that there would be other opportunities to raise money with a view to ramping up production, and that this might be easier once, what he understood to be a large investment fund, had shown some faith in the bond issue. As well as the prospect of generating income from the sale of oil and minerals extracted, there was always the possibility of selling oil or mineral rights or forward-selling expected production.

573. I must, however, deal with the accusations made against Mr Wright and CGrowth of misleading Trafalgar. The complaints include the following:

    i) That the bond offering document failed to disclose that 30% of subscriptions would be applied for introductory commission (28%) and administration (2%), as is evident from the Introducer Agreement entered into with PPL. This was

technically a failure to disclose, rather than a misrepresentation, but it was a very important failure to disclosure, and as such may be taken as rendering elements of the offering document (such as the diagram showing the flow of funds) misleading. Mr Wright makes the argument that the commissions were to be borne by the CGrowth Underlying Borrowers, but this misses the point – the disappearance of these sums out of the structure, whether borne by CGrowth or the CGrowth Underlying Borrowers, affected the cash flow of the structure into which bondholders would be lending and would be a highly material factor in any assessment of the ability of CGrowth to repay the bonds when due.

ii) That the offering document in relation to the bonds falsely misrepresented that CGrowth would use the proceeds of bond subscriptions solely for the purpose of lending contemporaneously to the CGrowth Underlying Borrowers. This was not in fact a representation made by CGrowth – it was an undertaking on the part of CGrowth, the breach of which would constitute an event of default. Nevertheless, I think its inclusion in the bond terms could be regarded as misleading. Mr Wright and Mr Thwaite argue that the statement is true, as it is the CGrowth Underlying Borrowers that were responsible for the payment of the commission and administration fee. This, as I have analysed above, is not supported by the legal agreements that were before the Court, but, as an accounting presentation of what happened here might possibly be regarded as fair.

iii) CGrowth falsely represented to its bond subscribers that bond funds would be paid into a designated PPL client account and kept separate from any other funds so as to enable such funds to be transferred in accordance with the undertaking mentioned above), whereas the PPL account was not a designated client account for CGrowth, but a mixed client and office account.

574. Whilst I have sympathy for these points made by the Claimant, I am not sure where they take us, as there is no suggestion that the Claimant invested on the strength of the offering document alone. The decision made to subscribe was made by Mr Hadley and I think we must assume that he was well aware of the commission arrangements.

575. The Claimant also accuses CGrowth as being responsible for the misleading ambiguity in Mr McBeath's letter, on the basis that Mr McBeath suggested that he had written it under pressure and this pressure could have only come from Mr Wright, or Mr Thwaite or Mr Lightfoot, who were agents of, and acting on behalf of CGrowth. As what the Court learned about what Mr McBeath may have said on this point was hearsay and he was not called to give evidence on this point, I do not think I can make any conclusion on this point.

576. The Claimant also makes the point that it is established that Mr Wright would have known by 7 April 2016 exactly what the policy covered and would have understood that it did not cover payment of interest on capital on the bonds. On 19 April 2016, Mr Wright wrote to Mr Caruana, a director of the Fund responding to the question:

> "Do you confirm that the loan notes subscribed by Trafalgar are insured and such insurance cover will remain in force until maturity?"
>
> with the answer:

> "We confirm this to be correct, we confirm that insurance shall be maintained that covers Trafalgar whilst Trafalgar continues to be a bond holder (i.e. until maturity or upon redemption)."

577. This was another point that may have been strictly true in one sense – Trafalgar was being noted as having an interest on the insurance, and in that sense was "covered". The insurance was not at that stage put in place over the CGrowth Underlying Borrowers in Peru, but some insurance was in place (making the first statement strictly correct) and I think it was the intention to maintain insurance making the second statement strictly correct. Nevertheless, I think that the statements were misleading, because Trafalgar would have taken from this reply an understanding that the insurance covered more than it did, and would have understood him as saying that the insurance covered the operations of all the CGrowth Underlying Borrowers.

578. Mr Wright claimed in his oral evidence that he thought the statement was true when he made it and tried to indicate that he had been unsure whether the insurance covered revenue flows in the sense that Trafalgar was understanding this. I found his evidence on these points to be unconvincing. As an experienced oil man (and given the inherent unlikeliness of AON guaranteeing payment flows, as I have explained at [536] to [538] above), I think he would have understood, even before seeing the policy document, the broad scope of what the insurance actually covered. I think also he would have been aware of the misleading impression his answer would have given to Mr Caruana.

579. I conclude generally in relation to these points about misleading statements being made, that CGrowth did not conduct itself with the diligence and frankness that would be expected of an honest and competent issuer of bonds. I will consider the consequences of this further below.

12.3 Claims relating to the CGrowth transaction: Bribery

580. The Claimant has already established a bribery claim against PPL and Mr Hadley relating to the purchase of VAM.

581. It is arguable whether CGrowth is vicariously liable for that bribery claim, depending on whether one considers that the VAM transaction (which eventually was undertaken not with PPL but with another company owned by Mr Thwaite) should be considered to have been entered into by PPL in the course of its agency arrangements with CGrowth.

582. I do not think, however, that I need to settle that difficult question given that the Claimant, through the discovery of materials that were disclosed very late in the day by Mr Hadley has established that PPL, clearly within the scope of its authority under its Consultancy Agreement with CGrowth, provided Mr Hadley's company, Proactive, with an introducer agreement binding CGrowth to pay it a commission in relation to any subscriptions in CGrowth bonds. This created a further conflict of interest for Mr Hadley in circumstances where PPL (which clearly in this regard was CGrowth's agent) knew it was creating a conflict of interest. There was, and can be, no suggestion that this conflict of interest was disclosed.

583. These arrangements clearly provide the basis for a further bribery claim on the part of Trafalgar for which PPL and Mr Hadley are liable. Furthermore given the clear agency that PPL had been granted to enter into such arrangements, CGrowth must be held vicariously responsible for the bribery undertaken by its agent.

584. As can be seen from the *Petrotrade* case mentioned at [282] above, it is no defence against vicarious liability for bribery that an agent was not commissioned to undertake bribery if the bribery was committed within the scope of the lawful authority provided to the agent. *Petrotrade* has widely followed and applied including in at first instance in *UBS AG v Kommunale Wasserwerke* [2014] EWHC 3615 (Comm) at [610]-[611]. Although that judgment was overturned on appeal in *Kommunale Wasserwerke (AC)*, the Court of Appeal indicated (at [101]), that it would have endorsed the trial judge's conclusion that the bribe fell within the scope of the agency relationship had it found the arrangement to be one of agency. *Petrotrade* has also been applied in the recent Scottish case of *Oil States Industries (UK) Ltd v "S" Ltd* [2022] CSOH 52, 2002 SLT 919 (see in particular at [91]-[93]).

12.4 Claims relating to the CGrowth transaction: Breach of fiduciary duty

585. Having regard to the points above, I now consider the extent to which the Claimant has established the claims relating to the CGrowth transaction.

586. I have no hesitation in accepting the Claimant's claim that Mr Hadley was in breach of fiduciary duty, not just in accepting the bribe established by the Court of Appeal in relation to the sale of VAM, but also in relation to the earlier bribe he must be considered to have taken by allowing his company, Proactive, to enter into an Introducer Agreement which would reward it for subscribing CGrowth bonds.

12.5 Claims relating to the CGrowth transaction: Liability for bribes

587. As regards PPL and Mr Thwaite, they have already been found to be involved in a bribery claim by the Court of Appeal, and I find that they are also involved in the newly established bribery claim relating to the Proactive Introducer Agreement.

588. As regards CGrowth, I have no hesitation in finding that CGrowth has vicarious liability, certainly for the bribe relating to the Introducer Agreement. I am less satisfied that CGrowth has vicarious liability for the bribe relating to the sale of VAM given that this was not to PPL and I think was being undertaken by VAM CI UK and Mr Thwaite outside the scope of whatever agency PPL had with CGrowth. However I need not decide the point given my finding relating to the Introducer Agreement.

589. On the basis of the bribery claim relating to the Introducer Agreement provided to Proactive, therefore, I consider that Trafalgar is entitled to treat the CGrowth bond subscriptions as void and to reclaim the monies subscribed under them plus interest.

12.6 Claims relating to the CGrowth transaction: Unconscionable receipt

590. As against CGrowth, to the extent that this adds anything to the established claim for vicarious liability for bribery, I consider that an unconscionable receipt claim is made out. Rehearsing again the elements of that claim:

    i) The first element is the disposal of the claimant's assets in breach of fiduciary duty. Cash belonging to the Fund/Trafalgar, and receivables that Trafalgar could have claimed were transferred to CGrowth when Mr Hadley brought about Trafalgar's investment into the CGrowth bonds and this has been established as being in breach of fiduciary duties on the part of Mr Hadley. The first element therefore is satisfied.

ii) The second element is the defendant's beneficial receipt of the claimant's assets. Clearly CGrowth received this cash and the diversion of receivables due to Trafalgar and so the second element is satisfied.

iii) The third element is the defendant's knowledge that the assets are traceable to a breach of fiduciary duty. Whilst I do not consider that Mr Wright had this knowledge, Mr Thwaite, and therefore PPL which was acting as CGrowth's agent, had this knowledge. Following the second principle in *Meridian Global* (see at [462] above), I consider that CGrowth should be fixed with the knowledge of its agent, and therefore this element of the tort is also established.

591. I do not consider, however, that Mr Wright personally can be considered to be involved in this unconscionable receipt, as I have not found that he was aware of the bribery or of any other breach of fiduciary duty on the part of Mr Hadley.

12.7 Claims relating to the CGrowth transaction: Dishonest assistance

592. As against CGrowth, I consider also that a dishonest assistance claim is made out. Again, I will rehearse the elements of that claim:

i) The first element is that there is a breach of fiduciary duty by another party. Again Mr Hadley's breach of his fiduciary duties is established by the bribery.

ii) The second element is that the defendant procured or assisted in that breach of duty. I think it is clear that both CGrowth (by issuing the bonds and accepting Trafalgar's assets) must be regarded as having assisted the breach.

iii) The third element is the element of dishonesty. To make a finding of dishonest assistance the Court must conclude that the defendant's conduct is dishonest, applying the standards of ordinary decent people. Again whilst I do not consider that there is any evidence that Mr Wright had the knowledge of Mr Hadley's conflict of interest, Mr Thwaite, and therefore PPL, acting as CGrowth's agent, had this knowledge and following the second principle in *Meridian Global*, I consider that in the circumstances CGrowth should be fixed with the knowledge of its agent. Therefore this element of the tort is also established.

593. As I do not believe that he was aware of the bribery or of any other breach of fiduciary duty on the part of Mr Hadley, I do not consider that Mr Wright personally can be considered to have been involved in dishonest assistance.

12.8 Claims relating to the CGrowth transaction: Conspiracy

594. The Claimant also makes a conspiracy claim against participants in the CGrowth transaction.

595. I should be clear that I do not consider that the facts surrounding the CGrowth transaction should be elided with what the Claimant has called the "overarching conspiracy" or what I call the Original Conspiracy. If there is a conspiracy here, it stands on its own.

596. I will consider again the elements of an unlawful means conspiracy in relation to the CGrowth subscriptions.

597. First there is the question of loss or damage. Clearly, at present, Trafalgar has suffered damage in that its money has gone to CGrowth and so far it has had nothing in return.

598. Secondly, there must be a combination or agreement between the defendant and another person or persons to injure him by unlawful means.

599. Whilst, as I have discussed above, Mr Hadley might have considered that the CGrowth transaction was in the interests of Trafalgar, nevertheless, I must find that the two established counts of bribery constituted unlawful means and injured Trafalgar by denying Trafalgar by depriving it of its entitlement to disinterested advice and actions from its agent Mr Hadley.

600. I therefore consider that the conspiracy claim is made out in respect of those participating in the conspiracy. This includes Mr Hadley, Mr Thwaite and PPL. I do not consider that it includes Mr Jones or Titan, despite their role in transferring cash out of Titan, given what I have held above in relation to Mr Jones' knowledge and intentions. Neither do I consider that the conspiracy included Mr Wright, who also was, I think, ignorant of the bribery.

601. As regards whether CGrowth itself should be considered to be part of the conspiracy, this question goes to whose knowledge and intentions should be attributed to CGrowth in relation to this conspiracy. Again, I consider that it is appropriate to attribute to CGrowth the knowledge and intentions of its agent, PPL and therefore I find CGrowth also to be a participant in this conspiracy.

602. As regards Mr Wright, there is no evidence that he knew of or joined in this conspiracy to bribe Mr Hadley. Any case against him must be based on the more general contention that he (along with CGrowth, PPL and Mr Thwaite, and perhaps Mr Hadley) meant to harm Trafalgar by procuring it to enter into loan notes that could not be repaid or by selling bonds on a false prospectus or through fraudulent misrepresentation.

603. I have considered these matter at [561] onwards. As regards the claim that CGrowth and Mr Wright intended to harm Trafalgar by taking money from the bonds with no intention of repaying it, I do not think that this claim is made out.

604. As regards the incidences of misrepresentation claimed, I do not think the Claimant has been able to get quite as far as establishing a fraudulent misrepresentation on the basis of the points made about the bond offering document at [573] above. At most, with the evidence before me, I might find any misrepresentations as to the application of the bond proceeds to be negligent. The Claimant has not pleaded a claim for negligent misstatement or negligent misrepresentation and might have a difficulty in establishing one as it would have difficulty in showing that Trafalgar relied on these statements, given that the decision to invest was made by Mr Hadley who certainly did know of the commission arrangements. As regards an unlawful means conspiracy, this requires more than mere negligence. It requires an intention to injure the claimant. It also requires the claimant to show loss.

605. Trafalgar has not suffered any loss as a result of any misrepresentation in the offering document. In truth the bond transactions came about not because Mr Hadley (or anybody else representing Trafalgar) evaluated and relied upon the CGrowth bond offering document. It came about as a result of the motivations of Mr Hadley, which (apart from

any motivation arising from bribes) included getting the flawed assets held by Trafalgar out of the books of Trafalgar and (in Mr Hadley's over-optimistic, but probably genuine, view), acquiring in return an asset that was, in effect, guaranteed by AON.

606. If the Claimant had been able to demonstrate a statement made by Mr Wright that deliberately misrepresented the nature of the insurance to Mr Hadley, and had induced Mr Hadley to invest on behalf of Trafalgar, then this might have formed the basis of an unlawful means claim that included Mr Wright. But the Claimant has not in my view, established any such misrepresentation. Insofar as Mr Hadley was misled by the letter written by the insurance broker, in the absence of any evidence of any other representation made by Mr Wright or someone else at his direction, that can only be attributed to the insurance broker himself or to Mr Hadley's naivety (or wilful blindness) in reading it the way that he did.

607. As regards Mr Wright's exchange with Mr Caruana discussed at [576] and [577] above, this was misleading and it is difficult to characterise Mr Wright's misleading answer as being honestly given. However, I do not think that this answer, by itself, can be a basis on which to found the basis of an unlawful means conspiracy involving Mr Wright.

608. First, it is unclear who else might be said to have been involved in a conspiracy to provide this misleading answer – certainly not Mr Hadley. Neither do I think it has been suggested that Mr Thwaite or PPL were implicated in this particular statement. Perhaps it could be said that there was a conspiracy with CGrowth itself, but there has been no evidence that the board of CGrowth approved this letter or any other misleading statement that may have been made about the insurance arrangements.

609. Secondly, this statement did not induce Trafalgar to invest in CGrowth bonds, it went to Mr Caruana rather than Mr Hadley and it was Mr Hadley who made the decisions to invest.

610. I think the Claimant would seek to persuade the Court that it should not look at this letter in isolation but should see it as an instance of a more general pattern of misleading bond investors, including Trafalgar as represented by Mr Hadley, into thinking that the insurance covered more than it did. However, such a pattern was not established by the facts that were put before the Court. The communication with Mr Caruana was the only statement coming from Mr Wright that could be said to be misleading in this regard. Importantly, no misleading statement about insurance was included in the bond offering document. Indeed that document stated prominently within the risk warnings given at the front of the document:

> "Whilst the project companies may hold extensive arrays of risk insurance policies, commercial risks of total or partial loss for whatever reason may not be covered under such policies in exceptional events for whatever reason. Non-payment of insurance premiums would also likely render any such policies avoid in any insured event of claim".

611. In addition, the risk warnings included a statement that:

> "The ability for the Bond Issuer to repay capital and interest is based upon the project company borrowers repaying."

612. It is difficult to see these statements as compatible with CGrowth holding out the insurance provided as something which would in effect guarantee repayment of the CGrowth bonds and with the exception of the one letter to Mr Caruana I have not been taken to any statements by Mr Wright or anyone else representing CGrowth that could be said to have induced the bond subscription on a false basis.

613. Whilst I consider that that CGrowth, under Mr Wright's direction, did not conduct itself with the diligence and frankness that would be expected of an honest and competent issuer of bonds, I do not see that this founds the basis of a claim for unlawful means conspiracy. The damage to the Claimant arose from the bribery relating to Mr Hadley, not anything said in the bond offering document and not anything said by Mr Wright.

13. SUMMARY OF THE CLAIMS ESTABLISHED BY THE CLAIMANT

614. This case has generated a large number of different claims and potential remedies for the Claimant and it is appropriate that I gather together my conclusions above as to the claims that the Claimant has established by reference to each individual and each transaction.

615. Of course the Claimant cannot be compensated twice for the same loss and, as I discuss further below, it will be necessary for the Claimant in some cases to elect between different remedies.

13.1 Claims against Mr Hadley

616. I have found that Mr Hadley was a part of the Original Conspiracy and was throughout his involvement in breach of fiduciary duty to Trafalgar.

617. This was:

i) first, because of the conflict of interest arising from his understanding with Mr Talbot and Mr Chapman-Clark in the Original Conspiracy (which applies to all his (and Mr Biggar's) involvement in the Dolphin Capital; Quantum, Momentum and Shawcross transactions);

ii) secondly, it was because of the conflict of interest arising from the self-dealing nature of the investments in Momentum and Titan;

iii) thirdly, it was because of his receipt of bribes in relation to the CGrowth Transactions.

618. In consequence of the above, I consider that:

i) Fiduciary duty

As regards the Dolphin Capital; Quantum, Momentum, Shawcross, Titan and CGrowth transactions, Mr Hadley is liable in consequence of his breaches of fiduciary duty.

ii) Conspiracy

As regards the Dolphin Capital; Quantum, Momentum and Shawcross transactions, Mr Hadley is liable to damages also in consequence of the Original Conspiracy. I

consider that it may be arguable also that this head of liability also extends into the Titan and CGrowth transactions as they were enabled by the Original Conspiracy, but I think the Court should hear further argument on this when damages are being quantified.

As regards the CGrowth transactions, Mr Hadley is also liable for a conspiracy with PPL, Mr Thwaite and CGrowth.

iii) Bribery

Mr Hadley is liable in bribery in consequence of the bribes established against him.

iv) Remedies

Having regard to my findings above, I find that Trafalgar is entitled various remedies against Mr Hadley, including:

a) *Equitable compensation*, for the breaches of fiduciary duty in relation to each of the impugned transactions. Equitable compensation is available for a fiduciary's dishonest or deliberate failure to disclose a potential conflict of interest (in addition to remedies that include rescission and an account of any profits received by the fiduciary from his breach). A fiduciary may be held liable for loss, even though he has not himself received any of any misapplied property. The loss may be assessed on the basis of what would have happened had the disclosure of material facts been made – see *Gwembe Valley Development Company v Koshy* [2003] EWCA Civ 1048, at [142]-[147].

b) *Damages* in relation to any loss arising from the Original Conspiracy and/or the conspiracy relating to CGrowth.

c) *Liability for bribery*, in consequence of the bribes established in relation to the CGrowth transaction, the Claimant is entitled to remedies that include an account of profits, rescission and restitution. An election must be made, so as to avoid double recovery. That election need only be made prior to the entry of judgment (see *Mahesan v Malaysia Government Officers' Co-operative Housing Society Ltd* [1979] AC 374). I will interpret this requirement in this case as requiring the Claimant to make its election prior to the final hearing that will be required to fix damages in this matter. That election might conveniently be provided in its skeleton argument ahead of that hearing.

13.2 Claims against Mr Chapman-Clark

619. Against Mr Chapman-Clark, the Claimant seeks to persuade the Court that he is liable for conspiracy to injury by unlawful means, dishonest assistance, or unconscionable receipt.

620. I have found that Mr Chapman-Clark also was a part of the Original Conspiracy.

621. In consequence of the above, I consider that:

i) Conspiracy

As regards the Dolphin Capital; Quantum, Momentum and Shawcross transactions, Mr Chapman-Clark is liable in consequence of the Original Conspiracy. As with Mr Hadley, I consider that it may be arguable also that this also extends into the Titan and CGrowth transactions as they were enabled by the Original Conspiracy but I think the Court should hear further argument on this when damages are being quantified.

ii) Authority

Given his knowledge of and participation in the Original Conspiracy, Mr Chapman-Clark, and any company of which he was the controlling mind, must be considered to be aware that any implied actual authority that Mr Hadley or Mr Biggar may have had in relation to Trafalgar was vitiated by their conflicts of interest arising from the Original Conspiracy. It appears that no representations were made by Trafalgar itself to them, to allow them to rely on any doctrine of apparent authority to prevent such transactions being rendered void, but even if a representation can be implied from a course of dealing it will not lead to any implied authority for the reasons given at [247] above.

iii) Dishonest assistance

Mr Chapman-Clark, through his involvement with Mr Talbot in producing the information memorandum which Mr Lloyd used to recruit investors and his general assistance in setting up the scheme of recruitment for investors, and in receiving commissions from investments made by Mr Hadley in breach of fiduciary duty, should be considered to have rendered dishonest assistance to Mr Hadley in his breaches of fiduciary duty as regards the Dolphin Capital, Quantum, Momentum and Shawcross transactions.

As the arrangements he helped put in place to put funds under the control of Mr Hadley (and Mr Biggar) also put Mr Hadley in a position to damage Trafalgar further in relation to the Titan and CGrowth transactions, it is arguable also that he should be regarded as providing dishonest assistance to those also, and the Court should hear further argument on this point when determining damages.

iv) Unconscionable receipt

Mr Chapman-Clark, in receiving or procuring the receipt by companies in which he was interested (and/or through procuring payments being made to persons at his behest), should be regarded as being liable to the Claimant for unconscionable receipt.

v) Remedies

Having regard to my findings above, I find that Trafalgar is entitled to various remedies against Mr Chapman-Clark, including:

a) *Damages* in relation to any loss arising from the Original Conspiracy;

b) *Equitable compensation*, for his dishonest assistance in Mr Hadley's breaches of fiduciary duty. Equitable compensation is available for losses

resulting from the breach of fiduciary duty that was procured or assisted (not the assistance itself) (see *Group Seven*, at [110]): the dishonest assistant is thus liable for the same loss that the party in breach of fiduciary duty assisted (not the assistance itself); and

c) *equitable compensation*, for unconscionable receipt for funds originating from investments made by any of the Trafalgar investee companies using funds from Trafalgar – for which the usual measure of compensation is the value of the misappropriated assets received by the defendant, less any recoveries.

13.3 Claims against Mr Lloyd and Pinnacle

622. As with Mr Chapman-Clark, the Claimant seeks to persuade the Court that Mr Lloyd and Pinnacle are liable for conspiracy to injury by unlawful means, dishonest assistance, or unconscionable receipt.

623. I have found that Mr Lloyd and Pinnacle were also part of the Original Conspiracy.

624. In consequence of the above, I consider that:

i) Conspiracy

As regards the Dolphin Capital, Quantum, Momentum and Shawcross transactions, Mr Lloyd and (to the extent that any of these transactions took place during the involvement of Pinnacle) Pinnacle are liable for any loss arising to Trafalgar in consequence of the Original Conspiracy.

ii) Dishonest assistance

Mr Lloyd, and later Pinnacle, through their respective involvement in recruiting investors, and in receiving commissions from investments made by Mr Hadley in breach of fiduciary duty, should be considered to have rendered dishonest assistance to Mr Hadley in his breaches of fiduciary duty as regards the Dolphin Capital; Quantum, Momentum and Shawcross transactions.

As the arrangements they helped put in place to put funds under the control of Mr Hadley (and Mr Biggar) and also put Mr Hadley in a position to damage Trafalgar further in relation to the Titan and CGrowth transactions, it is arguable that they should be regarded as providing dishonest assistance to him in relation to those transactions also. The Court should hear further argument on this point when determining damages.

iii) Unconscionable receipt

Mr Lloyd and Pinnacle, in receiving (in the case of Mr Lloyd either directly or through other companies owned by Mr Lloyd) monies derived directly or indirectly from investments made by Trafalgar. They did so with no contractual entitlement from the companies concerned and as such should be regarded as being liable to the Claimant for unconscionable receipt.

iv) Remedies

Having regard to my findings above, I find that Trafalgar is entitled to various remedies against Mr Lloyd and against Pinnacle, including:

a) *Damages* in relation to any loss arising from the Original Conspiracy;

b) *Equitable compensation*, for their dishonest assistance in Mr Hadley's breaches of fiduciary duty; and

c) *Equitable compensation*, for unconscionable receipt for funds originating from investments made by any of the Trafalgar investee companies using funds from Trafalgar.

13.4 Claims against Mr Jones and Titan

625. I have found against the Claimant on its claims for conspiracy to injury by unlawful means, dishonest assistance, and unconscionable receipt in respect of Titan.

626. I have also found that, whilst Mr Hadley, had neither actual nor apparent authority to cause Trafalgar to enter into the Trafalgar loan notes, by the time it came to the redemption of the loan notes he had apparent authority in the eyes of Titan, and that this action implied a ratification, which also was made with apparent authority, of the subscription itself. I therefore consider that Trafalgar has no right to set aside these transactions.

13.5 Claims against Mr Thwaite and PPL

627. PPL and Mr Thwaite have already been found liable to Trafalgar in respect of bribery by the Court of Appeal. This, as well as the additional bribery claim relating to an introducer fee that emerged during the course of the trial, renders them each liable for damages. The additional claim, however, will not affect the quantum of their liability, which will need to be determined in a further hearing alongside the other liability issues that remain to be dealt with.

628. I have found that PPL and Mr Thwaite are not to be regarded as part of the Original Conspiracy but each is variously responsible in respect of the bribes undertaken on its behalf by PPL.

629. They were not, during the course of the trial, pursued in relation to the separate unlawful means conspiracy between Mr Hadley, PPL, Mr Thwaite and CGrowth, and PPL. Because of this, and as Mr Thwaite and PPL were limited in the evidence and submissions they were able to make to dealing with quantum issues relating to the bribes, I will not make any finding against them in relation to these matters.

13.6 Claims against CGrowth

630. The Claimant seeks to persuade the Court that CGrowth is liable for conspiracy to injury by unlawful means, dishonest assistance, and unconscionable receipt.

631. I have found that CGrowth is not to be regarded as part of the Original Conspiracy but it is variously responsible for the bribes undertaken on its behalf by PPL, and in respect of such bribes may be considered to be part of a separate unlawful means conspiracy between Mr Hadley, PPL, Mr Thwaite and CGrowth.

632. In consequence of the above, I consider that:

i) Conspiracy

As regards the CGrowth bonds transaction CGrowth is liable jointly with the other conspirators for conspiracy against Trafalgar to bribe Mr Hadley.

ii) Authority

Given its knowledge of and participation in such conspiracy, CGrowth must be considered aware that any implied actual authority that Mr Hadley or Mr Biggar may have had was vitiated by their conflicts of interest arising from that conspiracy. In such circumstances, and given also that no representations were made by Trafalgar itself to them, they cannot rely on any doctrine of apparent authority to prevent such transactions being rendered void. Even if a representation of authority can be implied from a course of dealing it will not lead to any implied authority for the reasons given at [247] above.

Accordingly, I find that the CGrowth bond purchase contracts are void for Mr Hadley's want of actual or apparent authority.

iii) Dishonest assistance

CGrowth, as vicariously liable and/or a conspirator in relation to the bribes, should be regarded as providing dishonest assistance to Mr Hadley in his breaches of fiduciary duty as regards the CGrowth bonds and the transactions arising in respect of them.

iv) Unconscionable receipt

CGrowth, in receiving the proceeds of the CGrowth bonds should be regarded as being liable to the Claimant for unconscionable receipt as it must be considered to know these to have been procured by bribes.

v) Remedies

Having regard to my findings above, I find that Trafalgar is entitled to:

a) *A declaration* that all CGrowth bond purchase contracts are void;

b) *Restitution* of the sum of £5,460,000.90 paid to CGrowth through PPL;

c) *Damages for bribery*, as against CGrowth through its vicarious liability for the actions of PPL;

d) *Damages* in relation to any loss arising from the conspiracy I have found in relation to the CGrowth transactions; and

e) *Equitable compensation*, for their dishonest assistance in Mr Hadley's breaches of fiduciary duty.

13.7 Claims against Mr Wright

633. The Claimant has sought to persuade the Court that Mr Wright also is liable for conspiracy to injury by unlawful means, dishonest assistance, and unconscionable receipt.

634. I consider that no such claim has been established against Mr Wright.

13.8 Other remedies

635. In addition, the Claimant may seek such proprietary relief as it considers that may be necessary.

14. Conclusion

636. One's heart goes out to the pension investors who were persuaded to invest in Trafalgar, and have suffered both loss, uncertainty and anxiety as this long litigation has unfolded.

637. As will be clear from my findings above, this suffering was brought about by the cupidity of various individuals who contrived schemes that would provide them with considerable rewards at the expense of Trafalgar and therefore, ultimately, the pension investors.

638. The liquidators of Trafalgar by bringing this action have established a number of claims which may allow them to claw back some of the losses involved in these dealings, although I suspect that even with the success that they have had in establishing multiple claims against many of the Defendants, they will struggle to obtain a full recovery.

639. This is not quite yet the end of the road. In view of the complexity, and the elections available to the Claimant as to its remedies, the precise remedies and quantum under each remedy will need to be considered further. Arrangements for determining this shall be considered at a consequentials hearing to be heard when practicable following the handing down of this judgment.

640. However, I would hope, now that the principles of liability are firmly established, that there may be a prospect as regards some of the Defendants at least to reach a settlement that may allow a quicker receipt of monies to be claimed by the Claimant, and reduce the prospects for further legal costs. I commend this as a possible way forward.