

<p>The Pensions Regulator</p>	<p align="center">COMPULSORY REVIEW</p> <p align="center">FINAL NOTICE pursuant to Section 99(4) of the Pensions Act 2004 ("the Act")</p> <p align="center">London Quantum Retirement Benefit Scheme (also known as the London Quantum Occupational Pension Scheme ("the Scheme"))</p>	<p align="center">The Pensions Regulator case ref: C46205159</p>
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By this document ("the Final Notice") the Determinations Panel gives notice of its determination on a review to confirm the determination made on 18 June 2015, and its reasons for doing so. The Final Notice has been sent to the parties directly affected by this determination.

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Directly Affected Parties

1. The Panel considered the following parties to be directly affected by this determination on the review (“the DAPs”):¹
 - (1) Dorrioxo Alliance (UK) Ltd, the former trustee of the Scheme (“Dorrioxo”);
 - (2) Quantum Investment Management Solutions LLP, the employer of the Scheme (“QIMS”); and
 - (3) Dalriada Trustees Limited, the independent trustee appointed pursuant to the Original Determination (defined below) (“Dalriada”).

The Review

2. The Determinations Panel (“the Panel”) of the Pensions Regulator (“the Regulator”) carried out a review (“the Review”) of the determination made by the Panel on 18 June 2015 (“the Original Determination”) in respect of the Scheme. The Review was carried out pursuant to section 99 of the Act.

The Original Determination

3. The Original Determination is contained in a Determination Notice dated 29 June 2015 and reflected in an Order dated 18 June 2015. The Order states:

“

 1. *Dalriada Trustees Limited (“the New Trustee”) of Commerce House, 22 Great Victoria Street, Belfast BT2 7BA is hereby appointed as trustee of London Quantum Retirement Benefit Scheme (also known as the London Quantum Occupational Pension Scheme (“the Scheme”) with immediate effect.*
 2. *The order at (1) is made because the Pensions Regulator is satisfied that it is reasonable to do so pursuant to the relevant provisions of the Pensions Act 1995 as set out below, in order:*
 - (i) *to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the Scheme pursuant to section 7(3)(a);*
 - (ii) *to secure the proper use or application of the assets of the Scheme pursuant to section 7(3)(c);*

”

¹ These were the same parties identified as being directly affected by the Panel in the Original Determination (defined below).

(iii) otherwise to protect the interests of the generality of the members of the Scheme pursuant to section 7(3)(d).

- 3. The powers and duties exercisable by the New Trustee shall until further order be to the exclusion of all other trustees of the Scheme pursuant to section 8(4)(b) of the Pensions Act 1995, including (but not limited) to the exclusion of Dorrioxo Alliance (UK) Ltd.*
 - 4. The New Trustee's fees and expenses in respect of the Scheme shall be paid out of the resources of the Scheme pursuant to section 8(1)(b) of the Pensions Act 1995.*
 - 5. An amount equal to the amount paid out of the resources of the Scheme in accordance with (4), above, is to be treated for all purposes as a debt due from the employer of the Scheme, Quantum Investment Management Solutions LLP, to the New Trustee pursuant to section 8(2) of the Pensions Act 1995.*
 - 6. To the extent that the New Trustee's fees and expenses in relation to the Scheme are not met out of the Scheme's resources under (4), above, the shortfall is to be paid to the New Trustee by the employer of the Scheme, Quantum Investment Management Solutions LLP, pursuant to section 8(1)(a) and (c) of the Pensions Act 1995.*
 - 7. Pursuant to section 9 of the Pensions Act 1995, it is hereby ordered that all property and assets of the Scheme, heritable, moveable, real and personal, of every description and wherever situated be vested in, assigned to and transferred to the New Trustee as trustee of the Scheme.*
 - 8. The appointment of the New Trustee may be terminated, or the New Trustee replaced, at the expiration of 28 days' notice from the executive arm of the Pensions Regulator to the New Trustee, pursuant to section 7(5)(c) of the Pensions Act 1995.*
 - 9. This Order having been made under the Special Procedure provided by sections 97 to 98 of the Pensions Act 2004, it shall be reviewed by the Pensions Regulator as soon as reasonably practicable in accordance with section 99 of the Pensions Act 2004. Details of the said review shall be provided to directly affected parties pursuant to section 99(4) of the Pensions Act 2004."*
4. In essence, the Panel determined to exercise the following regulatory functions: Dalriada was appointed as trustee of the Scheme to the exclusion of all other trustees of the Scheme including Dorrioxo, the immediate former trustee of the Scheme. The Panel also made certain consequential orders, for example in connection with the necessary

assignment and transfer of the Scheme's property and assets, and the payment of fees and expenses incurred by the Scheme. The determinations were made pursuant to sections 7-9 of the Pensions Act 1995 ("the 1995 Act").

5. The Original Determination was made by the Panel under special procedure as described in section 98 of the Act, following a request ("the Request") by the Regulator made on 12 June 2015, supported by evidence. The Panel was satisfied that the statutory requirements for use of the special procedure were met in this case.

Determination on the Review

6. The Panel determined to confirm the Original Determination and the Order pursuant to section 99(3)(a) and (b) of the Act.
7. The Panel was satisfied that it was, and remains, reasonable to appoint an independent trustee to the exclusion of other trustees in order to meet the statutory objectives prescribed in section 7(3)(a), (c) and (d) of the 1995 Act. Further, the Panel was satisfied that it had been reasonable for the Panel to appoint Dalriada as trustee of the Scheme to the exclusion of Dorrixo, and to make the various consequential orders contained in the Order, pursuant to the Original Determination.
8. In making its decision the Panel had regard to the objectives of the Regulator as set out in section 5 of the Act and to the matters listed in section 100 of the Act and to the matters raised in the representations, responses and replies ("the representations") served by the parties.
9. The reasons for the Panel's determination are set out in more detail below.

Representations

10. In making its determination the Panel considered written representations, skeleton arguments and oral representations made on behalf of the parties at a hearing held on 16 December 2015. At the hearing the Regulator was represented by Mr. Jonathan Evans QC and Mr. Bobby Friedman (instructed by the Regulator); Dalriada was represented by Mr. Fenner Moeran QC (instructed by Pinsent Masons); Dorrixo was represented by Mr. Jonathan Chew (instructed by Mr. Stephen Ward, director of Dorrixo); and QIMS was represented by one of its partners Mr. Matthew Welsh (who appeared with Mr. Paul Hilton, also a partner of QIMS).
11. The representations included matters arising on the Review and not considered as part of the Original Determination. The Panel considered such new matters as if they had arisen on the Original Determination, pursuant to its power to do so under section 99(3)(d) of the Act.

12. Notably, the Panel considered new matters arising from certain documents presented shortly before the hearing by the Regulator, relating to the issue of whether or not the Scheme was set up as part of a plan for liberation. The Regulator made representations based upon the documents at the hearing. Following the hearing QIMS submitted further material which the Panel considered before making its determination.

The approach of the Panel to the determination on a review

13. The Panel made its determination following due consideration of all the facts and matters relied on by each of the parties in their representations, including new matters. This is in accordance with paragraph 19 of the Determinations Panel Procedures.
14. The Panel had regard to the approach of the Panel in *Telent* [2008] 05 PBLR (also a case concerning section 7 of the 1995 Act) at [13]:

“...the review is not a retrospective procedure with which to analyse whether the reasons behind the initial Determination were right. It is a procedure which reviews the outcome of the initial Determination on the basis of the facts at the time of the review.”

Factual background

15. Having considered the parties' representations and submissions, the Panel made findings of fact as set out below, save where it states otherwise. In certain instances, the Panel has not made a finding on a particular issue, either because the Panel considered it was not in a position to make a conclusive finding of fact (i.e. because there was insufficient evidence before the Panel), or because the Panel did not need to make a finding.

The Scheme and its trustees

16. The Scheme was established on 30 April 2012. At that time it was called London Quantum Occupational Pension Scheme. The Scheme's name was changed to the London Quantum Retirement Benefit Scheme on or around 30 June 2014.
17. The Scheme is an occupational pension scheme within the meaning of the Pension Schemes Act 1993. All the parties proceeded on this basis before the Panel. The Scheme is registered with HMRC.
18. The Scheme is presently governed by a trust deed and rules dated 19 April 2014 (the "Trust Deed" and "Rules"). The Trust Deed states that it amends the original deed and rules dated 30 April 2012 (pursuant to clause 16). In fact, the power of amendment is contained in clause 26, not clause 16. However, the Panel did not consider that anything turned on this. The original trust deed has been provided to the Regulator by QIMS. No party has been able to locate the original rules.

The Panel concluded that Dorrixo neither received nor sought a copy of the original rules.

19. QIMS is the sole sponsoring employer of the Scheme.
20. The original trustees of the Scheme were Mr. Paul Hilton and Mr. Matthew Welsh (who was recorded as the employer nominated trustee). Mr. Hilton and Mr. Welsh are also partners in QIMS. They were removed as trustees on or around 19 April 2014 (as recorded on the face of the Trust Deed). The Regulator was notified of this on 30 June 2014.
21. Dorrixo became trustee of the Scheme on 19 April 2014, at the beginning of (what is referred to below as) the second life-cycle of the Scheme. Dorrixo is also recorded as being the Scheme administrator. Dorrixo submitted to the Panel that it outsourced the administration of the Scheme to a company called Premier Pension Transfers Limited.
22. Dorrixo was incorporated on 13 October 2011. Dorrixo was wholly owned by Mr. Stephen Ward. Mr. Ward was Dorrixo's sole director from the date of incorporation until 28 April 2015, when he resigned his directorship. Mr. Anthony Salih became the director and owner of Dorrixo when Mr. Ward resigned. The reason originally given by Mr. Ward for his resignation was to enable Dorrixo to open a new bank account with Metro Bank. This was necessary because Dorrixo's existing bank account with Lloyds Bank had been frozen. Dorrixo submitted that the fact that Mr. Ward was not a UK resident was an obstacle to Dorrixo opening a new bank account while he remained a director. It was said Mr. Ward resigned in order to remove this obstacle to Dorrixo opening a new bank account. Dorrixo's subsequent submission on this issue was that the opening of a new bank account coincided with Mr. Ward's planned retirement. Mr. Ward was reappointed as a director on 22 June 2015. According to Dorrixo, Mr. Ward was reappointed to assist Mr. Salih respond to the regulatory investigation. The Panel made no finding as to why Mr. Ward resigned (or why he was then reappointed).
23. Dorrixo received £63,000 in fees from the Scheme. Clause 18 of the Trust Deed makes provision for the payment of trustee fees. However, there is no evidence of any invoices, or any other record of specifically what Dorrixo was paid for doing.
24. The life of the Scheme prior to the appointment of Dalriada can conveniently be split into two periods of time, referred to by the parties as, respectively, the first and second life-cycles. The period from the Scheme's inception to around April 2014 is referred to hereafter as the "first life-cycle" of the Scheme, and the period starting in or around April 2014 and ending with the appointment of Dalriada as trustee of the Scheme on 18 June 2015 is referred to as the "second life-cycle" of the

Scheme. As stated above, Dorrixo was the trustee of the Scheme during the second life-cycle.

The first life-cycle of the Scheme

25. During the first life-cycle the Scheme had three members: Mr. XXXXXX, Mr. XXXXX and Mr. XXXXXXXX XXXXX (“the original members”), for whose benefit the Scheme was originally established. A total of £616,383.58 was transferred into the Scheme from the original members’ pensions.
26. Of the amount transferred into the Scheme, a total of £600,000 was transferred out to the original members between 25 May 2012 and 14 November 2012. Mr. XXXXXX received in total £196,000 and Mr. XXXXX £273,000. Of these amounts, £300,000 was paid by the Scheme to Mr. XXXXXX and Mr. XXXXX the day after the Scheme’s bank account had become active. Mr. XXXXX received £131,000 in total.
27. In the circumstances, the Regulator was concerned that the Scheme was a plan for pension liberation. In the Request the Regulator proceeded on the basis that the payments that were made to the original members were fees.
28. QIMS submitted that the payments were invested in a company called London Quantum One Limited (“Quantum One”). Quantum One was incorporated on 30 April 2012. According to material provided to the Panel, Mr. XXXXXX, Mr. XXXXX and Mr. XXXXX were appointed directors of the company on 30 April 2012 (although Dalriada stated that Mr. XXXXX and Mr. XXXXX were not appointed as directors until February 2014). Mr. XXXXXX was the sole shareholder and Mr. XXXXX was the company secretary. According to QIMS, the original members wished to invest in Quantum One in order to take advantage of the opportunity to receive higher returns on their pension investments.
29. Summarised below is what the Panel understood to be QIMS’ explanation of how, by a series of transactions said to have taken place in May 2012, the Scheme came to own 100% of the shareholding in Quantum One.
 - (1) The original members acquired an interest in a business referred to as VIP Greetings (or VIP Messages) from a company called BDS. The interest is said to attach to what was referred to as “name ranges” of celebrities. A business plan produced by BDS dated July 2011 describes the business in the following way: *“The idea: VIP Messages is based on the principle of transporting a packet of video information, embedded in a text message or an email, which opens immediately and automatically when accessed by the recipient. VIP Messages has a number of applications...These include...Business to Consumer: Generation of unique licensed celebrity content, direct*

marketing, affinity group marketing, and entertainment.” The acquisition was funded by a loan. The original members wished to invest their pensions in VIP Greetings because of the potential high returns it gave. It remains unclear on the material as to what, precisely, the nature of the business is and how it is said to have any meaningful economic value. According to QIMS, BDS remain involved in the operation of the VIP Greetings business.

- (2) Quantum One was formed to invest in VIP Greetings. The original members sold their interest in VIP Greetings to Quantum One.
 - (3) The Scheme made the payments totalling £600,000 directly out to the original members from the Scheme’s assets (as set out above).
 - (4) The Scheme acquired the shares in Quantum One from the original members as consideration for these payments.
30. The Panel understood QIMS’ submission to be that Messrs XXXXXX, XXXXX and XXXXX (the original members of LQOPS) sold their interest in VIP Greetings to Quantum One in exchange for equity in the company. This was done ‘back to back’ with a further transaction between the original members and the Scheme to sell their shares in Quantum One to the Scheme, and with it the interest in VIP Greetings, in exchange for aggregate payments of £600,000 made by the Scheme to the original members.
 31. The Regulator maintained before the Panel its concerns that the Scheme was a plan for pension liberation in the first life-cycle, including because the payments made to the original members could constitute unauthorised payments within the meaning of Chapter 3 of the Finance Act 2004 (“FA04”).²
 32. QIMS submitted that the payments made by the Scheme to the original members *were* authorised payments. QIMS in particular relied on section 171(3)(a) FA04 (scheme administration member payments). QIMS submitted that the payments were made for the purchase of assets (the shares in Quantum One) to be held for the purposes of the Scheme.

The second life-cycle of the Scheme

33. From around April 2014 the Scheme was opened up to new members.
34. The following is a summary of how the Scheme operated in the second life-cycle, insofar as the Panel was able to make any conclusive findings about such matters.
35. The difficulty the Panel faced in making findings was that certain documents and records that it expected Dorrigo to have retained were

² See section 160 FA04

missing, including a full set of Scheme documentation. As stated above, the Panel concluded that Dorrioxo neither received nor sought a copy of the original rules when it became trustee. There is no full set of minutes of trustee meetings. There is no comprehensive set of correspondence. Of perhaps most concern to the Panel was that key documents relating to the investments made by Dorrioxo during the second life-cycle are missing (assuming that they ever existed at all, which is unclear).

36. The Scheme increased its membership to between 91 and 96 members during the second life-cycle. The original members remained members of the Scheme during its second life-cycle. Members who joined the Scheme during the second life-cycle are referred to below as “the new members”. At the time Dalriada was appointed trustee, the Scheme was on the cusp of having 100 members (Dorrioxo made clear submissions that there was no plan to limit the Scheme to 99 members), and would have very likely far exceeded that number. Following its appointment Dalriada discovered that there were approximately 609 files on record relating to potential new members, each at various stages of progression towards becoming a new member. In some cases the potential new member had elected not to join the Scheme.
37. Dalriada has carried out a reconciliation of the Scheme’s bank accounts which show that the Scheme assets increased to approximately £6.8 million during the second life-cycle (including for present purposes the investment in Quantum One), reflecting in large part the transfer into the Scheme of new members’ pension pots.
38. QIMS and Dorrioxo explained to Dalriada (following its appointment as trustee of the Scheme) that during this period QIMS were looking to get involved with the investment side of the Scheme but were conflicted because Mr. Hilton and Mr. Welsh were the trustees of the Scheme. QIMS stated that it was advised by Mr. XXXX XXXXXX of Gerard Associates Limited (“Gerard”) that a new trustee should be appointed, and recommended Mr. Ward and Dorrioxo. As stated above, Dorrioxo was appointed trustee of the Scheme on 19 April 2014.
39. The Scheme was promoted to potential new members by introducers. These included the following entities: GoBMV; Baird Dunbar; What Partnership; the Resort Group PLC; Friendly Investments; Premier Mark Consultants and Quantum Wealth Management Solutions Limited. It appears that some of the introducers had agents working on their behalf. For example, the Resort Group PLC had an agent called First Review, which ran a call centre through which it promoted the Scheme to potential members. The introducers received commission for each new member who transferred their pension pot into the Scheme. New members were given a limited selection of investments from which to choose. The introducers would receive commission based upon the combination of investments chosen by each member.

40. QIMS submitted that it was Gerard who had brought the introducers on board, and was responsible for liaising with them. Mr. XXXXXX also provided information to Dalriada, following the latter's appointment as trustee of the Scheme. According to Mr. XXXXXX, it was QIMS who maintained the relationship with the introducers. The Panel made no finding in this respect.
41. Gerard was responsible for producing template risk letters, member application forms, pro forma declarations stating that the person signing them was a self-certified sophisticated investor, member booklets and the statement of investment principles (of which there were four versions). There existed various iterations of these documents, but the Panel was satisfied that the content of the different versions of each document was materially the same. Gerard sent these documents to members once they had been introduced to the Scheme by an introducer. Gerard also sent new members a letter setting out Gerard's conditions and fees (as to which, see below). Mr. XXXXXX explained to Dalriada that he would forward the completed documentation to Dorrixo.
42. Mr. XXXXXX also described Gerard's role in connection with the Scheme to Dalriada. He stated that Gerard "*simply helped the process of people joining the Scheme*" in the way described at paragraph 41 above.
43. Gerard was paid fees totalling approximately £220,000. The letter sent to new members setting out Gerard's fees stated that Gerard would charge a minimum of £2,100 or 4% of the transfer value up to £100,000, with further sums payable on additional amounts transferred in. This was to be paid "*by deduction from the pension transfer funds received by the new scheme.*"
44. Mr. XXXXXX also told Dalriada that Gerard did not provide advice to new members as to the wisdom of investing in the Scheme. The documentation sent by Gerard to new members stated that no advice was being given. For example, a risk letter sent by Gerard to a new member (referred to as Member A), stated: "*The documents included with this report should allow you to evaluate the decisions you make about potentially transferring your pension fund. The investment strategies you have expressly requested are not regulated by the Financial Conduct Authority...and therefore highest risk. You confirm receipt from another party and understanding of each individual investments prospectus and promotional material that comply with the Financial Services Act 2012. This is important as Gerard Associates Ltd are not advising you on the suitability of the Investments you have chosen...*" The Panel made no finding as to whether or not Gerard (or, indeed, any other person), provided investment advice to new members.

45. When joining the Scheme, new members were required to sign a declaration stating that they were self-certified sophisticated investors. The declaration stated: *“I declare that I am a self-certified sophisticated investor for the purposes of the restriction on promotion of non-mainstream pooled investments. I understand that this means: (i) I can receive promotional communications made by a person who is authorised by the Financial Conduct Authority, which relate to investment activity in non-mainstream pooled investments; (ii) the investments to which the promotions will relate may expose me to a significant risk of losing all of the property invested.”*
46. The member files inspected by Dalriada after its appointment show that a number of the new members transferred in relatively small pension pots. The Panel concluded that this was a material fact of which Dorrixo ought to have been aware. Further, Dalriada has carried out an exercise collating information from a sample of new members including asking them about their risk appetite and what they understood the risk profile of the Scheme’s investments to be. The Panel made a finding of fact from this information that a material number of the new members had a low or medium appetite for investment risk and, in any event, were unaware that the Scheme’s investments were high-risk investments.
47. The Trust Deed provided that, once a new member had joined the Scheme: *“The Trustee shall hold the assets in separate Personal Accounts. The Trustees shall ensure that the assets attributable to a Personal Account are at all times separately identifiable within the Fund. The liabilities...attributable to each Personal Account under clause 5 shall then be met out of the Personal Account”* (see clause 4(3) of the Trust Deed).
48. On its appointment, Dalriada was provided by Dorrixo with an electronic spreadsheet which, notionally at least, appeared to show that funds in each of the investments were allocated to individual members. The spreadsheet has separate tabs for each introducer and shows the members that were introduced to the Scheme by them. The spreadsheet also shows fees deducted by Gerard and “London Quantum”. It is unclear whether this is a reference to QIMS or Quantum One, or another entity, or what the fees are for. It was also unclear to the Panel whether or not Dorrixo maintained separately identifiable personal accounts during the currency of the second life-cycle of the Scheme, and the Panel made no findings in this respect.

The Scheme investments

49. At the time Dorrixo was appointed as trustee of the Scheme, the Scheme held shares in Quantum One acquired during its first life-cycle.
50. Dorrixo made a number of investments on behalf of the Scheme. The Panel concluded that these investments were selected either by Dorrixo or the former trustees, Mr. Hilton and Mr. Welsh. The present

position with regards to the Scheme's investments (excluding the Quantum One shares) can be summarised as follows:

Investment	Nature of investment	Sum invested
Quantum PYX Managed FX Fund ("the Quantum Fund investment")	Regulated UCITS (Ireland)	£1,029,238
Reforestation Group Ltd ("the Reforestation investment")	Company with purported 'land rights' to 21 plots of Brazilian farm land that is to be used for growing eucalyptus trees	£220,000
Park First	18 car park spaces in Glasgow	£340,000
Best International (Dubai Car Parks) ("the Dubai car parks investment")	Purported agreements for 99 year leases on car park spaces in Dubai with alleged guaranteed income	£189,000
The Resort Group	Purported investment in hotel rooms in Cape Verde (the hotel is said to be under construction)	£485,151.52
Best International (ABC Corporate Bond) ("the Best International bond investment")	Three series of corporate bonds with a term of 4 years issued by ABC Alpha Business Centres Limited	£409,000
Dolphin GmbH ("the Dolphin loan note investment")	Nine corporate loan notes with a term of 5 years issued by Dolphin Capital GmbH (a German company)	£424,641.88
Colonial Capital Group plc ("the Colonial bond investment")	Corporate bonds with a term of 3 years issued by Colonial Capital Group plc	£24,000
Mallets Loan Note	Unsecured loan note with a term of 6 years	£8,000

51. Dalriada instructed an independent investment adviser and actuary, XXXXXX X XXXXXXXXXXXX XXXXXXX ("XXXXXX"), to carry out a high level review of the Scheme's investments, the conclusions of which are

set out in a written report (“the XXXXXX Report”). XXXXXX is regulated by the Institute of Actuaries (under a Delegated Professional Body licence, pursuant to the Financial Services and Markets Act 2000 (“FSMA”)) to provide investment advice. The XXXXXX Report was the only independent professional opinion concerning the Scheme’s investments received by the Panel.

52. The XXXXXX Report concluded that the investments made by Dorrioxo on behalf of the Scheme were high risk investments as the investments were in a number of cases volatile; attended by high costs (i.e. commission); had a high level of credit risk and promised implausibly high returns.
53. Dalriada made submissions that a number of the investments are highly illiquid for the following reasons:
 - (1) The Reforestation investment: It is a 21 year investment, with no evidence of a secondary market.
 - (2) The Park First investment: Liquidity is very limited and there are significant obstacles to re-sale on the secondary market, including because of the taint of the Action Fraud notice (as to which, see below).
 - (3) The Dubai car parks investment: Liquidity is very limited and the secondary market is said to be dependent upon the vendor buying the investment back. The secondary market is also potentially vulnerable to the level of availability of spaces on the primary market.
 - (4) The Resort Group investment: The investment is entirely illiquid. The investment can only be sold upon completion (not due until 31 December 2016, assuming there are no delays in construction). There are concerns as to whether or not a viable secondary market exists. This has been exacerbated by the taint of the Action Fraud notice (as to which, see below).
 - (5) The Best International bond investment: The bonds can only be redeemed early after 3 years (with a 6 month notice period) or otherwise with the express consent of the directors of the issuer. Liquidity is therefore very poor prior to maturity of the bonds in 3-4 years time.
 - (6) The Dolphin loan note investment: There are no early exit options and therefore the investment is entirely illiquid prior to term.
 - (7) The Colonial bond investment: The investment has no early redemption options and so is entirely illiquid prior to term.

54. Dalriada further submitted that there are material concerns about the legitimacy of some of the investments, including because a number of the investments lacked complete and comprehensive contractual documentation:
- (1) The Reforestation investment: The investment is a right to share profits generated by the land, rather than ownership of the land itself. There is no signed documentation or proof of ownership of the land in question by the other party to the agreement. The agreement itself is a draft agreement. The purported investment does not match the documentation (which refers to an investment in the value of £230,000, not £220,000).
 - (2) The Park First investment: The nature of the rights in the car parks is unclear (i.e. whether it is a lease or sub-lease or some other contractual right). There is no documentation for the purchase or registration of the alleged rights to the car parks. The registered freehold owner of the car parks is not a party to any documentation that exists. The investment is in a class of investments which has recently been highlighted by Action Fraud as potentially fraudulent.
 - (3) The Dubai car parks investment: The agreements are incomplete with a number of pages and schedules missing. There is also an inconsistency in the documentation as to whether the income is guaranteed or not.
 - (4) The Resort Group investment: The Scheme has no property rights but rather a profit sharing right in hotel rooms currently under construction in Cape Verde (with a completion date of 31 December 2016). The investment is in a class of investments which has recently been highlighted by Action Fraud as potentially fraudulent.
 - (5) The Best International bond investment: The documentation is incomplete and has inconsistencies. For example, the contract note for one of the bonds (the B5-14 bond) is missing.
 - (6) The Colonial bond investment: Dalriada has concerns about the issuer, Colonial Capital Group plc. Company accounts were not filed until four months after the requested deadline, and recently a Gazette Notice for a proposal to strike off the Company was filed with Companies House (although that has since been suspended).

Relevant legal principles: section 7 of the 1995 Act

55. Section 7(3) of the 1995 Act states, where material:

“The Authority may also by order appoint a trustee of a trust scheme where they are satisfied that it is reasonable to do so in order –

- (a) *to secure that the trustees as a whole have, or exercise, the necessary knowledge and skill for the proper administration of the scheme;*
- (b) *...*
- (c) *to secure the proper use or application of the assets of the scheme, or*
- (d) *otherwise to protect the interests of the generality of the members of the Scheme.”*
56. The parties made submissions as to the approach to be adopted by the Panel when determining whether or not to exercise its power to appoint an independent trustee. In light of these submissions, the Panel considered it helpful to set out what it regards as the proper approach to the exercise of the power contained in section 7 of the 1995 Act.
57. The Panel must be satisfied that it is reasonable to appoint the trustee. The starting point is each of the statutory objectives contained in sub-paragraphs (a)-(d) of section 7(3). (In this case sub-paragraph (b) was not relied upon by the Regulator). In the Panel's view it is implicit in section 7 that the trustee of the scheme is required to secure the statutory objectives on an ongoing basis, including prospectively. If circumstances arise such that the existing trustee fails to secure one or more of the objectives, the Regulator may appoint an independent trustee to do so.
58. In the Panel's view, where the Regulator is satisfied that there has been a breach of trust which touches one or more of the statutory objectives, or where there is no extant breach of trust, but the Regulator is satisfied that such a breach was immediately about to occur, an independent trustee may be appointed to secure the maintenance of the statutory objectives. To illustrate, and taking the objective contained in section 7(3)(c) as the example: where the Regulator is satisfied there has been improper use or application of the assets of the scheme by the existing trustee, it may be reasonable for the Regulator to appoint an independent trustee to secure the scheme's existing assets for the future, and to seek to recover any assets that may have been dissipated as a result of the breach of trust.
59. Further, the section 7 power is preventative. This is clear from the language of the statutory objectives; it is reasonable to appoint a trustee "to secure" the objectives, in the sense that the purpose of appointing the trustee is to ensure that the objectives are secured prospectively. Where there is no extant breach of trust, and even where no such breach is imminent, the Regulator may appoint a trustee if it is satisfied that there is a realistic prospect that the statutory objectives will not be met with the existing trustee in place. In forming this view the Panel had regard to the approach of the Panel in *Telent supra.* at [33].
60. QIMS submitted that the power contained in section 7 of the 1995 Act may only be exercised where the statutory objectives "can only be

achieved in that way”, that is, where it is “necessary” to exercise the power.³ The Panel did not accept this submission. Section 7 of the 1995 Act does not state that the Regulator must be satisfied that it is necessary to exercise the power, before doing so.⁴ Such a construction would mean that the Regulator is faced with a binary choice: either it is satisfied that it is necessary to appoint a trustee (in which case the Regulator has a duty to do so); or it is not satisfied that it is necessary to appoint a trustee (in which case the duty is not engaged, and the Regulator may not lawfully exercise the power). By contrast, the statutory language is permissive: the Regulator “may” exercise the power, or discretion, where it is “satisfied that it is reasonable to do so”. There may be more than one way of securing the statutory objectives (including by not appointing a trustee). If so, then the existence of an alternative, and the likelihood of it succeeding, would be relevant considerations for the Regulator to take into account when determining whether or not it is reasonable to appoint a trustee. As submitted by QIMS, the exercise is not cost neutral: certain additional costs attend the appointment of a trustee. The Panel considered this to be a relevant consideration to be taken into account (but not in this case a conclusive consideration nor indeed sufficient to outweigh the various considerations in favour of the appointment set out below).

61. Dorrixo urged the Panel to ignore evidence tending to show historic failures by Dorrixo qua trustee from its considerations when deciding whether or not to appoint a trustee. Dorrixo submitted that the Panel should focus on “potential future conduct” as to what Dorrixo and QIMS “would have done”, in the absence of an independent trustee being appointed. The Panel concluded that in this case Dorrixo’s past conduct was plainly relevant to its likely future conduct, and was to be weighed in the balance when considering whether or not it was reasonable to appoint an independent trustee to the Scheme to the exclusion of Dorrixo in order to secure the statutory objectives.
62. Further, Dorrixo submitted that it wished to work with the Regulator to assuage any concerns; this, and not the appointment of a trustee, was “the appropriate way to proceed”. The Panel rejected this submission. As stated above, the Regulator may appoint a trustee even where there is an alternative way of proceeding. In this case, however, the Panel was not satisfied there was a safe alternative by which the statutory objectives could be secured, for the reasons set out below.

The Panel’s Reasons

63. The Panel was satisfied that it was reasonable to appoint an independent trustee to the exclusion of other trustees in order to:

³ This is how QIMS’s submissions developed at the oral hearing.

⁴ In *Telent* the Panel considered a prior version of section 7 of the 1995 Act which stated that a trustee could be appointed where the Panel is satisfied “*that it is necessary to do so*” (emphasis added); the provision has since been amended and the present version omits this language.

- (1) Secure that the trustees as a whole have and exercise the necessary knowledge and skill for the proper administration of the Scheme pursuant to section 7(3)(a) of the Act;
 - (2) Secure the proper use or application of the assets of the Scheme pursuant to section 7(3)(c) of the Act; and
 - (3) Otherwise to protect the interests of the generality of the members of the Scheme pursuant to section 7(3)(d) of the Act.
64. The Panel's reasons for its determination can be conveniently categorised as:
- (1) Investment grounds;
 - (2) Trustee grounds; and
 - (3) Fee grounds.

The Panel determined that each of the objectives in section 7 (3)(a)(c) and (d) of the 1995 Act was satisfied by each of the grounds identified above.

Investment grounds

65. The Panel concluded that Dorrixo breached its various common law and statutory duties to invest Scheme assets. Dorrixo's failures were, in the Panel's view, more fundamental than a failure to exercise proper knowledge and skill. Dorrixo exercised its powers of investment with a serious disregard of some obvious risks, and indifference to other risks posed by the Scheme's investments; namely to the security and safeguarding of the Scheme's assets, and the interests of the members of the Scheme.

Power of investment

66. Clause 4 of the Trust Deed contains the trustee's power of investment. The power is drafted in wide terms: the trustee may invest the assets of the Scheme in a wide range of investments "*...as the Trustees shall in their absolute discretion think fit...*"

Common law duty

67. Dorrixo owed a duty at common law to exercise the power of investment in the same manner that an ordinary prudent man of business would conduct his own: see *Speight v Gaunt* [1883] EWCA Civ 1 per Jessel MR.

Statutory duty to obtain and consider proper advice: section 36

68. Section 36 of the 1995 Act requires a trustee of an occupational pension scheme to obtain and consider proper advice. It states, where material:

“(3) Before investing in any manner... the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to the matters mentioned in subsection (2) and the principles contained in the statement under section 35.”

69. Proper advice must be given or subsequently confirmed in writing (section 36(7)). It includes advice from a person authorised by the Financial Conduct Authority (“FCA”) to provide such advice (so far as it related to investments which fell within the perimeter of FSMA, which in this case the Scheme investments did) (section 36(6)(a)).

70. This requirement is codified into the Trust Deed at clause 5(2), which states that: *“Subject to such terms and conditions [of the investments themselves], in selecting and changing the range of Investment Alternatives available for Members, the Trustees shall comply with their duties under section 35 and 36 of the 1995 Act.”* This is reflected in the member booklets sent to new members, which stated at page 5, as follows:

“The Trustees invest in pooled funds but your funds are individually identifiable. Professional advice from the Trustee’s investment advisers is obtained and considered in the selection of these funds and fund managers. As part of this selection, a due diligence process is performed to ensure that the assets are invested with sufficient security and liquidity and each of the fund managers is of the appropriate quality and calibre to ensure the quality and profitability of the assets.”

Breach of trust and common law duty

71. The Panel concluded that Dorrioxo was in breach of its duty to invest Scheme assets in the manner that an ordinary prudent man of business would because the investments were high risk. The investments are all (except possibly at times the Quantum Fund) highly illiquid, and there are concerns about the legitimacy of most of them. In addition, the uncertainty and the risk attending such investments make them unsuitable for the Scheme. This view is supported by the XXXXXX Report, which concluded that: *“We believe that Dalriada...should realise as many of the investments as soon as is expedient.”*
72. Before the Panel, Dorrioxo relied upon the investment power to submit that the investments were not ultra vires of the trust. The Panel did not understand either the Regulator or Dalriada to submit otherwise. The relevant obligations breached by Dorrioxo arose out of the common law and by statute, which operate to inform and, in this case, limit, the investment discretion in the hands of the trustee.

Breach of section 36

73. The Panel further determined that Dorrixo was in breach of its duty to take proper advice within the meaning of section 36 of the 1995 Act.
74. In its response to the Regulator's representations on the applicability of section 36 of the 1995 Act and the breach thereof, Dorrixo submitted that section 36 had "limited application" to the Scheme given that it had fewer than 100 members. (This was, it seems, a reference to the Occupational Pension Schemes (Investment) Regulations 2005 ("the Investment Regulations"). It was also unclear what was meant by "limited application". Dorrixo also submitted that if Dorrixo had breached section 36 or the Investment Regulations, such a breach was of a "technical" nature and was not a good reason for the Panel to exercise its power to appoint a trustee under section 7 of the 1995 Act. The Panel did not accept this submission. If Dorrixo had taken proper advice, it would not have made the investments it did. The Panel relied in particular upon the XXXXXX Report in coming to this conclusion.
75. Finally in this respect, during the oral hearing, and in response to a question from the Panel, Dorrixo stated that it was aware of its obligation under section 36 of the 1995 Act. Dorrixo submitted that it satisfied this obligation by obtaining "de facto" investment advice from Mr. XXXXXX and Gerard. It also pointed to "letters of advice" in respect of each investment, which Dorrixo submitted constituted investment advice "coordinated by" Gerard.
76. The Panel rejected this submission. The Panel concluded that Dorrixo neither received nor sought any investment advice qua trustee of the Scheme, whether as to the suitability of each investment made or the assets held by the Scheme as a whole. Further, the Panel concluded that Gerard did not provide investment advice to Dorrixo.
77. There is an absence of any agreement or other documents (for example, instructions and invoices) that the Panel would expect to see if Gerard had been retained by Dorrixo to provide investment advice. Mr. XXXXXX told Dalriada that Gerard was not advising Dorrixo. Moreover as an authorised firm, Gerard is under strict regulatory obligations to ensure there is in place a written agreement with clients that governs the provision of regulated advice. Secondly, the "letter of advice" relied on by Dorrixo as constituting advice from Gerard to Dorrixo does not contain investment advice. At best, the letter is, in the Panel's view, a 'sales pitch' providing generic information about the investment. In so concluding, the Panel had regard to what the FCA's Perimeter Guidance (also referred to as 'PERG') states constitutes the giving of a personal recommendation (that is, advice), as considered by the Courts in financial services mis-selling cases. In *Rubenstein v HSBC* [2011] EWHC 2304 (QB) the Court summarised the position at [80]-[81], as follows: "*The key to the giving of advice is that the information is either accompanied by a value judgment on the relevance of that information to the client's investment decision, or 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. In both these scenarios the information acquires the character of a recommendation." Neither scenario was, in the Panel's view, present in this case.

78. The thrust of Dorrixo's defence to the Regulator's allegations concerning the investment and advice was that investment advice was a matter for individual new members and, so far as Dorrixo was concerned, they had received advice from Gerard. New members had also signed the declaration (referred to above) confirming that they were sophisticated investors and were aware of the high risk nature of the investments, and had joined the Scheme with their eyes wide open.
79. As Dorrixo drew to the attention of the Panel in its submissions, the risk letters sent by Gerard to new members stated that the Scheme is "*a group pension arrangement with a specific highest risk mandate.*" Dorrixo submitted that the Scheme's express structure and purpose in the second life-cycle was to invest for capital return; the purpose behind this was to generate returns that would exceed inflation. (The Panel observed that inflation has been relatively stable and low in the relevant period). Dorrixo's submission was that, for its part at least, the Scheme was intended to provide members with exposure to high return, and therefore high risk, investments.
80. In the Panel's view this submission missed the point: Dorrixo was a trustee of an occupational pension scheme, and as such was required among other things to satisfy the requirements of section 36 of the 1995 Act, and to obtain and consider for itself investment advice. The Panel concluded that Dorrixo failed to do so, for the reasons set out above.
81. It was no answer to this to submit that the members were in some way responsible for the investment selection, or had consented to it, in the way that they may have done if they were making a personal pension investment (such as a self-invested personal pension scheme, or 'SIPP'). Even where new members had made a notional election as to the specific investment they wanted the pension pot to be invested in, this selection was itself chosen by Dorrixo and/or Mr. Hilton and Mr. Welsh.

Regulations 4 and 7 of the Investment Regulations: duty and breach

82. The exercise of a trustee's power of investment is subject to the Investment Regulations.
83. In cases where a scheme has fewer than 100 members, regulation 7 of the Investment Regulations requires a trustee to have regard to the need for diversification of investments, insofar as appropriate to the circumstances of the Scheme.

84. The Scheme only had nine investments (including two investments in car park spaces; two investments in corporate bonds and two investments in loan notes). In the circumstances, the Panel concluded that the Scheme's investments lacked diversity, in breach of regulation 7 of the Investment Regulations.
85. Where a scheme has 100 members or more, the trustee is also required to exercise the power of investment in accordance with the investment requirements set out in regulation 4 of the Investment Regulations. The Regulator relied upon the following requirements set out in regulation 4:
- (1) The powers of investment, or discretion, must be exercised in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole (regulation 4(3)).
 - (2) The assets of the Scheme must consist predominantly of investments admitted to trading on regulated markets (regulation 4(5)). A regulated market is one recognised for the purposes of the Investment Services directive (93/22/EEC) and the Markets in Financial Instruments Directive (2004/39/EC), and as otherwise described in regulation 4(11).
 - (3) The assets of the Scheme must be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group undertakings and so as to avoid accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group must not expose the scheme to excessive risk concentration (regulation 4(7)).
86. The Panel concluded that the membership of the Scheme was on the cusp of reaching 100 members and would have done so imminently but for the appointment of Dalriada. The Panel therefore concluded that it was incumbent upon Dorrixo to ensure that it was ready to meet the obligations set out in regulation 4, when that occurred. The Panel determined that Dorrixo was not ready for this, given the Scheme's investments at the time Dalriada was appointed.
87. Further, the Panel concluded that most of the requirements contained in regulations 4(3) and 4(7) codified obligations which Dorrixo was obliged to observe as part of its common law duty. As such, the obligations that are part of the common law duty were applicable regardless of whether or not the membership of the Scheme had reached 100 members.
88. In the circumstances, the Panel concluded that:
- (1) In making the investments Dorrixo had failed to exercise the power of investment in a manner calculated to ensure the security, quality, liquidity and profitability of the portfolio as a whole, and further

would have breached regulation 4(3) when the membership of the Scheme reached 100 members.

- (2) Save for the Quantum Fund investment (which was listed on the Irish Stock Exchange until December 2014), none of the investments made by Dorrioxo were admitted to trading on a regulated market and Dorrioxo would have breached regulation 4(5) when the membership of the Scheme reached 100 members.
- (3) In making the investments, Dorrioxo had failed to ensure the assets of the Scheme were properly diversified in such a way as to avoid excessive reliance on any particular asset. Further Dorrioxo would have breached regulation 4(7) when the membership of the Scheme reached 100 members.

89. Dorrioxo submitted that it had taken steps to ensure compliance with the Investment Regulations once the membership of the Scheme reached 100 members. Dorrioxo had been in discussions with a fund manager, WH Ireland, to whom it envisaged delegating its investment discretion. The Scheme had opened an account with WH Ireland on 28 May 2015. The plan, according to Dorrioxo, was to place 50% of all further new members' cash transfers with WH Ireland (and thereby also alleviating the liquidity issues identified by the Regulator and Dalriada). The Panel did not accept that this was a viable solution. It would, in the Panel's view, most likely take a relatively high volume of transfers in by further new members – over a significantly long period of time – for the Scheme's investments to be rebalanced in favour of the WH Ireland investment. Further, Dorrioxo failed to explain how future new members' cash investments would rebalance the pension pots of existing members given that, as Dorrioxo explained, investments were not pooled and each member's pension pot was held in a personal account. The Panel therefore considered this to be an inadequate answer to the imminent risk of breaching the Investment Regulations that the Scheme faced.

Trustee grounds

90. The Panel relied on the following grounds as evidence of Dorrioxo's lack of competence and capability as trustee.
91. First, Dorrioxo failed to obtain a copy of the original rules.
92. Secondly, Dorrioxo failed to take steps to identify, investigate or secure the Quantum One asset, after it was appointed trustee. Dorrioxo submitted that it was not obliged to do so as this investment was made prior to it being appointed trustee. In the Panel's view an incoming trustee has an obligation to make reasonable enquiries about the nature and security of the scheme's investments. In this case, the Quantum One investment was the Scheme's sole investment at the time Dorrioxo was appointed. Further, given the concerns about potential pension liberation, it was incumbent upon Dorrioxo to

investigate the issues and take the appropriate action. There were risks to the Scheme, including de-registration of the Scheme for tax purposes, if HMRC took the view that the Scheme had been part of a plan for pension liberation (in the sense that unauthorised payments had been made to members as identified in *Dalriada v Woodward* [2012] EWHC 2162 (Ch)).

93. In this respect, Dorrioxo failed to turn its mind to the risk that the Scheme may have been part of a plan for pension liberation and may have made unauthorised payments during its first life-cycle. The Panel concluded that there were clear warning signs and real concerns surrounding the nature and legitimacy of the Scheme's investment in Quantum One. These concerns, together with the risks to the Scheme of a sanction if HMRC were to take the view that the Scheme had been part of a liberation plan, were matters which Dorrioxo ought to have recognised and investigated when it was appointed trustee, but failed to do so.
94. Thirdly, Dorrioxo failed to ensure it maintained complete and accurate records of the investments made by the Scheme. The Panel's view was that the state of the documentation calls into doubt the existence and legitimacy of certain of the investments. Further, Dorrioxo failed generally to keep adequate trustee records.
95. Fourthly, Dorrioxo failed to appoint an auditor to advise the Scheme.
96. Fifthly, Dorrioxo failed to notify and inform members about the nature of the investments held by the Scheme and made on their behalf, and the risks that attended such investments. In the Panel's view, Dorrioxo conducted itself with a serious disregard of, and indifference to, the obvious risk that members might be misled as to the true nature of the investments held by the Scheme and the risks that attended such investments.
97. The Panel was not persuaded by the following arguments raised by Dorrioxo namely that:-
 - (1) members were suitable for the Scheme - they were aware of the level of risk and were satisfied with the proposed investments. In asserting this, Dorrioxo relied on the declaration that all prospective members signed, certifying themselves to be "sophisticated investors."
 - (2) new members were investing one or more of their pension pots into the Scheme, rather than investing all their pension savings into the Scheme. Further, and contrary to what Mr. XXXXXX had told Dalriada was the case, Dorrioxo submitted that Gerard was responsible for advising new members upon the transfer and the investments held in the Scheme (although, as set out above, Dorrioxo also submitted that Gerard had advised Dorrioxo).

- (3) new members would only be accepted into the Scheme after repeated clear disclosures of the Scheme's risk profile. Dorrixo's case was that Gerard was responsible for vetting new members to ensure that they were 'sophisticated' investors. Dorrixo was not responsible for ensuring that new members were sophisticated investors or that they understood the nature and extent of the risk attending the investments made by the Scheme. Gerard and the introducers were responsible for ensuring this: this was not Dorrixo's concern.
98. The Panel rejected these submissions. As regards the sophisticated investor declaration, the Panel concluded that the declaration was not relevant and, even if it was, had not been executed properly. This was because the declaration (which is taken from the sophisticated investor declaration referred to in Article 50A of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005, (the "FinProm Order")) excludes the operative part of the declaration, namely that part which requires a person to certify the basis upon which he/she is a self-certified sophisticated investor.
99. In any event (and even if the operative part of the declaration had been included) Article 50A provides a mechanism by which persons making communications amounting to financial promotions to self-certified sophisticated investors, may be exempted from the various restrictions relating to such communications found within the regulatory regime under FSMA. The FSMA financial promotions regime only applies to what are defined as controlled investments. It has little if any relevance to the administration of an occupational pension scheme, or a member's rights to benefits thereunder.
100. Further, as trustee of the Scheme, Dorrixo was responsible for ensuring new members were kept informed of the risks carried by the Scheme's investments: the duty is to be pro-active in providing disclosure (see *Schmidt v Rosewood Trust Ltd* [2003] UKPC 26).
101. The Panel concluded that a material number of the new members who joined the Scheme during the second life-cycle had small pension pots, did not wish to take risks with their pensions, and were in any event unaware that the Scheme's investments were high risk. The Panel considered that this was or ought to have been obvious from the various documents received by the Scheme when a new member applied to join. In a number of cases, new members were transferring in relatively small pension pots from what might best be described as 'standard occupational pension schemes'. The background information in relation to the new members suggested that they were not likely to be sophisticated investors or to have more than one pension pot. The risk that this was the case ought to have been evident to Dorrixo.

102. One example was a self-certification declaration by a new member which had been annotated to show that the member was seeking fixed investments with “*known rates of return to avoid the volatility associated with direct stockmarket investments and with-profits type funds*”, apparently contradicting the pro forma language of the self-certification declaration. Another completed application form included documentation showing that a new member was receiving jobseeker’s allowance (provided, it seems, as proof of identity). Dorrixo accepted during the oral hearing that, had it seen these documents, it would have been on notice that some new members might not be suitable for the Scheme (or the Scheme suitable for them).
103. Dorrixo submitted that it did not see these documents. This concerned the Panel given that, on Dorrixo’s own case, it relied among other things upon the self-certification declaration as providing sufficient evidence that new members were suitably sophisticated. The Panel made no finding as to whether or not Dorrixo did in fact see these documents.

Fee grounds

104. The Panel concluded that Gerard’s fees were paid out of the Scheme in breach of trust. Dorrixo submitted that the payments were made pursuant to clause 14 of the Trust Deed which allowed for the payment of “*expenses of and in connection with the administration of the Scheme.*” However, Gerard was not involved in the administration of the Scheme; that was Dorrixo’s role (which according to Dorrixo was outsourced). Further, the Panel concluded that the payments were not authorised under the FA04.
105. As set out above, there is no evidence of what specifically Dorrixo was paid for doing. In the circumstances, the Panel could not conclude whether or not Dorrixo’s fees were justified.

Pension liberation

106. The Panel shared the Regulator’s concern that the Scheme may have been part of a plan for pension liberation in the first life-cycle. There are a number of inconsistencies and anachronisms in the explanation proffered by QIMS as to the alleged series of transactions (described above), which troubled the Panel.
- (1) There is no evidence of the original members, or indeed anyone, ever paying £600,000 for the interest in the VIP Greetings business. QIMS’ only response to this concern has been to present receipts apparently reflecting payments totalling £15,000 made to BDS (which sold the VIP Greetings interest to the original members).
- (2) There is no evidence of the alleged agreement by which the original members are said by QIMS to have acquired the interest in the VIP Greetings business from BDS. The document relied upon by QIMS

as evidence of the agreement is a blank template agreement. Further, the template agreement is dated May 2012; whereas the first tranche of the interest in VIP Greetings was allegedly bought in April 2012. QIMS' response to this concern is that a contract was signed and completed, but BDS has lost the paperwork.

- (3) The loan documentation with which it is said by QIMS that the original members funded the acquisition of the interest in VIP Greetings is also absent. The document relied upon by QIMS as evidence of the existence of the loan is a blank template loan agreement. In response to this concern QIMS repeated its explanation set out above in respect of the acquisition of the interest in VIP Greetings by the original members: BDS has lost the paperwork. The Panel found this to be an unsatisfactory explanation, given that BDS was not a party to the alleged loan. It was not clear to the Panel why QIMS consider it was BDS' job to maintain the loan documentation, or how this explains why QIMS do not have the documentation. QIMS provided no satisfactory answer to this concern.
- (4) The second tranche of the acquisition of the interest in VIP Greetings by the original members was in October 2012. However, on QIMS's own case the original members' interest in VIP Greetings was sold to Quantum One in exchange for shares. The shares in Quantum One were then sold by the original members to the Scheme in May 2012; that is, approximately six months before the original members had completed their acquisition of the second tranche of their interest in VIP Greetings (even if the second tranche of payments was not made until later). QIMS provided no answer to this concern.
- (5) The asset purchase agreements by which (a) Quantum One acquired the interest in VIP Greetings from the original members, and (b) the shares in Quantum One were acquired by the Scheme, are identical template agreements, and in the Panel's view very poorly drafted. It remains unclear whether the agreements in fact operated in the way QIMS say they were intended to. In particular, the absence of a definition for the term "the Business", which is said to be the property or interest that passes under the agreement, means that it is unclear what property or interest the parties intended to be sold and acquired, and may mean that no property or interest passed at all. QIMS provided no answer to this concern. In any event, the Panel decided that it did not need to make a finding as to the validity or meaning of the agreements.
- (6) Quantum One is a dormant company and has been since its incorporation (as reflected in its company accounts for 2013 and 2014). It has not generated any income, including from its interest in VIP Greetings.

(7) There exists no timely, independent valuation of the interest in VIP Greetings. QIMS submitted material which it said supported its case that the interests in VIP Greetings bought by the original members and sold to Quantum One were worth £600,000 at the time they were purchased. The valuations consisted of purported historic valuations of the whole of the VIP Greetings business, not the interest purchased by the original members and sold to Quantum One. The Panel considered that the evidence was not anywhere near sufficient to prove the value of the interests purchased.

107. Notwithstanding this, the Regulator was not in a position to submit to the Panel that the Scheme was or had been part of a plan for pension liberation. Instead, the Regulator submitted that there was a *realistic prospect* that the Scheme was part of a plan for pension liberation. In the Panel's view, this was a matter that should have been investigated by Dorrixo and still requires further investigation.

108. In all the circumstances, the Panel was not able to determine conclusively whether or not the Scheme was part of a plan for pension liberation. The Panel therefore made no finding in this respect.

109. Further, the Panel was not able to determine whether or not the investments made by the Scheme in the second life-cycle were a scam as submitted by the Regulator. The Panel also made no finding in this respect.

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XXXXXXXX XX XXXX. This was a new matter before the Panel. The
Panel notified Dorrixo that it would be given a further opportunity to
respond to the point if the Panel considered that it was necessary. The
Panel concluded that it did not need to determine this point, and
decided not to.

Dalriada

112. Finally, QIMS submitted to the Panel that Dalriada should be replaced
as trustee in any event because it was associated with cases of
pension liberation and fraud. QIMS submitted that this caused
reputational damage to QIMS. QIMS also submitted that the
appointment of a trustee was not cost neutral, which should be a factor
which weighed in favour of keeping Dorrixo in place as trustee of the
Scheme.
113. The Panel did not accept that the choice of Dalriada as independent
trustee had caused reputational damage to QIMS.
114. The purpose of section 7 of the 1995 Act is to protect the Scheme, its
assets and the interests of its members. It may be relevant in certain
cases to have regard to the impact of the appointment of a trustee
upon a directly affected party and the costs associated with appointing
a trustee, but that cannot (and does not in this case) outweigh the
interests of the Scheme, its assets and members.
115. The Panel concluded that the appointment of a different trustee would
likely be attended by additional costs of handover, which would in these
circumstances be disproportionate and unnecessary. The Panel was
satisfied that it was reasonable for Dalriada to remain in place as
trustee of the Scheme to secure the statutory objectives in section 7(3)
of the 1995 Act.

Reference to the Tribunal

116. **Appendix 1** to this Determination Notice contains important information
about the Directly Affected Parties' rights to refer this decision to the
Upper Tribunal.

Signed

Chair XXXXXX XXXX

Date 8 February 2016

Appendix 1

Referral to the Tax and Chancery Chamber of the Upper Tribunal

You have the right to refer the matter to which this Final Notice relates to the Tax and Chancery Chamber of the Upper Tribunal (“the Tribunal”). Under section 99(7) of the Act you have 28 days from the date this Final Notice is sent to you to refer the matter to the Tribunal or such other period as specified in the Tribunal rules or as the Tribunal may allow. A reference to the Tribunal is made by way of a written notice signed by you and filed with a copy of this Final Notice.

The Tribunal’s address is:

Upper Tribunal
(Tax and Chancery Chamber)
Fifth Floor
Rolls Building
Fetter Lane
London
EC4A 1NL

Tel: 020 7612 9700

The detailed procedures for making a reference to the Tribunal are contained in section 103 of the Act and the Tribunal Rules.

You should note that the Tribunal rules provide that at the same time as filing a reference notice with the Tribunal, you must send a copy of the reference notice to the Pensions Regulator. Any copy reference notice should be sent to:

Determinations Panel Support
The Pensions Regulator
Napier House
Trafalgar Place
Brighton
BN1 4DW.

Tel: 01273 811852

A copy of the form for making a reference, FTC3 ‘Reference Notice (Financial Services)’, can be found at:

http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3043