Neutral Citation Number: **[2021] EWHC 372 (Ch)**

Case No: BL-2019-000267

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

Rolls Building
Fetter Lane
London, EC4A 1NL

Monday 22nd February 2021

Before :

THE HON MR JUSTICE MELLOR

- -

Between :

THE FINANCIAL CONDUCT AUTHORITY	**Claimant**
- and -	
(1) SAMUEL ANTHONY GOLDING **(2) SHANTELLE DEACON** ***(also known as SHANTELLE GOLDING)*** **(3) DIGITAL WEALTH LIMITED** **(4) OUTSOURCING EXPRESS LIMITED**	**Defendants**

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Adam Temple (instructed by the internal legal department of the Financial Conduct Authority) for the **Claimant**
The Defendants did not appear and were not represented
Various investors attended the hearing and made representations

Hearing date: 16 February 2021

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APPROVED JUDGMENT

COVID-19: This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 3 pm on 22nd February 2021.

....
MR JUSTICE MELLOR

Mr Justice Mellor:

1. The FCA applies for directions under section 382(3) of the Financial Services and Markets Act 2000 ('FSMA') as to the distribution of monies collected in by the FCA from the Defendants. The history in outline is as follows.

2. In September 2017, the FCA intervened in the conduct of two unregulated investment schemes operated by the Defendants:

    i) The first was the 'Digital Wealth Society scheme' or 'DWS scheme' which operated from about August 2015 until the FCA's intervention.

    ii) The second was the 'Outsourcing Express" or 'OEL scheme' which operated for only a short time from around August 2017 until the FCA's intervention.

    iii) I will need to say more about each scheme later, but it is important to note that the two schemes were linked. Originally the OEL scheme was promoted on the basis that one had to have first invested in DWS to be able to invest in OEL, although that requirement was not always adhered to.

3. The FCA opened a formal investigation on 26 September 2017 and secured undertakings from the First and Second Defendants to protect the funds invested in the two schemes by investors. In the course of the FCA investigation, each of the First and Second Defendants was interviewed by FCA investigators in December 2017. Ultimately the FCA commenced this action against the Defendants on 4 February 2019. The claim against the Defendants was settled on the terms of a confidential settlement agreement.

4. To give effect to the settlement agreement, Chief Master Marsh made an Order by consent dated 28 June 2019, in which the Defendants admitted that:

    i) The DWS scheme was operated and promoted as alleged in the Particulars of Claim and constituted the specified activity of accepting deposits;

    ii) The OEL scheme was operated and promoted as alleged in the Particulars of Claim and constituted a collective investment scheme as defined by s.235 of the Act.

5. The Order included declarations as to the various contraventions of the FSMA committed by the Defendants, in particular sections 19 and 21. The Order also provided that the funds paid under the settlement agreement were to be treated as if paid pursuant to an Order under s.382(2) of the FSMA. In total, £3,428,612.42 was received by the FCA, of which:

    i) £879,298.87 came from the DWS scheme account (including interest);

    ii) £2,475,561.79 came from the OEL scheme account (including interest);

    iii) Some £53,751.66 derived from what has been called the Shillingford Account in the name of the mother of the Second Defendant, of which

£49,983.67 derives from the DWS scheme and £3,767.99 from the OEL scheme;

iv) £20,000 from the bank account of a company owned by the Second Defendant called Legendary Music Limited, recovered from the Treasury Solicitor who received the funds as *bona vacantia* when that company was dissolved. These funds were received by the Second Defendant from the Third Defendant's account and therefore have been treated as referable to the DWS scheme.

6. The monies have been held in an interest bearing account, yielding interest of £14,133.70 to date, so the total amount for distribution is £3,442,746.22. Of that total, the FCA's investigation suggests that the total should be allocated as follows:

i) £953,195.75 to the DWS scheme; and

ii) £2,489,550.47 to the OEL scheme.

7. In his very helpful Skeleton Argument, Mr Temple for the FCA suggested (correctly in my view) that the following issues arise for my determination:

i) Whether there should be a single scheme of distribution or a scheme of distribution for each scheme separately;

ii) The FCA's proposed approach to calculating loss;

iii) General issues, by reference to various categories of investors;

iv) Issues raised by a few individual investors;

v) Other miscellaneous issues.

8. Of those issues, the first is by far the most significant, for this reason. A single distribution scheme would return roughly 45 pence in the pound to the qualifying investors, whereas if each scheme is dealt with separately, DWS investors would receive about 22.5p in the pound and OEL investors would receive about 74.9p in the pound. These rates of return indicate just how much of the investors' money has been spent, lost or frittered away by the Defendants.

9. Whilst the parties are to be commended for having reached a settlement of the claim under s.382(2), it does create a difficulty at this later s.382(3) stage because there has been no trial and no findings of fact to the precise details of each scheme, beyond the outline summary of each scheme pleaded in the Particular of Claim and admitted by the Defendants.

10. Therefore, for the purposes of deciding the first issue in particular, I need to set out the rather scant information as to how each scheme was supposed to operate and did operate.

The DWS scheme in more detail

11. In the initial phases, the DWS scheme was operated by the First and Second Defendants (husband and wife), with the Third Defendant ("DWL") being incorporated on 8 December 2016. The total amount invested in the DWS scheme is estimated by the FCA to have been around £12m. Considerable sums were paid out to certain investors during the operation of the DWS scheme, albeit the FCA estimates the net loss suffered by investors in DWS is over £4.2m.

12. Initially, investors in the DWS scheme were offered a 50% return on their deposit over a stated period (typically 4 months). Later, investors were charged an administration fee and were offered variable returns (25%-40%, based on the size of their deposit. By way of example, in an email to a depositor on 16 August 2017, the First and Second Defendants promised the following:

'Silver (25% Level) £1,000 - £9,999

Admin Fee 399 (£47 Only for new investors investing £1000)...

Gold (30% Level) £10,000 - £19,999

Admin Fee £149.00

Platinum (35% Level) £20,000 - £29,999

Admin Fee £199.00

Gold (40% Level) £30,000+

Admin Fee £299.00'

13. The Defendants supplied the FCA with a 'Business Plan' which refers to the DWS scheme using funds '*to fund the platform which the IT feasibility study quoted a £1.2m so far we have raised apprx £900,000'*. This was a reference to the Kerchiing sales platform which was intended to promote sales within the OEL scheme. There is no evidence that any entity was engaged to start creating the software for this sales platform, nor that any software was written.

14. Beyond that, there is not a great deal of information about the DWS scheme, other than the fact that the Defendants, through word of mouth recommendations, were able to attract significant investment into the scheme. The FCA has found it difficult to assess the precise sums invested and lost in each scheme. This is in part due to deficiencies in the data retained by the Defendants, but also because the DWS scheme at least operated as a Ponzi scheme. Some investors received their returns and did very well. Other investors rolled over their investments, both in the DWS scheme and into the OEL scheme. On paper, they had very high notional investments, but in the end received little or nothing, subject to the distribution to be made by the FCA.

15. It follows from this that the view of an individual investor of the DWS scheme varies hugely depending on their own experience.

16. I agree that the DWS scheme has all the hallmarks of a 'Ponzi' scheme in which the sums invested by later investors were used to pay the returns for earlier investors. Furthermore, in the course of the FCA investigation, the Defendants

were unable to give any coherent explanation of any profit-making activity which could have sustained the unrealistic returns which were promised to investors.

17. In the more formal analysis of the Act, the DWS scheme was a deposit taking scheme. It is in the nature of deposit taking that the funds deposited are at the disposal of the deposit taker. It follows that the sums deposited were not held on trust for the investors and they had no property right in the scheme.

The OEL scheme in more detail

18. This was operated through the Fourth Defendant by the First and Second Defendants. Even though it was operated for such a short time (perhaps 6 weeks maximum), some £3.3m of new money was invested in this scheme in addition to notional transfers of investments from DWS into OEL and the FCA estimates that the investors in OEL suffered a net loss of over £3.2m.

19. In this scheme, investors were led to believe that they were purchasing goods which would be sold on their behalf online, to generate fixed profits of between 50 and 100%. The management and sale of all goods were to be managed by OEL on the investor's behalf. At the time of the FCA intervention, no goods had yet been purchased. It remains unclear as to precisely how the scheme was supposed to operate. Once again, in their interviews with the FCA, neither of the Defendants was able to provide a coherent explanation, in particular to shed light on whether OEL was acting as vendor of the goods in question or as agent selling on behalf of the investor.

20. The reason why this matters is because if investors had property rights in the sums paid to OEL (or DWS for that matter), this would make a single distribution very difficult to justify. As Lindsay J. explained in *Russell-Cooke Trust v Prentis* [2002] EWHC 2227, references to investors suffering a 'common misfortune' cannot be used to override or force the surrender of, in that case, 'clearly discernible separate property rights'.

21. The contractual terms of the OEL scheme refer to OEL being the seller of 'units', but it is clear these units did not represent specific property. Instead, the 'units' were references to multiples of £10,000, which then translated into a category of goods e.g. one 'unit' meant that the investor was investing in 'large bulky items' such as 'dog beds'. Other statements indicate that OEL would act as agent e.g. '*We will order stock on your behalf'.*

22. Given the uncertainty in the terms of the investment and the absence of any clear evidence that the money invested by an individual investor was to be segregated in the hands of OEL, it is difficult to conclude that investors had any property right in the sums paid to OEL. In any event, as Mr Temple pointed out, there is nothing in the documentation to indicate the status of investment monies prior to the purchase of goods in the OEL scheme.

23. Notwithstanding the above, in terms of FSMA, the OEL scheme is characterised as a collective investment scheme.

The hearing and the representations from individual investors.

24. I heard this application at a fully remote hearing on 16 February 2021. Microsoft Teams enabled over 150 people to attend the hearing. Leaving aside representatives from the FCA, the vast majority of attendees were investors in one or both of the schemes, the vast majority of which have been very badly let down by the Goldings. After hearing some very helpful submissions from Mr Temple, I heard brief oral representations from some 21 individuals. I also received a number of written representations: some were gathered together by the FCA before the hearing; some were written during the hearing (in the chat function) and some were sent in emails on 16, 17 & 18 February.

25. I am grateful for all the representations I received, nearly all being heartfelt and reflecting the fact that some investors had lost nearly their entire savings. In terms of the representations made by individuals, naturally they reflected the particular position in which they find themselves. In broad terms, they fell into the following four categories:

    i) Those arguing that there should be a single distribution. I apprehend that most if not all in this category were investors in DWS who wished to receive the greater return that a single distribution would provide.

    ii) Those arguing for two distributions. Again, most in this category would be investors in OEL who wished to obtain the greatest return.

    iii) There was one representation from an investor (albeit writing on behalf of 5 others) in which it was argued that those in the DWS scheme who did not receive their initial return from DWS should be identified and given a higher rate of return like the OEL investors. The representation acknowledged that this would require a transfer of funds from the OEL scheme. The alternative suggested was that the DWS and OEL investors should be treated the same (i.e. a single distribution).

    iv) Finally, there were a few representations to the effect that the FCA should not have intervened at all, the suggestion being that the losses now being faced by investors are the consequence of the FCA's intervention. Some even submitted that before the FCA intervened, no losses had been sustained.

26. I will deal at once with the representations in this last category. They are wrong and misguided. As is often the case with Ponzi type schemes, the two schemes in issue were promoted to friends and family of the organisers and then spread by word-of-mouth recommendations, themselves encouraged no doubt by the impressive returns paid out to early investors. I apprehend that representations in the fourth category came from either family members or close associates of the First and Second Defendants. Views of this nature are completely unrealistic and indicate that the delusion required for a Ponzi scheme to operate continues in the minds of some people. In reality, the facts here are yet another illustration of the maxim 'if it looks too good to be true, it almost certainly is'. As for the criticism of the FCA, it is completely unjustified. The FCA has a statutory duty to intervene in unregulated investment schemes.

27. As for the other representations, I made it clear during the hearing that my decision as to whether to order one distribution or two was not going to depend on a public vote. Nonetheless, leaving aside the views expressed as to one distribution or two, the representations from individual investors did highlight in various ways the fact that these were different schemes. By way of example, one investor in OEL said he had looked at DWS and decided not to invest. However, the greater detail and the more concrete proposal in the OEL scheme persuaded him to invest.

The relevant statutory provisions

28. The relevant parts of s.382 of the FSMA provide as follows:

> *s382 Restitution orders.*
>
> *(1) The court may, on the application of the appropriate regulator or the Secretary of State, make an order under subsection (2) if it is satisfied that a person has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and—*
>
> *(a) that profits have accrued to him as a result of the contravention; or*
>
> *(b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.*
>
> *(2) The court may order the person concerned to pay to the regulator concerned such sum as appears to the court to be just having regard—*
>
> *(a) in a case within paragraph (a) of subsection (1), to the profits appearing to the court to have accrued;*
>
> *(b) in a case within paragraph (b) of that subsection, to the extent of the loss or other adverse effect;*
>
> *(c) in a case within both of those paragraphs, to the profits appearing to the court to have accrued and to the extent of the loss or other adverse effect.*
>
> *(3) Any amount paid to the regulator concerned in pursuance of an order under subsection (2) must be paid by it to such qualifying person or distributed by it among such qualifying persons as the court may direct.*
>
> *…*
>
> *(8) "Qualifying person" means a person appearing to the court to be someone— (a) to whom the profits mentioned in subsection (1)(a) are*

> *attributable; or (b) who has suffered the loss or adverse effect mentioned in subsection (1)(b).*

Case law

29. The case law to which Mr Temple drew my attention can be categorised as follows:

    i) There are a relatively few examples of cases in which the Court has given directions under s.382(3);

    ii) There are some examples of distributions in the slightly different circumstances of company insolvency, including *BCCI* (see below), *Barlow Clowes International v Vaughan* [1992] 4 All ER 22 CA and *Russell-Cooke Trust v Prentis* [2002] EWHC 2227, Lindsay J. In at least some of these, and particularly in *Barlow Clowes*, there is discussion as to whether the rule in *Clayton's Case* (i.e. first in, first out) should be applied or disapplied. Whilst the rule in *Clayton's Case* may be apposite in the context of a running account, I do not consider it applicable in the present context nor liable to provide a fair result.

30. As for the first category, in *FCA v Anderson* [2014] EWHC 3630, Mr David Halpern QC sitting as a Deputy High Court Judge, approved separate distributions amongst multiple investment schemes on the following basis:

> *'[counsel for the trustee in bankruptcy of the defendants] took a neutral position on this point but helpfully referred me by way of analogy to Re BCCI (No 3) [1993] BCLC 106 at 111 (upheld on appeal at [1993] BCLC 1490), where Nicholls V-C approved an arrangement to pool the assets of two BCCI companies in liquidation on the basis that their affairs were so hopelessly intertwined that this was the only sensible way to proceed. Nicholls V-C acknowledged that this was an exceptional measure but explained that he took this course because it would make no sense to spend vast sums of money and much time in trying to disentangle and unravel the transactions. In the present case I have an unfettered discretion but <u>I take as my starting point that I should respect the separate existence of each of the three schemes unless fairness requires that they be pooled</u>. The strongest argument in favour of pooling is that the schemes run by Anderson and Peacock were sub-Ponzi schemes which fed into Pruthi's scheme. However, as against that, each Defendant offered his personal guarantee to depositors in his scheme. On balance, it strikes me as fairer to apply each Defendant's payment to his depositors in recognition of that guarantee. There is no practical difficulty of the kind referred to by Nicholls V-C if the separate identity of each scheme is maintained.'*

31. Mr Halpern QC's helpful 'starting point' apart, it seems there are few, if any, principles which can be derived from the case law, because each case depends on its own particular facts.

32. I now turn to the issues I have to determine.

One distribution or two

33. After careful deliberation, I have come to the clear conclusion that I should order two separate distributions, for the following reasons.

34. First, I see considerable merit in adopting the starting point that the Court should respect the separate existence of separate schemes. I cannot simply assume that the investments were made purely on the basis of the returns offered, even if this may have been a primary motivator for many. Furthermore, it is important to recognise that the two schemes differed and resulted in different investment decisions.

35. Second, the FCA has been able to identify whether investments were made into DWS or OEL and none of the outstanding issues with individual investors relate to this issue. In other words, the two schemes are entirely separable and the recovered monies can be allocated to one scheme or the other, as indicated above.

36. Third, whilst the two schemes were quite closely related, as I have explained above, it is clear that they were not so hopelessly intertwined to make separate distributions impractical.

37. Fourth, if I consider the situation just at the point when the FCA intervened, at that point an investor in DWS could only have claimed against the DWS scheme and would not have been able to claim against the OEL scheme, and vice versa. There is merit in the distribution replicating (as far as possible) the claims that investors would have been able to make at the point when the FCA intervened. This point can only be taken so far, because I could envisage the Goldings being held personally liable in respect of each of the schemes.

38. Fifth, whilst at some relatively high level of generality, all investors can be said to have suffered a ‘common misfortune’, in my view that views matters at too high a level of generality. It also assumes hindsight (i.e. that the current situation would come about). When investments were made, they were made on the basis of the investor accepting different risks. For the DWS scheme, an investor took the risk that the First, Second and Third Defendants would not be able to produce a return capable of paying the promised return. They were placing their trust entirely in those Defendants.

39. Although an investor in the OEL scheme was also placing a great deal of trust in the Goldings, it is reasonable to assume that he or she had the comfort of knowing their money would translate, in some way and at some point, into specific goods. Investors believed that goods were to be purchased (in some way) equivalent to the sum invested and took the risk that the goods would not sell (whether by the Defendants or on their account). Those investors understood that they would only get a return if the goods sold. Whilst there were risks in common in the sense that both schemes depended on the Goldings, certainly the entitlements were different.

40. Sixth, the shortfall in the DWS scheme is far greater than that in the OEL scheme. The reason for this is because the DWS scheme had been running for nearly two years before the FCA intervened and had paid out considerable returns estimated

at around £9m. Because the OEL scheme only operated for a matter of weeks, far less investor money was extracted and paid away by the Defendants.

41. So far as arguments in favour of a single distribution are concerned, it seems to me that all of them operate at far too high a level of generality. The notion that a common distribution in the order of 45 pence in the pound to all investors produces a 'fairer' result requires all of the differences between the two schemes (including the sums recovered from each scheme) to be ignored. I do not consider that is either justified or fair.

42. Furthermore, the only principled basis on which I consider I could order a single distribution was by treating both schemes as essentially 'Ponzi' schemes which were always going to fail at some point because the Goldings were unable to implement coherent methods of doing business which would have been capable of generating the returns promised. To so treat these two schemes would not reflect the realities of how individual investors made their decisions to invest in one scheme or the other or both.

43. For these reasons I order separate distributions: one for the DWS scheme and one for the OEL scheme, and the overall total sum to be distributed is to be allocated as £953,195.75 to the DWS scheme and £2,489,550.47 to the OEL scheme.

The approach to calculating loss

44. In the present case, the qualifying persons are the investors who suffered loss (see ss 382(8) and 382(1)(b) above.

45. In previous cases of distributions of this type:

i) In *FSA v Upton* [2010] EWHC 2345 (Ch) at [4], Mr Englehart QC (sitting as a Deputy High Court Judge) agreed with the FSA (as it then was) that the focus should be on

> '*…reimbursement of money laid out rather than looking at some anticipated notional, and it may be called extremely notional, loss of profit in this case.*'

ii) In *FCA v Anderson* (cited above) Mr Halpern QC (sitting as a Deputy High Court Judge) at [10] took this approach:

> '*10 As regards (b), "qualifying person" is defined in section 382(8) as being a person appearing to the court to be someone (a) to whom a profit has accrued as a result of the contravention or (b) who has suffered a loss as a result of the contravention. In other words, the court has jurisdiction to extend the class, not just to depositors who have suffered a real loss, in the sense of being out of pocket, but also to those who did not receive the profit which they were expecting. Mr Purchas submitted, and I accept, that where there is an enormous shortfall between the actual losses and the amount recoverable, out-of-pocket losses are much more deserving of compensation than expectation*

> *losses. I therefore have no hesitation in limiting the class of person to those within section 328(8)(b). ...*'

iii) Although there is no judgment available, the same approach was taken in *FCA v Capital Alternatives* (Order of 21 November 2019 at [8]).

46. I entirely agree with those observations. In my view it would be unreal to compensate investors by reference to the unrealistic returns they hoped to receive. So the starting point is to focus on the capital sums actually paid into either scheme by an investor, less any returns actually received. It follows that any investor in either scheme who made a net profit has not suffered any loss and is therefore not a qualifying investor for that scheme.

47. There is a complication in this case because a number of investors switched between schemes. Typically, a number of investors in DWS who had built up a significant notional deposit sought to invest that notional sum into OEL. However, there is no evidence of any real transfer from one scheme to the other. So, whilst these investors believed they had accrued significant rights against the Third Defendant, DWL, in reality they had already lost most of their investment because DWL was insolvent. It follows that I accept the FCA's submission that these investors did not suffer additional losses '*as a result of the contraventions'* in relation to the OEL scheme.

48. For these reasons, in assessing loss, the FCA should apply the following principles:

i) The calculation of losses should focus on capital losses namely the sums invested minus returns actually received by investors.

ii) Those who made a net profit on either scheme are not treated as qualifying investors for that scheme.

iii) Investors who 'switched' between schemes should only be treated as having suffered their losses by reference to their original investment, save that any further sums invested as a part of or following the switch should be treated as investments into the second investment.

Specific categories of investor

49. The FCA draws attention to two general categories of investor which I need to address. The first are 'aggregators'. Early investors in the DWS scheme were promised better rates, as were investors of larger sums. Thus, there was a distinct incentive to investors to club together but also to invest in the name of an early investor. However, these arrangements were outside the schemes and were essentially private arrangements between the second-order investors and the aggregators. The second-order investors would not have had direct claims against DWL or OEL. They have claims (if at all) against their aggregator. Accordingly, I agree with the FCA that these third party arrangements should be ignored as being arrangements outside the investment schemes.

50. The second general category I need to address are 'non-responding investors'. From the evidence I received, I am entirely satisfied that the FCA has made very considerable efforts to contact and track down investors. Whilst it is possible that

there are further investors who the FCA has not identified, and they will receive nothing under the proposed order, the exercise conducted by the FCA has to remain proportionate. Furthermore, it would be wrong to delay the distribution against the possibility that some more investors might turn up.

Specific issues concerning individual investors

51. Individual investors are identified by randomly assigned numbers.

52. The FCA has determined that Investor 24 in the DWS scheme suffered a net loss of some £8,800 odd. However the investor suggests that his net loss should be increased by £23,100, for the following reason. At the time of investing, the investor was required to provide details of the bank account to which his returns should be paid. Whoever filled out his form put in the bank details of the investor's accountant. Some £23,1000 was paid out from the DWS scheme to that account, yet the investor says he never received those monies. The FCA suggests that the investor's recourse must be to his accountant and I agree.

53. Next, there are three investors (26, 130, 154) who claim to have invested sums in one or both schemes yet either have not been able to produce any evidence properly to substantiate the sums alleged to have been invested and/or the bank records which the FCA have investigated do not support their claims. As I understand the position, these claims have been thoroughly investigated and the investors have been given ample opportunity to provide evidence to substantiate their claims. In the circumstances these claims can be excluded, unless further evidence is provided in time (see paragraph 58 below).

54. Investor 70 received what appears to be a return on investment in DWS in August 2016, when there is no evidence of an initial investment, and appears to have made a separate investment into DWS in September 2016. Despite efforts to contact this person, the FCA has received no response. It seems likely that the investment was repaid.

55. Investors 32 and 488 were only recently identified, but the FCA has not yet been able to contact them, despite its efforts. They are included in the Schedule of Qualifying Investors. The FCA will retain sufficient funds to pay the distribution due to these investors, and if no contact is made, those sums can be distributed as part of a 'Special Distribution' in due course.

Final matters

56. For reasons it is not necessary to go into, to effect the distribution by bank transfer is not practicable, so the FCA will make the distributions by cheque, sent out to each investor by letter. To give sufficient time for all the arrangements, the FCA suggests an end date of 30 April 2021 by which the sums to be distributed should be paid out. I will so order. Naturally, if the FCA can make the distribution in advance of the 30 April 2021, it will do so.

57. It is possible that the FCA may recover further monies and that some cheques may not be banked, so it is necessary to provide for further 'Special Distributions' in the future. It is likely that any amount to be distributed will be limited, so all

investors who would receive less than £50 are to be entered into a random lottery for further payments of approximately £50. Once the balance falls below £2,500, it is not appropriate to devote further time and resources to any further distribution, so I will order that the FCA should retain that against the very significant costs which it has incurred in investigating these schemes.

58. The Order which I make as a result of this Judgment (the terms of which are annexed) include a provision for the FCA or anyone claiming to be an investor in either of the two schemes to apply for further directions. The FCA need only apply if an issue of principle arises. If an investor (such as those individuals I have discussed above) is able to provide the FCA with additional evidence to substantiate their claim before the FCA makes the distribution, or if further evidence comes to light which requires an adjustment to any investor's entitlement (even to zero) the FCA has permission to act on such evidence in accordance with the principles discussed above (see paragraph 10 of the Order).