

<p>The Pensions Regulator</p>	<p><b>DETERMINATION NOTICE</b>  <b>pursuant to Section 96(2)(d) of the</b>  <b>Pensions Act 2004</b>  <b>(“the Act”)</b>  <b>Mr Anthony Mustafa Salih</b></p>	<p>The Pensions Regulator case ref: <b>C46205159</b></p>
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## Introduction

1. By a Warning Notice dated 9 December 2016 the Pensions Regulator (“**the Regulator**”), acting by its Case Team (“**the Case Team**”), sought orders under section 3(1)(c) of the Pensions Act 1995 (“**PA 95**”) prohibiting two individuals, Mr Stephen Alexander Ward (“**Mr Ward**”) and Mr Anthony Mustafa Salih (“**Mr Salih**”), from acting as trustees of trust schemes in general.
2. The power to make an order under section 3(1)(c) of PA 95 is a “reserved regulatory function”, pursuant to paragraph 4 of Schedule 2 to the Act. It must therefore be exercised by the Regulator’s Determinations Panel (“**the Panel**”). The matter was accordingly referred to the Panel on 20 July 2017 and the Panel held an oral hearing on 7 November 2017, following a period in which the parties provided further representations.
3. Mr Ward and Mr Salih were represented by Mr Uberoi of counsel and the Case Team was represented by Mr Friedman of counsel.
4. This Determination Notice gives notice of the Panel’s determination in respect of Mr Salih. Although the factual background to the cases against Mr Ward and Mr Salih was in most respects the same, the matters that were relevant to the Panel’s decisions in respect of each of them were significantly different. For that reason the Panel has decided to give a separate Determination Notice in the case of Mr Ward.
5. The Panel considers Mr Salih to be the only party directly affected by this determination.

## Contents

6. This Determination Notice is structured as follows:
  - a. Factual Background – paragraph 7;
  - b. The Law - paragraph 50
  - c. Mr Salih’s representations – paragraph 63
  - d. The case on honesty and integrity – paragraph 69;

- e. The case on competence and capability – paragraph 73;
- f. Conclusion – paragraph 92.

## **Factual Background**

7. Mr Ward and Mr Salih were directors and involved in the management of a company called Dorrixo Alliance (UK) Limited (“**Dorrixo**”). This was during the period in which Dorrixo acted as corporate trustee to an occupational pension scheme that had been established on 30 April 2012 as the London Quantum Occupational Pension Scheme (“**the Scheme**”). The Scheme’s name was changed to the London Quantum Retirement Benefit Scheme on or around 30 June 2014.
8. Mr Ward was a director of Dorrixo from its incorporation on 13 October 2011 to 28 April 2015. He was reappointed as a director of Dorrixo on 22 June 2015.
9. Mr Salih was a director of Dorrixo from 1 April 2015. He was its sole director from 28 April 2015 until 22 June 2015 and became the legal owner of Dorrixo on 30 April 2015. Dorrixo was dissolved on 16 August 2016.
10. Dorrixo was wholly owned by Mr Ward until 30 April 2015, when he transferred his shareholding to Mr Salih.
11. 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.
12. A company called Quantum Investment Management Solutions LLP (“**QIMS**”) has at all material times been the sole sponsoring employer of the Scheme.
13. The original trustees of the Scheme were Mr XXXX XXXXXX and Mr XXXXXXX XXXXX (XXX XXX XXXXXXXX XX XXX XXXXXXXX XXXXXXXX XXXXXXXX). Mr XXXXXXX and Mr XXXXX XXX XXXX XXXXXXXX XX XXXX. They resigned 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.
14. Dorrixo became the sole trustee of the Scheme on 19 April 2014. Dorrixo is also recorded as being the Scheme administrator.
15. Mr Salih was involved in the management of Dorrixo during the period in which it was the trustee of the Scheme. Mr Salih’s involvement in Dorrixo’s management is described at paragraph 68 below.
16. Mr Salih was working with pension schemes before his involvement with the Scheme. The Panel was shown an email of 20 December

2013 from Mr Salih in his capacity as “Pensions Manager” of Dorrixo giving information to facilitate a transfer in to a pension scheme called the Headforte Pension Scheme. The evidence also contained letters from him in March 2011 on behalf of “Premier Pension Solutions SL” (“**PPSSL**”) seeking to effect transfers of clients into the Ark pension schemes. These forms showed Mr Ward, also of PPSSL, as the introducer. It is clear that Mr Salih and Mr Ward have worked together on pension matters for some years.

17. On 18 June 2015, and in accordance with the Special Procedure under section 98 of the Act, the Regulator appointed Dalriada Trustees Limited (“**Dalriada**”) as an independent trustee to the Scheme, with exclusive powers. This followed proceedings contested by Dorrixo, with an oral hearing at which it was represented, culminating in a Final Notice dated 8 February 2016 (“**the IT Proceedings**”).
18. Dorrixo received £63,000 in fees from the Scheme during the 14 month period in which it was the Scheme’s sole trustee. Its actions in providing trustee services for remuneration as part of its business constitutes it a professional trustee in the Panel’s judgment. Dorrixo was also a trustee of other pension schemes.
19. The life of the Scheme prior to the appointment of Dalriada can conveniently be split into two periods of time, referred to by the Panel in its Final Notice in the IT Proceedings as, respectively, the first and second life-cycles. The period from the Scheme’s inception to the appointment of Dorrixo as trustee in April 2014 is referred to hereafter as the “first life-cycle” of the Scheme, and the period starting with the appointment of Dorrixo in 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***

20. During the first life-cycle the Scheme had three members: Mr XXXXXX, Mr XXXXX and Mr XXXXX, for whose benefit the Scheme was originally established. A total of £616,383.58 was transferred into the Scheme from the original members’ pensions.
21. 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 in the course of acquiring an investment in London Quantum One Limited (“**Quantum One**”). Mr XXXXX received in total £273,000 and Mr XXXXXX £196,000. 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.
22. Quantum One was incorporated on 30 April 2012. Quantum One was dormant from the time of the investment until at least 30 April 2014

(according to its annual accounts for the years ended 30 April 2013 and 30 April 2014.)

23. In the circumstances, the Regulator was concerned that the Scheme was a plan for pension liberation.
24. It was common ground in these proceedings that at the date of Dorrixo's appointment as trustee of the Scheme, nearly all of its assets were invested in Quantum One, and that Quantum One was "connected" with QIMS for the purposes of the restriction on employer-related investments imposed by section 40 of PA 95 ("ERI"s).

### ***The second life-cycle of the Scheme***

25. Following the appointment of Dorrixo as trustee in April 2014 the Scheme was opened up to new members.
26. The following is a summary of how the Scheme operated in the second life-cycle. The relevant findings of the Panel in the IT Proceedings are set out below and are relied on by the Case Team in these proceedings. These findings were not challenged by Mr Ward or Mr Salih in these proceedings and are accepted by this Panel. We note however that Mr Salih did not accept the entirety of the Panel's findings in the IT Proceedings.
27. Amongst the difficulties the Panel in the IT Proceedings faced in making findings was that certain documents and records that it expected Dorrixo to have retained were missing, including a full set of Scheme documentation. Mr Ward and Mr Salih accepted in these proceedings that Dorrixo neither received nor sought a copy of the Scheme's original rules when it became the trustee. There is no full set of minutes of trustee meetings. There is no comprehensive set of correspondence. Further, key documents relating to the investments made by Dorrixo during the second life-cycle are missing (assuming that they ever existed at all, which is unclear).
28. 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 (Dorrixo made clear in the IT Proceedings 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, although in some cases the potential new member had elected not to join the Scheme.

29. Dalriada carried out a reconciliation of the Scheme's bank accounts which show that the Scheme's assets increased to approximately £6.8 million during the second life-cycle (including the original investment in Quantum One), reflecting in large part the transfer into the Scheme of new members' pension pots.
30. QIMS and Dorrixo explained to Dalriada (following its appointment as trustee of the Scheme) that during the first life-cycle QIMS were looking to get involved with the investment side of the Scheme but were conflicted because Mr XXXXXX and Mr XXXXX 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 Dorrixo. As stated above, Dorrixo was appointed trustee of the Scheme on 19 April 2014.
31. 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 appear to have received commission in respect of each new member who transferred their pension pot into the Scheme on the basis of the investments chosen by each member.
32. 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 in the IT Proceedings 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. Mr XXXXXX explained to Dalriada that he would forward the completed documentation to Dorrixo.
33. 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 in the paragraph above. On 24 March 2014 Mr Ward emailed Mr Salih saying that he was "liaising" with Mr XXXXXX "*in order to get the scheme across to Dorrixo as trustee*" and that "*XXXX. .. will help in administering transfers*". It is unclear whether Gerard was formally appointed for this purpose, or any other purpose. Mr Ward's First Representations state that Mr XXXXXX was appointed a member of the Scheme's investment committee on 23 April 2015. There is no evidence of an earlier

appointment although Mr Ward says Mr XXXXXX provided investment advice to the Scheme in 2014 and exhibits an email from Mr XXXXXX to Mr Ward discussing the potential loss from an investment. From evidence adduced by Mr Ward it is clear that Mr XXXXXX was appointed a signatory of the Scheme's bank account on 19 April 2014. The reason for this is not clear.

34. The Warning Notice states that Gerard was paid fees totalling approximately £253,000 from transfers into the Scheme without provision in the Trust Deed and Rules to do so. Mr Ward and Mr Salih do not deny these payments were made. 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."*

Mr XXXXXX of Gerard says that this was in accordance with their agreement with their client, who was the potential new member. Mr Ward indicated that the fee was levied by Dorrioxo as trustee of the Scheme in accordance with the Scheme rules.

35. 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 in the IT Proceedings made no finding as to whether or not Gerard (or, indeed, any other person), provided investment advice to new members.
36. Mr Ward's position in these proceedings, which Mr Salih adopted in his representations, is that Gerard was appointed to provide advice on investments within the meaning of s.36 of PA 95, that Mr Ward believed Mr XXXXXX was qualified to provide such advice, and that Mr XXXXXX did in fact advise in relation to investments. Mr Ward and Mr Salih accepted that they failed to have the advice subsequently confirmed in writing, as s.36(7) of PA 95 requires.
37. When joining the Scheme, new members were required by Gerard 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.”*

38. 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 in the IT Proceedings concluded that this was a material fact of which Dorrioxo ought to have been aware. Further, Dalriada 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 in the IT Proceedings 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. The Panel in this case has reached the same conclusion.

#### *Structure of the Scheme*

39. The Panel was troubled by the apparent disconnect between members’ appetite for risk and the high risk nature of the investments made by Dorrioxo. Mr Ward accepted that the Scheme’s investments were high risk, but claimed this was made clear to new members in the Member Booklet. However it appears that no steps were taken by Dorrioxo to understand new members’ attitude to risk.
40. 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).
41. On its appointment, Dalriada was provided by Dorrioxo with an electronic spreadsheet which, notionally at least, shows 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 was unclear whether this is a reference to QIMS or Quantum One, or another entity, or what the fees are for.
42. It was also unclear to the Panel in the IT Proceedings whether or not Dorrioxo maintained separately identifiable personal accounts during the currency of the second life-cycle of the Scheme. Mr Ward’s and Mr

Salih's position in these proceedings was that the Scheme was not a segregated scheme, and never claimed to be so structured. The Case Team's position is that there had been a breach of clause 4 of the Trust Deed which required assets to be "*attributable*" and "*separately identifiable*."

### ***The Scheme investments***

43. At the time Dorrixo was appointed as trustee of the Scheme, the Scheme held shares in Quantum One acquired during its first life-cycle. Mr Ward and Mr Salih accepted in their representations that this investment was an employer-related investment within the meaning of PA 95 and thus should not have been held by the Scheme. They denied being aware of this, and argued that to have discovered the true position would have required examination of the Scheme's papers in considerably greater detail than Mr Ward or Mr Salih did.
  
44. Dorrixo made a number of investments on behalf of the Scheme. The position with regards to the Scheme's investments (excluding the Quantum One shares) can be summarised as follows:



Investment	Nature of investment	Sum invested	Dalriada report documents missing?	Commission (from Report by Jagger & Associates)	Value at March 17 (according to Dalriada's investment summary)	Date(s) of investment
<b>Quantum PYX Managed FX Fund</b> ("the Quantum Fund investment")	Regulated UCITS (Ireland)	£1,029,238			Sold for £764,278	unclear
<b>Reforestation Group Ltd</b> ("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	Yes	Not 7% not disclosed	unclear	3.10.14 – 31.3.15
<b>Park First</b>	18 car park spaces in Glasgow	£340,000	Yes	30%, not disclosed	unclear	30.9.14 – 20.4.15
<b>Best International (Dubai Car Parks)</b> ("the Dubai car parks investment")	Purported agreements for 99 year leases on car park spaces in Dubai with alleged guaranteed income	£189,000	Yes	2%, not disclosed	unclear	1.10.14 – 17.4.15
<b>The Resort Group</b>	Purported investment in hotel rooms in Cape Verde (the hotel is said to be under construction)	£485,151.52		Not known	Investment repaid	31.3.15 – 20.4.15
<b>Best International (ABC Corporate Bond)</b> ("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	Yes	Not known	Company associated with Issuer entered administration in January 2017. value unclear.	27.10.14 – 24.12.14
<b>Dolphin GmbH</b> ("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		Not known	May 2016 Scheme received offer of £300,000 but did not accept it	unclear
<b>Colonial Capital Group plc</b> ("the Colonial bond investment")	Corporate bonds with a term of 3 years issued by Colonial Capital Group plc	£24,000		17.5%, not disclosed	Issuer entered administration in March 2017.	31.1.15
Mallets Loan Note	Unsecured loan note with a term of 6 years	£8,000		Not known	Issuer entered liquidation in May 2016	20.8.13

45. Dalriada instructed an independent investment adviser and actuary, Jagger & Associates Limited ("**Jagger**"), to carry out a high level review of the Scheme's investments, the conclusions of which are set out in a written report ("**the Jagger Report**"). Jagger 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 Jagger Report was the only independent professional opinion concerning the Scheme’s investments received by the Panel.

46. The Jagger Report concluded that the investments made by Dorrioxo on behalf of the Scheme should be realised as soon as expedient by Dalriada. Jagger described them as of very limited liquidity, having only one investment traded on a regulated market, and including investments that were in a number of cases volatile; attended in some cases by high costs (i.e. commission); had a high level of risk and in three cases quoted implausibly high returns. Mr Ward and Mr Salih note in these proceedings that Jagger described the investments as more suited to high net worth or sophisticated investors, which the Scheme was in fact aimed at.
47. Dalriada produced an Investment Summary as at March 2017 showing that certain investments had been realised at a loss (Quantum PYX Managed FX Fund) while others appear to have been long-term illiquid (Dolphin Trust, London Quantum One Limited, Park First Glasgow Limited (the exit is at the discretion of Park First), Reforestation Group Limited) or no likely value (Malletts Solicitors Limited has entered liquidation, Colonial Capital Group has entered administration). Only the Resort Group investment has resulted in repayment in full.
48. Dalriada submitted in the IT Proceedings that there were material concerns about the legitimacy of some of the investments, including because a number of the investments lacked complete and comprehensive contractual documentation. The Panel in those proceedings accepted that submission and found that there were concerns regarding whether most of the Scheme’s investments were properly made and adequately documented. The evidence in the IT Proceedings showed:
  - (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 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 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.

## **The Law**

49. Section 3(1) of PA 95 allows the prohibition of a person from being a trustee of trust schemes in general, or of particular schemes, if the Regulator is satisfied they are not a “fit and proper” person to be a trustee of the schemes to which the order relates.
50. Pursuant to section 3(6) of PA 95, the Regulator has published statements of the policies it intends to adopt in relation to exercising powers under this section.
51. The statement from July 2016 (“**Statement**”) was in the papers before the Panel and states that it replaced the statement issued on 25 June 2013. No party suggested that we should not have regard to the 2016 Statement, or that there were material differences between the two.
52. The Statement describes the test of being “fit and proper person” as being answered in particular by reference to information concerning:
  - a. honesty
  - b. integrity
  - c. competence and capability, and
  - d. financial soundness.
53. The Case Team’s case against Mr Salih was based on allegations of failures of competence and capability, and a lack of honesty and integrity in relation to one matter (namely the Scheme’s breach of the ERI requirements during the entirety of Dorrixo’s trusteeship).
54. As regards that one matter, the parties agreed that the guidance in the case of *In Re H (Minors)* [1986] AC 563 was applicable. This is that although the standard of proof is on the balance of probabilities, the more serious an allegation the more convincing must be the proof required to tip that balance.
55. We should also record a passage from the authority particularly relied on by the Regulator for its case of a lack of honesty and integrity. This was *Arch Financial Products LLP & Ors v FCA* [2015] UKUT 0013 at [200] (in turn quoting part of an earlier judgment):

*“13. The meaning of integrity was considered by the Tribunal in Hoodless and Blackwell v FSA (2003). The Tribunal observed at [19]:*

*“In our view “integrity” connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)”*

*14. While the passage quoted above is useful guidance as to the meaning of the concept, the second sentence is clearly not the only circumstance in which a person can be said to lack integrity. In the subsequent cases of Vukelic v FSA (2009) at [23] and Atlantic Law LLP and Greystoke v FSA [2010] UKUT B30 (TCC) at [96], the Tribunal has cautioned against attempting to formulate a comprehensive definition of integrity. As the Tribunal in Vukelic observed, integrity remains a concept “elusive to define in a vacuum but still readily recognisable by those with specialist knowledge and/or experience in a particular market.”*

*15. The Tribunal in First Financial Advisors Limited v FSA [2012] UKUT B16 (TCC) agreed with the observation in Vukelic and endorsed the guidance in Hoodless and Atlantic Law . At [119], the Tribunal observed:*

*“Even though a person might not have been dishonest, if they either lack an ethical compass, or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity.”*

*We agree. A lack of integrity does not necessarily equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements. Such behaviour was found to be evidence of a lack of integrity by the Tribunal in Vukelic at [119]:*

***“It may be that Mr Vukelic was not dishonest on this transaction in the sense of deliberately participating in a scheme to deceive and we are prepared to accept that he was not. But he turned a blind eye to what was obvious and failed to follow up obviously suspicious signs. We do not believe that an educated professional in a senior position could have been oblivious to the signs that the transaction depended on concealment for its success. It is possible, but unlikely, that Mr Vukelic simply failed to spot what should have been obvious to a person in his position. But if that had been so it would have resulted from an inexcusable failure to ask obvious questions.”***

***201 It is clear from the above passages that acting recklessly is one example of acting without integrity. The passage from Vukelic***

***referred to above indicates that a person acts recklessly when he turns a blind eye to what was obvious to a person in his position.***

*202 In our view such a formulation results from no more than an application of the authoritative formulation of the concept of recklessness by Lord Bingham of Cornhill at page 1057 of the opinion of the House of Lords in R v G [2004] AC 1034 where he stated that a person acts recklessly when he acts with respect to (i) a circumstance when he is aware of a risk that exists or will exist and (ii) a result when he is aware of a risk that it will occur; and it is in the circumstances known to him, unreasonable to take the risk. This formulation was recently adopted by this Tribunal in Amir Khan v The Financial Conduct Authority FS 2013/002 (January 2014)”*  
(emphasis added).

56. The Case Team also relied on breaches of statutory duty. A number of these were not controversial, for example Mr Salih admitted a breach by Dorrixo of the duty under section 47 of PA 95 to appoint an auditor. He also admitted a breach by Dorrixo of section 40 of that Act, concerning employer-related investments, and of the requirements imposed by regulations made under sections 41 and 49 of that Act (regarding disclosure and record-keeping respectively).
57. However there was dispute in relation to two areas of statutory obligation, which we therefore set out. The first is section 36 of PA 95. So far as relevant this provides:

*“(3) Before investing in any manner (other than in a manner mentioned in Part I of Schedule 1 to the Trustee Investments Act 1961) the trustees must obtain and consider proper advice on the question whether the investment is satisfactory having regard to [the requirements of regulations under subsection (1), so far as relating to the suitability of investments, and to the principles contained in the statement under section 35.*

*(6) For the purposes of this section “proper advice” means— [*  
*(a) if the giving of the advice constitutes the carrying on, in the United Kingdom, of a regulated activity (within the meaning of the Financial Services and Markets Act 2000), advice given by a person who may give it without contravening the prohibition imposed by section 19 of that Act (prohibition on carrying on regulated activities unless authorised or exempt);*

*(b) in any other case, the advice of a person who is reasonably believed by the trustees to be qualified by his ability in and practical experience of financial matters and to have the appropriate knowledge and experience of the management of the investments of trust schemes*

*(7) Trustees shall not be treated as having complied with subsection (3) or (4) unless the advice was given or has subsequently been confirmed in writing.”*

58. The second area is that set out in sections 1 and 4 of the Trustee Act 2000. Section 1 defines “the duty of care” which a trustee must exercise in certain prescribed circumstances, as the duty to “*exercise such care and skill as is reasonable in the circumstances, having regard in particular— (a) to any special knowledge or experience that he has or holds himself out as having, and (b) if he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.*”

59. This is a duty that applies to trustees when exercising investment powers (Schedule 1 to that Act, paragraph 1).

60. Section 4 of the Trustee Act 2000 provides:

*“(1) In exercising any power of investment, whether arising under this Part or otherwise, a trustee must have regard to the standard investment criteria.*

*(2) A trustee must from time to time review the investments of the trust and consider whether, having regard to the standard investment criteria, they should be varied.*

*(3) The standard investment criteria, in relation to a trust, are—*

*(a) the suitability to the trust of investments of the same kind as any particular investment proposed to be made or retained and of that particular investment as an investment of that kind, and*

*(b) the need for diversification of investments of the trust, in so far as is appropriate to the circumstances of the trust.”*

61. This supplements the common law duty on trustees to invest scheme assets in the way that the ordinary prudent man of business would, if he were under an obligation to provide for others (*Re Whiteley* (1886) 33 Ch D 347).

### **Mr Salih’s representations**

62. Mr Salih’s First Representations said that he adopted the terms of Mr Ward’s Representations. Those Representations went on to make exactly the same submissions as Mr Ward (even where this was inappropriate, such as responding to a case that the Case Team made only against Mr Ward regarding involvement with the Ark pension schemes in 2011).

63. Mr Salih’s Second Representations were also in materially identical terms to those of Mr Ward, although Mr Salih’s covering email to the

Second Representations, dated 9 June 2017, sought to add to them by saying that many of the failings alleged by the Case Team predated his appointment as director of Dorrixo.

64. Mr Salih's Third set of Representations to the Panel stated, inter alia, that when he was appointed director of Dorrixo "*I was not a professional trustee nor was I appointed for any special expertise. On appointment I took steps to gain the necessary trustee knowledge and understanding within the period prescribed by tPR. Evidence in the form of a printout of my Trustee Toolkit is attached. I separately took further steps outside of the Toolkit to advance my trustee knowledge and understanding. I was unable to complete the Toolkit process in relation to the Scheme prior to the appointment of Dalriada, which appointment substantially predated the date by which the law required me to have obtained the necessary trustee knowledge and understanding. It should further be noted that none of the investments were made during the brief period of my appointment.*"
65. Mr Salih continued "*During the initial period of my directorship, not only did I face the substantial challenges of acquiring the requisite TKU (Trustee Knowledge and Understanding) and of assuming sole trusteeship in its widest sense, but I identified what I considered to be a number of issues requiring attention. I gave my attention to the investments but I was constrained as the steps I felt I could properly take until I have been able to take proper advice. I was further engaged in matters concerning HMRC, having considered that ensuring continued registration and compliance was a critical matter for the scheme.*"
66. He added "*In addition, I was concerned to regularise the banking position as it related to the scheme, both generally and also to enable the day-to-day operation of the scheme to function. This included, but was not limited to, member requests for PCLS (Pension Commencement Lump Sum) payment. With little experience, I was attempting to deal with these and other scheme matters. I made no attempts to avoid this responsibility. Indeed, far from seeking to avoid responsibility, which I could easily have done simply by declining to accept the role) I had assumed an arduous role with the sole intention of ensuring the interests of the members were served in circumstances where, had I not done so, those interests would almost certainly have been materially adversely affected.*"
67. At the hearing Mr Salih further represented to the Panel, through his counsel, that his role before 1 April 2015 did not extend to making or advising on investment decisions but rather was as "pension administration manager" employed by Premier Pension Transfers Limited from 2009. This involved him in acting for three companies (including Dorrixo) of which Mr Ward was a director in dealing with the administration and processing of pension transfers for a number of pension schemes, including the Scheme from late 2014. He was

therefore involved in the management of Dorrixo at least in the sense of responsibility for administering transfers into the Scheme of which it was trustee. He was also responsible for managing the office and facilities, such as dealing with utility suppliers, for the three companies.

### **The case on honesty and integrity**

68. The Case Team relied on one matter to show Mr Salih lacked honesty and / or integrity. This was the failure, throughout Dorrixo's appointment as trustee, to do anything in respect of the Scheme's investment in Quantum One, despite it being an ERI.
69. Mr Salih's case on this allegation mirrored that of Mr Ward, namely that he would have had to examine the Scheme's papers in greater detail than he did to uncover the ERI. He did not dispute that the investment did breach ERI restrictions, nor that steps should have been taken to reduce the level of it below 5% in order to comply with Regulation 12(2) of the Investment Regulations.
70. By the time of Mr Salih's appointment as a director the Scheme had many other investments that it had not had when Dorrixo was first appointed. Unlike Mr Ward, Mr Salih took office at a time when the Quantum One investment was some 9% of the Scheme's investments and not close to 100%.
71. The Panel was not persuaded that Mr Salih's failure to identify the Quantum One investment as an ERI was evidence of a lack of integrity or dishonesty. Adopting the approach in the passage from the *Vukelic* case highlighted above, the Panel was not persuaded that his level of relevant knowledge and experience at the time he became a director of Dorrixo was so high as to mean this issue would have been immediately apparent to him. In particular:
  - a. there is no evidence he was aware of a breach of the ERI requirements. Indeed the case in the Warning Notice is of a failure to take steps to investigate and rectify. The Case Team does not allege that Mr Salih knew of the breach, and
  - b. Mr Salih's responsibilities before appointment as a director of Dorrixo were not clearly such as would have caused him to investigate this issue.

### **The case on competence and capability**

*Admissions by Mr Salih*



72. The Case Team relied on a number of specific failures in relation to the administration of the Scheme by Dorrixo which were accepted by Mr Ward and Mr Salih:

- a. as noted above, they accepted the investment in Quantum One was an employer-related investment within the meaning of section 40 of PA 95 and thus should not have been held by the Scheme.
- b. they accepted they did not obtain written confirmation of investment advice received, in breach of section 36(7) of PA 95;
- c. they accepted there were “organisational lapses” in relation to the investments, but said they had no adverse impact on the value of members’ benefits;
- d. they accepted that if there was a shortfall in maintaining proper records of investments, then they themselves should have done more;
- e. they admitted failing to appoint an auditor to the Scheme, contrary to section 47 of PA 95;
- f. they admitted failing to provide the Regulator with registrable information in the form of details of membership, trustees, benefits, contrary to section 60 of the Pensions Act 2004;
- g. they admitted failing to obtain the Scheme Rules from 2012, but noted that these were not relevant as Dorrixo replaced the Scheme’s Rules on appointment;
- h. they admitted an “administrative oversight” in failing to inform the Scheme’s bank that Dorrixo had been appointed sole trustee, meaning that the former trustees continued to have access to the Scheme’s Lloyds bank account.

73. The last of these occurred before Mr Salih became a director. The remainder had commenced before that time but were not remedied during it. At the time of his appointment as director, Mr Salih had had prior dealings with the Scheme and was involved in Dorrixo’s operation of the Scheme from the outset of its involvement in 2014. While the Panel did not hold Mr Salih responsible for Dorrixo’s failures before his directorship commenced, it considered his involvement before that time was relevant in assessing the competence and capability with which he approached his responsibilities for the Scheme both when considering accepting the appointment as director of Dorrixo, and after his appointment.

Mr Salih accepted in his First Representations that a number of failures had occurred whilst Dorrixo was the Trustee of the Scheme, as described above. However the case advanced in those Representations was that they were not sufficient to justify a prohibition order. In particular he relied on the lack of adverse impact to members as a result of the failures. He accepted that certain investments had been sold at a loss by Dalriada, but argued that such sales by Dalriada after they were appointed as trustees were unnecessary or untimely.

74. The Panel did not accept this submission. It found that the failures had, as a matter of fact, a significant adverse impact on member benefits because they exposed the members to significant and avoidable risk (due to e.g. the lack of proper advice, lack of record keeping regarding investments, and lack of an auditor). They also exposed members to loss due to the extraordinarily high cost of payments to introducers, and due to the performance of the high risk and illiquid investments entered into without appropriate advice and without regard to the risk appetite of the scheme members.
75. The Panel was particularly concerned by the imprudence of the investments and the high commission rates that were charged to the Scheme as a result of them. The Panel in the IT Proceedings had concluded that Dorrixo breached its various common law and statutory duties to invest Scheme assets. It stated that "*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*". The Panel in this case agrees. Furthermore, the Panel considers that the evidence clearly establishes that Dorrixo had taken no proper steps to ensure the investments were suitable for the Scheme's investors. These included several who have informed Dalriada that they sought low to medium risk investments. Mr Salih was responsible on behalf of Dorrixo for dealing with new investors joining the Scheme, before he was appointed as a director.
76. In his Third Representations and at the hearing Mr Salih stressed that at the time of his appointment he was doing what he could to acquire relevant knowledge and secure the Scheme's position. He was not appointed for any special expertise. He said, in effect, that he stepped into the breach as nobody else would do so and that he intended to take steps after his appointment to advance his trustee knowledge and understanding. He believed (wrongly) that there was a six month period following appointment as a director, prescribed by the Regulator, in which he was required to obtain the necessary trustee knowledge and understanding. He stated that he faced substantial challenges on his appointment including the need to address the Scheme's banking position and its registration with HMRC. He said he was constrained by the need for proper advice in addressing the issues relating to the investments.

77. As a director of Dorrixo, Mr Salih would or should have had some awareness of the high risk nature of the investments made with Scheme assets. His prior involvement with those transferring funds into the Scheme would or should have given him some understanding of the members' risk appetites. The Panel considers that a competent person, when considering whether to accept appointment as a director of a professional trustee that was the sole trustee of a scheme such as the Scheme, would at the very least have undertaken steps to become aware of the issues arising out of the Scheme's investment decisions. Mr Salih failed to take any such steps.
78. He stated that he was aware of his lack of experience in this area. He wrongly assumed that he had six months to obtain the required knowledge and understanding in this area. However Dorrixo was acting as a professional trustee of the Scheme, and the six month period is afforded to lay trustees only. There was no leeway for Dorrixo in discharging its responsibilities whilst an inexperienced director acquired the necessary knowledge and understanding. The common law duty on Dorrixo, as trustee, to invest in the manner that an ordinary prudent man of business would, applied at all times. Dorrixo, at a time that Mr Salih was a director, created an Investment Committee for the Scheme on 23<sup>rd</sup> April 2015 and appointed Mr Ward, Mr XXXXXX and himself to the committee. Mr Salih would or should have been aware of Mr XXXXXX's previous role in relation to the investments. Mr Ward told the Case Team that he intended to step down from Dorrixo and retire at this point. If this was the case Mr Salih would have been aware of this decision at this time.
79. The exercise of a trustee's power of investment is subject to the Occupational Pension Schemes (Investment) Regulations 2005 ("**the Investment Regulations**"). 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. The Panel in the IT Proceedings found that the Scheme's investments lacked diversity, in breach of this regulation, and this Panel agrees.
80. The Panel takes account of the fact that Dorrixo was a professional trustee. As such it should have had the knowledge and expertise required to identify the regulatory and legal requirements that a Scheme's trustee will have to meet as the Scheme develops. When considering whether to accept the appointment as director of Dorrixo, Mr Salih could have refused the appointment as director of Dorrixo until he had the appropriate level of knowledge and experience, or he could have ensured that he and Dorrixo took professional advice to remedy any lack of knowledge or experience amongst Dorrixo's board immediately upon his appointment.

81. The Panel considered that before accepting a role as a director, and then sole director, of a professional trustee an individual should have the competence and capability to be able to identify and address the full range of responsibilities they would have to discharge, including investment. Accepting such a role without that competence and capability was an irresponsible step to take that endangered the interests of scheme members.
82. This issue of inappropriate investments would have become more acute once the Scheme passed one hundred members, which would have happened soon after Mr Salih's appointment as director. This is because 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:
- (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)).
83. The Panel in the IT Proceedings 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. Mr Salih and Dorrixo had no plans to stop the membership reaching 100 and no plan to enable the Scheme to comply with its obligations when it did occur. This is further evidence of a lack of the competence and capability required to be a pension scheme trustee.
84. By the time Mr Salih became a sole director the Scheme was in crisis. It had shown "red flags" before that time, in particular due to its high risk and unsuitable investments and inadequate administration. By 28 April 2015 its Lloyds Bank account had been frozen and it had applied to Metro Bank for an account.
85. Metro Bank informed the Case Team, by letter of 14 August 2015 that:

- a. Metro Bank does not accept bank account applications by corporate trustees of UK pensions schemes where the sole director of the trustee is not domiciled in the UK;
  - b. in September 2014 Dorrixo applied for an account with Mr Ward as a director but based in Spain. The application was accordingly declined;
  - c. on 27 April 2015 Dorrixo (via Mr XXXXXX) contacted Metro Bank again asking if the account could be opened if the overseas trustee director were removed and replaced with a UK domiciled trustee. The Bank “indicated it would only review the application on the basis of this taking place”;
  - d. this was done, and the bank informed of it (and of the transfer of Mr Ward’s shares to Mr Salih);
  - e. an application was then made to open an account, on 28 April 2015. It was signed by Mr Salih and stated that viewing only access was to be given to Mr XXXXXX and Mr XXXXX. These individuals were not trustees of the Scheme or directors of Dorrixo;
  - f. an account was then opened;
  - g. the Bank was not informed that shortly after this, Mr Ward was re-appointed a trustee director.
86. The Case Team accused Mr Ward of misleading Metro Bank on the grounds that he had always intended to resume his directorship of Dorrixo, and that when he did resume it he did not tell Metro Bank. Mr Salih was accused of being complicit in this.
87. The Case Team relied on text in the application form by which applicants for a bank account undertook to tell Metro Bank if the information in the information form altered. This was the form signed by Mr Salih. The Panel placed limited weight on this, as the form required details of all trustees and all scheme members and the obligation to keep Metro Bank informed of any alteration is unlimited in time. The text in question was in small type and appeared to be standard form wording that was ill-suited to a form opening an account for a pension scheme trustee where details such as membership would change very regularly.
88. However, the Panel was concerned about the uncertainty in the evidence as to whether Mr Ward had genuinely relinquished control and ownership of Dorrixo, when he resigned as director on 28 April 2015 and transferred his ownership of Dorrixo to Mr Salih. Metro Bank had been told this was the case. However Mr Ward received no apparent consideration in return for his shares in Dorrixo and he continued to attend meetings of Dorrixo (and had just agreed to join its investment committee). Mr Ward’s decision to re-join the board in June 2015 after apparently transferring his interest in the company raises further doubt. The extent to which Mr Salih allowed Mr Ward to exercise any control over Dorrixo in the period in which he stood down

as a director is unclear. The Panel was unable to resolve this concern during these proceedings.

89. The Panel noted that Mr XXXXXX and Gerard had received some £250,000 of fees taken from the transfers in paid by investors, in circumstances where there was no written record of Gerard's appointment, the scope of its services, and / or the advice it gave. Certain of these payments were made during Mr Salih's directorship. Mr XXXXXX of Gerard was appointed to the Scheme's investment committee by Dorrixo at a time that Mr Salih was a director of it.
90. The evidence remains wholly unclear as to whether Gerard provided the Scheme with investment advice and, if so, why there is no record of Gerard's appointment as an adviser or of any advice being provided. The Final Notice in the IT proceedings concluded that Dorrixo never sought nor received investment advice qua trustee of the Scheme, that Gerard did not provide investment advice to Dorrixo and that Gerard's fees were paid out of the Scheme in breach of trust. The level of fees charged by Gerard also raises concerns about whether such payments were a prudent use of Scheme funds. A competent trustee would not have allowed such uncertainty over a matter as important as the Scheme's investment advisory relationship to continue.

## **Conclusion**

91. The Panel considered Mr Salih's explanation for the failings set out above. The Panel noted Mr Salih's decision to submit Representations that initially repeated those of Mr Ward's and which sought to dismiss or downplay the failures by Dorrixo. Mr Salih appeared to adopt Mr Ward's Representations without a full understanding of their effect and did so even when these were irrelevant to the case against him. However in his third Representations and in the hearing Mr Salih sought to modify his position in order to argue and admit that he took on the director's role at Dorrixo with limited knowledge and experience and for which he proved to be ill-prepared.
92. The Panel recognised that Mr Salih was in office for a comparatively short period (eleven weeks from 1 April 2015) until his powers were effectively removed by the appointment of Dalriada as trustee of the Scheme with exclusive powers. However the brevity of the period was due to the Regulator's actions in stepping in to protect the Scheme by appointing a new trustee, rather than Mr Salih's actions in stepping down or taking other action to remedy the situation. Further, over the brief period of his directorship:
  - a. further investments were made, in particular to the Resort Group, albeit as a continuation of investments that had been made before 1 April 2015;

- b. the Scheme obtained no proper investment advice, despite the imminence of it reaching 100 members;
  - c. non-trustees were proposed to have access to Scheme bank accounts, by reason of an application form to Metro Bank signed by Mr Salih;
  - d. payments were made to Mr XXXXXX and Dorrixo;
  - e. failures such as not appointing an auditor and not providing registrable information to the Regulator continued.
93. Mr Salih stated that had had begun the process of acquiring the knowledge that he needed to discharge his responsibilities as the director of Dorrixo and the Panel accepted this. However, his conduct during the brief period in which he had apparent control of Dorrixo caused the Panel to retain its concerns about his ability to address and resolve the failures by Dorrixo that are identified above. In particular any individual taking on responsibility for Dorrixo with any doubts about their own competence and experience should have had the capability to recognise the need to take independent expert advice immediately.
94. His reliance on a six month period to acquire knowledge and understanding is misplaced and to the Panel a worrying misunderstanding. That is a period afforded to lay trustees, not professional trustees, under the Regulator's published guidance. Dorrixo was a professional corporate trustee, charging fees for its services. The members of the Scheme were reliant upon Dorrixo to manage the Scheme and Mr Salih's inability to see both that members should not be expected to pay for a professional trustee whilst it lacks the capability to manage a scheme, and that members' interests were at risk during the period in which he lacked the competence to discharge Dorrixo's responsibility, is a fundamental concern to the Panel.
95. The Panel concluded that Mr Salih lacked the competence and capability to take on the role as director of Dorrixo. The Panel understood Mr Salih to have effectively agreed with this conclusion, as his Third Representations admitted that on his appointment he still needed to take steps to gain the necessary trustee knowledge and understanding for his role, and that he had little experience.
96. In considering whether this failure was such as to give rise to a need to impose any regulatory sanction, the Panel considered the circumstances in which Mr Salih had taken on the responsibilities for the Scheme that he was unable to discharge. The Panel noted Mr Salih's long involvement with Mr Ward and their work on other pension schemes and his involvement with the Scheme during the period in which Dorrixo was its trustee and in which widespread and obvious failures in its duties as a trustee took place. These factors and Mr Salih's co-operation in not only taking over the directorship of Dorrixo, but also its ownership in circumstances that were hard to understand and which were expedient for Dorrixo and Mr Ward, pointed the Panel

toward a conclusion that Mr Salih had or should have had an adequate understanding of the failures by Dorrixo that put the members of the Scheme at risk.

97. Against this the Panel considered the fact that Mr Salih was clearly subordinate to Mr Ward and that there was little evidence pointing to his close involvement in Dorrixo's failings or to a sophisticated knowledge of the full range of issues that are relevant to the administration of a pension scheme. These factors, together with Mr Salih's belated submissions accepting his lack of knowledge and experience and the unsophisticated and erroneous argument that he used in attempting to mitigate his position, pointed to Mr Salih lacking the judgement required to understand adequately the failures that had taken place in the Scheme and the risk that his appointment created for the Scheme and its members.
98. On balance the Panel found Mr Salih to have lacked the competence to take on the role of director of Dorrixo and the capability properly to understand the consequences of his decision to take on such a role when he lacked the competence to discharge it. Dorrixo was itself the sole trustee of the Scheme, and was responsible for safeguarding the pension funds of 96 members. Mr Salih did not fully understand the responsibilities of the role that he was being asked to take on, and what would be required of him given the position the Scheme was in and the need for immediate action. He lacked the judgement to understand that accepting Mr Ward's request to take on the role placed the Scheme and its members at risk. Such lack of understanding and judgement appears to the Panel to be evidence of a lack of the competence and capability required to be a trustee of a pension scheme.
99. In the Panel's view, Mr Salih's admitted competence and capability failures in relation to the Scheme justify a prohibition order on the basis of the need to protect the public from repetition of such failings. A prohibition from acting as a trustee of trust schemes in general is appropriate in this case, rather than a prohibition for only one scheme or a class of schemes. This is because Mr Salih has had long involvement with other pension schemes and pursued a career in this area and may therefore again find himself in a position where he might be considering taking on the role of a trustee of a pension scheme. In such circumstances Mr Salih lacks the understanding and judgement required to assess his ability to take on such a role and the risk he may pose to members and potential members of any pension trust scheme were he to take up such a position. The Panel finds that Mr Salih's inability to recognise the risk that his lack of competence and capability may pose to pension schemes and their members can only be adequately addressed by a general prohibition.
100. Our approach is consistent with the determinations of the Panel in the cases of the 5G and Hugh Mackay pension schemes, and regarding



Desmond Cheyne. In all of those cases a general prohibition of a trustee was ordered under s.3 of PA 95, on the grounds of competence and capability failings alone.

101. For these reasons the Panel determines that a prohibition order should be made in respect of Mr Salih under section 3 of PA 95, prohibiting him from being a trustee of trust schemes generally and in the following terms:

*“The Pensions Regulator hereby orders as follows, pursuant to section 3 of the Pensions Act 1995:*

*Anthony Mustafa Salih (date of birth 15 January 1985) is hereby prohibited from being a trustee of trust schemes in general.*

*This order has the effect of removing the above-named individual from all or any schemes of which they are a trustee.*

*By section 6 of the Pensions Act 1995, any person who purports to act as a trustee of a trust scheme whilst prohibited under section 3 is guilty of an offence and liable*

*(a) on summary conviction to a fine not exceeding the statutory maximum, and*

*(b) on conviction on indictment to a fine or imprisonment or both.”*

#### **Reference to the Tribunal**

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

**Chair**        XXXXX XXXXXXXXXXXX

**Date**        8 January 2018

## 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](http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=3043)