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Day 1AH0

January 18, 2024

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                Thursday, 18 January 2024
(10.00 am)
    (A technical problem; the court videolink was muted)
MR JUSTICE RICHARDS: Perhaps everyone who wishes to speak
    could stand up. I will take them in turn. You heard
    the two or three questions I wanted to ask you. Perhaps
    I could start with the gentleman that I'm pointing to.
MR WEIGHT: Cliff Weight, representing ShareSoc, the UK
    individual shareholders society and the ShareSoc
    Woodford campaign group which has 1,800 members; the
    vast majority are claimants.
MR JUSTICE RICHARDS: Thank you. Did you put in written
        interjections ?
MR WEIGHT: Yes, I put in written submissions.
MR JUSTICE RICHARDS: By 21 December or the deadline?
MR WEIGHT: Yes.
MR JUSTICE RICHARDS: You did. Thank you very much.
            Yes, perhaps the next gentleman there.
MR ETKIND: Anthony Etkind; I'm a creditor. Yes, I also put
        in submissions in time.
MR JUSTICE RICHARDS: Thank you.
MR PYATT: Alan Pyatt, my Lord.
MR JUSTICE RICHARDS: How do you spell that, please?
MR PYATT: P-Y-A-T-T. I was at the (inaudible). I'm
    a Woodford investor.
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MR JUSTICE RICHARDS: Yes.
    MR PYATT: I'm talking on behalf of myself and my journey
        here. I did not submit on 21 December. I saw my Lord's
        email this week; I thought should I put in my objection
        this week. I put in a 6-page document before and
        thought, with the thousands of documents that have been
        published, I wouldn't add to it. I would rather do it
        here, physically
MR JUSTICE RICHARDS: Okay, but you would you like to say
        something orally nonetheless? Okay, thank you very
        much. And the lady at the back, sorry, I couldn't ...
(A lady at the back of the courtroom, totally inaudible on
            the videolink)
MR JUSTICE RICHARDS: You are a creditor. And did you put
        in any written objection?
            Well, is there anyone that I have missed? I'm
        looking at the Teams link. I don't think I'm seeing
        anyone on there.
            Okay. Well, I will hear briefly from counsel on
        this. I'm minded to hear from everyone who wishes to
        speak. What I might ask, and I look at counsel and see
        if anyone is objecting to that; I don't see anyone
        objecting. I'm minded to hear from everyone who wishes
        to speak, whether they put in written submissions on
        time or not.
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We will probably be hearing from the individual investors, as distinct from the represented investors, after lunch. I think that's the way the timetable works out.

So perhaps, over lunch, perhaps there could just be a running order for the individual investors. I might suggest that the investors who have not put in written submissions on time might be last in that running order, just so that if anyone loses out, or if anyone is pushed for time, it is them, rather than other investors; but that's a suggestion, rather than a command.
MS TOUBE: My Lord, we have no objection to that at all. Just on Mr Weight. He did serve submissions on 21 December. It was slightly after the 4 pm deadline, but we are obviously not taking any points on that.
MR JUSTICE RICHARDS: Okay. Well, I'm not taking any point either.

Okay. Apparently there's someone on Teams who wishes to speak as well. Perhaps that person could identify themselves. They are permitted to turn on their video and their microphone, so that I can see and hear them.
MR DICKENSON: Yes, I would please like the opportunity to speak later, if I may. I'm a creditor. I did put in a written submission by the 21 st. I did a subsequent

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one in response, or partial response, to Mr Reid's later evidence as well.
MR JUSTICE RICHARDS: Well, I think we should hear him. It 's Mr Dickenson, isn't it?
MR DICKENSON: Mr Dickenson, that's correct.
MR JUSTICE RICHARDS: Yes, thank you. I think we should hear from Mr Dickenson as well.
MS TOUBE: Yes, my Lord. We're happy with that.
MR JUSTICE RICHARDS: Thank you.
MR DICKENSON: Thank you.
(Pause).
MR JUSTICE RICHARDS: Perhaps you would be kind enough --
oh, he has. I was going to ask Mr Dickenson to turn off
his camera, but he has done it. Thank you.
MS TOUBE: So my Lord, that leaves us with two housekeeping matters.

## Housekeeping

MS TOUBE: The first is the timetable generally. We did send your Lordship a timetable that counsel had agreed, subject to your Lordship. So the intention was that I would open for about an hour or so; and then I will hand over to those who are opposing, which will start with counsel for TTF, then counsel for Harcus Parker, then the various litigants in person. At the end of the day, or at the end of whenever that ends, the investor

MR JUSTICE RICHARDS: Yes.
MS TOUBE: For a short period of time.
MR JUSTICE RICHARDS: Well, thank you for agreeing that.
I'm content with the timetable that was sent to me.
MS TOUBE: Thank you.
And then tomorrow, that will leave me to deal with
any points I need to come back to, and then we will end
with the FCA, as your Lordship suggested, at about 3 o'clock tomorrow.
MR JUSTICE RICHARDS: Yes. I mean, it might be -- I mean, when I was doing my pre-reading yesterday and saw the sheer volume of material that there was, and the sheer number of objections, I think the idea that I announce a result today might be fanciful, but it's nice to have -- there might be a little bit more scope in the timetable for submissions, because I don't think I am going to be announcing a result tomorrow. We will see how the argument develops.
MS TOUBE: Well, our intention is to try and finish by 3.30 tomorrow, and then that will leave that matter for your Lordship.

And then the second point is, the parent
undertaking, my Lord. You will have seen reference to
it, and it is in the bundle. It's now been signed.
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MR JUSTICE RICHARDS: Right.
MS TOUBE: So I should hand that up. That replaces the document that is in the hearing bundle at tab 100.
MR JUSTICE RICHARDS: Thank you. So you have a signed version?
MS TOUBE: I have a signed version. There is no change, apart from it being signed, but if I can just ...
MR JUSTICE RICHARDS: I will take that now. Thank you. (Handed).
You can file it electronically if you like, I don't need to steal anyone's hard copy.
MS TOUBE: It is not going to take us very long. I just have a lot more copies of it than I think I needed.

So it is a longer document than appears in 100,
because it has the scheme annexe to it, but the parent undertaking itself is exactly the same. It has just been signed. The parent undertaking.

So turning then to my introductory remarks.
Opening submissions by MS TOUBE
MS TOUBE: Your Lordship will have seen that we have obviously dealt with the points made against us and that we need to make out ourselves as fully as we can in the written submissions and given the shortness of time and the number of people who wish to address your Lordship, my intention is to deal with this matter at a high

[^0] the FSCS.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: Because the FSCS is the next stage in relation to things that have already gone away under the scheme.
MR JUSTICE RICHARDS: Understood.
MS TOUBE: So this is not something special or different, really from all sorts of schemes, where what one does is compromise the claims against the company and associated claims against third parties. And it is important, I think, to draw that distinction. But the point I was making for now was that all of this means two things.

First of all, the underlying claims have not been established; they are disputed. So whatever is said in relation to the claims that are maintained or would exist or would lead to whatever compensation or loss there is, has not been established.

And the second thing is that the relevant alternative to the scheme is insolvency.

And those two things are really important, when we're looking at the scheme jurisdiction.

And I just want to pause for a moment in relation to the relevant alternative, and your Lordship will have seen, we deal with that in our skeleton at paragraphs 48

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\text { to } 57
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Would it help your Lordship if, when I give references to the skeleton, I give you references to the skeleton bundle as well?
MR JUSTICE RICHARDS: Yes, thank you.
MS TOUBE: So it is the skeleton bundle, tab 1, pages 25 to 28.

MR JUSTICE RICHARDS: I have them all printed out in hard copy, but ...
MS TOUBE: Yes. I have the same, but I have got both sets --
MR JUSTICE RICHARDS: Yes.
MS TOUBE: So that is paragraphs 48 to 57 of our skeleton. And there we explain why the relevant alternative of claims asserted is insolvency. In short, we make three points on this.

The first is that there's no guarantee that in the relevant alternative, which is insolvency, there would be any payment available from the FSCS to scheme creditors, either in relation to the litigation which is inchoate and therefore uncertain, or any complaints that might be brought to the FOS, which as your Lordship will have seen, FOS has paused consideration of and has made it clear in their letter of 10 January that they haven't made a decision on how the complaints will be treated.
MS TOUBE: If we go to the hearing bundle at tab 12, which
is page 453.
(Pause)
453 is the second page of the letter, starting at
452.
MR JUSTICE RICHARDS: Yes, thank you. Hang on. Electronic
453 seems to be some legal document, to me.
Convening - - sorry, I have got the convening hearing
bundle. I have opened the wrong bundle. It's my fault.
(Pause).
MS TOUBE: I have just been told by my junior that my
pagination on my hard copy does not match the page on
the electronic bundle.
MR JUSTICE RICHARDS: Anyway, I have 453. It looks
promising.
MS TOUBE: It does match; good.
MR JUSTICE RICHARDS: Yes, it does match.
MS TOUBE: That would not have been fun!
So the 10 January letter. This is a letter to the
FCA. Has your Lordship had an opportunity to read this?
MR JUSTICE RICHARDS: I haven't read this one, I am afraid.
MS TOUBE: Can I just invite you to read the whole letter.
It is two and a bit pages. And then I will draw out the
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points that I would like to draw out of it.
(Pause).
MR JUSTICE RICHARDS: I have seen Mr Walsh's treatment of it in his witness statement, but I have not read the letter
MS TOUBE: Yes. Well, just to put it in context. The letter from the FCA to FOS is the previous two pages.
It says "Please tell us these things". Then this is the answer.
MR JUSTICE RICHARDS: Yes.
(Pause).
Yes. Much of that is familiar from the material
that I have read, but I haven't seen the particulars
MS TOUBE: Yes; we have referred to it in your skeleton and
it is, as you rightly say, referred to in the FCA's
evidence. Just for present purposes, what we can see
from it is the following.
There are a number of open complaints. There are
119 of them. Most of them are paused. 21 of them were
closed, either because they were withdrawn or they were
out of jurisdiction, or one of them was rejected, on
a provisional settlement.
And so the FOS has not formed any view, and that's
an important point. So at best, it's uncertain what
they would do. And then the other point they make under
paragraph 5 as to what they would do if the scheme was
approved and they say: we haven't made any decisions about that either.

But the last point under paragraph 5 is:
"We consider that if the Scheme is sanctioned by the Court, this is likely to engage the discretion ... [that you will see they identify]. And, our general expectation is that it would be appropriate for an ombudsman to consider dismissing a complaint ... without considering its merits."

And then 6 is: what would you do if the scheme is rejected? And they say: we haven't decided. We would have to work out what to do.

So what this tells us is that FOS, apart from saying: we would be likely to dismiss it if the scheme is sanctioned, has said: we haven't made any decisions at all. We have paused.

And so that's important for the point I was just making to your Lordship, which is: in the relevant alternative, you can't assume that people will be able to -- will win their claims, will be successful in establishing a right to compensation from -- in the complaint to FOS, or that the FSCS will pay out, and that's important in the context of the relevant alternative.

Now, whether this is the relevant alternative is something which is supported by the FCA, and we spell that out in our skeleton at paragraph 54. And it also was supported by the investor committee and we spell that out in paragraph 55.

So that's what we say the relevant alternative is. Your Lordship will have seen that Harcus Parker, in their skeleton, suggest that the relevant alternative might not be insolvency, but is some sort of renegotiated scheme; and that's in paragraph 43 of their skeleton. And just for your reference, that is in the skeleton bundle, tab 6, page 142.

And we say that that's wrong, it's wrong anyhow for the reasons we have just established, but it is also wrong for four reasons.

First of all, the relevant alternative was correctly identified as insolvency, at the convening hearing. Mrs Justice Bacon said so, at paragraphs 41 to 43 of her judgment.
MR JUSTICE RICHARDS: But I don't think you go as far as saying that is dispositive of the question. You pray it in aid, do you, or ...?
MS TOUBE: We do pray it in aid, because that is what the court held on the evidence before it, and the court was being pressed then that the relevant alternative was
something different and Mrs Justice Bacon said no.
Is there any evidence that has come out since then, which suggests that her conclusion was wrong? The answer is: no. There is nothing, no evidence other than speculation, to support the suggestion that there should be a different relevant alternative.

And to the contrary, what your Lordship has is three things.

First of all, the parent has been clear that there will be no other money forthcoming.
MR JUSTICE RICHARDS: Is that since the hearing before Mrs Justice Bacon?
MS TOUBE: No. Secondly, the scheme company itself is already contributing all its assets to the scheme. Again, that was always the case.

Thirdly, the scheme is the result of a settlement between the company and the FCA that took seven months to negotiate. And all of those were out there before.

And also, now we have the FOS saying: we don't know what we will do.

So the relevant alternative is still what we say there is. There is no genuine relevant alternative that is anything different.

The other point to remember in this context is that the court is not being asked to consider at a sanction

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hearing whether this is the best scheme. The court is
being asked to consider whether this is a scheme that
a relevant intelligent and honest investor, acting in
respect of their own interests, might reasonably approve. And it is a bit of a mouthful, but it is the test.

So we say that the relevant alternative point taken against the scheme is just not right ; the relevant alternative is insolvency.
MR JUSTICE RICHARDS: And I don't need to decide whether --
what the relevant alternative is, it seems to me.
I mean, it seems to me that I need to decide whether
this is a sensible -- a scheme that a sensible investor
could approve. So do I need to make a finding of fact on what the relevant alternative actually is, or is it enough, in your submission, to establish that a sensible and reasonable investor, intelligent investor, could think it is?
MS TOUBE: Well, one of the things that we need to show is that the explanatory statement was not misleading.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: And one of the things that is said is that it was misleading, because this is not the relevant
alternative.
MR JUSTICE RICHARDS: Yes, I see that.

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MS TOUBE: And so the answer to your Lordship's question
    is: sort of.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: So what we said was that this was the relevant
        alternative. There is nothing to show that it is not
        the relevant alternative. That is what we told the
        creditors. They then voted and then -- etc.
MR JUSTICE RICHARDS: Yes, thank you. I have that.
MS TOUBE: So my Lord, you will have seen this from our
        skeleton, but again, just to set the scene. What does
        the scheme actually do? And we say: well, what the
        scheme does is it takes -- it establishes a trust, which
        has in it monetary value of all the assets of the
        company. The contribution from the parent of 60 million
        and also a further 2.5 million towards costs, and the
        proceeds of the insurance policies. It puts that in
        a trust fund and then it distributes all of that, apart
        from a reserve, which will be used up to a greater or
        lesser extent, depending on what happens.
            And then it will be distributed to the scheme
        creditors, in proportion to the shares that they hold.
            So all the scheme creditors will be treated the same
        way. They won't have to pursue any claims, they won't
        have to prove any claims; they will just get
        a guaranteed return, depending on what their shares

\section*{MR JUSTICE RICHARDS: Yes.}
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And then it will be distributed to the scheme creditors, in proportion to the shares that they hold. So all the scheme creditors will be treated the same way. They won't have to pursue any claims, they won't a guaranteed return, depending on what their shares

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MR JUSTICE RICHARDS: And the reserve, it's a reserve not
    just against fees and expenses of the scheme and other
    matters; it 's against other contingent costs that you
    just don't know yet?
MS TOUBE: That's right. But it's limited; it has got
    an upper limit.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: And in return for what they get under the scheme,
        the scheme creditors will release their claims, as we
        have already discussed. I don't need to go into that
        again. So that is what the scheme is about. And your
        Lordship, I hope, has also seen the worked example.
        I don't know if it is worth going to it, because the
        investor advocate certainly did think it was helpful and
        some of the scheme creditors have, but I can just give
        you a reference.
MR JUSTICE RICHARDS: Why don't you give me a reference to
        it.
MS TOUBE: It is at tab 30, page 663 of the hearing bundle.
        Having said I was not going to go to it, I think
        actually I might, just for one point. It is part of the
        explanatory statement. So tab 30 is the explanatory
        statement. So this is what all the creditors saw when
        they voted. And they were told: this is sort of how

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\section*{were. \\ were.}

MR JUSTICE RICHARDS: And the reserve, it's a reserve not just against fees and expenses of the scheme and other matters; it 's against other contingent costs that you

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MR JUSTICE RICHARDS: Why don't you give me a reference to it.
MS TOUBE: It is at tab 30, page 663 of the hearing bundle. Having said I was not going to go to it, I think actually I might, just for one point. It is part of the explanatory statement. So tab 30 is the explanatory they voted. And they were told: this is sort of how
it 's going to work, and you can see what the columns were.

In particular, you can see the pence per distribution in column D. That's the initial distribution. So that's without any money coming in from the reserve.
\(E\) is the 230 million, which is the maximum, and you will see it specifically says "Maximum distribution".

And then F is the FCA total amount of \(£ 298\) million.
Now, that \(£ 298\) million is important, and it's worth looking at where that comes from. If you go to tab 39 of the hearing bundle, at page 1198.
(Pause).
Now, this document is a document produced effectively by the FCA, summarising its investigation into the company. At the end of it comes the calculation of loss tables. I won't even attempt to explain how they do this, but they do set it all out, as to what they did. And at the bottom of it, you will see the \(£ 298\) million figure.

So that is the figure that the FCA calculated in its calculation of loss tables. And that is why the FCA -we talk about the \(77 \%\) recovery, because that is the 230 million maximum, over the \(£ 298\) million FCA --
MR JUSTICE RICHARDS: So if I got out my calculator and did
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my sums, I would find 5.153 divided by 6.685 is about \(77 \%\) ?
MS TOUBE: Yes.
(Pause).
So going back to what we are doing here today. We are seeking sanction for a scheme that your Lordship will have seen has overwhelming support from the scheme creditors; \(96 \%\) by value, \(93.72 \%\) by number. And your Lordship will have seen that from the chairman's report, which is at page 1020 of the bundle.
MR JUSTICE RICHARDS: Yes, of course. Those present and voting.
MS TOUBE: And that is the test of course. So it is very significantly in excess of the \(75 \%\), by value of those present and voting, which is required. And very much more than \(50 \%\) by number.

And that majority vote is overwhelmingly a vote of individuals. It's \(99.9 \%\) by number who are individual investors. And just to give you the reference for that; that is the vote verification report; that is tab 37 , page 1131. And as your Lordship will have seen from the test, the legal test, where a scheme is approved by that sort of majority, the court will be slow to differ from the views expressed by the majority who are viewed as very much better judges of their own interests than are

\section*{the court.}

And it is worth just taking a look at what we set out in paragraph 80 of our skeleton.

If you are looking at the skeleton bundle, it's tab 1, pages 34 to 35 . And this is the judgment of Mr Justice David Richards, as he then was, in Telewest. Can I just invite your Lordship to look at what he says? MR JUSTICE RICHARDS: I have actually read this quite carefully in advance of the hearing, and indeed on other scheme sanction hearings, but I mean, I'm happy to read it, but I have done so.
MS TOUBE: So my Lord, you definitely don't need to read it again, because we cite it every time, because it is the test.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: And so there's therefore a strong presumption in favour of sanction for this sort of vote in favour.
Now, as your Lordship knows, and I think as you were mentioning as an aside, there are criticisms made about the percentage of turnout.

And we deal with this in paragraph 93.1 of our skeleton. And what we show is that it was \(21.6 \%\), by number; \(47 \%\) by value. And we compare that to other consumer scheme settlements; all of which are very much lower.

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What we say is that this is actually a relatively high turnout for this sort of scheme.
MR JUSTICE RICHARDS: Yes. I mean, on turnout, it seems to me, and tell me if you disagree on this. On turnout, it seems to me, it is appropriate for me to look at why turnout was at this level. I mean, if turnout was at this level because \(73.4 \%\) of voting packs weren't sent out, then you have a real problem. If it's because people were being muscled into not attending the hearing, you might have a problem.

So I'm not entirely persuaded that a comparison
between \(21.6 \%\) and \(4 \%\) in instant cash loans necessarily
takes me that far. It seems I should generally understand why turnout was at that level and see if it is problematic. Is there more to it than that? MS TOUBE: So there are two points, I suppose.

The first point is that it is not unusual for it to be a relatively low turnout for these sorts of things. That is the point of the comparison. So one should not be surprised that the turnout is relatively low.

Then in the context of looking to see whether this is a representative vote, and in the context of looking to see whether there has been compliance with the convening order, then the court will be looking at the question of: well, what did the scheme company do? And
we have set this out in --
MR JUSTICE RICHARDS: Sorry. I really don't want to have to continue saying this, but I am getting some feedback from the Teams, which suggests to me strongly that someone has got their microphone not on mute. Please, please could I ask that everyone stay on mute. Ms Toube?
MS TOUBE: So the point I was making is that in our skeleton and in the evidence, you will have seen that, in fact, this scheme company has gone, what I might say is above and beyond, to ensure that the scheme creditors know. They don't have a list of all the scheme creditors. So it is not that they can just send an email out. They have to rely on doing it through the intermediaries. But they have also mounted a very significant series of actions, in order to advertise the -- the FCA even asked the intermediaries to make sure they were sending things on. There were social media campaigns. And there has been, as your Lordship will know, really quite a lot of publicity about this scheme, one way or another.

So, yes, you are right that the court needs to be satisfied that this is a representative vote. You are also right that just saying: oh well, it 's more than it was in this case, doesn't answer that question.

But the combination of that, plus all these other

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things, means, we say, that your Lordship can be satisfied about what happened in this case.

\section*{MR JUSTICE RICHARDS: Yes.}

MS TOUBE: Now, your Lordship will know, of course, that there are a lot of different scheme creditors and indeed those who are not scheme creditors, who are objecting to these very significant outcomes. There is no doubt that these scheme creditors who are opposing feel aggrieved at what has happened to their investment and that they want a different outcome in terms of monetary recourse.

They also, no doubt, say that they feel that it is unfair that they have required to abide by the will of the majority. But I would urge your Lordship to bear in mind that they are very much in the minority. The majority has spoken loudly in another way, in voting in favour of the scheme, and the fact that the majority are not here to make submissions themselves should not obscure that fact.

The best evidence of what the majority views is how they voted. But in fact, in this case, we also have a number of creditors who wrote in, saying that they were in favour of the scheme; they either wrote to the company or the investor advocate. And really, what they said was: we would like you to get on with this.

Now, I don't think it will assist you very much to
see this. There is a whole pack of people mostly
objecting and a small number of people saying: no,
actually, we are in favour. But it is important to
remember that the evidence is not just one way.
What about the position of the other interested
parties? Let's start with the FCA. The FCA is of
course the regulator and they act in the interests of
all the creditors and they support the scheme. And your
Lordship will hear from Mr Smith about the FCA's
position tomorrow afternoon, but as your Lordship has
already seen, the FCA not only entered into the
settlement and issued an announcement back in April
supporting the scheme, and that announcement is at
page 2041 of the bundle; but the FCA has also been
involved in looking at drafts of the scheme, the
explanatory statement and the evidence.
And your Lordship has also seen the evidence of
Mr Walsh which makes it clear that FCA, which after all
is a body focused on consumer protection, continues to
support the scheme which it considers to be in the
overall best interests of the investors. And your
Lordship will have seen that from Mr Walsh's evidence at
paragraphs 4 and 54 .
MR JUSTICE RICHARDS: And I mean, a lot of the time with
these schemes, the FCA put in, not an objection letter, 25
saying: we don't object, and sometimes they put in a mealy-mouthed letter that says: we may or may not be objecting; we are - - it is up to you, the judge, to decide whether to sanction it.

Is it significant -- you haven't made this point in your skeleton, which suggests to me that it is not something you are pressing, but is it significant that the FCA are not just saying: we don't object. They are supporting it?
MS TOUBE: There certainly are cases where the FCA does support. This is not the only case where they have ever supported. There are also other cases where the FCA very much objects, positively objects.

So what is important is that this is a scheme which enacts a settlement, after seven months of negotiation with the FCA. That's more important, in a way, than asking whether they are here supporting or not today. But they have said repeatedly that they support this scheme.

The next stakeholder group I wanted to look at were the investor committee. Now, in order to see the position of the investor committee, it's perhaps worth looking at some paragraphs in the investor committee report; and that's at tab 36, page 956. Tab 36, it starts.

MS TOUBE: I can't remember if this was on your Lordship's reading list.
MR JUSTICE RICHARDS: Well --
MS TOUBE: If it was, you may not --
MR JUSTICE RICHARDS: I can tell you, I haven't read it.
Whether it was or wasn't, I am afraid this is a document I'm afraid I have not been able to read.
MS TOUBE: I think we might not have put it on your list.
The investor committee is a committee of a cross-section of investors in the company; and your Lordship will have seen, there is some attack on the independence of the chair of that committee. But it is -- and we have dealt with that in our skeleton, to say there is nothing in that. And I don't propose to go through that now.

But what's important to note is that it is
a committee of nine people; and you can see from paragraph 1.9 of this report that the affirmations which they received from the company, even though they weren't as definitive as the committee would have liked, and although the level of clarity requested was not received, eight members of the committee had supported the scheme and one remained undecided. So here we have independent investors on the investor committee.

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Now, it is perhaps worth noting, if we look at paragraph 2.5 , on page 960 , that originally this was an eight person committee, but it was increased to nine by agreeing to choose one additional member from the list of potential committee members, who was identified as a member of the Leigh Day/Harcus Parker claimant group. So we have one of those people who was on the committee.

And then we have a member of the Wallace litigation group. And if we go back to page 957, at paragraphs 1.1 to 1.3 , you will see reference to the Wallace litigation in paragraph 1.3.

So there were two institutional investors, five individuals. And then there was one person who was Wallace litigation, one person who was
Harcus Parker/Leigh Day. So there can't be any question that it's not representative.

And just to look at some of the points they deal with. Paragraph 1.11, on page 958, you will see:
"It is not possible to say that the Committee has helped achieve the best possible outcome for Investors covered by the Scheme. From my perspective, based on the information provided by the Company and taking comfort from the due diligence carried out by the FCA [that is another point to raise with your Lordship] it

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is difficult to see a further source of funds to help improve the return to creditors."

Then you will see, towards the end:
"The Committee has concluded that the Scheme provides a better outcome than the alternative described in the PSL based on (1) the information provided by the Company and (2) all the constituent limits stated to compromise the Settlement Fund ... being received ..."

So there wasn't another source of funds and it is a better outcome than the relevant alternative.

It is also worth looking at, because we didn't ask your Lordship to look at it, what the IC did; and it had discussions with the FCA directly, and also with the parent. And we can see, for example, from paragraph 3.10 .1 which is page 964 , that they had a meeting with the parent, at the top of page 964. And they met with the parent and they expressly asked, could the parent contribute more? And the parent said no.
MR JUSTICE RICHARDS: Yes. In a sense, there's only ever going to be one answer to that question, isn't there?
MS TOUBE: Well, yes, but that's important for the question of whether there is a different relevant alternative. This parent is not going to put more money in, because they have said so. Or rather, the evidence before the court is that this parent will not put more money in,
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\section*{because it said so}

The other thing that is important is the interaction with the FCA, and we can see that from paragraph 9 -sorry, 3.13.4, which is at page 965 , that there is reference to the seven months of negotiation with the FCA.

And then from 3.13.6, on the same page, that the FCA concluded that it didn't have legal powers to require the parent to pay more, outside the scheme.

And 3.13.7, the fact that any return to creditors from the FSCS would only be available after litigation, and your Lordship will seen the same point was made by Freshfields, who was advising the IC, at page 966, paragraph 3.18.

And going back to 3.14 on the previous page:
"The Committee took comfort from the extent of the ... [FCA] negotiations with [the company] ..."

And its conclusion that it was the best chance to achieve a better outcome.

Also, while we are here, if we just look at 3.22, this is at page 966. 3.22.2:
"The Company agreed to reduce the reserve amount to £46.5 million."

So that was reduced from 50 million to 56.5 million. And that was the direct result of negotiations with the
investor committee.

\section*{MR JUSTICE RICHARDS: 46.5?}

MS TOUBE: 46.5 million. So that was -- that is an extra sum that hits on the other side.

So with all of that, after all these discussions, negotiations and information provision, eight members of the investor committee conclude that it was a scheme that should be sorted and one is undecided.

So that is people who have been down in the weeds of this, and involved in negotiation, and talking directly to other parties.

Then we move on to the investor advocate. The investor advocate, of course, again is there to represent all investors; and is the first point of contact for them. And Mr Bannister is a very experienced restructuring professional, who has looked at these with his, again, very experienced team; and he is neutral; and that's, of course, important.

Your Lordship will have seen, I hope, the second report. Given the time, I don't want to spend too much time going through it. But just to draw your attention to two significant points.

He concluded that the explanatory statement provides a fair and accurate summary of the terms of the scheme.
He also concluded that when scheme creditors raised

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points, they were almost always answered in the explanatory statement and that there were also bite-sized answers in the FAQs; that is paragraph 2.4 of his report, which is at tab 38, page 1151.

He said that the FCA calculation of loss was of particular value. That is paragraph 4.2 .6 of his report, page 1155.

And as my learned friend Ms Cooke notes in the skeleton for the investor advocate, this helpful addition had been shared by the investor advocate with a number of the scheme creditors who sought more information about the \(77 \%\) figure.

He also notes that the jurisdiction of the FSCS to determine and pay compensation was explained, and that the jurisdiction was not engaged. That is
paragraph 4.5.6. That is at page 1160 .
And he concludes that it is described as accurately as is reasonably possible; this is paragraph 7.4 , at page 1164.

He considers the grounds of opposition against the background of the strong approval of the scheme and remains satisfied that the scheme documentation, including in particular the explanatory statement, accurately and fully sets out the choice faced by scheme creditors.

That is paragraph 5.11 and 5.12 of his report, at
And he concludes that the proposal and presentation of the scheme, including the voting and decision processes, have been undertaken in a manner that is
lucid and user-friendly. That is paragraph 7.6; page 1164.

It is also worth just bearing in mind two points he made in his first report, which just for your reference, is at page 1168, exhibited to the second report. In relation to the clarity of return, he expressed his view that the worked example was very helpful. And in relation to notice to creditors, and of course that was prior to the convening hearing, but he considered the steps taken and the level of engagement and concluded that reasonable efforts had been made to draw the existence of the scheme to the attention of scheme creditors.

Your Lordship will hear more from Ms Cooke in relation to the investor advocate's position.

Then we have the FSCS. The FSCS do not object to the scheme, so this is a non-objection letter. I don't know if your Lordship has seen that letter? And if not --
MR JUSTICE RICHARDS: I have seen references to it in the
witness statements and I think I know what is said, but
I have not read the actual letter.
MS TOUBE: Well, given the time, can I just give you the page reference and ask you to take a look at it? It 's at tab 104, page 2608; and confirmation that they don't oppose the scheme is at paragraph 11, on 2609.

And the FSCS also states that it hasn't made any determination of whether the scheme -- whether the company is in default or whether there are any protected claims. So again there's uncertainty, insofar as the FSCS is concerned.

And your Lordship will have seen that the FSCS has
had -- seen and had input into the evidence, the explanatory statements, the scheme rules.

So all of these parties who support, have all seen the documents, had input into the documents; have had extensive discussions. And the investor advocate concludes that the explanatory statement is accurate. And that's important, obviously, when we come to look at whether it's misleading, which it's said it is, and we say it absolutely is not.

So what does the court need to consider at this hearing? Your Lordship will be very familiar with section 899, which we have set out in paragraph 79 of our skeleton. We are looking at whether a majority in
number, representing \(75 \%\) in value present and voting,
either in person or a proxy approved, or has
a discretion; as long as there is a majority in number,
\(75 \%\). So once we have got to that point, the statutory jurisdiction is engaged.

If the court does sanction the scheme, the majority will bind the minority. That is how it works.

Now, at the sanction hearing, again, your Lordship will be familiar with this; as we set out in paragraph 81 of our skeleton. There are four questions which the court needs to decide.

Now, there are a very large number of disparate points which are made by various people. We have tried to deal with every one that we are aware of and we have explained why none of them is right and why your Lordship should sanction the scheme.

If I can just, for a few minutes, deal at a high level with what those objections.

So we start with Stage 1: has there been compliance with the statutory requirements? The answer is: yes.
There doesn't seem to have been any real challenge to this; as we explain, in paragraphs 58 to 78 and 83 to 91 of our skeleton, that there has been such compliance. And indeed, as I said to your Lordship before, the company has gone above and beyond what would normally be

\section*{35}
the case. So the scheme creditors have been given notice, they have been provided with all the documents and opposing parties have had an opportunity to have an input into the documents as well.
MR JUSTICE RICHARDS: So stage 1 it might be said that the challenge to the explanatory statement is a Stage 1 challenge because it says there has been no ... (audio interference).
MS TOUBE: Yes. It also might be said that the people who said: well, I didn't really know about it, is a challenge to Stage 1. But the explanatory statement challenge is put as a Stage 3 challenge.
MR JUSTICE RICHARDS: Right. It could fall into either, really.
MS TOUBE: It could, and indeed, a lot of these things are cumulative. If I can put it this way. If and insofar as there is a Stage 1 challenge, there is nothing in it.

Stage 2: was the class fairly represented and did the majority act in a bona fide manner and for the purposes when voting at the class meeting? Again, we say the answer is yes. There are some who oppose, who say the answer is no., but we have explained in paragraphs 93 to 95 of our skeleton that there's no basis on that -- on which that can be properly asserted.

First of all, there is the turnout point, which

\section*{I have already addressed with your Lordship.}

Secondly, the representative nature of the vote was not undermined by the explanatory statement; because it was not misleading; it was accurate.

Thirdly, the scheme was explained in fair and accessible terms, including in FAQs and videos.

Fourthly, there is no evidence that any person acted with any adverse interest; and even if there were such evidence, which there isn't, any such adverse interest would not have been causative of the vote in a necessary manner and your Lordship will be familiar with the Lehman test which we have set out in paragraph 95.5 of our skeleton. It is not enough to say someone has an adverse interest unless it actually causes the vote.

No matter which way you cut the numbers as we set out in paragraph 75 of our skeleton there were very significant majorities in favour of this scheme.

So then we get to Stage 3: is the scheme one that an intelligent and honest, if I can say "person", but the word usually is just "man", acting in respect of their interests, might reasonably approve? Again, we say yes.

As we point out in paragraph 101 of our skeleton, and as we have already seen from Telewest, the court isn't required to determine: is this the best scheme?

But: is it one that an honest and intelligent member of the scheme might vote?

It's not fairness in a vacuum. It has a specific and limited meaning.

And it might be worth just very quickly looking at the brief precis by Mr Justice Snowden, as he was, in KCA Deutag. That is in our authorities bundle, tab 24,, page 577 of the bundle; paragraph 28.
(Pause).
In particular, the final sentence:
"It does not mean that the court is required to form a view of whether the scheme is, in some general sense, or even in the court's own opinion, the ' fairest ' or 'best' scheme."

This is important for those opposing, to understand that the test is not: is this unfair, could I have done better? Do I want to have done better? But: is this a scheme for which an honest, intelligent, etc, person might vote?

And it is not a Wednesbury unreasonable test either. It is effectively a rationality vote.

So as we point out in paragraph 100 of our skeleton, in circumstances where the relevant alternative is at least possibly likely materially worse, and the alternative of getting compensation from the FSCS in scheme sanction hearings, so I'm familiar with it.
MS TOUBE: So explanatory statements are supposed to be relatively concise. They rarely are. But that is supposed to be what they are doing, and they should be concise, as circumstances admit.

Now, there are a small number of cases where the
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    court has concluded that they aren't - - they don't have
    the sufficient information, and Sunbird was one of them.
    And we have referred to Sunbird in paragraph 144 of our
    skeleton.
        But the question is: is there sufficient information
        in this document to enable the creditors to decide
        whether the scheme is in their interests? Not: does it
        have every piece of information which it could possibly
        have had? And we say that it did have sufficient
        information for them to make that decision and they then
        did make that decision.
    MR JUSTICE RICHARDS: And I think, part of the reason you
say that is, although the transaction as a whole is
complicated, in essence you are putting quite a simple
voice to the investors. It is either: take this or take
your chances in the liquidation -- or take your chances
with litigation, do without the 60 million parent
contribution.
I mean, I just want to make sure this is the point
you are making, because I see it running through your
skeleton; but I don't see it quite put the way I have
just put it to you.
MS TOUBE: That is exactly what it is. We say to
people: this is what you get; it is certain. This is
jam today. You will get this. This is what might

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happen. You might win your claim, you might not win your claim, you might get compensation, you might not get compensation. It might be a long way down the line. There's uncertainty.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: It is up to you to decide which you would prefer.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: And that's what they then decide; a very large percentage of them.

And we point out in paragraph 146 of our skeleton that although the majority of these investors are individual investors, they are not particularly vulnerable creditors, and that is important. When we are looking at whether this is an intelligent and honest person, we have to assume normal levels of intelligence of the persons reading it.

So that is what we are looking at. What is challenged is relevant alternative. I have already addressed you on that. The estimated \(77 \%\) recovery point. Again, we say that that is absolutely clear. We deal with it in our skeleton at 153 to 157 . We explain what the FCA breakdown is. They had access to it. The investor advocate says that's actually particularly helpful in getting people to understand the \(77 \%\). And what is said against us is: oh well, there is
an ordinary meaning of loss that might have made people think something different.
MR JUSTICE RICHARDS: Sorry, I'm conscious that I would like to stick to the time, just because we have so many people to hear from. I have picked up quite clearly this debate on what the \(77 \%\) was of. I have seen the competing arguments on that.
MS TOUBE: Absolutely. Well, moving on from that. There are complaints about us not explaining the role of the FCA. We have dealt with that in our skeleton. There are complaints made about the independence of Mr Drummond-Smith. We have dealt with that in our skeleton. And then there is the additional point I made to your Lordship about and there were also all the other members. There is no challenge to that.

There is a complaint made about releases, to say we did not explain those clearly enough. The explanatory statement was very clear about what the releases are.

Then there are complaints about fairness, which are said to be: we should have treated scheme creditors differently, with different personal characteristics. We say there isn't any obvious difference between them. They were not put in different classes.

Then there is the point made about calculation of loss. People say: actually, my loss is higher, you

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should have said something about that. The answer to that is: well, that is what you say your loss was. It is all disputed.

Then there are arguments about third party releases. We have dealt with that in the skeleton and I don't want to deal with that now.

Then we go on to Stage 4 which is the blot or defect. That is where the TTF -- we think the TTF's arguments come in --
MR JUSTICE RICHARDS: Yes.
MS TOUBE: - - about excluding the reference of claims to FOS. Now, given the time, I can deal with this in two minutes now. I could --
MR JUSTICE RICHARDS: I think I - I mean, a particular focus of my pre-reading was on the objections, and on your answer to the objections, as set out in your skeleton. Not only have I read your skeleton; I have also read all of the written objections that have been sent in by individual investors, and I have read very carefully the skeletons of those opposing schemes.

So I don't think I need anything more on the lie of the land, as regards the dispute. What I think I might prefer is just to hear, in closing, once we have heard the oral argument, how you answer the objections.
MS TOUBE: Absolutely. All I would say is that this boils
down to an argument that there are some rights, under statute, which trump the scheme rules, and scheme law, and scheme statute.
MR JUSTICE RICHARDS: Yes, yes.
MS TOUBE: And we say the answer to that is: no, there isn't. And --
MR JUSTICE RICHARDS: Well, you have lots of layers, haven't you? You say: we are not releasing statutory rights. What we are doing is we are releasing the claims against LFSL. Even if we are releasing statutory rights, we can, because part 26 permits us to. A lot of layers.
MS TOUBE: Absolutely. And obviously we haven't dealt with the letter from the academics that came in. I will deal with that in --
MR JUSTICE RICHARDS: Would you deal with that in closing? MS TOUBE: Yes, thank you.
MR JUSTICE RICHARDS: Or reply, or whatever it is. Yes.
MS TOUBE: Thank you. My Lord, unless there is anything else I can assist you with.
MR JUSTICE RICHARDS: I might have some more questions for you in closing, just on the nuts and bolts of the contribution reduction, I can't remember what you call it .
MS TOUBE: The contribution reduction mechanism.
MR JUSTICE RICHARDS: Because that is new and I just want to
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make sure I understand that.
MS TOUBE: Absolutely, yes.
MR JUSTICE RICHARDS: Thank you.

\section*{Submissions by MR FALKOWSKI}

MR FALKOWSKI: My Lord, I have the two points. The one, as my learned friend puts it, which is whether the scheme, part 26, trump the statutory scheme of the Financial Services and Markets Act 2000. And the other is the 77\% point, which I will only deal with very briefly, because my learned friend Mr Crossley is going to deal with it in greater detail.

Can I ask my Lord to turn to page 3156 in the core bundle, please.

And this is the concluding pages of the Woodford Equity Income Fund prospectus. And in paragraph 34, a few lines down, my Lord will say it says there:
"In the event of the ACD [the authorised corporate director] being unable to meet its liabilities to Shareholders, details about rights to compensation can be found at www.fscs.org.uk."
MR JUSTICE RICHARDS: I just want to make sure I have got that. It is my fault not yours. I think I have gone to the wrong page. Is it 3156 ?
MR FALKOWSKI: 3156. It says "34. General." And then four paragraphs down:
"In the event of the ACD ..."
MR JUSTICE RICHARDS: Thank you. I had gone to the wrong page.
MR FALKOWSKI: And as everyone knows, the FSCS stands there,
in effect, as a state guarantee, up to \(£ 85,000\). So my submission is that -- and this is in the evidence of Mr Agathangelou, who has put two witness statements in; every person, whether they be a bank depositor, the person who puts money into a building society, the person who goes to an independent financial adviser, or an investor in such a fund, knows that the FSCS stands behind whatever else happens to the tune of \(£ 85,000\), in the event of a claim being successful, whether it is in litigation, or whether it is through the Financial Ombudsman Service.
MR JUSTICE RICHARDS: Just so I understand that; both Mr Agathangelou and the academics make the analogy with the banks? I just want to make sure I understand how that analogy is put, because if I have got \(£ 85,000\) in a bank account, there is no doubt really that the bank owes me \(£ 85,000\). It is a debt. It is a liquidated sum.

But obviously the claim against LFSL, it is not
a liquidated sum yet. It hasn't been established. It
is an asserted claim.
What exactly is the analogy, or are you pressing

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an analogy? You mentioned banks. So are you pressing
an analogy between the claims against LFSL and bank
deposits and, if so, can you explain it a little bit more for me?
MR FALKOWSKI: I am making the principle, which is: this is
a right which I submit cannot be taken away by part 26 .
There is, in my submission, simply no basis for saying
that a primary statute, which has been enacted pursuant to the IC directive can have those rights taken away from any person who is entitled to the benefit of the Financial Services Compensation Scheme.
MR JUSTICE RICHARDS: Thank you.
MR FALKOWSKI: And so any --
MR JUSTICE RICHARDS: Because they are statutory rights.
MR FALKOWSKI: They are statutory rights, yes. And there is nothing in the statute that says: subject to anything the court might do, for example, in a scheme of arrangement. And this is, as you have seen from the academics and as you have seen from the evidence that we have put in, of, we submit, enormous public importance, because a statement like this is meaningless if this scheme goes ahead.
MR JUSTICE RICHARDS: Mm—hm.
MR FALKOWSKI: Because what all of the investors now face is, not -- first of all, they won't have the right to go
to court. They won't have the right to go to the Financial Ombudsman Service.

Now, in my submission, my learned friend's submissions, with respect, are submissions of substance over form. She says that there won't actually be any claim, there won't be anything to go to FOS, there won't be anything to go to court, because those will in effect be deemed to have been compromised. But that drives a coach and horses through the concept of FSMA protection, which is that a person who is an eligible claimant, within the meaning of the handbook, is entitled to go to FOS. It costs them nothing. FOS states that it is a speedy determination; not the exact words, but I think relatively quick. It costs them nothing. It is very user-friendly. It is not like litigating. And it is wider than litigation, in the sense that FOS will make an award, on the basis of what it considers to be fair and reasonable.

Now, in my submission, it is obvious that any member of the public, any consumer would want to avail themselves of the jurisdiction of FOS. If they don't like the decision, they are not bound by it. They can still litigate if they wanted to.

So that is what every person who engages in financial services in the United Kingdom, to which the

FSCS applies, is assuming when they enter into any arrangement with a bank, a building society, an IFA, a funeral plan operator, or any other kind of investment.

What actually happens in this case, if I can turn to page 530, please, my Lord.

Now, on page 530, we have carried out three examples calculations, where we have applied methodology used by FOS; and the methodology, for my Lord's note, but I won't go through it now, the methodology is taken from two decisions of FOS, which appear at page 516 and 523.

So we use the same methodology that they use, and we apply it to three sample cases.

We can, if it would be required by my Lord and my learned friends, provide the names behind these calculations; but of course, the company knows who these people are, so they can check that out.
MR JUSTICE RICHARDS: But these are real world investors in the fund?
MR FALKOWSKI: These are real people, yes. These are real people and we can supply their names and we have listed -- we can provide their names and we can provide their account numbers. So these are real people.

And we have applied the same methodology that FOS has used in other decisions.

MR JUSTICE RICHARDS: I mean, is there a problem with this

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calculation, in that -- I mean, I understand what you have done, but obviously it's not just enough to look at the FCA's calculation. There is also the capital distributions that have actually been received previously. Are they not --
MR FALKOWSKI: We have taken into account --
MR JUSTICE RICHARDS: Have you taken them into account? MR FALKOWSKI: Yes, we have said there the investors received redemption sums of \(£ 39,000\). So we have done the other two which I don't think I need to trouble my Lord to go through those again. They are there for my Lord to see. But we have three examples there; \(4.7 \%\), \(4.7 \%\) and \(7.7 \%\).
MR JUSTICE RICHARDS: Sorry, I think my point is still valid, isn't it? I mean, the total return that the investor gets is \(£ 39,206\), plus the \(£ 3,510\) under the scheme. So it's not right to say it is \(4.7 \%\) of what you say the FOS would give them. It is \(£ 39\) plus \(£ 3\); that is £42. £42 over \(£ 74\); they would get more than \(50 \%\).
MR FALKOWSKI: No, my Lord, that is not the way I see it. The way I see it is that what they will get under the class \(Z\) scheme is \(£ 3,500\). What they would have got, had they complained to FOS and used the same methodology that has been used before, is \(£ 74,000\).
MR JUSTICE RICHARDS: Mm-hm. So the \(£ 39,206\), they have
already received, hits the calculation nowhere?
MR FALKOWSKI: No, the \(£ 39,000\) is deducted from the \(£ 113\). They ought to have got, on the total return, \(£ 113,000\). Allowance is made for the \(£ 39,000\).
MR JUSTICE RICHARDS: Oh I see, sorry. I do see. I'm so sorry. I was slow. I understand your point. Yes, okay.
MR FALKOWSKI: Yes.
MR JUSTICE RICHARDS: The \(£ 39\) has hit the calculation.
MR FALKOWSKI: So it is a stark contrast of positions here.
My learned friend says: oh well, you can magic away any complaint and say that the complaint doesn't exist, because any claim has been compromised and therefore there is no claim so there is nothing for FOS to consider, because the scheme deems there to be, in effect, no claim. All claims are released, of all kinds, so there could be nothing to complain to FOS about.

And in my submission, that is simply taken away by a mechanism, which is a matter of -- as I said, it's substance and not form. What, in effect, happens is that this investor loses the right to go to FOS, which will cost them nothing, and they will get up to \(£ 85,000\), if they are -- FOS, I think, has a jurisdiction of \(£ 415,000\), but FSCS stands behind only to the extent of

\section*{£85,000.}

Another point that has been made in my learned friend's skeleton argument is that: how much money is in the fund, and so forth. Completely irrelevant. It does not matter if there's not a penny left in the fund, because for these people, FOS will determine, on a fair and reasonable basis, what their losses are and what compensation they should be entitled to.

And if there is no money at all left, that is what the FSCS is there to do, to stand as, in effect, a state insurer, up to \(£ 85,000\).

You have been referred, in my learned friend's skeleton argument, to various cases.
MR JUSTICE RICHARDS: Sorry, before we leave your calculation. I think the riposte from the company is to say: well, but actually, what your calculation does is assume that this methodology would be applied to claims based on lack of liquidity of the fund, because what is being compensated here is a loss of investment opportunity. This is what is said. You shake your head, but I would like to understand why you say it's wrong.

It's said that this calculation you have shown me is for lost investment opportunity or for bad investments. There is no read-across to a claim for poor management

\section*{of liquidity.}

Since that point is raised in the company's skeleton, I would just like to hear your response to it.
MR FALKOWSKI: Well, my Lord, these figures are there to illustrate the difference, but the figures are separate to the matter of principle.

Now, the reason why we have got figures there is that if we had done figures and they showed that somebody might get \(78 \%\), instead of \(77 \%--\) we don't accept the \(77 \%\) is right --
MR JUSTICE RICHARDS: Yes.
MR FALKOWSKI: -- then the court would be entitled to take the view, I would imagine: all very well, jolly interesting argument, but actually who does such an argument benefit? Because everybody would be better off getting the money tomorrow. Anyone advising any client, in any sort of dispute, would be saying: to get \(78 \%\), or \(70 \%\) today, rather than go for \(78 \%\) in four years time, with a load of costs, was a decision that no sensible person would take.

So there are many, many arguments that are in this court today. My learned friend doesn't even accept the \(£ 298\) million, the FCA. They challenge that, they dispute the \(£ 298\). So while the FCA is supporting the scheme, even that sum is in dispute.

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So of course, I accept that complaints might be made to the Financial Ombudsman Service. The ombudsman might reject them. The ombudsman might come up with a different calculation. But we are not here today, and we can't actually determine any of these points, as a matter of quantum. These are merely illustrative points and I accept that there is argument to be made as to how exactly they work.

The point of putting it in is just to show that this is not an argument about nothing; it is an argument about something that is extremely important.
MR JUSTICE RICHARDS: So the significance of this example is that they are real world examples, if I can put it bluntly, of investors doing a lot better out of FOS than they would under the scheme?
MR FALKOWSKI: Yes; and as I say, it is, we say, an unsatisfactory position that FOS has not been determining them; but that's obviously because they have been in contact with the FCA, and they have agreed to put them all on hold. But the scheme ought to be operating in a way that leads to a speedy and easy resolution for the investor.

My learned friend refers to a number of cases in which it is said that the court has sanctioned schemes which take away the right to go to FOS. But none of
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those are cases where these are investors who have FSCS
those are cases where these are investors who have FSCS
standing behind the possibility of the insolvent
company. They are doorstep lender cases, high cost
payday type lending cases, where these are borrowers.
The sort of complaints are that they shouldn't have been lent to. It was irresponsible lending and so forth. So these are people who obviously would have had difficulty repaying, who the loans ought not have been made to in the first place. It would be very surprising if people of that ilk were to be turning up in the court to oppose a scheme under part 26.
But they are not depositors. They are not investors. They are not people who have put money in, who are expecting FSCS to stand behind to $£ 85,000$ limit. They are schemes, payday lending and so forth, which are not - -
MR JUSTICE RICHARDS: I see.
MR FALKOWSKI: -- covered by FSCS. Because they are not investments, they are not deposits of money.
So --
MR JUSTICE RICHARDS: But the expectation isn't engaged?
MR FALKOWSKI: It is not engaged. It doesn't exist as a matter of statute; and I can see perfect sense, why
the $£ 85,000$ guarantee wouldn't apply in the case of
a payday lender. It wouldn't make any sense. You go to

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a payday lender because you are presumably in the unfortunate position to be a person who is in desperate financial need. What sense is there in having an \(£ 85,000\) guarantee standing behind the payday lender, in the event of failure?

So there are -- first of all, you are not protected, as a matter of statute.

Secondly, it seems to me pretty obvious why payday lenders don't have the FSCS scheme standing behind them for the benefit of the consumer.

So I distinguish those cases. As I have said, there is no case where this point has arisen, under part 26 , where in effect the rights of an eligible claimant under FOS, who has FSCS standing behind them, can be taken away by the scheme; and that is the effect of it.
MR JUSTICE RICHARDS: And I think you put it in two ways. I think you have put that point in two ways.

First of all, I just don't have power to do it. And even if I do, I shouldn't exercise the power.
MR FALKOWSKI: That is the point, my Lord, yes.
MR JUSTICE RICHARDS: Yes.
MS TOUBE: My Lord, I'm sorry to rise, but I am reminded that on the remote, we do have people transcribing.
MR JUSTICE RICHARDS: Yes. I was -- much the same thought was going through my head, I think.

Just so everyone in the courtroom knows: what
I would like to do is to take a break now for five minutes or so, because we have people making an electronic note of everything, and it's quite tiring for them. So we will break now and we will come back a bit after 11.30 by my -- well, we will come back just a bit before 25 to, by the court clock.
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(11.28 am)

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(A short break)
(11.35 am)

MR JUSTICE RICHARDS: Yes, Mr Bompas.
MR FALKOWSKI: So what is available to investors is access to the Financial Ombudsman Scheme and as I have said, it is a wider jurisdiction, and it is helpfully, for my Lord's note, in the FCA's skeleton argument. It is at paragraph 37. They set it out very helpfully.
(Pause).
MR JUSTICE RICHARDS: Yes.

\section*{MR FALKOWSKI: So:}
"In making this determination, it must take into account: [the] relevant law and regulations; relevant regulators' rules, guidance and standards; relevant codes of practice ; and (where appropriate) what it considers to have been good industry practice at the relevant time."

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So it is actually, from a consumer's point of view, much better on that test alone, going to FOS, than the hazards of litigation. You have got a wider ambit and they can award compensation for things that go beyond the ordinary, that the court could award, just for breach of contract or breach of duty.
MR JUSTICE RICHARDS: But I mean, do you -- again, just to answer a point that is made in the company's skeleton. Do you accept that the FOS jurisdiction is not completely unprincipled? It has to be guided by the law? So if it went around making money awards where there was no legal liability, it might find itself vulnerable.
MR FALKOWSKI: Absolutely, yes. But of course it acts in accordance with the law, and if it failed to do so, then there would be a judicial review open to a financial organisation that felt that it had gone wrong in law.

But it is much more consumer friendly than -- what it doesn't do is say: you can go to the ombudsman and the ombudsman will determine your complaint in accordance with the laws of England and Wales. If it did that, that would simply be mimicking or replicating what the courts do, but it does something far better, which is the wider -- it takes into context concepts which are fundamental to FSMA, like treating customers
investor advocate to ask: had any consideration been
given to what, so far as I was aware at the time and is confirmed now, the situation which is that it has never been before the courts before, where there is a FSCS-backed position, where those rights will be taken away by the scheme of going to FOS and then FSCS standing behind any award, in the event of insolvency.

So I asked the question, which I have set out in my skeleton argument, and that's at paragraph 4 of the skeleton argument.
MR JUSTICE RICHARDS: Yes.

\section*{MR FALKOWSKI: So I said there that:}
"From the ... Link Scheme of Arrangement website, I can find no discussion about the statutory protections for retail investors under ... FOS and FSCS schemes established by FSMA - - Statutory protections which in my submission have the nature of inviolability. It seems to me rather unlikely that Parliament, in passing FSMA, could have intended that investors ... be stripped of their statutory protections under FOS and FSCS ex post facto following the insolvent default of a licence holder. That would be contrary to 'Parliaments precise intention, namely to promote investor confidence in the UK investment industry by protecting loss (up to \(£ 85,000\) each individual) in the event of insolvent default of a
licence holder. I would be grateful if you would please confirm whether this legal issue -- which I consider to be of fundamental importance, and which could, in my opinion render the entire Scheme of Arrangement in its present guise unlawful -- is one that you have identified and considered in your role as Independent Investor Advocate. Is this something that you have raised with the FCA and/or Link? And if so, can you please let me know what their response was."

And the response in effect was: oh, well just wait until you get our submissions, by which I invite the court to conclude that no consideration at all has been given to this point by the investor advocate, or by the company. That is a point obviously about fairness and so forth, and Mr Crossley is going to be addressing you at greater length on those points, so I simply make that point and it can feed into his submissions.
(Pause).
As for the \(77 \%\) point, my submission is really straightforward on this. This is only one aspect of a claim that my clients would be able to make to FOS. And it is what has been called the early mover advantage or first mover advantage. And my Lord can see that explained in the bundle, at page 506.
(Pause).

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So this, under the paragraph:
"How has the FCA calculated the loss in this matter?
"The FCA considers that investors leaving the Fund between 1 November 2018 and 3 June 2019 enjoyed a 'first mover advantage' in that their units were redeemed by sales of more liquid assets, while the illiquid assets remained in the Fund and their proportion increased.
Therefore, the FCA considers that an appropriate means to assess these losses is to compare the difference between ..."

And so forth. And that's how they have come up with the \(£ 298\) million, which they say would be what they would impose, and require by way of restitution, but which the company in any event denies.

Now, that is just one claim. And in fact, there are many complaints that investors can make, and I can just refer my Lord to the particulars of claim, because that's the best and easiest summary of it, and that's page 1171. So this is the opening pages to the generic particulars of claim.
MR JUSTICE RICHARDS: Hang on, sorry. 1171?
MR FALKOWSKI: I think it's 1171. Ah.
MR JUSTICE RICHARDS: In the core bundle?
MR FALKOWSKI: Yes, sorry. My computer says it ... yes. It's 1171, sorry.
MR JUSTICE RICHARDS: Just so you know, 1171 for me is 1
    something, the role of the investor -- of the
    independent investor advocate.
MS TOUBE: If you are looking for the generic particulars,
    they are at 3171
MR FALKOWSKI: 3171, sorry. I couldn't see the first number
    on the screen.
MR JUSTICE RICHARDS: 3171
MR FALKOWSKI: So under D, we can see "Link's breaches".
        "Failure to carry out proper liquidity management."
        The next big heading:
        "Unauthorised and inappropriate overall investment
        strategy."
        D3:
        "Asset-specific breaches."
        D4:
        "Overvaluation."
        And those particulars are made in further detail for
        each of those at 3184 , tied in the handbook. So at
        paragraph 39, page 3184:
            "Link failed to ensure that the Fund maintained
        a sufficient quantity of sufficiently liquid assets
        within the Fund's portfolio ..."
            And further particulars are provided there, with
        reference to the handbook, and the requirements in
            65
        respect of collective investments; paragraph 40.
        Then the next heading, page 3192, "Unauthorised and
    inappropriate overall strategy". D3, 3195,
    "Asset-specific breaches", collective :
        " ... COLL 5.28R(4), Link was obliged to ensure that
        no more than \(10 \%\) of the Fund's property was invested in
        unlisted securities."
            Then 3203, "Overvaluation". And D5, 3208, "Failure
        properly to manage liquidity".
            And part of these claims include equities being --
        or funds being on the Jersey -- sorry, Guernsey Stock
        Exchange, which I think the governor of the Bank of
        England described as not being a properly functioning
        liquid market.
            So those are various complaints that are open to any
        of the investors; and the \(£ 298\) or \(77 \%\) figure is simply
        saying: well, if we require them to put up \(£ 298\) by way
        of restitution, and then you look at the figures, oh
        well, these people all get \(77 \%\). Well, that might be
        right as a matter of maths, but it ignores all of these
        claims.
MR JUSTICE RICHARDS: I see. So I mean, just so I have got
    that. What you are saying then is that the FCA have
    calculated their \(£ 298\) million figure, on the basis of
    their view on how a subset of your claims could be
compensated? So your claim is not just about liquidity management. Your claim is that the investments were bad, the investment guidelines were breached?
MR FALKOWSKI: Yes.
MR JUSTICE RICHARDS: I see.
MR FALKOWSKI: Yes, it is all of those claims. The £298 million is -- all the FCA have done is said: oh, this all looks very unfair, because people got out quickly, who did much better, because they got out their money, because the liquid assets could be realised ; and the poor souls who didn't realise quickly enough that they should be getting out were stuck with the illiquid ; and the FCA have said: that is unfair on people, as a whole, and so to balance things out, you need to put \(100--£ 298\) in, by way of restitution. So that's all they have done.
MR JUSTICE RICHARDS: So conceptually, a scheme creditor could go to FOS, you say, and say: actually, the investments were bad; the investment guidelines were breached. Here is my loss, calculated in a way that -along the examples that you showed me earlier on; and have someone creditworthy standing behind \(£ 85,000\) worth of that?
MR FALKOWSKI: Yes, exactly. That is exactly the point, yes.

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Now, much is made of it being uncertain, there's no determinations by FOS. Well, as I have explained, that is because the FCA have some kind of an agreement that they should all be paused, is the word I think that was used. There has been no determination on any of these points; and of course, everything in litigation or disputes is uncertain, and only a fool would suggest otherwise. But these aren't fanciful claims. These are perfectly proper arguable claims; that my clients are in effect being asked to forego a statutory right to go to the free service of the ombudsman, who doesn't require any great degree of sophistication or legal knowledge; and then know that the FSCS will stand behind whatever award is made, even if the company is completely insolvent, has not a penny left in the bank.

And in my submission, my point would still be good, if I only represented one single investor. In my submission, it is nothing to the point; however many percent. Even if it were \(99.99 \%\) of people that voted in the scheme, this cannot take away the rights of a person who has such rights enshrined as a matter of FSMA.

What is interesting to note is that there does appear to be a carve-out for the Wallace people, if I can call them that, because if one looks at paragraph 105 of the company's skeleton argument:
"The Wallace Claimants, described above in
paragraphs 31.3 and 32.2 , include, as a sub-set of those claimants (the Pre-suspension Sellers) who allege that they suffered loss due to breaches of COLL rules by LFSL over the period during which they were invested in the [fund]. Insofar as these claimants do not also have suspension date claims -- by reason of which they would be Scheme Creditors and subject to the general releases under the Scheme - - there is a theoretical prospect of distinct claims not dealt with by the Scheme."

So it is recognised there that there are some people who will still be able to bring claims; and in my submission, it is not for my clients to have to rework the scheme. It is simply enough that they say that they have enshrined statutory rights.

Now, a case which I say is of fundamental importance to the question before my Lord is that of
Payward v Chechetkin, which is in the authorities bundle that we have prepared. But the key points I have set out in my skeleton argument, from paragraph 8. So I don't know, has my Lord had a chance to consider this point?
MR JUSTICE RICHARDS: I have seen the way it is developed.
I have seen the analogy that is made with
Payward v Chechetkin. I have not dived into the detail

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of Payward v Chechetkin, so if you want to show me passages of that authority, I would --
MR FALKOWSKI: Yes. I have set those out from paragraph 8.
The importance of the case is that it is an arbitration award. And it is an arbitration award made in California, where the High Court here refused to recognise it, because it had deprived, the court held, the consumers' rights under the Consumer Rights Act and under FSMA. And that was held to be a public policy reason for not enforcing it. So I have set out paragraph 118, Mr Justice Bright, asking the question: is FSMA an expression of English UK public policy? The introductory text of the Financial Services and Markets Act 2000 describes it as an act to make a provision about the regulation of financial services and markets. It appoints the Financial Conduct Authority as the regulatory body.

He then sets out the scheme; and he puts the key provisions for the purposes of the case before him, in paragraph 121. In paragraph 9 he makes the point that he can't determine any of the issues that arise in Mr Chechetkin's case, which was one of somebody engaging in crypto trading.

In my submission, that is the same position that my Lord is in here today. My Lord cannot determine who
is right and who is wrong about any of these various points. Although I will come on to make the submission that the one person to has put their money where their mouth is, is the insurer who has paid up in full. In my submission, an insurer, and it is Allianz, advised by -sorry, Zurich, advised by Clyde \& Co, would not have paid up in full under the policy, without considering it very carefully. So I invite the court to take notice that one party has already paid up in full, and that's the insurer.

So turning back to Mr Justice Bright's decision, as I note at paragraph 9 of my skeleton, he was not willing to make any findings. It was enough that there was a prima facie case. I say we have a prima facie case here.

Can I just allow my Lord to read that passage to yourself, my Lord, rather than me reading it out?
MR JUSTICE RICHARDS: Yes, thank you.
(Pause).
Yes. When I was reading your skeleton and the extract in pre-reading, what I wondered was whether this case was dealing with the second aspect of your submissions, rather than the first.

So you make two points. I don't have power to do it ; and if I do, I shouldn't do it.

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Now, it looks like Mr Justice Bright here is
exercising some -- he has some sort of discretion whether to do something; and he says: no, I'm not going to do it, because it would be at odds with the policy of FSMA. So it's category 2 of your argument.

I wasn't quite sure that I saw it supporting category 1 of your argument, namely that I don't even have power.
MR FALKOWSKI: I accept that that's a fair analysis of the case and where the case sits in relation to the two ways that I put it. But what the case does show, and the reason why I put it there, is that it shows that FSMA is a matter of UK national policy and it weighed very heavily on the court in saying that an arbitration award should not be enforced, and in my submission, it is a very powerful point for a court to refuse to recognise an arbitration award that otherwise would be from a competent arbitration.

So my Lord has the two points.
(1), I say it just cannot be done as a matter of law, because it is to take away the enshrined rights that are there under FSMA in statute. It has no

\section*{carve-out.}

And the second is that, as a matter of discretion, you shouldn't do it ; and my Lord has seen the way we put
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it in the skeleton argument, which I say that this applies to everything under FSCS. At paragraph 21; for example, if there were a run on a bank, the $£ 85,000$ guarantee from FSCS will provide some calm to depositors. They will know that they are guaranteed to the $£ 85,000$ level. The $£ 85,000$ is unconditional. A state-backed guarantee that would dampen down a contagion of withdrawals. If the $£ 85,000$ guarantee were to be conditional, then any run on a bank would accelerate out of control. That is the purpose of the scheme. So my Lord has also seen the submissions from the various economists as to the effect, if the law in this country became one of: well, you don't actually have the $£ 85,000$ protection, because the court could come to a scheme of arrangement that would deprive you of that.
We also have the point that it is clearly stated in the scheme documents that you get the protection of the FSCS. So as a matter of a triumph of form over substance, that's been taken away.
So for those reasons, those are my submissions in the two (inaudible), unless I can assist you, my Lord.
MR JUSTICE RICHARDS: Thank you very much. Thank you.
Sorry, I can't remember who is next. Is it
Mr Crossley next?

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\section*{Submissions by MR CROSSLEY}

MR CROSSLEY: Yes, judge. It is me, indeed; yes.
May it please your Lordship, I am here as you have heard, for Harcus Parker who in turn represent several thousand investors in the Woodford Fund and they are referred to in the papers, and I will refer to them as convenience, as the HP investors.

Now, the HP investors have set out their grounds for opposition, in the grounds of opposition, and judge, I am grateful that you have indicated you have read the relatively fulsome skeleton I have put in.
MR JUSTICE RICHARDS: I have, thank you.
MR CROSSLEY: For that reason, I do intend to move quite quickly through these submissions. I will come to the detailed grounds in a moment.

If I may first make two points by way of introduction, summary and overview really.

The first introductory point is that investors do seem, as a matter of fact, to have been genuinely confused in a number of respects by the material and information that Link has put forward in relation to this scheme and we see that from the written submissions made to the court by the investors themselves and we see it by the questions asked at the scheme meeting. And the reason investors have been confused, we would say,
is because the explanatory statement promulgated in this case is misleading in a number of respects. And I will come to the details of why.

Now, Link naturally and understandably rejects any such submission in strident terms. But in any scheme, the scheme company must of course walk a tightrope between their natural desire to promote the scheme and see it succeed. There is nothing wrong with that per se. But on the other hand, the need to provide complete, accurate and clear information to scheme creditors, even when that information might dissuade a scheme creditor from voting in favour of the scheme; and getting that tension right is of course a difficult thing to do; and in this case, for this scheme, Link did get that balance wrong in a number of respects and as I say, I will go into the details of why.

But I think point 1 by way of introduction is simply this. That there has been misleading information and confusion. No proper consultation. The relevance of that, of course, is it goes to the regard the court should have to the result of the scheme meeting, as explained in the grounds of opposition and my skeleton.

The second introductory point I wanted to make is just to step briefly back and look at what happened in this case, from the HP investors' perspective. Because

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certain investors, including the HP investors, also those represented by Leigh Day, went to the effort and expense of instructing solicitors to advance claims against Link, arranging funding, arranging for detailed and complex particulars to be drafted and, in fact, by issuing claims. And in the normal way, those claims could be resolved either by being fought to a determination or more often, by a settlement directly with those investors. Most commercial cases of course are settled before trial.

But in this case, rather than settling with the HP investors directly, the claims are instead being compromised by virtue of a scheme whose substance was not negotiated with the claiming investors, but with the FCA, who had to balance the interests of investors and differing positions against one another, so to come up with an arrangement that suited them all as a collective. And to be clear, that is not a criticism of the FCA. It had a very difficult job to do. But in striking that balance between investors, the resulting scheme is unfair to those, like the HP investors, who were having their claims compromised above their heads and worse terms than otherwise they likely would be agreed to and given also the possibility of the FSCS compensation.
MR JUSTICE RICHARDS: You are making, I think, a couple ofpoints there. I think, the first point is, the HPinvestors are bound into a compromise that is worse thanthey could otherwise have done.
MR CROSSLEY: Yes.MR JUSTICE RICHARDS: A general point. It is not goodenough, I think is the general point there; but thereis, I think, a specific point about costs. Is therea specific point about costs or not?MR CROSSLEY: Yes, there is. Judge, you are quite right topick up on the fact that a few points are running intoone. These are just introductory comments, but yes.One fundamental unfairness at the heart of the scheme isthat those investors who have gone to the most effort toadvance their claims and have expended costs in doing
        so, are in a worse position than those who just sat back
        and did nothing at all. So yes, that point is there
        too.
            And one can see why, given that background and that
        point which I have just made, that the HP investors and
        other investors, some of whom are here today, are really
        very cross about this scheme, and feel that their rights
        are being unfairly compromised. One sees that sentiment
        in the written submissions and before the court and one
        will no doubt hear that from those who come after me
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\section*{directly .}
Against that backdrop I would say that this is one of those rare cases where the court should refuse to sanction the scheme, for reasons I will expand upon now.
That was the second introductory point I wanted to make.
In terms of the structure of my main submissions, I intend first and very briefly just to make some points from the law. I won't take long on that. The law is not in dispute at all. It is all set out in the skeleton arguments there. I will just highlight a few points.
I will then secondly move on to discuss in more detail why scheme creditors have not been properly consulted and informed; and thirdly, setting out in more detail why this scheme is unfair.
Turning first just to draw out a few points on the law. I will move quickly. I understand, judge, and my Lord, that you are familiar with this area and have read the skeletons. But if I may briefly just highlight seven points. I know that is a large number of points. I will move quickly, as I say.
Drawing largely from the seminal judgment of Mr Justice Snowden in Re Sunbird. That is in Link's authorities bundle, at tab 31, starting at page 701.

The first point to highlight, which the judge knows, is that the court at the sanction hearing is not a rubber stamp and provides an important safeguard for the scheme jurisdiction. One sees the court's role helpfully explained at paragraphs 49 to 51 of Sunbird which starts at page 717 of Link's authorities bundle. Again, I know the court is familiar with this, so I will go quickly. At the bottom of paragraph 49:
"... the scheme jurisdiction is [quoting Sovereign Life] ... 'a ... formidable compulsion upon dissentient, or would-be dissentient, creditors'."

Paragraph 50:
" ... the scheme jurisdiction ... [therefore] contains ... important safeguards ..."

Including for the court to sanction the scheme.
And paragraph 51:
"... at the sanction stage, the court does not simply act as a 'rubber-stamp' for the wishes of the majority as expressed at the court meeting. The decision of the meeting in favour of the scheme represents a threshold that must be surmounted before the sanction of the court can be sought, but in deciding whether to sanction the scheme or not, the court exercises an important discretion which provides a safeguard against [the] oppression of the minority."

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That is the first point. The court, not a rubber stamp. An important safeguard.

The second point to highlight from the classic exposition of the exercise of that discretion from Telewest, which is set out in paragraph 52 of Sunbird, my Lord I know you are familiar with that passage, but if I just highlight that although the court will usually be slow to differ from a decision of the scheme meeting, of course we accept that, the court will not give the scheme meeting that deference if scheme creditors were not, prior to that meeting, properly consulted. So that is a precondition, as it were, to the discretion only differing slowly.

The third point to highlight is the point made at paragraphs 54 to 55 of Sunbird, that the starting point for what is proper consultation is the explanatory note as required by the Companies Act, section 897, which must adhere also to the requirements of the practice statement at paragraph 14, and of course we looked at that earlier.

The fourth point to highlight is that the effect of creditors not being properly consulted is quite dramatic. The court will likely be unable to place any reliance upon, or give effect to an affirmative vote at the scheme meeting.

One sees that in the final sentence of the quotation
from Ophir Energy cited at paragraph 58 of Sunbird. The final sentence there, and I am quoting it now:
"... the Court will most likely not be able to place any reliance upon, or give effect to, an affirmative vote at the Court meeting."

And that proposition, for what it's worth, is picked up on and approved in Mr Justice Miles' judgment in Re ALL Scheme. I don't propose to turn to it. But for the judge's note, it is paragraphs 102, subparagraph 9, and it is at tab 29 of the authorities bundle, page 675 , where Mr Justice Miles says:
"If creditors have not been given fair, full and adequate information, the court will probably be unable to place any reliance on, or give effect to, an affirmative vote."

So if not proper consultation, quite a dramatic change to how the court exercises its discretion.

The fifth point to highlight is that the rationality test the court has to apply as it exercises its discretion to sanction the scheme requires, among other things, the majority to appreciate the alternatives open to them.

One sees that from the sanction judgment, Mr Justice Trower, in another one of the Re ALL Scheme
cases, at paragraph 52. It is possible worth turning that up very briefly. It is at tab 33, page 790. There, it says:
"However the proper application of this test is dependent both on the majority vote being representative of the class it purports to represent and [this is the point I'm making] also on the applicant being able to demonstrate that the members of the class are able properly to appreciate the alternatives open to them ..."

And one of the points I will be making is that they didn't properly appreciate the alternatives open to them.

The sixth point to highlight is that while there is no requirement for the scheme to be negotiated directly with scheme creditors, that is another factor that goes to the weight the court should place upon the result of the court meeting. We see that from Mr Justice Miles' judgment in Re ALL Scheme, paragraph 109. It is worth possibly turning that up briefly. Tab 29, page 677. And there, the court will see Mr Justice Miles expounds that the usual position which we don't defer from, there is no requirement to negotiate directly with creditors, but the sentence in the middle of that paragraph:
"But I agree with the FCA that the lack of any
negotiation is relevant (along with the other features of the case) to the weight the court should give to vote at the scheme meeting."

And of course, in this case, we accept that there was some very limited negotiation with the investors committee and there was engagement with creditors that led to some exchanges to the scheme documents. But the core of the scheme, the deal, the compromise, was not negotiated with scheme creditors directly. That was negotiated directly with the FCA.

The seventh point to highlight from the legal framework is that although the cases where the court has refused to sanction the scheme are rare, it happens, unsurprisingly, given the court is not a rubber stamp. The Re Sunbird case and Mr Justice Miles' judgment in Re ALL Scheme are two recent schemes. So it is an avenue open to the court. That was all I wanted to say in relation to the law. There is obviously more law than that, but there is no dispute, I don't believe, between my learned friend and us on what the law is. So the rest can be taken from our skeleton argument.
MR JUSTICE RICHARDS: Thank you.
MR CROSSLEY: So moving on now, therefore, to the HP investors' first proper ground of opposition, if I may call it that, which is that scheme creditors were in

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this case not properly consulted and informed.
Now, naturally this is an important part of the HP investors' opposition since, if right, it means on an application of the law we have just looked at, it changes the dynamics of what the scheme meeting means for this course today, which given that it was a substantial vote in favour, is potentially quite publish important.

A specific subgrounds for why investors were not properly consulted and informed are set out in the HP investors' grounds of opposition also in my skeleton and there are three reasons why investors were not properly consulted and informed.

The first reason, which we have touched on already, is the explanatory statement's misleading. I will spend most of my time considering that.

Secondly, because the chair of the investors' committee did not provide an independent or effective means for scheme creditors properly to be consulted.

And thirdly, because the scheme was not the result of negotiations with the scheme creditor.

So as to the first of those subgrounds, why the explanatory statement is misleading. There are six reasons why that is, all set out in my skeleton. If I may touch on each of those briefly now. I should say
that I will take longer on the first, second and third
of those reasons than I will on the fourth and sixth.
So if it seems we are going slowly, don't worry.
MR JUSTICE RICHARDS: No, I'm ...
MR CROSSLEY: Anyway, the first reason why the explanatory statement is misleading, and this has been touched on
a fair amount in the courtroom already today, concerns
the way the explanatory statement expresses the return
to creditors as up to \(77 \%\) of the capitalised term, FCA total amount.

Now, as background for this complaint, and so to understand it, it is necessary first to appreciate why the explanatory statement expresses the return to creditors in this way, because there is a logic to it; even if it is ultimately misleading. And that logic is explained in Karl Midl's first witness statement, at paragraphs 49 to 50 , and which is in the core bundle, at tab 7, page 136. We have been over this ground a little bit, so it will be familiar.

What one sees there is that the FCA held, following its investigation into Link, that there had been a breach of its rules by the way that more liquid investments were sold to satisfy redemption requests from investors wanting to leave the fund and in particular, the FCA held that those liquid sales

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benefitted those who had redeemed their shares
disproportionately against those holding on to their investments, who were left with a rump of illiquid investments which were held to sell. So the FCA held that is a breach of our principles.

Having reached that conclusion, the FCA calculated the loss to the remaining investors by comparing what they had received against what they would have received, had the fruit of those liquid assets been shared equally between all investors and not disproportionately just for those who had redeemed their shares. Ultimately, that amount was found to be approximately £298 million and that is the capitalised term, FCA total amount.

So, it is said, as I said, there is a logic to it; the scheme returns up to \(77 \%\) of the FCA total amount.

The problem, however, is that that phrase is misleading and it is misleading in two ways.

The first way in which it is misleading, and this has been touched on already, is that the loss for which the FCA held Link was liable was based on a narrow set of alleged breaches, concerning the management of liquidity. And claims put by the investors, for example, in the generic particulars of claim, alleged much broader breaches than that; and thus that the loss resulting from those broader breaches is likely to be
higher than that said by the FCA.
Now, what is the total amount of that loss has not been quantified yet. It is a matter for expert evidence. But an investor may well consider that his recoverable loss is greater than that which was determined by the FCA, the FCA total.

So that is the first reason why it's essentially misleading; and the investors' loss can be quantified in a range of different ways, not just the way --
MR JUSTICE RICHARDS: I mean, you say misleading. It is not necessarily misleading. Isn't there just another way of saying that the FCA amount might not be enough? I mean, the explanatory statement says that you are getting up to \(77 \%\) of this number called the FCA amount. The point you have just articulated to me is not, it seems to me, a statement that the FCA amount is -- that that amount is misleading. It is a statement that the FCA amount isn 't big enough to compensate for all the heads of loss that - -
MR CROSSLEY: Absolutely. I follow that point entirely.
The answer to that, which I will come to, is that the investors needs to understand, you know: what is the invest -- the FCA total amount, how is it calculated? I really need to know that. And that point isn't explained very well and I will come to it that.

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MR JUSTICE RICHARDS: So it is misleading omission because it does not explain what the FCA total amount -- it does not explain how it has been calculated.
MR CROSSLEY: Yes. I will come to that in careful detail in a moment.

Additionally, this phrase, \(77 \%\) of the FCA total amount, comes in the context of an unhelpful, I would say, announcement by the FCA on 19 April 2023, which trumpeted that the scheme would be returning to investors, and I quote, "77p in the pound". Now, that, I would suggest, is not a helpful description of what is being offered by the scheme, since it strongly suggests, by the phrase "77p in the pound", that investors will be recovering \(77 \%\) of their total loss, i.e. their loss as against what they invested, rather than \(77 \%\) of what the FCA has determined is recoverable by their regulatory action which is a much smaller amount. And the announcement is worth, because it is quite important, it is worth turning up briefly. It is in the core bundle, tab 80, page 2042. We are picking the announcement up halfway, but the paragraph is the second paragraph from the bottom:
"Although the redress offered in the proposed Scheme will not provide fund investors with the full redress amount of \(£ 298\) million, the FCA considers it is in the
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interests of the investors to be given the opportunity
to consider the Scheme. If the proposed redress amount
of £235 million is paid in full then investors will have
recovered approximately 77p in the pound."
The problem is that that really unhelpful phrase,
"77p in the pound", which one notes has been dropped in
the explanatory statement, is picked up in the financial
press.
So the helpful summary of what the financial press
were then saying --
MR JUSTICE RICHARDS: Sorry, we will come on to the press.
But it is not just a bold statement that they -- the
paragraph -- maybe I'm in danger of construing this
paragraph as a statute, but the paragraph starts by
saying: it does not give you all - - it does not give
investors all of the £298 million, but it is still in
the interests of investors because if -- it will be 77p
in the pound; and then you see £235 is 77%, one assumes,
of 298. In the round, is it not clue clear?
MR CROSSLEY: My Lord, I follow that entirely. Of course,
it is coming in the context of a longer statement. The
problem really is that this phrase, 77p in the pound, is
then picked up in the financial press and repeated. And
that is what investors are hearing, months and months
and months before the explanatory statement lands.
to consider the Scheme. If the proposed redress amount of $£ 235$ million is paid in full then investors will have recovered approximately 77 p in the pound."
The problem is that that really unhelpful phrase,
"77p in the pound", which one notes has been dropped in the explanatory statement, is picked up in the financial Sos
So the helpful summary of what the financial press were then saying --
MR JUSTICE RICHARDS: Sorry, we will come on to the press. But it is not just a bold statement that they -- the paragraph -- maybe I'm in danger of construing this paragraph as a statute, but the paragraph starts by saying: it does not give you all -- it does not give investors all of the $£ 298$ million, but it is still in the interests of investors because if -- it will be 77p in the pound; and then you see $£ 235$ is $77 \%$, one assumes, of 298 . In the round, is it not clue clear?
MR CROSSLEY: My Lord, I follow that entirely. Of course, it is coming in the context of a longer statement. The problem really is that this phrase, 77p in the pound, is then picked up in the financial press and repeated. And and months before the explanatory statement lands.

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MR JUSTICE RICHARDS: So, the problem isn't necessarily with 1

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MR JUSTICE RICHARDS: So, the problem isn't necessarily with 1
    the FCA's statement, it is how that is picked up and run
    the FCA's statement, it is how that is picked up and run
    with.
    with.
MR CROSSLEY: Indeed. Again, I'm not making any criticism
MR CROSSLEY: Indeed. Again, I'm not making any criticism
    of the FCA about this. It is difficult . But this
    of the FCA about this. It is difficult . But this
    phrase, 77p in the pound, I would say was unfortunate
    phrase, 77p in the pound, I would say was unfortunate
    and unhelpful; and it has been picked up by the
    and unhelpful; and it has been picked up by the
    financial press in a way that investors then reading
    financial press in a way that investors then reading
    that press, will begin to form a false impression of the
    that press, will begin to form a false impression of the
    scheme's return. So a summary of what the financial
    scheme's return. So a summary of what the financial
    press are saying is at page 607 of the bundle., tab 21.
    press are saying is at page 607 of the bundle., tab 21.
    This is the problem, that phrase 77p in the pounds is
    This is the problem, that phrase 77p in the pounds is
    taken out of context. So 28 April, the Investment Week:
    taken out of context. So 28 April, the Investment Week:
    "The redress would return investors 77p on the
    "The redress would return investors 77p on the
pound."
pound."
    The same article:
    The same article:
    "This means that with the up to £235 million
    "This means that with the up to £235 million
    payment, the most investors will get back is 77p on the
    payment, the most investors will get back is 77p on the
    pound."
    pound."
    Same day, Proactive Investors:
    Same day, Proactive Investors:
    "Following these distributions over the past
    "Following these distributions over the past
    three years, if the full redress payment is made it
    three years, if the full redress payment is made it
    could take the recovery level to roughly 77p in the
    could take the recovery level to roughly 77p in the
    pound of the value of the fund on suspension, the FCA
    pound of the value of the fund on suspension, the FCA
    said ..."
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    said ..."
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Now, it is worth saying, that is completely wrong. It wasn't returning to 77 p of the value of the fund on suspension. It is just wrong. So there is confusion about what this 77p amounts to; in the financial press, and I would say also in the minds of those investors who are picking up on this scheme from what is circulating in the financial press.

And the point is this. Of course, we are not considering what the financial press says. We are considering what the explanatory statement says. But the explanatory statement arrives in that context of confusion about what this 77 p in the pound -- what this 77p represents. And in that context, an investor reading the scheme in a cursory way is likely to be misled that the scheme is returning \(77 \%\) of their total loss, because the explanatory statement, we would say, doesn't do enough to explain that is not the case, and given the context in the way the explanatory statement is arriving.

It does get worse, because of course we are not considering an investor who reads the explanatory statement in a cursory way. We are considering an investor who reads the explanatory statement in full. But even for a diligent scheme creditor who sees this phrase, "77p of the FCA total amount" and wants to

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understand how that means and compares with how he understands his loss, how he is being advised he would be able to recover through litigation, is not actually able to get to the bottom of what that phrase means.

Now, one point that is said against me on this --
MR JUSTICE RICHARDS: Sorry, why not? Because the FCA -- as I read the explanatory statement, the FCA total amount, what we lawyers call a defined term, it is \(70 \%\) of \(£ 298\) million is, it is a number.
MR CROSSLEY: Absolutely, absolutely. That is entirely correct. The first point that is taken against me, the scheme is clear. It says the FCA total amount is \(£ 298\) million. But the problem is, \(£ 298\) million is a meaningless figure for individual investors who aren't interested or don't understand how that total amount being returned relates to them. They want to know their individual losses and how the scheme relates.
MR JUSTICE RICHARDS: So it is not very helpful to say a total figure. The question is: is it \(77 \%\) of my loss? MR CROSSLEY: Yes, exactly. So then the investor might think: okay. I now understand the FCA total amount is \(£ 298\) million. That doesn't actually get me very far. How is that \(£ 298\) million calculated? How does that calculation compare to my understanding of my loss on advice or not? And as to that, this is a really, really
important point, and Link points to a number of places
in the explanatory statement where they say that the calculations sitting behind the FCA total amount are carefully explained, but in fact those sections don't do that. And Link points, first of all, to the explanatory statement, at paragraph 4, paragraphs 4 to 10 . Of course it is worth turning that up, tab 30, page 636.

And the court can see in those paragraphs, an explanation in paragraph 4 of what the FCA alleged against Link in its draft warning notice and what the conclusions of that investigation were, in paragraph 5. What the FCA proposed Link should pay, in paragraph 6.

And paragraph 7 then explains the logic behind the term in bold, called the FCA redress calculation. As the court can see, those paragraphs don't clearly explain how the FCA total amount, capitalised defined term, has been calculated. The paragraphs don't use that term. My Lord, you won't see it. The paragraphs use different terms. And those paragraphs are therefore not useful or clear for an investor wanting to know how the FCA total amount has been calculated.

Now, my learned friend will take this point against me on this. She will of course point to the fact that within paragraph 8 , one sees the figure of \(298,403,919\). It turns out, that is the FCA total amount. But that's
not explained. It is not clear. And pretty hefty concentration and memory would be required, I would say, from an investor reading the explanatory statement. Remember, for many pages before, that the FCA total amount is \(298,403,919\). And that is the figure being referred to here, despite that not being explained. And I would submit that that level of a concentration goes beyond what should be expected of an ordinary investor; and even an ordinary investor who takes the time to read the explanatory statement in full. They are not expected to unpick its parts or study it like a statute.

So those paragraphs, I would say, actually don't explain clearly, or at all, how the FCA total amount has been calculated, despite Link's assertions to the contrary.

The second place Link points to for where the FCA total amount is explained is in the FCA summary statement. We looked at that briefly earlier today. And the FCA summary statement is linked to by the link, we can see in paragraph 8 of part 4 . One can see the link at the end. It was also uploaded to the scheme website. So the FCA summary statement has been promulgated. But the same point is just made in relation to these parts of the explanatory statement apply for the FCA summary statement too.

In the first place, paragraph 8 does not say: here is the FCA's calculation which underpins the FCA total amount. I have made that point already. It does not make that clear. And an investor reading this part of the explanatory statement, looking for: what is the FCA total amount, this key terms sitting behind the \(77 \%\) ? They won't think to themselves: ah yes, the answer is in this link that I must click on. It is not something that would occur to the ordinary investor.

If we turn to the FCA summary statement itself, which is in the core bundle, at tab 39, page 1195, the summary starts, forgive me, at 1194; and one sees the same problem we have just been describing. The wording is quite similar to what we see in the explanatory statement. And one sees what the FCA alleged against Link in its draft warning notice, one sees what the conclusions were, and so soon. And then one sees, in paragraph 8, this same figure. One sees \(298,403,919\), but it doesn't say: this is the FCA total amount. It is not explained how that figure links to the FCA total amount.

The court was shown the calculation of loss, which starts at page 1198, and my learned friend candidly said: gosh, I won't even attempt to unpick how that works.

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MR JUSTICE RICHARDS: This is the actual calculation?
MR CROSSLEY: Yes, exactly.
MR JUSTICE RICHARDS: Not the summary --
MR CROSSLEY: Exactly, section 1198. And again, the FCA
total amount is not referred to. It doesn't say: this
is the FCA calculation of loss which sits behind the
definition of the FCA total amount.
I should say, I wouldn't expect it to say that,
because it wasn't drafted with the explanatory statement
and its definitions in mind. It is not actually
a problem with this summary statement. It is a problem
with how the explanatory statement explains the
relevance of the FCA.
MR JUSTICE RICHARDS: Because this presumably is the thing
that the FCA did in realtime, not knowing that it was
going to be sent to investors at any point.
MR CROSSLEY: Well, not knowing that the £298 million would
be referred to, using a defined term, you know, as
I say, the calculation behind which isn't really
explained.
Now, I have gone into quite a lot of detail there,
but the point really is this. What can we expect of
an ordinary investor who reads this monthly statement?
They are faced with this phrase that is repeated
throughout the explanatory statement, that they are

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hearing against the backdrop of that confusion that
resulted from the financial press saying: up to \(77 \%\) of the FCA total amount, up to \(77 \%\) of the FCA total amount.
What are they going to understand by that term and can
they easily correct their understanding if it is wrong?
And I would say that for the reasons submitted: no.
They cannot easily understand what the FCA total amount is and why it is, therefore -- and what therefore the \(77 \%\) relates to at all.

Now, as I mentioned in my little introduction a moment ago, in any scheme, the scheme company must walk a tightrope between its desire to promote the scheme and see it succeed and the need to provide complete, fair, accurate information to scheme creditors. And in this scheme, by promoting the scheme through that nicely big percentage, up to \(77 \%\), Link has unfortunately given the wrong impression, that the scheme returns \(77 \%\) of investors' total loss. Given the context in which the explanatory statement arrives, and given the explanatory statement doesn't do enough to correct that impression by explaining what the FCA total amount has been calculated at.
MR JUSTICE RICHARDS: Can I just share you are with something that is on my mind, not to try to catch you out or anything, but just so that you have

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an opportunity to answer it. I think we were shown earlier on in the explanatory statement that table that showed, in -- in -- how much. It talked turkey. How much are you actually going to get?
MR CROSSLEY: Quite right, judge. And that is the next paragraph.
MR JUSTICE RICHARDS: You are going to come onto that, right.
MR CROSSLEY: It is the obvious point, isn't it? Is this all not made correct by that worked example in the explanatory statement? And we have looked at that; and we have seen what it does and what it says. The problem with that table is twofold.
MR JUSTICE RICHARDS: Can we turn this up, please?
MR CROSSLEY: Yes, of course. It is --
MS TOUBE: Page 663.
MR CROSSLEY: Thank you, I'm grateful. I don't have it in my mind.

The problem with that worked example is twofold.
Problem 1 is that it is complicated, I would say.
Problem 2 is that the scheme does not repeat, as it should have done, I would say, that the scheme will return between 4 to 6 p per share. It repeats and repeats and repeats and repeats, that it will return \(77 \%\). And there is a material difference in emphasis
between how the scheme is being promoted.
And we say that difference of emphasis is ultimately misleading and an investor reading this explanatory statement as a whole, if they then wandered out of the room and was asked: what does the scheme return to you? Would think to themselves: \(77 \%\). That is the number that has been repeated to me. They wouldn't think to themselves, or they wouldn't remember what this scheme says and they wouldn't remember that it returns 4 to 6 p .
That is almost nothing. So that is what I have got to say on the worked example, but no doubt my learned friend will point to that in her reply.

But that is the first reason why the explanatory -sorry, I have used the same term there, I should change. That is the first reason why the explanatory statement is misleading, \(77 \%\).

The second reason why the explanatory statement is misleading --
MR JUSTICE RICHARDS: Sorry, just to absolutely make sure I land that. So to be fair, you say, in the explanatory statement, instead of using this eye-catching figure of \(77 \%\), it would have been fairer, or better, to say: you are going to get about \(4 p\) per share.
MR CROSSLEY: Yes, 4 to \(6 p\).
MR JUSTICE RICHARDS: So 4 to \(6 p\) per share.

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MR CROSSLEY: It varies by class, but 4 to 6 p. You know, for you, investor, to work out what that means to you, for you to work out how that compares to what you think you will get in litigation, what you think you will get from FOS on advice, we can't work that out for you. MR JUSTICE RICHARDS: Yes, look at the table.
MR CROSSLEY: Look at the table. It is 4 to \(6 p\) per share. It might also have a paragraph saying: just so you know, the FCA says the maximum you will get is 298 , it is \(77 \%\) of that. I don't have a problem with it saying that. But it is just the emphasis of up to \(77 \%\), whereas the emphasis should have been, I would say, on 4 to 6 p per share.

So the second reason, moving on, why the explanatory statement is misleading and it is similar to the first reason in a way, is that the scheme overpromotes that it will return up to 230 million, or up to \(77 \%\), without giving equal emphasis to the fact that, in fact, it may return as little as 183.5 million, or \(61 \%\). And this is a simple point which again ultimately goes to emphasis.

But instead of using the language that the scheme will return up to 230 million or if it is wrong to use this phrase, up to \(77 \%\) which is what the an explanatory statement does, it should have used the language: the scheme will return between 183.5 million and
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£298 million or between $61 \%$ and $77 \%$. And that latter language, showing the upper and lower bounds of the scheme, it does give a very different impression than the impression given by the repetition of the upper band only. And that misleading impression is compounded, I would say, by what is a particularly misleading phrase used in part 1, paragraph 20, which is worth turning up briefly. It is at page 114 sorry.
(Pause).
It is at page 657. Part $1--$ paragraph 20. That says:
"As explained above, a Settlement Fund of up to $£ 230$ million will be made available to share proportionally amongst relevant investors according to the number and class of shares they hold in the WEIF. It is estimated that the initial distributions from the Settlement Fund will be made in the first quarter of 2024 and will total between $£ 183.5$ million and £200 million."
So initial distributions. And it is the following sentence which is misleading:
"Additional payments will also be made to ensure that the Settlement Fund is distributed in full."
MR JUSTICE RICHARDS: I see
MR CROSSLEY: That is not correct. There is no guarantee

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that the scheme will return anything other than the lower bound of the range, 183.5 million. So that is the second reason why the explanatory statement is misleading. An overemphasis, I would say, on the upper bound of the range of incomes.

The third reason why the explanatory statement is misleading is it misleadingly gives the impression that the relevant alternative is worse than it is. The relevant alternative, which is presented in the explanatory statement, is, in summary, that Link will defend itself against all claims by the FCA and creditors, and if that fails, will then enter insolvency, leaving creditors to claim in that insolvency, possibly also with the claim against the FSCS. If I may at this point just correct one point which was made my learned friend this morning by my learned friend, where my learned friend said that the relevant alternative was insolvency. It is a little bit more complicated than that. The relevant alternative, as put by the company and in the explanatory statement, more accurately is quite a long period of uncertainty, and then insolvency. And that was what was recognised by the judge at the convening hearing, at paragraph 42.
MR JUSTICE RICHARDS: Yes. The judge cannot didn't -Mrs Justice Bacon did not quite accept the proposition
that it was liquidation. She said it was a period of uncertainty followed by the liquidation.
MR CROSSLEY: Yes, absolutely and the judge said:
"I agree that the appropriate comparison in this case is not the immediate commencement of insolvency proceedings. Ms Toube recognised that, in the first instance, the result failure of the Scheme was likely to be the conclusion of the FCA investigation and decision-making progress, and the progress of the various investor claims ... As she said (and I agree) that means that the alternative to the Scheme is a situation of considerable uncertainty and delay until those proceedings are resolved."

So the relevant alternative is not slam bang, Link insolvent. It is uncertainty.

And the true relevant alternative is not, as it is put by Link, simply for Link stubbornly to bludgeon on, defending itself against proceedings. That is what it said. It said: a period of uncertainty where Link would sort of just fold its arms and say: ah, you're wrong.

The true relevant alternative is that Link will defend itself against proceedings. I have got no reason to doubt that that is what they will do. What they will also do, like any commercial litigant would do, is to consider the possibility of settlement, either with the

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investors themselves or with the FCA directly.
Most commercial litigation ends with settlement after all and there is no reason to suppose that this case is any different.

The explanatory statement's failure to mention even the possibility of settlement with the investors bringing its claims or the possibility of a different scheme, negotiated with the FCA, who would in that event be bringing regulatory action, is misleading. You know, that settlement, you know, discussions with the FCA or discussions with individual investors bringing litigation, is a likely part of the relevant alternative and it should have been highlighted as a possible outcome, but it isn't. And of course, the reason that it isn't even mentioned in the explanatory statement is because Link wants to give the impression that the relevant alternative is just uncertainty. You know, all extremely drawn out, difficult, uncertain; Link folding its arms, not giving an inch until finally the judgment falls, or finally the FCA reached its determination. Whereas as we all know, that is not how a period of litigation proceeds. The judgment results if there has not been settlement in the meantime, and settlement in the meantime is the usual outcome. And I would say that it is misleading for the explanatory statement not even
to mention the possibility of settlement with investors
directly or with the FCA, as a view -- as a part of the relevant alternative.
MR JUSTICE RICHARDS: Presumably then, that argument can be made at any scheme. Any scheme, with someone in financial stress, on your analysis, you can always say that there is always likely to be a few quid more, there is always likely to be more and you just keep on going; and when -- when do you end? When do you end? When do you not ask yourself whether there is likely to be a few quid more?
MR CROSSLEY: Well, I obviously follow that point so far as it goes it is a sort of reductio ad absurdum perhaps, but the key feature of this scheme, as I mentioned in my introduction, is that before the scheme even began, the claims have been carefully formulated, particulars drawn up, claims issued. So litigation was on foot; it began, it had been issued. Similarly, the FCA had commenced its regulatory action, so it takes place against the backdrop of litigation, against the backdrop of regulatory action. And in that framework, I do say that it is misleading not to say: look, we're putting forward this scheme, vote for it if you want, but if we don't then we will defend ourselves and we cannot rule out the possibility that there will be a settlement in the

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meantime. It is quite different from a scheme, say,
that is a takeover or where -- you know, it is not taking place against the backdrop of litigation regulatory action. So yes, it is a point one can make but there are differences and particular features of the scheme that mean that settlement should have been mentioned, as part of the ...
MR JUSTICE RICHARDS: Mm-hm.
MR CROSSLEY: Had that relevant alternative been known, the investors would not just be holding out for the long haul, many years -- but in that long haul, in that uncertainty, there was a period of settlement, they may well have voted differently. If the scheme is: bread today rather than jam tomorrow, well, you need to know, when is that jam coming tomorrow? It may have been coming sooner than Link is portraying it in its explanatory statement.

So those are the first three witness statements were the explanatory statement is misleading. As mentioned at the beginning, I will go through the fourth, fifth and sixth reasons more quickly and that is simply because I don't have much to add beyond the relevant parts of my skeleton.

So just briefly, the fourth reason why the explanatory statement is misleading, concerning third

\section*{MR JUSTICE RICHARDS: I see. So a fair explanatory} statement would have said: we are not stopping you, but just know that it is going to be difficult for you to get litigation funding.
MR CROSSLEY: Exactly.
party claims, and the point is as explained at paragraphs 47 to 50 of my skeleton. It is simply that the explanatory statement is misleading in saying that the scheme does not prevent scheme creditors from bringing third party claims, without also explaining that the scheme would prevent those claims from being brought in practical terms; and the point there is that the practical limit arises because the third party litigation deed necessarily reduces the quantum of those claims for claiming creditors, which would in turn affect the means to obtain funding. That is the point.
MR JUSTICE RICHARDS: I mean, I read this carefully in opening. You say it is the third party litigation deed that reduces the quantum and I see, of course, the setoff mechanism for contributions. But doesn't the very act of getting money from Link reduce the quantum of third party claims, because your loss is less? Doesn't the act of settling with Link mean that if you go and sue a third party tomorrow, the value of that claim is always going to be less, because you have had part of your loss paid out?
MR CROSSLEY: Possibly that also, but the third party litigation deed does do it even more, so Link's contribution to any third party liability is expressly carved out of any third party claim that might be borne

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by a scheme creditor and because it is carved out, the claim is reduced for that reason. So although it is right in formal terms that the scheme doesn't prevent a party's ability to sue third parties, practically speaking, because of the need to obtain funding, the way in which the scheme reduces the quantum of that case will likely make the availability of any funding more difficult and therefore would limit the ability of scheme creditors to bring the scheme in practical terms.
MR JUSTICE RICHARDS: But -- sorry. I mean, I see that. But isn't the reason that third party litigation funders are likely to be less willing to advance money to pursue a third party claim; the claim has become smaller because part of the loss has been recovered from Link.
MR CROSSLEY: Well, maybe that also. I don't think that necessarily negates the point I'm making. It is just an additional point. It reinforces the point that although it is technically correct to say that: go ahead, bring your third party claim; practically, it is going to be difficult.
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MR JUSTICE RICHARDS: I see, thank you.
MR CROSSLEY: The fifth reason why the explanatory statement
is misleading is explained at paragraphs 51 to 56 of my
skeleton. And this point arises because of the way in
which the chair of the investment committee's
contractual obligations work. Let's look at what we say
creates that problem quickly now you. It is at tab 36,
page 970. This is the letter by which Mr Drummond-Smith
was appointed. If the court would note the date of this
letter, it is 31 July 2023. And at the bottom of
page 970, one sees paragraph 7:
"In your role as Chair of the Committee, you
will ..."
And then if the court turns over the page to
page 971, subparagraph (I), which is roughly in the
middle of that paragraph, it says, you will:
"Present at a webinar on the final Scheme for all
investors, explaining why the Committee believes the
Scheme being proposed is fair, and in the interests of
affected creditors."
The problem is that the committee had not been
constituted at this time, which hadn't reached -- well,
necessarily, because it didn't exist, hadn't reached any
view at all about whether the scheme was fair, had not
reached any view at all about whether the scheme was in

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    the interests of the affected creditors. And yet
    Mr Drummond-Smith at the outset is being required by
    this contract to present a webinar saying that the
    investment committee considers that the scheme is fair
    and in the interests of the affected creditors.
    And in circumstances where the chair was
    contractually obliged to present a webinar with that
    content, he was required contractually, we would say, to
    steer the discussions of the investment committee to
    that end or at least would have been subliminally
    tempted to do so and it is misleading for the
    explanatory statement to say that Mr Drummond-Smith was
    independent without explaining that his independence
    was, in fact, contractually fettered in this way. So
    that is the fifth reason why the explanatory statement
    is misleading.
    The sixth reason why the explanatory statement is
    misleading, as explained in paragraphs 57 to 59 of the
    skeleton, is by its failure to note the releases for
    directors in the declarations of directors' interests.
    And a key part of this scheme for directors, of course,
    is the releases that they are given. That is not
    mentioned in the section of the explanatory statement
    setting out what are the directors' interests in the
    scheme; in part 11. And we would say that an investor
who grabs the explanatory statement and thinks to
himself or herself, you know, what skin have they got in the game, who turns to part 11 , won't see what is the directors' key interests in this scheme, which is the releases.

It is said against me: well, fine, you know. But the releases are mentioned elsewhere in the explanatory statement and it is common practice for the releases to be mentioned elsewhere in the explanatory statement and not in part 11. I would say, if that is common practice, that is common practice which should change. It seems obvious to me that the section of the explanatory statement which sets out what are a director's interests in the scheme, to have set out what are a director's interests in the scheme, including the releases they get under the scheme. This would not be the first time where the courts require what is common practice to change.

So the HP investors say, for all those six reasons, either individually or taken together, that the explanatory statement is misleading; investors weren't properly consulted and the court should have no regard to the resolve the meeting when exercising its discretion to sanction the scheme.

So that is subground 1 for why investors were not
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properly consulted, the --
MR JUSTICE RICHARDS: Before we leave subground 1. One point I think you are not making, I don't think you are saying the explanatory statement is misleading because investors are not told that if they don't approve the scheme they still have the right to go to FOS and get -if they get up to \(£ 85,000\), have those rights against the entity. That is a point that is being made by others but it is not, I think, a point that you are making.
MR CROSSLEY: No; partly because it is a point being made by others. Obviously I don't give two hoots whether the scheme is refused because of Mr Falkowski says or what I say, but no, I'm not repeating that point.
MR JUSTICE RICHARDS: Yes, thank you.
MR CROSSLEY: So it is ten minutes until lunch. The next two subgrounds will be quick. I suggest that I complete those and then leave fairness until after lunch.
MR JUSTICE RICHARDS: Let's do that.
MR CROSSLEY: So subground 2 , why investors were not properly consulted, is that the chair of the investor committee did not provide an independent or effective means for scheme creditors properly to be consulted; and this is simply a further outworking of the point that we have discussed already, concerning Mr Drummond-Smith's contractual arrangements. Just to be absolutely clear, resolution?
MR CROSSLEY: Exactly that. The law seems to be that the company's within its rights to just propose a scheme, take it or leave it: you get this or, on your bike. But if the company does that, then the law says: that's
I make this point without any criticism of
position by what he was contractually obliged to do, which contractually fettered his ability properly to consult the scheme creditors through the investor committee. Anyway, as I say, we have sort of covered that point, so it is just a further outworking of that.

The third reason why investors were not properly consulted is because the scheme is not the result of negotiations with the investors themselves, but negotiations with the FCA. We have touched on this already and just to be clear, it is accepted that there is no requirement for a scheme of arrangement to be negotiated directly between the creditors. I totally accept that. Similarly, it is accepted that there was some limited negotiation between Link and the investor committee, resulting in a limited reduction of the reserve amount, from 50 million to 46.5 million. And it is accepted that there has been correspondence about some of the documents and so there was some limited negotiation there. But as I mentioned in my introduction, the core deal was a done deal; and when the investor committee approached, I'm not quite sure whether the FCA or Link, I forget. But when they tried to renegotiate the terms of the scheme they were

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told: look, you don't have much scope to change anything. All we can do is reduce the reserve amount a little bit, but that is it. The scheme wasn't negotiated in substance with the investors themselves.
MR JUSTICE RICHARDS: But there is a flawed dynamic to it, you say. A proper scheme is where -- is that right or ...?
MR CROSSLEY: No, I don't even say there is a flawed dynamic. The company is perfectly in its rights to propose a scheme without negotiating with anyone. They just propose a scheme. So it is not a flawed dynamic. But the court may recall that we looked at the judgment of Mr Justice Miles earlier, which says that it has not been negotiated directly with creditors. It stands to reason that they have not been consulted as they would have been if it had been negotiated directly with creditors and that goes to the weight to be placed on the scheme meeting.

fine, but because you haven't consulted in -- with creditors, not even as you should have done, because there is no requirement to do it, but as you could have done, that does go to the weight that should be given to the scheme meeting.

Judge, it won't actually take me that long to move on to my third major point, which is why this scheme is unfair.
MR JUSTICE RICHARDS: Yes, I am sure it wouldn't. I am just conscious of the stenographers who have been going for an hour and a half, and it is very tiring for people looking at screens who are attending remotely. So would you mind if we break there and we will come back just a little bit early at 1.55 .
MR CROSSLEY: Yes, thank you very much.
(12.56 pm)
(The short adjournment)
(1.56 pm)
(Proceedings delayed)
( 1.58 pm )
MR JUSTICE RICHARDS: Before we carry on, Mr Crossley. Over the lunch break, I got -- or I was forwarded an email from a gentleman who is apparently trying to make contact with the courts, to make submissions. I have had the email forwarded to Clifford Chance. Let me see

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if I can find it, to remind me of his name.
Yes, it was a gentleman called Mr Barry Stevens, a gentleman called Mr Barry Stevens, who has been trying to either get some written representations or make some oral representations, it was not entirely clear to me which. I wonder if I could ask someone at the company, if he is on your list of known objectors. He is not on your list of known objectors?

Is there someone at the company that -- presumably the LFSL is ringmastering -- or, I mean, there is the website. I have seen the website. I just don't want this gentleman to -- it is a bit late in the day, but I don't want him necessarily to be shut out and I wonder what we can do, if anything, to --
MS TOUBE: Is he on the list?
MR JUSTICE RICHARDS: Yes, well, I was -- is Mr Barry Stevens on the link?
MS TOUBE: I was thinking, could someone send him a link? We can't send him a link.
MR JUSTICE RICHARDS: Could we do this. I have asked my clerk to forward Mr Stevens' details to Clifford Chance. Perhaps Clifford Chance could pass that to someone at LFSL, who could give him the details of -- either an email address or the web portal or whatever it is, that he could at least send his written submissions.
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    Maybe they will arrive in time, maybe they won't.
    (A discussion between someone on the videolink, not
        transcribed)
    MS TOUBE: Or would it be easier to forward the link, so he
can make some submissions that he wishes to make?
MR JUSTICE RICHARDS: Yes, that is a better suggestion.
Could we just - - would you mind if I just typed an email
to my clerk to that effect?
MS TOUBE: Not at all, my Lord.
(Pause)
MR JUSTICE RICHARDS: Right, thank you. I'm sorry for that.
I have sent that email now. I'm sorry to interrupt your
submissions, Mr Crossley.
MR CROSSLEY: My Lord, this morning I was covering the
reasons why scheme creditors weren't properly consulted.
That's ground 1 of the HP investors' opposition.
And we now move on to ground 2, fairness; the HP
investors say this scheme is not fair.
Now, when we come to consider the fairness of this
scheme, the first point to dwell on is a point we have
thought about a couple of times already, which is that
this scheme is not the result of direct negotiations
with scheme creditors. And to repeat a point I have
made a number of times: I'm not saying that that is

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    a reason in itself why the scheme is unfair and I have

\section*{made that clear.}

But the fact that the scheme was negotiated with the FCA, rather than with scheme creditors directly, does have quite considerable explanatory power for why the scheme is unfair, in the way that it is. And as to that, Mr Walsh's witness statement for the FCA, although it's principally directed at addressing points made by the transparency task force and my learned friend, but the end of that statement is actually really interesting and it is worth looking at. It is in the core bundle, tab 11, page 341.
MR JUSTICE RICHARDS: Yes.
MR CROSSLEY: Paragraph 53. I will read it out:
"The Authority understands that some investors may consider that the level of redress which they would receive under the terms of the Scheme is less than they consider is due to them and would prefer to take their chances through contested proceedings. For the reasons outlined in this witness statement, the Authority is concerned that this preference may, in some cases, be based on misplaced and unrealistic assumptions and that ..."

And what about I'm to say is the key point, really:
"... even if redress was obtained by some investors through contested proceedings, this would likely be at
the expense of other investors who may not have access to the Ombudsman Scheme and/or the FSCS and those who may have good cause to want redress paid in a more timely manner. The Authority is bound to act in the interests of all investors and considers that, overall, the Scheme presents the best opportunity for investors to recover significant redress in a timely manner."

So the FCA obviously has a statutory function to act for all investors, and they have done that. None of this is a criticism of what the FCA has done. They have put together a scheme which balances the interests of the investors in different positions, and come up with a scheme that's, kind of, all right in the round for them, as a collective. But as one can see there, the FCA is balancing the investors in one position against investors in another position, and saying: look, well, I don't want a scheme that's at the expense of those investors. They have got to net off their rights, to have a scheme that's okay in the round.

But the problem with that is that the terms of settlement are unfair for a certain subset of investors, and particularly the HP investors I act for, and those in a similar position, such as those represented by Leigh Day, whose particular position has been compromised unfairly for the benefit of the collective

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\section*{whole.}

And indeed, had the scheme been the product of negotiations with scheme creditors directly, the scheme likely would look quite different. In particular, those scheme creditors, like the HP investors who had formulated, pleaded and issued claims against Link, would be in a stronger negotiating position than those without such issued claims. And for that reason, likely would only have settled for a higher amount. That is an obvious point, from simple game theory. An issued claim is a greater thought than a claim which hasn't been properly articulated. And it would be rational for Link to settle issued claims for a higher amount than claims not yet articulated, all else being equal.

Or looking at the same matter in a slightly different way; those scheme creditors would at least likely have required their litigation costs be paid, as part of the scheme.

Similarly, those scheme creditors with the right to bring claims against Link, pursuant to section 138D, along with potentially valuable rights of recourse against the FSCS, would likely hold out for higher terms of settlement than those without the potential rights of recourse against the FSCS, since the relevant alternative for scheme creditors with such valuable
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        rights is better than those without them.
    MR JUSTICE RICHARDS: Because their claim is easier to
prove, because it's statutory-based, rather than the
tort of negligence? Or why is a 138D claim better?
MR CROSSLEY: There's that point, judge; that procedurally
one can rely simply on the statute. But more
significantly, it's the right of recourse to the FSCS.
So for those investors who don't have the right of
recourse -- I should say a potential right of recourse
to the FSCS, the relevant alternative, if there's no
settlement or anything, will be picking over the crumbs
in a liquidation.
MR JUSTICE RICHARDS: I see. So a 138D claim is better, not
because it is a 138D claim, but because it's made by
someone who is likely to have recourse to the FSCS.
MR CROSSLEY: Yes. I mean, the test for those who are able
to bring a section 138D claim, and the test for those
who have the right of recourse to the FSCS is different.
But they are substantially overlapping, so it is likely
to be a single class. So private investors, if I may
use that term loosely, are in the position whereby they
have this statutory right and they have a potential
right of recourse against the FSCS. For them, as they
look at the relevant alternative, they think: look,
okay, fine. You know, we may have a long road ahead of

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    us, we might settle in the meantime. But if there is
    a liquidation of Link, I can be made whole by the FSCS
    up to a cap of 85,000 and for an institutional investor,
    that is not right. If Link becomes insolvent, then they
    are just picking over the crumbs of the insolvency.
        So the relevant alternative for those who have
        a potential right of recourse against the FSCS is quite
    a lot more attractive than for those without. And so
    if -- and this is the point -- if the scheme was
    negotiated with these investors directly, one can see
    that those investors who have a potential right of
    recourse against the FSCS --
MR JUSTICE RICHARDS: Would drive a harder bargain.
MR CROSSLEY: Drive a hard bargain, exactly that, my Lord.
    So by treating all investors equally, without taking
    account of the different positions of investors, the
    scheme is unfair for those investors who have these
    enhanced rights or who had issued claims; and the scheme
    is unfair, just to spell out clearly, in not
    distinguishing between those scheme creditors who had
    issued claims and those who had not and the scheme is
    unfair in not distinguishing between, on the one hand,
    those investors with section 138D and FSCS rights, and
    those without.
    And now, of course, as my learned friend has
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highlighted, the court is not applying some freestanding notion of fairness here. The court is to apply what has been labelled as the rationality test.

But we say that the factors expressed do make this scheme one that fails the rationality test to be applied at sanction and the scheme is one that an honest, intelligent and reasonable creditor cannot reasonably approve, we would say.

For example, it's not reasonable or rational for the scheme to place in the worst position of all, those scheme creditors who have done the most work to advance their claims against Link.

In addition, a separate point. The scheme also fails the rationality test to be applied, because that rationality test requires the affirming majority to properly appreciate the alternatives open to them. We saw that from Mr Justice Trower's comments in the Re ALL Scheme judgment that we looked at earlier.

In this case, scheme creditors did not appreciate the true relative alternative. In particular, they did not, as explained, appreciate that the true relevant alternative included the possibility of some other settlement with the investors directly or with the FCA, possibly with some other scheme. That was made clear.

My Lord, to conclude really. For the reasons

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explained, scheme creditors were not in this case properly consulted and the scheme is unfair and fails the rationality test, and the court must therefore safeguard against oppression of the minority that I represent and exercise its discretion to refuse to sanction this scheme.

My Lord, unless I can assist further, that is the end of my submissions for the HP investors.
MR JUSTICE RICHARDS: Thank you very much.
MR CROSSLEY: I should probably briefly turn my back.
MR JUSTICE RICHARDS: Yes, why don't you do that.
MR CROSSLEY: Thank you.
MR JUSTICE RICHARDS: Thank you very much. So who have we got next? I think, are we now moving on to the opposing creditors who are unrepresented? I think that's right.
Did you manage to agree a running order?
MS TOUBE: I'm sorry, my Lord. I was rather buried under thinking about reply points and I have not actually spoken to anyone on that side. I don't know if they have spoken amongst themselves.
MR JUSTICE RICHARDS: Have you agreed a running order? MR WEIGHT: Speaking formally, I think I have agreed -MR JUSTICE RICHARDS: Well, there we go.
(Several inaudible comments from the back of the courtroom)
MR JUSTICE RICHARDS: Sorry. And you are Mr Weight?
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MR WEIGHT: That's correct, my Lord. Cliff Weight. I am
representing ShareSoc, the UK individual shareholders
society.
MR JUSTICE RICHARDS: You have written a letter, I think?
introduction, I should say that we have run a ShareSoc
Woodford campaign since November 2020, which has }180
members. Almost all of them are claimants.
Submissions by MR WEIGHT
MR WEIGHT: I have been a director of ShareSoc from 2016
to --
MR JUSTICE RICHARDS: Sorry, before you go on. I just
want --
MR WEIGHT: Sorry, I just want to give my credentials.
MR JUSTICE RICHARDS: Why don't you do that, but you are not
a lawyer. I don't think anyone is -- no one has made
any objection to hearing from Mr Weight, even though he
has not got rights of audience. I'm not going to make
that objection.
MR WEIGHT: I am not a lawyer, but I have advised the Law
Commission with a view of intermediated securities,
which is directly relevant.
MR JUSTICE RICHARDS: Okay.
MR WEIGHT: Thank you. I wish to make one crucially
important point, and then a couple of others of less

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MR JUSTICE RICHARDS: Okay.
WEIGHT: Thank you. I wish to make one crucially important point, and then a couple of others of less

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        importance.
        We think that the scheme is unfair, unless steps are
        taken to ensure that the \(£ 298\) million figure that the
        FCA says is fair, that that figure is paid in
        compensation.
    And we would ask the judge, if he is able to do so,
        not to grant the scheme, unless that attached
        condition -- attached conditions are -- or the FCA can
        make some statement of intent to get to that
        \(£ 298\) million. That is the first point. I will go into
        it in a bit more detail.
        The second point is about the amount of
        £298 million.
        The third point is some points of detail which
        I would like to mention.
        So by way of -- we have heard a lot about relevant
        alternatives this morning, and we think that the
        relevant alternative, if the scheme is turned down, is
        that the FCA issues a restitution order, which it is
        entitled to do, and that -- if that results in
        an insolvency, then that should fall upon the Financial
        Services Compensation Scheme to -- for any balance.
        That is one way of getting to the \(£ 298\) million.
            Now, if I can go into my main point about the
        \(£ 298\) million. This scheme is only going to produce

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importance.
We think that the scheme is unfair, unless steps are taken to ensure that the \(£ 298\) million figure that the FCA says is fair, that that figure is paid in compensation.

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Now, if I can go into my main point about the \(£ 298\) million. This scheme is only going to produce

183 million, to possibly up to 230 million. In fact, it definitely will not be 230 million; so anything which suggests that it is, is potentially misleading.

The FCA says it is fair compensation. However, it is questionable whether the FCA has stepped beyond its brief in this, and negotiated a settlement which is below the \(£ 298\) million which it thinks is fair.

The FCA can, and should propose -- pursue others for the difference between the \(£ 298\) million and the 183 to up to 230 million.

We suggest that Woodford Investment Management would be a potential source of funds for the FCA to pursue, and if they went insolvent, then the FCA could then pass on that claim to the Financial Services Compensation Scheme, and that would make up the difference between the \(18--100\) and whatever million Link would have left and the \(£ 298\) million.
MR JUSTICE RICHARDS: Only for retail investors?
MR WEIGHT: Well, retail investors up to \(£ 85,000\) per investor, yes. There is a question of sophistication of investors, who should have been aware of the size of the liquidity issue, and that the rumours going around the market. Your Honour may be aware that there was
a 10 billion fund in Woodford Equity Income Fund initially. It was hugely successful at the start. It

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then went from this size down to 3.7 billion, which is when the \(5 \%\) original liquidity suddenly grew to \(20 \%\) and then we had a lot of rotten apples when the 3.6 billion suspension then became 2.6 billion when we found out how much those rotten apples were really worth. That, your Honour -- my Lord, gives you a 1 billion loss figure; before interest.

So that was me suggesting that the FCA could actually go and issue a restitution order on Woodford Investment Management, which would get us towards that \(£ 298\) million. So that is -- we think that is a flaw in the scheme.

That is probably our key point, which we think that there are ways for the FCA to move this forward and get more than 183 million, or possibly 230 million. Let's stick on the 183 million.

And that is something --I don't know whether that is within your remit to be able to make that.
MR JUSTICE RICHARDS: Well, that is what I was just -MR WEIGHT: \(\quad-\quad\) to get the --
MR JUSTICE RICHARDS: Do you say it is within my remit or ...?

I mean, it is certainly in my remit to decline to approve the scheme.
MR WEIGHT: (Nods).
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MR JUSTICE RICHARDS: There is no doubt about that. But
I think you're not asking me just to do that. I think
you are asking me to decline to approve the scheme, and
to say to the FCA: off you go and issue this restitution
order, please, so that retail investors, at least, can
get £298 and if they aren't paid by the company, get it
from the compensation scheme.
MR WEIGHT: There are two routes, my Lord. If you turn down
the scheme, then the FCA can go to a restitution order
against Link.
MR JUSTICE RICHARDS: Yes, yes.
MR WEIGHT: If you approve the scheme, we would suggest that
you attached a condition, that the FCA did a restitution
order against Woodford.
MR JUSTICE RICHARDS: I see, thank you. Thank you for
making that clear. I hadn't understood that, but you
have explained that very clearly. I see.
MR WEIGHT: And it's also worth mentioning that the FCA may
have other ways in which it could fill the gap between
this }183\mathrm{ million and the £298 million. So that's my
main point that I would wish to make and express.
But I think I should make some comments about the
£298 million, which I made in my letter to you; and you
made the point well this morning, when you talked about
a subset of the losses.

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And in our view, the FCA's calculation of harm, it's woefully inadequate, but it focuses on one element only: the unequal treatment of investors, and it ignores the greater damage that resulted from an apparent reckless disregard for the fund mandate or the formal liquidity constraints that applied to a UCITS fund; the reckless manner of the liquidation of fund assets after suspension and for the opportunity costs to Woodford Equity Income Fund investors since suspension in the form of foregone returns and interest on their invested capital. So it was only -- and this is why, when we say that the simple logic would apply, that if the fund was 3.6 billion net asset value, net asset value at suspension, and yet it was only 2.6 billion that has been returned to shareholders, that is 1 billion of losses from that simple sum, plus interest, which usually is calculated compoundly, which gets you up to probably 1.4 million, -- sorry, \(1,004,000,000\); 1.4 billion.

I think we have laid this out in our letter to you and we have actually also written to the Financial Conduct Authority on 15 January. I don't know if you have seen that.
MR JUSTICE RICHARDS: I have seen that. I have seen that. MR WEIGHT: And that highlighted this point; and we haven't
had a response from them; although we have been in contact with them significantly over the last three or four years on this issue, as well as many others.
MR JUSTICE RICHARDS: So this second point is in support of an argument that \(£ 298\) is not enough?
MR WEIGHT: It's nowhere near enough. You have heard this morning from somebody who has said that it was by a factor of \(-\quad I\) think it was about 8 or was it 10 ? Yes, the man in the street can very easily see it is not right by a factor of 4 or 5 and that is before we get to expert advice.

If you will indulge me for a couple of minor points. The voting form was 22 pages in length; and the summary of the scheme was eight pages; and the attachments were 71 pages. That seems quite a lot. One might argue that it was overly complex. Interactive Investor have a two-click system for voting at AGMs, where you can just approve it. That takes five seconds. This scheme required a really intensive process -- a complex process compared to that; although I would note and accept that there were significant numbers of people who did vote.

I would also point out that the Group Litigation Order requested by Leigh Day/Harcus Parker; Mr Justice Trower, he refused to allow the interested parties to write to all shareholders and in so doing, he

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stopped an alternative review of the options available being put to them. So we have only had a one-sided information being sent to the -- to the shareholders, WEIF; and that is, to me, an unlevel playing field

It is compounded by the fact that there were different regulations in the Companies Act and the Open-Ended Investment Companies Regulations 2001, which made it impossible for me to get a copy of the shareholder register and to be able to write to shareholders. I think that is a serious problem which hopefully is worthy of comment on, as the government and Flint are reviewing intermediated securities and digitisation at the moment.

Hargreaves Lansdown, I don't think they have been mentioned yet today. They distributed the proposal. They had 133,000 of their customers who had invested in Link, and that's data that's from the Commons Select Inquiry; a letter they wrote to them. And they only sent out the information provided by Link. They weren't willing to send any alternative balancing information. And this is a problem for Harcus.
MR JUSTICE RICHARDS: So the contrary view never really got a sufficient airing, I think, is ...
MR WEIGHT: Not in my mind. We had 1800 members of our campaign group, but that was out of 250,000 investors.

MR JUSTICE RICHARDS: Mm-hm.
MR WEIGHT: I think I have covered my points about that. So
we are trying to submit that the scheme, if you
sanction, it, it should be enhanced by this formal commitment from the FCA, and also the restrictions about
creditors ' indemnity to LFSL being possibly modified and certainly, the right for creditors to make claims via the FOS should be reinstated.

Thank you very much.
MR JUSTICE RICHARDS: Thank you very much, Mr Weight. Who is the next gentleman? There is a lady behind you. Are you under time pressure? Do you need to be somewhere else? Well, I will hear from the gentleman who stood up. I think he had put in -- yes. I will hear from him and then I will hear from you next, if that is all right. Sorry, remind me of your name. I have written it down, but in awful handwriting.
MR ETKIND: Anthony Etkind, my Lord. \(\mathrm{E}-\mathrm{T}-\mathrm{K}-\mathrm{I}-\mathrm{N}-\mathrm{D}\). Submissions by MR ETKIND
MR ETKIND: My Lord, I propose to concentrate today on the status of the chair of the investors committee and the consequences of what he did and didn't do. There will
be a tiny little bit of repetition of what Mr Crossley
has said, but I think it is needed for the context.
As previously referenced by Mr Crossley, the chair's appointment letter included clause (I) which contractually obliged him to present the webinar of the final scheme for all investors, explaining why the committee believed the scheme being proposed is fair and in the interests of affected creditors. What wasn't mentioned by Mr Crossley is that there is a second clause, \(7(\mathrm{n})\), in the contract.
MR JUSTICE RICHARDS: Could we perhaps turn it up? I don't know if you have got it in front of you.
MR ETKIND: Ah.
MR JUSTICE RICHARDS: Maybe someone could give me a reference to the document we are talking about?
MR ETKIND: The document is \(--I\) have got it as K1097. Does that make sense for your Lordship? That is from the original hearing.
MR CROSSLEY: Page 971.
MR JUSTICE RICHARDS: 971, thank you. Yes, I see it. Thank you.
MR ETKIND: There is a second clause, 7(n), which obliges the chair to deliver a report on the business of the committee to the High Court of Justice, for the scheme convening hearing and it specifies that a copy of the
report shall be provided to the company two weeks prior to the scheme convening hearing and shall include various items, which include, number 6, details of the conclusions of the committee, including whether its conclusions were unanimous.

So my Lord, the sequence of events is instructive. The appointment letter was dated 31 July, well before the committee was formed. The committee's first meeting was on 29 August. Its second meeting was on 25 September. And the date when the chair was obliged to provide his report to the company was 26 September, which is two weeks prior to the convening hearing.

So not only was the chair committed to providing what I would describe as the right result for the company, he was in a real hurry. From the day of the committee's first meeting to the date he was obliged to provide its report of the deliberations and conclusions, that was less than a month.

The company argues that the chair was not committed to providing the right result and that this committee might have produced a different result. So it is also instructive to look at what the chair did and, most importantly and in my view revealing, what he didn't do, in order to help the committee to establish whether the scheme was fair.

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So an independent chair, who was genuinely interested in establishing whether the scheme was fair, could have been expected to do the following.

Seek expert financial opinion on the actual losses suffered by investors. Seek expert financial opinion on the theory and methodology of the FCA's calculation of redress and losses. Compare the actual losses of investors with the FCA's calculation of losses and with the compensation offered by the scheme. Take financial and legal advice as to the likely compensation by the Financial Ombudsman Service or by litigation if the scheme did not proceed. Take independent legal advice as to whether the company had breached FCA rules, as well as principles, which is one of the major issues. To seek clarification of the nature of the correspondence between the company and the FSCS. To invite known dissenting parties to present to the committee, so that the committee could form a balanced view. And to use all that information to enable the committee to debate and form a view.

The chair did none of those things. Our asking for details of correspondence with the FSCS and meekly accepting the statement that it was confidential and so it wasn't available. He did not take any expert advice about the losses suffered by investors, even though his
appointment letter authorised him to take such legal and financial advice as he considered appropriate. That is in clause 8 of his appointment letter.

He did not seek advice about the FCA's calculation of loss. If he had done so, he would soon have realised that it was not a real calculation of loss at all. The FCA's calculation merely equalises losses between those investors who sold between 1 November 2018 and the suspension, and those investors who didn't sell.

Both sets of investors made real losses and no attempt is made to calculate those losses. He could easily have asked the dissenting parties to present to the committee without prejudicing confidentiality. Instead, he appointed to the committee one member of the litigating group, but he bound that individual by confidentiality rules that prevented him from communicating with the lawyers, who had no idea that he was a member of the committee, and there is no indication in the report that that individual had any grasp of the views of the dissenting parties. So there was no communication at all between them.

He did not apparently disclose to the committee that he was contractually bound to produce the right result; at least there is no mention in his report that he made that disclosure. Nor is there mention that he disclosed

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\section*{his remuneration of \(£ 475\) per hour.}

He did not disclose his obligation to produce the right result in his report to the court, or in his video for the scheme website or in his statement for the scheme website. Nor was it disclosed by the company in the explanatory statement or on the home page of the scheme website, which itself emphasised the importance of the chair of the committee. He did, of course, invite both the company and the FCA, the two proponents of the scheme, to present to the committee, thus providing a totally partial and lopsided view for the committee.

So it is hardly surprising that the investor committee concluded, as it did, that it had restricted and limited information, very biased information, and that it was in a terrific hurry, and of course it was led by a chair who had to produce the right result.

Yet even then, the committee's conclusion does give a hint. Its conclusion was, and I quote, "Based on the information that was provided". Why is this so important? Because per the company, some 115,000 people visited the scheme website. If I can quote just a couple of lines from the home page of the scheme website, my Lord. It reads:
"To help ensure that the Scheme is fair to all
investors, an Investors' Committee was established to act independently of LFSL and to represent the interests and views of those investors affected. The Chairman of the Investors' Committee, Jamie Drummond Smith, provided a report on the views of the Committee in respect of the Scheme, on 5 October 2023, which can be [viewed] here. Watch Jamie discussing the Scheme and the Committee's conclusion that it offers a better outcome than the alternatives and that the Committee supports it."

Now, as I have said, some 115,000 people visited the scheme website. Rather less than half of them actually voted. No doubt a proportion of them will have downloaded and read the explanatory statement. In which case, at pages 55 and 56 , they will have read the conclusions of the investors' committee, biased as we know. Many others may have taken the shortcut and just read the report of the chair or watched his video.

Whichever route they took, they would have been blissfully unaware of the completely conflicted position of the chair. After all, they were told in the explanatory statement that he was, and I quote, "Independent of LFSL, the parent and each other member of the Link group and does not work for, and has never worked for, LFSL".

My Lord, that conflicted position was materially

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misleading. It was misleading to the committee, who had insufficient time and insufficient information to come to an unbiased, balanced conclusion. It was misleading to creditors, who believed that both the chair and the committee who had full information and were independent. It contaminates and invalidates the scheme.

For those reasons, my Lord, I submit that the scheme should not be sanctioned.

To those who say that the vote was so overwhelmingly in favour that whatever the blemishes it should be sanctioned, I reply that that would be acknowledging the effectiveness of the deceit and rewarding it, because it was so successful.

One more thing, my Lord. Although I retired over ten years ago, I have spent over 20 years as an independent financial adviser, advising retail clients on their investments. I was at the coalface. I have taken cases to FOS on behalf of investors and I know how important the FSCS is to them. If there is the slightest hint that the FSCS protection can be removed, invalidated or circumvented, that would cause immense worry. Investors will, as a consequence, only invest in the largest and safest institutions; thereby having the effect of being deeply anti-competitive; preventing new and small investment institutions and
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    banks from entering the market.
            Thank you, my Lord.
    MR JUSTICE RICHARDS: Thank you very much, Mr Etkind.
Sorry, let me just -- I'm just making a note of that
last bit.
Sorry, I can just about see you across. I'm so
sorry. My eyesight isn't very great. Is it
Ms Dickenson? It is Ms Dickenson; is that right?
Ms Baldwin. I'm so sorry.
Submissions by MS BALDWIN
MS BALDWIN: I am a single parent to a 16-year old daughter.
I invested in the Woodford Equity Income Fund over
a number of years, beginning in 2014. I saved in an ISA
I set up for myself, and also I saved in my daughter's
junior ISA.
I originally invested in the fund, because it was
recommended as a good investment by the fund management
company, Hargreaves Lansdown. I try to be a sensible
saver and investor and not to take too much risk and
that is why I invested in this fund, over five
management platforms. This was in case anything went
wrong with one of them and they were unable to pay me.
This meant my risk was spread. I knew that the
Financial Services Compensation Scheme protected
investments up to a financial limit and I also believed
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that my investments were protected by the Financial
Ombudsman Scheme. I certainly believed that in the case
of the Woodford Equity Income Fund.
It was on 4 June 2019 that I woke to the news that
the Woodford fund had been closed. I listened to the
Radio 4 Today programme and it made headline news.
Suggestions were, at this point, that investors could
possibly lose all of their investments. I have kept
a diary on and off over the years and my entry for that
day was "I feel sick with fear".
I have been a civil servant for many years and was
working for the MoD at the time. I was not able to go
to work that day. I was devastated. I had been vaguely
aware over the preceding period that the fund hadn't
been performing as well as expected. But I was
a long-term investor, especially for my daughter's
junior ISA. She was just }11\mathrm{ at the time. I understood
that it was not unusual for the market to change and for
performance to fluctuate, but this for this fund to
close like this is catastrophic. Over the next few
months, I became depressed. I blamed myself for making
this investment. I felt unable to talk to family
members about it, in case they criticised me and made me
feel worse.
I knew that I had invested a substantial amount in

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the fund, but I didn't dare look or log into the platforms to look. When I did feel able to log into the fund management platforms, months and months later, I found that I had invested a total of \(£ 66,183\) in the fund.

By reading the newspapers and listening to news articles over a period of time, it became clear to me that Link Fund Solutions Limited was at fault. I wrote to LFSL on 12 June 2020 and said in my letter that:
"I understand that as the administrator of this fund, under UK regulations, your role was to ensure that the funds stayed within rules and was run in the best interests of end investors. I was let down by Link's failure to address the substantive issue of the increasing liquidity of the fund."

LFSL wrote back, refuting what I had said in my complaint letter. I understand that since then, the Financial Conduct Authority has ruled that LFSL did fail to act in the best interests of investors.

On 16 June 2020 I made a complaint against LFSL to the Financial Ombudsman Scheme. I received an acknowledgement for my complaint which said, amongst other things, that it was their job to give me a fair and impartial answer and that it might take around four months before a case handler gets in touch and

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starts looking into my complaint.
Over the years, since then, I have periodically asked the financial ombudsman for updates on my case. I have always been met with the reply that an investigator has yet to be assigned.

In the last year I became aware of the scheme of arrangement. I cannot remember exactly when and how. Hargreaves Lansdown did write to investors to let them know of the scheme, but other fund management companies were not proactive in informing investors.

At first, I thought the scheme of arrangement was a good thing, because I hoped that it would give fair compensation to investors like myself. I found that this was not the case. It seems that it only offers, at most, 77p in the pound back on money invested. This is a maximum, and could be less. I have an outstanding loss of \(£ 25,830\); and at most, I would receive \(£ 4,633\) and it could possibly be less.

I found the documentation of the scheme of arrangement website overwhelming; because of the way that I have been affected emotionally by the collapse of the fund, I find it difficult to engage with large amounts of complex information such as this. I just felt that I wanted it all to go away and I just wanted it to be put right.

Consequently, it is only late in the day that I discovered that this scheme would not only unfairly recompense me for my loss; it would also nullify the complaint that I had already made to the Financial Ombudsman Scheme, three and a half years ago. I believe that it is my statutory right to complain, so I am unsure why this happen.

The vote on the scheme was clunky and difficult to negotiate. I asked and was told that I needed to write, to provide details of all five holdings and give information that I didn't know, and only the fund management platform could give. It was slow to provide this. I had to print screen, print, redact, scan and upload information in order to vote.

I have detailed the reasons why I think the vote is unsound in my witness statement. I believe the results cannot relied upon to represent the investors' wishes or interests as a whole.

For example, were all investors made aware of the scheme and the subsequent vote? What steps were taken to ensure that they were aware? Does a vote of less than \(20 \%\) of investors indicate that they did know about the scheme?

I was only aware myself at a late stage that my rights to access the Financial Ombudsman Scheme were

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being taken away by the scheme of arrangement. Were the majority of voters really aware of the implications of the scheme? For whatever reason, investors voted in the way they did or didn't vote, I don't see that they should be able to take away my statutory right for fair redress through the Financial Ombudsman Scheme. As I understand it, the Financial Ombudsman Scheme would, and should, offer me fair compensation. It could include some investment losses which I have not included in my loss, they come to \(£ 25,830\). It may also take into account the impact of the anxiety that I have experienced.

I note that the Financial Conduct Authority says that one of their main objectives is to protect consumers; specifically, they say that:
"We protect consumers from the harm caused by bad conduct in financial services."

That is why I was so disappointed to read the witness statement of Mr Walsh, the technical specialist employed by the Financial Conduct Authority. His argument in support of the scheme seems to be centred on time, not on fairness. He says that if the scheme is not sanctioned it may take months to years for an outcome. He uses phrase pounds like "Some years". I suggest that these may be pessimistic and misleading,
and even if it was accurate, there is no evidence to suggest that investors would want to settle earlier rather than wait for fair recompense.

If the financial ombudsman could decide that, as he put it, the complaint was more appropriately dealt with by the courts, then why wasn't I told this nearly four years ago when I made my complaint? He seems fixated on the uncertainty of any financial ombudsman claim, but surely this has got to be balanced against the absolute certainty of a poor outcome for investors, as a result of this scheme?

Finally, to summarise, I don't wish the scheme to go ahead. I don't think it delivers fairness and I am disappointed that the Financial Conduct Authority doesn't seem to be on my side or working in my best interests.

And also, I would like to -- I wrote that yesterday, but I would just like to add that when I put my loss in, of -- when I put what I thought I would receive back, of \(£ 4,633\), I read earlier, I realised, as the representative from Harcus Parker was speaking today, that that was \(-I\) had completely misunderstood that. I thought I was getting 77p back in the pound, of the money that I had originally invested. That's not the case; and that \(£ 4,633\) that I thought that the scheme of

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arrangement would give to me would be much -- probably
less. I haven't worked it out, but it would be less
than that; probably much less.
So ... Thank you.
MR JUSTICE RICHARDS: Yes. Thank you very much, Ms Baldwin, for those very clear submissions.

Mr Dickenson? He is remotely, I'm so sorry. Let me try again. Mr Pyatt?

> Submissions by MR PYATT

MR PYATT: Yes, my Lord. If you don't mind --
MR JUSTICE RICHARDS: Yes, that is absolutely understandable.
MR PYATT: I am here as a private investor and I want to say what my investment journey has been to this court. I have only been in two courts in my life. I am 63 years old. Once was the previous meeting on the 10 October and now I'm here again.

But why is it very important? I also represent tens, if not hundreds of thousands of people out there that have invested in Woodford. I invested \(£ 46,000\), over a 11 -month period; and it was 11 months before it closed. Like a lot of people, we had the Pensions Freedom Act of 2015, where a lot of people according to the FSCS website this morning, in the five years up to 2020, 200,000 people transferred their final sum schemes
out, and either took the money or invested it in the market. That was \(£ 100\) billion of investment, and that is only since \(2020--\) to 2020 . Since then, the money purchase schemes. So I decided that after 45 years of working, I would take my share purchase scheme and my money purchase scheme and invest it, because the trustees weren't very good; and I sat down with an IFA and we decided that we would -- he decided that we would invest in 22 funds in numerations between \(£ 30,000\) and \(£ 60,000\). Why did we do that? We did that because the financial services conduct -- the FSCS.
MR JUSTICE RICHARDS: Don't worry. I had similar difficulty earlier on.
MR PYATT: We knew that if one of them went belly-up, we had redress. It was a significant amount of money and it was the future for my wife and our family, now I'm retired. We need that money; like lots of other people. I understood the risks. I know we know about the ultimate ...

I will come a bit closer to the microphone. I know about the risks of government gilts, corporate bonds and equity. As I will show later on, I have got another equity fund that I invested at exactly the same time and I can tell you what it has performed to date.

Now, the WEIF was supposedly a fund defined by the

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FCA code of practice to be suitable for consumers to invest into, and it was in 2014. I was not invested then but I have looked into it and he did very well for the very first year as did my other fund. But in 2016, 2017, he ballooned up to about \(£ 10\) million. He had so much money. He was throwing it left, right and centre. So if you, my Lord, had some sort of scheme in pharma and you wanted 250 billion, I will give it to you. And a year later, it has gone, it is lost. That happened time after time after time.

Now, unfortunately they talk about liquidations. A lot of shares were redeemed, sorry, in the last seven months. I will come onto that later. That is why the FCA are forward in their calculation and why they did it. Now, we have talked about losses. So, I said 46,000. My losses to date are \(41 \%\). That includes the five capital distributions that have come out over the number of years which we have all had. If the FCA returns its maximum amount to me, I will be 5 p a share. That is smack in the middle of the 4 to \(6 p\) that they are offering. Unfortunately, what they are offering is only \(10 \%\) of the actual investment losses of most investors. So anybody on this call and the back of the room here are all the same. We have lost 40 to 55 p at least per share and we are being offered up to \(10 \%\).

I mention a similar fund. The similar fund returned
\(35 \%\), over exactly the same period. This is as of yesterday; if the WEIF fund had kept going maybe, potentially. And even if I use the FOS calculation, it comes out with exact liberty the same amount, \(35 \%\).

There have been a lot of numbers bandied around and I would just like to set the record straight and put some more numbers out there and they will be round numbers because it is difficult to start talking percentage points. Yesterday, effectively, at least half a million people, investors; half a million. And that split is split between two types of investors, direct investors, which is something between 250 and 300,000, and 200,000 investors who don't get to vote because they are in multi-manager funds. So I'll come back to that.

And Hargreaves Lansdown was mentioned to the right - hand side here. Hargreaves Lansdown have 157,000 people that are in multi-manager funds; that they didn't see fit to ask them what they wanted to do. And as we have seen in the report, they voted for the scheme. So that is \(£ 157,000\) gone straight away. Before on go on to video my views about the LFSL, I just want to mention about my learned friend for the investor advocate.

This whole journey and I and people behind me and

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others have been on, has been a rollercoaster ride and
I'm not a lawyer; I have done a bit of commercial training, but I thought an investor advocate was an advocate for investors. He was on our side, would do things for us, etc, etc. But what the investor advocate turned out to be was: you send him questions, it goes to Clifford Chance, he answers back, and that's just a merry-go-round.

It is interesting. If you look at his report, and I can't give the page number exactly, but out of the 500,000 investors, only 86 actually contacted him; 86 . That is a phenomenally small number.

Now, if I may go on to the FCA and Link Fund Solutions. I said this on the 10 th and I will repeat it again. They are bedfellows that have been colluding against the investors' interests, particularly retail investors. And there is a question that I think I raised on the 10 th and I will rise again now and my Lord, it may be a question you want to ponder when you get time to. You must be very busy. Why, why, why was this SOA now, not many years ago? It should have been much earlier.

Also, why is the SOA only from when the fund was gated on 23 June, when Link were the ACD or at least 18 months before that? One of the answers to "Why, why,
why now?" is because 24,000 people, with Leigh Day, since been put on ice. The other thing is they are trying to do it on the cheap. At last somebody has come up with a \(£ 940\) million loss since it was gated and this has been due to a fire sale because they announced they are closing it, so a lot of companies that were invested in the stock markets, I expect the stock market price didn't crash but reduced. Therefore us investors who are meant to be protected by Link Fund Solutions, because they said "We are closing this to protect the investors", if protecting means losing £940 million from me and everyone in this room and at the back, that is a ridiculous statement.

Again, the narrative that the FCA and the company, Link Fund Solutions, have only ever talked about is the 3 June, as if nothing existed before then, when we all know and I said earlier, the issues that came to the gate, the gating or closing of it, was mainly to do with things that happened in 2016, 2017 and 2018.

Now if I come to the FCA's £298 million calculation. My learned friend Mr Crossley at the front there talked about the first mover advantage.

For me, the calculation was flawed, because they only went back seven months. So in the table you will

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see somewhere about the calculation. They went back to November 2019, and in those seven months, 800 million shares were sold.

If they had gone back two and a half years, as in include those seven months, 3.8 billion, that is 3.8 billion, shares were sold. Four times that amount. So, I question why they went only back to November. It does say they go back to November. It does not say why they go back to November.

I am personally extremely disappointed and frustrated by the FCA's position and how they have conducted themselves throughout this whole WEIF scandal. I have lost all confidence in the FCA and they are clearly not protecting consumer rights.

I looked at the FCA website this morning, before I came in; and under their operations, they have three operational objectives.

Number 1 says:
"Protect consumers from bad conduct."
Number 2 says:
"Protect the integrity of the UK financial scheme."
They failed on one and they are failing on 2, by allowing Link Fund Solutions to take away, as has been discussed this morning, the FOS and the FSCS.

I had a strapline on 10 October and I am going to
say it again. Good people, the people behind me, the investors and myself, make good decisions with good information.

Now, unfortunately, there is an ill -fated FCA report, that has been buried since Andrew Bailey's days, who is now the governor of the Bank of England, of course, has been buried. We asked for it and I asked Mrs Justice Bacon if the FSA could produce it so the investors could see, those that wanted to, what really happened and therefore make their own mind up, when voting. We were told that that wasn't available, due to confidentiality ; because individuals who have given evidence hadn't yet said they could make it available.

I asked: can we have a redacted version? The response came back: if you got it redacted, it wouldn't be worth looking at.

In October last year, Therese Chambers, the Joint Executive Director of Enforcement and Compliance of the FCA, at the open day for the FCA, it was reported that she said, "If the FCA - - SOA is approved, we will release the FCA report". Now, how unfair is that? It is just incredible.

I won't go on about the 77p misleading, but I would like to bring your attention to support what Mr Crossley was saying earlier. In the bundle, I believe on

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page 640, at the very bottom, in the objection by Neil Taylor who is sitting behind me.
MR JUSTICE RICHARDS: Would you mind if I turn it up? 640, you say?
MR PYATT: 640, yes. Unfortunately I seem to have
a different version to what you are looking at.
MR JUSTICE RICHARDS: Well, we are about to find out, aren't we? Tell me the document you are looking for? I'm not sure this --640 ?
MR PYATT: It is court bundle 102776288936.1 dated 9 January.
MR JUSTICE RICHARDS: You may be working from the convening hearing bundle.
MR PYATT: No, this is the bundle that was published on the Clifford Chance website, file storm.
MR JUSTICE RICHARDS: 640? What do you think 640 is what?
MR PYATT: Right. 640 should be in the middle of Neil Taylor's objection about the communication by FSCS, the Financial Conduct Authority.
MR JUSTICE RICHARDS: No, it certainly isn't in there --
MR PYATT: Yes, that is the one. My learned friend is there. That is the one. What page is that? Yes, so 640. At the bottom of 640 you should see a sentence that says:
"If the proposed redress amount of 235 million is
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    paid in full, then investors will have recovered
    approximately 77p."
    MR JUSTICE RICHARDS: I'm certainly not seeing that, but you
say that it 's in the objection of a gentleman?
MR PYATT: Yes, it is in reference -- the reference on the
right - hand side is S0636.
MR JUSTICE RICHARDS: But what is the -- it is the written
objections of someone?
MR PYATT: Yes, the written objections. It was in the
court bundle of --
MR JUSTICE RICHARDS: The written objections of who, sorry?
MR PYATT: Neil Taylor.
MR JUSTICE RICHARDS: Neil Taylor. Maybe with that, someone
can give me a reference.
MR CROSSLEY: That does begin at page 639. That's correct.
MR JUSTICE RICHARDS: 639. That last sentence.
MR PYATT: On my version here ...
639 and 6 -- yes, it depends on the page.
MR JUSTICE RICHARDS: The core bundle?
MS TOUBE: It is at the bottom of page 639; the paragraph
starting "Although the redress of".
MR JUSTICE RICHARDS: Oh right, okay, yes.
MR PYATT: So traverse down to the end of that paragraph,
or halfway down, the sentence that says:
"If the proposed redress scheme ..."
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This is the FCA communicating to the press, because you will see further down, the press statements; 77p in the pound. Hence why a lot of people have been confused.
MR JUSTICE RICHARDS: We have seen this already, haven't we?
MR PYATT: Yes, but he was saying -- I must have nodded off at that stage.
MR JUSTICE RICHARDS: Right.
MR PYATT: Right. So I now have to go to the -- I don't know where it is in the bundle. The FCA skeleton argument of 16 January.
MR JUSTICE RICHARDS: You don't need to go anywhere as far as I'm concerned, because I have that in paper.
MR PYATT: Excellent. If you go to the bottom. So this is the evidence by Tom Smith KC, who is over on my left - hand side there, and Marcus Haywood. At the bottom of page 6 , item 22. It starts:
"The FCA considers that the scheme represents the best overall outcome for investors and it provides certainty of ..."
I will slow down here:
"Significant recoveries for all investors."
The scheme, or the SOA, is only going to give 4 to $6 p$ in the pound. If that is significant, then I don't know, I went to the wrong school. Which is again

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misleading. I don't know if the FCA -- if it was a typo, but it is definitely there.

Right. Now to Link. I could spend ages on this, but I will just ...

Right. They deliberately made the process, as the lady previously said -- it is overcomplex for investors to understand. I have two degrees, an MBA from a good London business school and I have struggled with it at all, and the deluge, the deluge of documents is just unbelievable. And as somebody said at lunchtime, we investors should not have to traverse all of those documents, just to find things out. It is very verbose, it is misleading and again, we have got the old \(77 \%\). The voting process, as somebody said, was very complicated.

I do want to mention about the voting process. So the voting process was by a portal called Lumi, which is part of the scheme meeting on 13 December.

So a week before, everybody was going -- who had registered for it, got two emails. The first email said it is going to be next week, it starts at 10 o'clock. The second one was your \(\log\) in, and: please don't pass it to anybody; it starts at 10 o'clock. That is all it said. So I went in at 10 o'clock and I listened and a listened, and I found out from a couple of gentlemen

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here today that there were 127 attendees at that meeting; 127. 53,000 or so had already put their proxy votes in. Only 127 turned up; out of hundreds of thousands. I mean, that is just ridiculous.

So why am I upset about that? I actually spoke at that meeting. I gave up in the end. I just thought: I have had enough, you know. If you are not culpable for 940 , who is? Is it someone else in that court who lost all that money? I went off at 12.30 and had a bit of lunch and I thought: I should have asked this question. I went back in at 1.35 , it was closed. It had gone. And at the - - if you had not been at the meeting at 10 o'clock, you would not have known that the portal and the scheme meeting would only go on until there were any questions, either verbally or through that message; for one hour afterwards. So they must have talked until 12.30 and then one hour later they closed it, and when they closed the meeting the portal closed, so nobody could get in and nobody could ask a question. The only thing akin to this I can think of is, well, the thousands of people who may want to vote, surely a bit like a voting booth when it is an election. You would open it at 6 o'clock in the morning and you close it at 6 o'clock at night. You don't close it at 1.30 in the afternoon.

Now going to the votes. Some interesting information, I thought. So there was a very, very long PwC report in there, which I have read twice and I still don't understand. But there were a couple of nuggets in there. I think it is important for people to understand the numbers.

Of the 50,590, I am being exact, but it is in the report that voted, nearly one third of those people, i.e. 16,326 individual investors, like us back here, were voted by their -- what they call their investment manager. And I suspect, or I know, without consultation with those people. So nobody thought -- even Hargreaves Lansdown which has got 157,000 people in the multi-managed funds, have got all their be email address. It would have been easy to send out an email to them or online: vote "yes" or "no" and then we will take that into consideration when we vote for this. They didn't do that. Others did the same. I know someone from --I don't know if Quilter was part of it, but other people have complained to me via the web and said: I didn't get a vote even though I have got shares because they say they are a discretionary fund manager and they can make the decision for me. Well, a discretionary fund manager is okay when they are doing investments into funds, but in something as big as this,

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really, the rules should be changed for SOAs, so that other people should get a say. Definitely those in multi-manager funds.

The other thing that is interesting about Hargreaves Lansdown, which had not has not been mentioned. I think my learned friend said they haven't been mentioned all morning. Hargreaves Lansdown, according to the last Link financial report, owned \(29.73 \%\) of the fund. That is short of \(£ 1\) billion, which is split about half and half. So their multi-manager funds are about half a billion, with 157,000 people, and their direct investors are about half that number, and there are 134,000 . So out of all the intermediaries here, Hargreaves Lansdown should have done better.

Lastly, the strategy by the company, Link Fund Solutions, has been to ensure limited investor engagement, very limited; which is exactly what they have achieved, so well done to them. I saw a report last night, because I spent five hours yesterday trawling what I could, before I went to bed exhausted. And I read a report by Lansons media report, direct communications to investors; who put the adverts out for the PSL. They put three adverts out into three newspapers. They then put four out with an explanatory letter. They also supposedly went to Sky and did
something on Sky; and also through Meta on Facebook. I use Facebook every day. And by the way, the Meta one was brilliant. They were trying to get through to people who were in their 50 s and 60 s with \(£ 100,000\) to invest. I'm one of those, other people behind me are one of those, and never heard a dicky bird. Didn't know about it at all. So if I give you the metrics that have been reported about the downloads from the website.

For PSL, only 23,000 , round numbers, was actually downloaded. So that is only \(10 \%\) of the direct -- or around \(10 \%\) of the direct investors who could have done it. And the numbers deteriorate from here. For the explanatory letter, only -- that was downloaded by just under 9,000 people. So, you have got 23,000 people getting the PSL. Now you have only got 9,000 people looking at the explanatory letter; then you have got 8,400 people downloading the voting form. It is not a very wide net. If I was a fisherman, I would be coming back and my family would be hungry. There aren't enough fish to feed you here.

Now, my Lord, I have taken enough of your time. As you can understand, I am upset. I am upset for other people that can't be here. And no way should this SOA be approved by this court, in my view. It should be thrown out and we should be given our day in court or

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via the FOS or the Financial Conduct Authority, to get the compensation that we deserve. The lady behind me, I was nearly in tears when she was talking. It was a bit like I was watching the Post Office thing a couple of weeks ago. It is just ridiculous and it hurts. Lots of people, me; I can take a little bit on the chain., because of other investments I have made.

Thank you very much for your time.
MR JUSTICE RICHARDS: Thank you very much. I think what I would like to do is then to break there for the transcribers to have a break.

Just so everyone knows my views on it.
My clerk has had an email from, I think,
Mr Agathangelou, in fact. Sorry. I am slightly -- he was emailing while listening. There is nothing wrong with that. And the request that he sent to my clerk was that Dr Smolow(?), it might be "Smolow", I don't know, who is one of the academics who signed the letter, has asked if he can speak.

I'm not going to make a ruling on that now. I will invite the parties to make representations on that request, if they want to, after the transcriber break.
MR AGATHANGELOU: My Lord, may I just briefly comment? Thank you, my Lord. I'm Andy Agathangelou. A purely practical point. Dr Smolow is in Australia. It may be
much more preferential for him, if it is okay with yourself and the court, sir, if he were able to contribute to the proceedings tomorrow, rather than today. I just add that bit of information for you. Thank you, my Lord.
MR JUSTICE RICHARDS: Okay, thank you. Thank you. Well, we will break there and we will come back at 20 past and then we will decide what to do.
(3.14 pm)
(A short break)
(3.23 pm)

MR JUSTICE RICHARDS: Maybe what we should do, since the gentleman isn't available to address us today, even if he were permitted to do so, maybe we should press on and hear Mr Dickenson remotely; so that he is not kept waiting round unduly and then we can decide what to do on the application to speak, once we've heard from Mr...

So perhaps I could ask you, Mr Dickenson, if you could switch on your camera and your microphone, and -so that we can hear your submissions?

Submissions by MR DICKENSON
MR DICKENSON: Yes, I am switched on now. Can you hear me? MR JUSTICE RICHARDS: Just about. I wonder if -- oh. The volume is -- our speakers don't go up to 11 , but they do

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go up to 100. Can you say something and I will see if
I can hear you?
MR DICKENSON: Yes, I don't have any volume control at this end.
MR JUSTICE RICHARDS: Yes, I can hear you. Thank you, yes.
MR DICKENSON: Okay. Well, firstly, thank you very much for the opportunity to speak.

My name is Graham Dickenson. I am a retired chartered surveyor. I'm speaking on behalf of myself and my wife, Mrs Dickenson; and we both have direct investments via the Hargreaves Lansdown platform.

By way of context, I have wide experience in the property world, from which I have become used to reading legal and commercial agreements, and I have quite a lot of court and tribunal experience over the years. So I am not in entirely unfamiliar territory here.

However, despite the advantages of that, and being retired, I must say that I found myself a bit overwhelmed by the volume of material in this case; coupled with the very short timescales to assimilate or respond, and I would apologise in advance that my submissions, which you have before you, are pretty unpolished by my standards; and the second one is simply unfinished. I simply didn't have time to do more.

My Lord, if you have been able to read the various
submissions and fully assimilate the many facets of this case in the time you have had so far, I would certainly offer congratulations, but I must emphasise the necessity for full reading of all of the background documents. There is a lot of stuff in there, which is not going to be covered today and tomorrow.

In particular, could I refer you to Mr Reid's evidence? In his first statement of 9 December and the attachment, AGR1, there is quite a lot of material in there, which provides direct insight into the perceptions and concerns of the most important people that are affected by this scheme, the investors in the Woodford fund. There's quite a lot of enlightening material in there.

What I would like to try and do this afternoon is to provide you with an understanding of the perception of the scheme from an individual investor's viewpoint, albeit one that is relatively informed and relatively able to get to grips with the technicalities of all of this.

Nevertheless, this has been quite a journey for all of us, and particularly those of us most closely engaged as new understandings and new ideas and new arguments have been emerging on a daily basis, right the way through this; and so I would have to say that my initial

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understanding from the initial reading of the original convening hearing has changed very considerably, even during the last week or ten days. And that is partly through close engagement and in the court process, but also through the ShareSoc and TTF groups.

But of course, those groups have limited membership, a couple of thousand people at most; and all of that knowledge that I have accumulated, incomplete though it is, will be largely unknown to the greater majority, who have not been engaged in this way.

Now, I would like to speak briefly, if I may, about the loss calculations. I will just try and cover a couple of topics today, to give you a bit of a flavour.

There has been talk about what decision would an intelligent and informed investor make. I would have to say -- qualify that and say: surely that would be a properly or fully informed investor.

I will start by reiterating my own off the cuff initial assessment of my losses that I presented at the convening hearing, which I think was 10 October. Myself and my wife, between us, invested approximately \(£ 97,000\) directly in two tranches, in 2014 and 2016; using the platform Hargreaves Lansdown.

Now, I can see from our platform statements that

I download periodically that the value decreased during
2018 to approximately \(£ 87,000\). And at that time, we'd had some indication that they had some slightly risky, illiquid investments, but that we should perhaps stick with it, because these were the sort of things; there were break or break companies, where some of them will go bust, but some of them will soar in value. So we weren't too worried at that point.

But then we went through this period where there was almost a catastrophic withdrawal of funds by those more in the know, which saw the value reduced by 2019 from \(£ 87,000\) to \(£ 70,000\); and shortly after that, the fund was gated.

Since then, we have had distributions of \(£ 51,000\). So we have gone from \(£ 97,000\) fully invested, we have got \(£ 51,000\) back. What would I make of that if I claim loss?

Well, the first thing is that I have to accept that some of those losses, certainly before 2018, may legitimately be seen as normal investment risk that I must bear, and I accept that.

However, from some point, I think, 2017 onwards, the losses increasingly arise from the very substantial structural changes that Woodford undertook, which changed the fund completely from the type of income
investment fund that was sold to us to an entirely different kind of fund and this is the process that should have been checked by Link in the exercise of its proper function, that is the ACD. And of course, what we have ended up with; we have got distributions of 51,000.

The scheme offers us just over 4 and a half thousand, so our total receipt would be about 55,500 if we accept the scheme. So that is the maximum, of course. We might not get the 4 and a half. We must remember that is the maximum figure.

So where do we go with that? I think the point here is that by 2019, there is a series of runaway redemptions, which removes the liquid -- the valuable liquid assets and those that produced income. Those of us that didn't monitor our fund closely and spot that were left holding these very poor tail-end of the funds when it was gated, because it was unable to continue redemptions.

And I think that, had Link fulfilled its function properly, it would never have got to that point. And of course, the gating and then the closure of the fund is a direct result of the failure to ensure that it 's managed to its original remit, and kept in the correct liquid balance.

So the gating and the closure is a direct result of that failure and that results in further losses which were, I think, quite nicely described by one of the previous speakers; whereby we had a gated figure of around about 3.6 billion and we have got distributions of about 2.56, I think, billion. So there is something towards \(£ 1\) billion that goes missing as a result of the closure and the fore sale of the funds.

Some of that has been described as a fire sale, in that large amounts of investments were dumped in the market which knew that was coming; but also bear in mind that a lot of these were these difficult illiquid investments which depend on a much longer term holding period to allow them to grow and come good. But if you sell them before you have got to that stage, and they are difficult subjects to sell, you take a catastrophic loss by selling them in that way, and that's what has happened.

So those are the sort of bare figures that I started with and of course, on top of that, you have got the opportunity losses while your funds has been locked in, from closure, into an unproductive fund and any interest that might be due on that lost capital.

So my overall conclusion from that original
consideration was that our losses, myself and

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Mrs Dickenson, would be of the order of 30 to \(£ 35,000\),
after allowing for -- in some realistic way, for the investment risk that we must bear; but not allowing for the opportunity of cost of the locked in funds.

So from our point of view and from that initial analysis, there is a big difference between 30 to \(£ 35,000\), that I thought we might have lost, to the 4 and a half thousand that we were offered; and then there is a further disincentive to accept that, in that it's paid into our pension fund, and out of that, I have to pay for the Leigh Day fees of \(30 \%\). If I draw that money out of my pension fund, rather than receive it as compensation, it is taxable. So there is an additional loss there.

On as an intelligent investor who has some powers of analysis and understanding, I found myself totally unable to see the scheme as either fair or reasonable; and the upside was well worth pursuing. I voted on the basis of that analysis.

However, since I voted, I have also become aware, through the ShareSoc and TTF discussions, about this Financial Ombudsman Service approach, using a comparative index to compare what your investment would have done elsewhere, on average, compared to what it did in this fund. And carrying out those
calculations, that actually produces a loss to us of more like \(£ 90,000\). That's like three times of my original assessment. Now, that is a huge difference and I will accept there is some discussion and dispute about whether that is realistic or achievable, but let's say that gets cut back by \(50 \%\). That is still an upside of 45,000 , which is a lot more than my estimate and it's ten times the amount of the scheme offer.

I would have to suggest, my Lord, that very few investors have made this kind of calculation or are even aware of these figures and discussions. Had we all been aware, all 250 or 300,000 , we don't know how many, of these possibilities and these figures at the time of voting, that could have led perhaps to a very different outcome.

Please also bear in mind, and I think this might have been covered by others, that this scheme offers, at best, 230 million, versus the FCA calculation of loss which I will come to in a minute, of \(£ 298\) million. But there is no provision to plug that gap and we are cut off by the scheme, from seeking any recourse to that shortfall. There is simply no mechanism and you have been asked elsewhere whether that could be made a condition, and I endorse that request.

So overall, I would say that there is no strong
motive on me to accept this scheme; and I would suggest that it's both rational and intelligent for me to make an informed -- this informed decision to reject it as being unreasonable and the certainty of immediate payment is simply not enough to cover the downside of a difference between that and what I might get elsewhere. It is a pretty small risk to take.

And that's the decision that a properly informed investor, who is fully up to speed with all of this and understands the calculations, that is the logical decision to make.

So that covers that point, I think.
I would also like to just comment on this 77 p in the pound thing, because it's part of what I would almost describe as propaganda which has got out there, and propagated extremely successfully.

Personally, I always look past headlines, particularly where they are repeated. I have a questioning and analytical nature, and I soon came to understand that the 77p in the pound actually referred to the \(£ 298\) million, so I did understand that point.

However, without going beyond that, it would mean nothing to me. I had gone beyond that and I had estimated that it would pay me a very small proportion of my actual losses, as I perceived them, following
a reasonable line of reasoning.
So the other point about the 77 p is that I have observed, in interacting with consumer groups, like TTF and ShareSoc, in looking at Facebook posts, and I have looked at comments that follow press articles; you see from that very quickly that there's a widespread misunderstanding of what the 77 p in the pound really means. To the average investor, what it means; they think it means 77p in the pound of their losses, but they don't equate their losses to the \(£ 298,000\), and that point has been made eloquently before and I make it again as an investor. I understood that, but I'm unusually well placed to be able to do that, and I have observed, even amongst the informed people that I have been interacting with, I have observed widespread misunderstanding about that.

In that context, I have also come across numerous press articles about 77p. They will often refer to the 298,000 or the FCA assessment, but they don't give any more context than that, and so people repeatedly see, you are getting 77p in the pound of the losses, and that thought becomes engrained and established.

Now, in my own submission, which is in the court bundle, in AGR1, I think, I have added my own statement and an index which sets out some of what I have seen and

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I think that is repeated in Mr Agathangelou's evidence as well; and you will see from flicking through that, again and again and again, if you know what the answer is, you can see what they are saying; but the average investor does not have that level of understanding and you just see: yes, we are getting 77p in the pound, that sounds all right. And they don't actually realise what it means, in reality.

So I think you need to -- when you see the repetition of that message, you will see it throughout all of the documentation. It's repeated over and over again. It is designed to implant that message in people's minds; and it has been very successful, I think, in -- and it is reflected in the voting results.

I should also say that I have seen correspondence between TTF and the FCA, where TTF explain -- they have tried to be helpful here; explain the concerns about this 77p message, and they have invited FCA to clarify its own statements and to correct some of the press statements; and as far as I'm aware, it has never followed that up or done any of those things.

So I think, I would also like to just say a few words about the confidence issue. Myself and my wife, we have invested through the Hargreaves Lansdown
platform; and when we did it, we examined the
background, the objectives and the classification of the Woodford fund, and we used it to decide that this was, indeed, a suitable place that would protect our pension capital and provide a reasonable pension income; and the fund was initially set up and did that admirably well. It delivered good growth and quite a good return. When it started to go down a bit on both sides, we formed the impression from what was put out that this was, well, they have perhaps got a few too many of these slightly riskier type of investments, but Neil Woodford has done this in the past and he has come good and so you need to wait and hang on, but of course that was fatal, because by the next year, there was a runaway disaster going on, which led to the gating and the closure.

So we have invested in this fund, which like others of its type, operating in the UK, provides the usual reassurances that we all take for granted, that it is underpinned by the FCA regulation and the UK financial compensation system, the FOS and the FSCS.

So obviously we are very dismayed now to find that the FCA is now enabling a scheme that entirely bypasses those underpinnings. It frustrates our litigation and it delivers a very poor outcome. It has all been done without any reference to us, as investors.

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And worst of all, it releases those responsible for this, who can continue in business, without any sanction; as has happened before. Now, I have learned through this process that this team, at Link, who seem to have perpetrated this mismanagement, they were bought from another company where they did something like this before, and the team and the business were sold to Link, to get out of a similar situation orchestrated in -an agreement orchestrated with the FCA. They have now done it again and they have moved to yet another firm where the business carries on, unhindered, with the same people, without sanction. They have escaped, they have got the jobs, they have got their business. It kind of -- it sticks in your throat a bit.

Now, we fully appreciate that the liabilities are contested and the outcomes are uncertain of the alternatives to the scheme. However, the scheme imposes a very low figure, without discussion with the investors, and it removes any possibility of testing these alternatives. I don't think that's fair or reasonable at all, and this has wider implications for the financial industry, which has only just started to hit me really, quite what this means; because I suppose I have been a bit slow on the uptake here.

In monitoring the financial industry much more
closely, in connection with this debacle, I have noticed the failure of a couple of pension providers, where people have been locked in and are unable to access their funds, and then they have had to pay management fees to get out. And I'm thinking: crikey, we have got our lifetime savings held at Hargreaves Lansdown, which is itself under some threat from this failure. This is a huge failure; and Hargreaves is under considerable pressure from it, and if Hargreaves were to fail, we would be sunk.

Our faith in the integrity and regulation of the financial industry is severely shaken and through dealing with TTF and looking at the financial industry more closely, you come to realise how many problems there are and how poor the regulation is, and how badly the FCA has been failing throughout.

And going forward from here, when the dust has settled on this, I'm thinking: right, I think we need to consider getting out of Hargreaves Lansdown, into some other form of pension provision, and perhaps get some of our savings out of the UK, because it's not safe here anymore.

It is a very difficult decision, because it is more difficult to administer that way and there is more risk involved. But we are retired, we cannot replenish these

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losses. They are significant losses and we are dependent on the incomes from these funds to provide for our old age. The scheme only offers a token amount against a very real loss.

The final topic I would like to cover briefly, if I may, is to give you some insight into my perception of the presentation in the scheme documents. I think this is very important. What does an investor see, if they have the energy and the ability to actually read all of these documents?

Well, very quickly, when I read the first draft documents prior to the convening hearing, I read them through and I said: crikey, this is carefully designed to ensure the scheme is successful. There are these positive and reassuring statements repeated over and over, and they dominate and steer the discussion. In other contexts, as I have said, that could almost be called propaganda. The negative aspects are all covered, they must be by law and they tick the boxes, I think, in the main, but it has been done in a minimal fashion; it is accompanied by numerous, repeated warnings of the consequences and the risks of the no scheme situation.

One example of these messages, I think, is the FCA position, which appears in the scheme documents, in
press releases and responses to press releases, which has always been along the lines of this:
"FCA considers that the scheme offers investors the quickest and best chance to obtain a better outcome than might be achieved by any other means."

Now, quickest -- quickest, certainly I agree with. I don't think any other means is going to be quickest. But best or better outcome? I don't think that claim is warranted at all. The FCA is in no position to tell us what the outcomes might be of our own assessments, from litigation or from the FOS/FSCS schemes.

That phrase appears again and again. You will see it in my index of -- the cases that I have indexed to, and you will see it throughout the scheme documents; if you read them with that filter in place, you will see it.

I can't immediately find the reference for it in the bundle, but I think the FCA's skeleton had that phrase or something like it, two or three times in the skeleton.

So these messages are banged out endlessly. But if you read the message, what is it actually telling you? It is meant to sound reassuring, but it doesn't tell you very much. And it could be arguably said to be factually incorrect.

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And coupled with that, we have repeated threats
throughout the documents. So we are told over and over again that the company will defend itself effectively to the death, and that there will be nothing left for us.

However, in engagement with this process, and again I don't think many investors realise this, it has become clear to me that actually the company has gone. They have been sold. The business is carrying on somewhere else under a different hat. They have all gone. We are dealing with some sort of shell company here. I don't know how many staff they have got, what resources they have got. But is a director -- is somebody going to be a director of a company whose sole purpose is to fight a pointless rear-guard action for a shell company that has no assets left and no business left? On principle? I mean, what is the motivation for doing that?

It seems to me, maybe it's just an empty threat. I don't know enough of the answers to those questions. But it seems to me, maybe, it is just an empty threat.

But the point is, investors as a whole don't know this background. They don't have that alternative interpretation that actually it might be an empty threat and they just see the threat; it is adding to the uncertainty and the timescales at every turn; and it's a very one - sided \(--I\) can see through it. It didn't
fool me. That is why I voted against the scheme. But I think it is going to fool a lot of people; perhaps most of the less informed investors.

I think overall, there has been a tendency to overstate or one-sidedly present the information and figures as well. In Mr Reid's first submission on 9 January, he says at least a couple of times in there that the scheme is supported by the vast majority.

Now, I think he means the vast majority of those that voted. I mean, it is kind of a Freudian slip, isn't it? A 20\% minority actually voted; and yes, a vast majority of that minority voted. That's not quite the same as saying the vast majority supported it. They didn't. The vast majority of a small minority voted, is perhaps a more objective way to present that. And a lot of the figures can be criticised in that way.

I was going to cover the document downloads, but somebody else has done that, so I will skip that bit.

Mr Reid also frequently refers, and elsewhere there is reference to this voting \(--54,000\) votes and how oppressive it is, compared to other schemes.

However, now that we have seen, and I can't - I'm sorry, I can't refer to it in the bundle, but we have seen in the bundle, the PricewaterhouseCoopers report on the voting; and if you read the detail of that, you will

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find, actually, out of that 54,000 votes, some 16,000 or so are individual votes, technically, but actually they were voted for by fund managers who have a discretion over how those individuals vote. So they are, in effect, an institutional vote which is counted for all its individual investors.

So the true number is a bit less than 54,000, if you want to bring it down to individual investors. It is more like 37,500 . So that figure is kind of buried away in the PwC voting report. I have got a reference there; at page 2024. So you can find that figure at 2024, but in the general documents they refer to this 54,000 vote repeatedly.

And elsewhere, I won't dwell too much on this. Others have said, it constantly talks of the -- up to the maximum figure, but of course when you do that repeatedly, the maximum figure becomes implanted as the figure; that is the figure of compensation. It is the repetition -- the repetition masks the lower possibilities, and people stop thinking about that. It is much fairer to say that it 's between \(X\) and \(Y\), between 183 and half -- or 230,000 .

Throughout this process, I have personally been able to recognise the repetitive and persuasive nature of these documents. But I'm used to doing this and I have
had the time, as a retiree, to actually look at the documents and I have got professional skills to interpret in that sort of way. But I doubt that any but a very small minority of the private investors have those advantages, and I think therefore, in deciding whether this has been voted for by intelligent and informed investors, there are severe doubts about the "and informed" bit.

I have also recognised, at least in part, how much is missing or presented in an unduly pessimistic way. I have alluded to some of this, and again, I doubt that most investors will have been able to do this in the same way.

But even with my personal level of engagement and understanding, I have struggled to keep abreast of the developing documentation and I have devoted solid days of work to this, something I have been able to do as a retiree. But people working won't have been able to do this. People with a busy family life won't have had a hope in heck of keeping up to this, and won't, as a result, qualify as informed; and despite these advantages, my understanding of what has happened has changed quite radically from the initial reading of the documents to things that have come out of discussion, out of news, press releases, the understanding of
others; all of which has increased my understanding, through that engagement, and has massively stiffened my opposition to this scheme; which is being imposed upon us.

I think probably no more than 2,000 people will be anything like this well informed or engaged in this process.
MR JUSTICE RICHARDS: I mean, Mr Dickenson, I think we are going to have to draw this to a close soon. I do have -- let me assure you of the point that although you have put a lot of work in and feel you have got a reasonable understanding, others won't. I do have that point loud and clear.
MR DICKENSON: Yes.
MR JUSTICE RICHARDS: I think we have to wrap up quite soon.
MR DICKENSON: I have got to the end of my presentation, so I am happy to finish at that.
MR JUSTICE RICHARDS: Well, thank you very much for those submissions. I'm very grateful for them.

I think that then brings us to the end of the submissions by the - - if I can call them, the unrepresented investors. Yes.
MR AGATHANGELOU: My Lord, if I may interrupt and forgive me for doing so. Mr Graham Dickenson made a point just now, in relation to the notion that there is
            any -- I confess, I'm doubtful about hearing from
            Dr Smolow. The reason I'm doubtful is: when he sent in
            the co-authored academic paper, my clerk asked if any of
            the authors of the paper were creditors of the fund, and
            we certainly didn't get a response to that. So I don't
            think -- sorry, creditors of LFSL. So my view at this
            stage, I would like to be taken to relevant authority.
            My view at this stage is that the academics are not
            themselves creditors of the company; and therefore, what
            they are doing is they are writing a letter and
            making - they are presenting their own perspective on
            a case that's before the court; and the court doesn't
            routinely hear from people -- doesn't routinely ask
            people to provide their views on a case in front of it;
            unless they are parties.
            Now, sometimes we have people intervening and
sometimes we have that kind of thing.

But my initial view is that this is something out of

MR JUSTICE RICHARDS: So the creditors and shareholders, they are not in the right class or they are not classed as the people who were affected by the scheme? Is that

\section*{the point?}

MS TOUBE: They were outside the scheme.
MR JUSTICE RICHARDS: They were outside the scheme, yes.
MS TOUBE: So they were not parties -- in a way, the word "party" isn't capped anyhow because of course the creditors aren't parties, but they were not affected by the scheme, internally, if I can put it that way. So they didn't vote they scheme meetings.

And then they turned up and they said they wanted to make -- they wanted to be heard. And there were various submissions made on their behalf, which Mr Justice Leech considered, at paragraph 54, he sets out the submissions that were made. And he says that he accepts as a general proposition that a party not bound by a scheme has standing to appear at the sanction and oppose the sanction of the scheme.
"There is no statutory restrictions seeking to limit the class of persons who can address the court or the considerations which can be taken into account.
However, the court does not have a roving commission they suit of any object or who claims any prejudice as a result of the scheme and the court's discretion must be kept within property bounds." (As read).

So this was the submission, following the various cases cited above.

And he then goes on to consider various other submissions, which is:
"However, you should not consider that -- in circumstances where a scheme is part of a wider restructuring, just because a third party is not affected by the scheme itself, but is affected by a sub - - a subsequent set, they can still be a person who the court can hear.
"The court shouldn't ignore the objections that a third party has raised in another forum." (As read).

And:
"In the context of a creditor scheme, which is a debt for equity swap, in principle the company is entitled to propose a scheme with its senior creditors' loan, but if junior creditors can satisfy the court that they have a real economic interest in the company, then they are entitled to object to the scheme." (As read).

So that is what was being said here; we are not parties to the scheme, we are just --
NEW SPEAKER: [On the videolink] Could we just say, we are not making any additional charges for her time.
MR JUSTICE RICHARDS: Excuse me. There are people on the Teams link who are not on mute and I can hear conversations between them.

If people do not stay on mute, and if they disrupt
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the court by enabling us to hear their submissions, they
will be removed from the link. I have had to say this
a few times now. I don't expect to say it again.
Anybody who remains off mute and interrupts this hearing will be removed. Thank you.
MS TOUBE: So my Lord, in Vroon, in Lamo Holdings, what the court was being asked to do was to let someone who was being economically affected by the scheme in the wider restructuring come and address the court. That is of course not the case in relation to Dr Smolow, who is --
MR JUSTICE RICHARDS: Who is not even economically affected.
MS TOUBE: He is not. He is an academic who has an interest
in saying something and indeed, already has said something.

And so what the court does is to consider this, and consider whether somebody has got legal rights and that they are affected or whether they have an economic interest ; and then the court effectively thinks about those points.

But what the court says is that it's not going to
have a general sort of roving circumstance where somebody is allowed to turn up and say something. So that's the obvious case that came to our mine, as soon as your Lordship asked the question.

So what we would say is: not a creditor, not
an expert. There is no order for expert evidence. Not
affected by the scheme economically; put forward on behalf of the TTF, who have already spoken and put their evidence in; and proposed by Mr Agathangelou, who is also not a scheme creditor. So we would say for all those reasons, your Lordship should not hear from him.
MR JUSTICE RICHARDS: I thought there was something in the statute about who could speak, or maybe I have in mind -- maybe I had in mind the insurance company scheme provisions, which I did one recently, where statute said who was allowed to speak.
MS TOUBE: Yes, there is, yes.
MR JUSTICE RICHARDS: Actually, the Companies Act says nothing.
MS TOUBE: There is nothing in the Companies Act.
MR JUSTICE RICHARDS: Does anyone have a different view? Does anyone have a different view on whether I should allow Dr Smolow to speak?
NEW SPEAKER: (inaudible) ... who is not a creditor.
MR JUSTICE RICHARDS: Well, you have counsel who act for you. I will hear from your counsel.

\section*{Submissions by MR BOMPAS}

MR FALKOWSKI: My Lord, I don't have the case in front of me but I have picked up on the words that my learned friend read out to you, that it is a discretion to be exercised
within the proper bounds. My learned friend says, quite
fairly, that it is a matter of weight; what weight is to be given to what is already in the bundle there. It is entirely a matter for my Lord, whether or not my Lord thinks it is helpful and, if not, my Lord will say no. If it is helpful, then no doubt my Lord would wish to hear. But that is my position on it.
MR JUSTICE RICHARDS: Thank you. Anyone else?
Well, my ruling is going to be this. I'm not going to hear oral submissions from Dr Smolow, although I can accept that the court does have a general discretion to hear oral submissions from someone who is not a party to the case; I don't think this is the appropriate case to exercise that discretion. Dr Smolow, he is not a creditor of the company. He is not affected by the scheme. He is not even economically affected by the scheme. What he is, he is obviously a very learned academic, with expertise in the area, who is interested in sharing his expertise and his opinions with the court.

Now, he is not an independent expert and while I am grateful for the offer of assistance from him, it does not seem to me that the court generally invites the views of people with a view on the outcome, when determining court proceedings in which that person does
\(\square\) MS COOKE: I will see how it goes. Thank you, my Lord. I appear on behalf of the investor advocate,
Mr Joseph Bannister. Mr Bannister is also in court and he is a very experienced restructuring and insolvency solicitor.

As your Lordship - - reference has been made to, Mr Bannister has been instructed as the investor advocate in this matter, engaged by the company, although independent from the company and not owing a duty to the company.

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His role is to consider representations made by the creditors at the prospectus and then produce reports ahead of the convening hearing and ahead of this sanction hearing. His role is not to consider the substantive merits of the scheme and so he is not expressing a view on whether he considers the scheme to be fair or in the best interests of the creditors.
Rather, his role is to enhance the voice of the scheme creditors in the process.

Of course, in that regard, it is perhaps important to note that the scheme creditors don't all speak with one voice, and whilst some creditors object and we have heard from many of those today, there are also a great many creditors who do vote in favour of the scheme.

The investor advocate has produced a report, both ahead of the convening hearing and ahead of this hearing. The sanction report starts at page 1148 of the bundle. What that report does, it reflects the investor advocate's review of the materials provided to scheme creditors, including but not limited to the explanatory statement and the scheme website. It also reflects his review of 453 emails that have been received from 267 different sources, since the convening hearing, up until the cut-off date of 10 January that was set for the purposes of his report.

I don't think anything turns on this, but Mr Pyatt referred to 86 creditors having contacted Mr Bannister. That is not correct. Emails from 86 sources were received prior to the convening hearing; after the convening hearing, emails from 267 different sources have been received. I am afraid I' m not sure to what extent that 86 and 267 overlap, but he has been contacted by much more than 86 creditors.

Just to update the court as well. Since the cut-off date of 10 January, 95 further emails have been received by the investor advocate from investors or their representatives. The largest number of those emails related to attendance at this hearing and getting the details of this hearing. There are also others which reflect the same themes of the emails received earlier, so the FSCS, involvement scheme eligibility and the voting process. There isn't anything, in particular, to draw your Lordship's attention to from the more recent emails.

A summary of the correspondence, or the themes of the correspondence with the investor advocate, is set out in paragraph 1.3 .3 of his report. It is not, I don't think, necessary to repeat everything that is said there now, but there are a few points that I do think it's important to emphasise at this stage.

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The first set of points concern the voting process and the second set of points concern the more substantive points that have been raised in the communications with the investor advocate.

In terms of the first set of points, between the convening hearing and the cut-off date, 112 emails were received relating to the voting process. Whilst that is not an insignificant number at all, it must be seen in the context of a process where around 54,000 creditors voted.

The communications received by the investor advocate in relation to the voting process tended to fall into three categories.

The first, concerns about completing the voting form.

Second, requests for specific assistance by those with particular needs in the creditor community.

And then third, requests for confirmation that specific votes have been received and/or accepted.

On the first of those points, the voting form; the majority of the feedback related to the ability to access or complete the online form. The investor advocate directed those investors to the telephone and email helpline that was helpfully set up by the company. There was some difficulty for some creditors getting
through to that, and in those circumstances the customers advisers offered to contact the creditors directly.

The investor advocate's interactions with the company's advisers in relation to the voting form, it also leads to the production of an editable PDF version of the form and the idea was that the creditors could print that off and fill it in and email it back or post it back to the company, and that was made available on the scheme website and it was also passed on by the investor advocate to the scheme creditors who -- where it was appropriate to do so.

In relation to specific requests for assistance, there were ten emails received asking for specific help, either in relation to completing forms for grandparents or those with specific needs, such as dyslexia or requesting a Braille format form. These queries were for the most part directed to the company's advisers while the investor advocate ensured -- took the matter forward or alternatively was provided with the information and he was himself able to go back to the creditor and deal with their concerns.

Finally, in relation to the voting. 17 scheme creditors contacted the investor advocate, seeking confirmation that their votes had been accepted and in

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some cases, also the value ascribed to their vote. The investor advocate engaged with the company to -- and having done that, was able to relay the -- the valuation of votes was, at the time, subject to an ongoing process. But those who voted online were to receive an automatic confirmation that their votes had been accepted and those who voted by email or post could contact the helpline, the email and telephone helpline that I mentioned. But that is the summary of the correspondence that was received in relation to the voting process.

Turning then to the more substantive points on which there has been correspondence. 29 emails were received since the convening hearing, relating to clarification of the amounts that scheme creditors would actually receive under the scheme, which is -- we have heard a lot today, obviously a very important matter for scheme creditors. The investor advocate has addressed that point in both his convening hearing report and in the sanction hearing report. It is paragraph 4.2.1 to 4.2 .7 of the second report in particular, and that is at page 1145 to 1155 of the bundle.

The key point I would emphasise really is that the investor advocate heard these concerns that the creditors had about a potential lack of clarity about
what was to be received under the plan and he worked with the company's advisers to see what could be done to improve the position in that regard and that is what led to the table and the worked example that we have seen at page 663 of the statement that does explain, in particular cases, what the return for creditors would be. And the investor advocate was able to point to that worked table and worked example, and put creditors in a position where they could see that, because that was put on the scheme website, ahead of the convening hearing. So for some time, that information has been available.

There is also, on the scheme website, which the investor advocate thought was helpful, a number of frequently asked questions and I don't think the court has been taken to those yet. So it is perhaps worth turning those up. It is page 2012 of the bundle.

> (Pause).

It should have question 35 on it first, which is:
"How much will be paid out to investors through this Scheme if it is successful?"

And then the second paragraph under there explains that:
"The proposed settlement amount of up to \(£ 230\) million is \(77 \%\) of the figure ( \(£ 298\) million) that
the FCA's investigation concluded was the amount owed to investors ... who held shares ... at the compensation date."

And then the next question, question 36 , is headed:
"How much can investors expect to receive
individually from the Settlement Fund if the Scheme goes ahead?"

And then we have the worked example and the table that we have already seen, in a different place, but this was on the scheme website, as a result of the work of the investor advocate with the company, and that was considered to be a great improvement in how that -- the return to creditors were presented to them.

The investor advocate also notes that since the convening hearing, the company has uploaded to the scheme website the documents summarising the FCA's investigation and its calculation of the loss, and also considers that to be a very helpful addition, in terms of explaining the position.

Another substantive point addressed in the communications with the investor advocate has been around the role of the FCA and the impact of the scheme on the potential recovery from the FSCS and FOS. In light of that correspondence, the investor advocate again went through and reviewed the various scheme
documents, including the explanatory statement and the other material on the website; and in light of that, he continued to be satisfied with the background of the FCA's settlement and what will happen if the scheme was not sanctioned was adequately taken out. And again, he has undertaken that same exercise and reached the same conclusion, having reviewed the grounds of opposition.

The substance of the points has been put by other parties, but the investor advocate does express that view on the presentation of the material; in particular, in the explanatory statement.

Finally then, just a couple of procedural points that it may be helpful to address.

The first very much related to the last point that I made, but a more general point and that's that the convening order directed the company to give scheme creditors an opportunity to comment on the scheme documents, and both scheme creditors and other interested parties, including the investor advocate, were given the opportunity to provide comments on the scheme documentation, including the voting form and the explanatory statement. And the investor advocate feels that his observations were considered and he is satisfied that these were included in the final suite of documents appropriately and he is also aware, since he

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was copied in on the correspondence, that others have made comments and that those comments were, where appropriate, included and where they weren't included, explanations were provided as to why that was the case.

It is perhaps worth saying that the investor advocate does consider that there has, on the part of the company, been a willingness to engage and that the company has been receptive to feedback and the provision of that worked example is perhaps the best example of that having taken place.

And so overall, he considers that the explanatory statement does represent a fair and accurate summary of the terms of the scheme.
MR JUSTICE RICHARDS: And does he -- a fair and accurate summary of the terms of the scheme, and of the choices available?
MS COOKE: Yes, yes, and of the options available, yes.
MR JUSTICE RICHARDS: Yes.

\section*{(Pause).}

Yes, thank you.
MS COOKE: Then finally, just to conclude. It's perhaps worth pointing out or repeating that the investor advocate is performing this role for all creditors who don't speak with one voice. The opposing creditors have put their case and so with that in mind, I do just - on
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    the other hand, not to take away from their points or
    express a view on the merit of them, emphasise that
    many, many creditors have voted in favour of the scheme.
            Unless I can assist your Lordship further, that is
    all that I was proposing to say.
    MR JUSTICE RICHARDS: Thank you very much.
MS COOKE: I am very grateful.
MR JUSTICE RICHARDS: Well, I think that then brings us to
the end of the day. I'm sorry that everyone has had to
sit in an extremely hot courtroom. It is hot enough up
here. I am sure it is even hotter in the main body of
the courtroom.
I am afraid it is just a function of lots of people,
plus lots of computers, equals lots of heat; and I am
sorry you have had to sit through it. People should
feel free to remove their jackets tomorrow, if it makes
them feel more comfortable. That really would not
bother me at all.
So I'm sorry I can't do anything about it, but I can
at least express my empathy with it.
Thank you very much. We will come back at
10 o'clock tomorrow.
(4.24 pm)
(The hearing adjourned until 10.00 am on Friday,
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[^0]:    MS TOUBE: Well, the FOS would seek compensation to be paid; state compensation to be paid. If the company can't pay that compensation, the FSCS would pay up to 85,000 of that.

    ## MR JUSTICE RICHARDS: Yes.

    MS TOUBE: If it does pay that, then it subrogates back in. So it is not the FOS who has a claim into the company; it would be the FSCS, if the FOS made a compensation determination.

    ## MR JUSTICE RICHARDS: Yes.

    MS TOUBE: But as we will come back to, in circumstances where the underlying scheme claims are being wiped away, there is nothing for the FOS properly to determine. And what is actually -- what actually happens under the scheme is not the right to claim against the FOS, but the claims which are then not allowed to be pursued in proceedings against the FOS and it is important that we distinguish between them.
    MR JUSTICE RICHARDS: Yes, so the scheme, and I think you make this point in your skeleton and I will play it back to you, to make sure I have understood it; the scheme releases claims against the company and advisers and affiliates. It does not release, you say, claims against FOS. It does restrict the right to take proceedings to the FOS. So it doesn't release anything,

