IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

IN THE MATTER OF

GLOBAL MUTUAL FUND PCC LTD (In Administration)

UNIVERSAL MUTUAL FUND ICC LTD
WORLDWIDE MUTUAL FUND PCC LTD
LANCELOT MANAGEMENT LTD
TRINITY GLOBAL FUND/ Mr. A.J. Roberts and Mr. J.R. Toynton
and
GUERNSEY FINANCIAL SERVICES COMMISSION

("the Applicants")

JUDGMENT FOLLOWING AN APPLICATION FOR DIRECTIONS
DATED 29 JANUARY 2016
APPROVED TRANSCRIPT

Before Sir Richard John Collas, Bailiff

Hearing date 29th March 2016
Judgment delivered 30th March 2016

Counsel for the Applicants:	**Advocate J M Wessels**
Counsel for the GFSC:	**Advocate P Nicol-Gent**
Counsel for Lumiere Fund Services Limited:	**Advocate M Adkins**

Introduction

1. This is an application ("the Application") made by James Robert Toynton and Alan John Roberts ("Grant Thornton") as the joint Liquidators of Lancelot Management Limited (in compulsory liquidation) ("Lancelot") and the joint Administration Managers of the Global Mutual Fund PCC Limited ("GMF"), the Worldwide Mutual Fund PCC Limited ("WMF"), the Universal Mutual Fund ICC Limited ("UMF") and the incorporated cells of UMF.

2. The purpose of the Application is set out in paragraph 4 of the first affidavit of Mr. Toynton, sworn on 29th January 2016:-

> *"a) to report to the Court on the progress of the administration management of the Mutual Funds and the cells of UMF (the **Administration Management**) and on the liquidation of Lancelot (the **Liquidation**);*
>
> *b) to apply for an order as to fees and costs of the Administration Management and the liquidation; and*
>
> *c) to introduce our proposals and recommendations for the future of the cells of GMF, WMF and UMF (together with the exclusion of The Creative Growth resource Fund (IC) Limited and The Czar Resource and Yield Fund (IC) Limited (see paragraph 33, as defined as the Mutual Cells) and the sub funds of Trinity Global Fund."*

3. I was advised at the start of the hearing that agreement had been reached regarding the Trinity Global Fund and hence matters relating to that Fund did not form any part of yesterday's hearing and I will not say anything more about it during the course of this judgment.

4. The Advocates who appeared before me were Advocate Wessels on behalf of the joint Administration Managers and Liquidators to whom I will refer for ease of convenience as "Grant Thornton", Advocate Philip Nicol-Gent on behalf of the Guernsey Financial Services Commission ("GFSC") and Advocate Adkins on behalf of Lumiere Fund Services Limited ("Lumiere"), the fund administrator of the mutual funds.

Preliminary Issue

5. At the start of the hearing, I had to rule on a preliminary issue raised by Advocate McGuffin who sought to appear in order to make representations on behalf of David Cosgrove who had filed an affidavit on Maundy Thursday, 24th March, that is to say the last working day before the hearing. In it Mr Cosgrove described himself in paragraphs 1, 2 and 3 of the affidavit:-

> *"1. I am a former director of Lancelot Management Limited (in compulsory liquidation) and was until 21st April 2015 a director of the Global Mutual Fund PCC Limited, the Worldwide Mutual Fund PCC Limited (in administration) and the Universal Mutual Fund ICC Limited (in administration).*
>
> *2. I am a director of RDL Management Limited (in administration) a company incorporated in Mauritius which was the investment advisor to Brand Investment Fund and The Excelsior Opportunities Fund (Guernsey) USD IC Limited.*
>
> *3. I am also a director of the immediate holding company of RDL being Stonewood Holdings Limited. I held a 50 percent interest in Stonewood during the period covered in the first report of the Joint Administration Managers and the Joint Liquidators to the Royal Court dated 30th December 2015."*

6. Mr Cosgrove was not one of the parties who had been convened to the application but he had received notice of it as being the contact for the investment advisors to some of the cells which had been notified of the Application. His position was described in a letter from

Mourant Ozannes, on behalf of Grant Thornton, to Babbé, dated 16th March 2016, in which Mourant Ozannes wrote:-

> *"As you are aware, your client is not a party to our clients' application. It would appear that Mr. Cosgrove received the 8th February 2016 e-mail as the contact for the investment advisors to certain cells that were Notified Parties for the purposes of the Directions Order. To the extent that your client, or indeed Mr. Cosgrove, wish to make submissions at the hearing on 29th March 2016, they will need to establish the necessary standing to make those submissions. We have invited you to outline what interest your client has in the subject matter of our clients' application, or the relief sought therein, such as to give your client standing. We await your substantive response in this regard."*

7. I should explain that Mourant Ozannes were under the understanding that Babbé were acting for a company called Stonewood Holdings Limited, of which Mr Cosgrove was a representative, rather than Mr. Cosgrove personally because that is what had been said in earlier correspondence.

8. Advocate McGuffin said that Mr. Cosgrove wished to do three things: first of all to correct certain inaccuracies in Grant Thornton's first Report to the Royal Court and to Investors; secondly, to raise concerns about the costs allocation proposed by Grant Thornton; and, thirdly, to respond to Grant Thornton's concerns re possible conflicts of interest. He said Mr Cosgrove had been invited by Grant Thornton to assist at an early stage but had never received that request because it had been sent to an old address of his. Grant Thornton disputed that they had corresponded with him at an old address but, in my judgment, that was not relevant and therefore was not a fact that I would need to resolve. On 21st January 2016, Mr. Cosgrove had written to Grant Thornton offering to assist them if he were to receive $10,000 as a non-refundable deposit but nothing further was heard until his Advocates, Babbé, sent his affidavit of 24th March to which I have referred.

9. In Court, Advocate McGuffin acknowledged that Mr. Cosgrove had no rights that would be determined in these proceedings. He was in effect a witness, that is to say, a witness of facts that led up to the administration management and liquidation of the funds and entities. Advocate Wessels objected to him being a party with the right to make submissions to the Court because there may be many people in the position of potential witnesses who cannot all be entitled to come along and apply to be made a party.

10. Advocate McGuffin was unable to cite any legal authority to support his application for Mr. Cosgrove to be a party save for one decision relating to a summary judgment application in which the English Court had held that it should only act on the best evidence available. I agreed that would be so when the Court is seeking to determine facts but it was not relevant here; I was not asked to make findings of disputed facts in this hearing.

11. The Advocates for the other parties appearing before me questioned Mr. Cosgrove's motives suggesting that he was acting purely for his own personal advantage, in the light of concerns raised by regulators, especially concerning conflicts of interest. For my part I was not interested in his motives.

12. Mr. Cosgrove believed that he had been encouraged by Mourant Ozannes to apply to make representations but I did not accept that to be correct on my reading of the correspondence. As I read it, Mourant Ozannes were merely saying that if he wished to make representations he had to make an application before the Court in order to do so.

13. I knew of no legal basis for permitting a witness to become party to an application such as this and I could find no other reason or need for Mr Cosgrove to be made a party. I was

advised during the course of the hearing that Grant Thornton had taken account of the contents of Mr. Cosgrove's affidavit, none of which altered their decisions or their approach to the Application. I therefore saw no legal basis, and no other reason, for permitting Mr. Cosgrove to become a party.

14. I therefore ruled at the start of the hearing that he had no *locus standi* in the Application but I encouraged him, if he now wished to do so, to cooperate with Grant Thornton which was something that he could do after the hearing. I refused to permit him to become a party.

Private or Public Hearing

15. Counsel and I then had a discussion as to whether the hearing was in private or in public, hence whether Mr Cosgrove and/or his legal advisors were entitled to remain in the courtroom for the remainder of the hearing. There is an important general principle that courts sit in public; justice requires them to do so unless it is in the interests of justice that parts of the proceedings or the whole of the proceedings be held in private.

16. There was material before the Court which, at a previous directions hearing, I had ordered should not be made available to investors generally. If that material were to be referred to, parts of the hearing would need to be held in private. Having discussed the matter with Counsel it was clear that it would be very difficult to decide in advance what should be heard in private and what should be in public. I therefore ordered that we would sit in private but on the basis that at the conclusion of the hearing we would review whether any confidential material or material that should be kept private in the public interest or in the interests of justice had been aired. If none, a transcript could be made available to those persons with an interest who might request it or, if appropriate, parts of the transcript could be redacted (if that could be easily done). Also, I was encouraged to issue a judgment which could itself be made public and I am envisaging that the whole or a large part of this present judgment may be available to be released to investors and/or published generally.

17. Following that decision, Advocate McGuffin and his assistant left the courtroom.

Background to the Application

18. I now turn to the written Application before me. I will explain briefly the background to it; the proceedings were initiated originally by the GFSC as explained in an affidavit filed with the Court last year, sworn by Paul David Yabsley, a Senior Analyst in the Enforcement Division of the Guernsey Financial Services Commission, on 22nd April 2015. I will not review the whole of his affidavit but I will refer to parts of the conclusion at paragraph 54:-

    "(a) There appears to be systemic failings in corporate governance and the application of law, regulation, code and principle to the management and function of GMF and the Managed Funds by Lancelot and the respective boards. This is evidenced by the matters relating to the failures relating to the management of the conflicts of interest.

    (b) Significant and systemic conflicts of interest exist in relation to certain cells of the GMF and their underlying assets. These conflicts of interest do not appear to have been dealt with appropriately by Lancelot. The failure to manage the conflicts of interests appropriately appears to have given rise to circumstances which have negatively impacted the value of the assets of certain cells of GMF. Such reduction in the value of the assets of certain cells has led to issues relating to the liquidity of these cells.

(d) The remaining board members of Lancelot and GMF have failed to recognise the issues that brought about the suspension of the Strategic Cells.

(f) The serious nature the issues set out above and the known impact which these have had on certain cells of GMF has led the Commission to the view that there is a high risk that the behaviour which has caused this, including the failure to manage conflicts of interest, also affects the Managed Funds. Due to the risk of contagion, there is a risk that the value of the underlying assets of such funds are not accurately known and that the net asset value attributed to the various cells is incorrect. Accordingly, the Commission has concerns that the value for redemptions of shares in cells of GFM as well as shares in other Managed Funds are being made, and the value at which shares in the cells of GMF and other Managed Funds are being issued, may not reflect the actual net asset value of such cells or funds (as relevant).

(h) Further, Lancelot's apparent failure to deal with the conflicts of interests appropriately in relation to GMF and its advisors has led the Commission to the view that there is a high risk that the behaviour which has caused this also affects other Managed Funds. This concern is particularly acute where funds and their advisors have persons in common."

19. Mr. Yabsley's affidavit detailed a number of specific issues relating to certain entities and at that stage the GFSC did not know how widespread within the group of funds those issues were. The problems arose principally from the individuals involved in the structure owning and controlling many of the entities within the structure. The GFSC were concerned that the lack of sufficient independent scrutiny meant that there were potential risks to investments and investors in all entities. It was on that basis that I had been persuaded to make the orders putting entities into administration management and/or into liquidation. The purpose of doing so was that Grant Thornton could then investigate these matters further.

20. The various conflicts of interests and the connections with related parties were shown graphically in appendix 1 of Grant Thornton's Report to the Royal Court and Investors starting at page 118 of the exhibit to Mr. Toynton's first affidavit and the chart at page 143 of that exhibit. There is no need for me in this judgement to elaborate further; the investors have had a copy of Grant Thornton's report, so they have that information available to them.

The Court's Approach to the Application

21. The statutory framework for the administration management regime is to be found in the Protection of Investors Administration and Intervention (Bailiwick of Guernsey) Ordinance 2008 ("the 2008 Ordinance"), an Ordinance made pursuant to enabling powers in Article 28AA of the Protection of Investors (Bailiwick of Guernsey) Law 1987, as amended, which empowered the States to make Ordinances authorising the GFSC to take certain steps with a view to intervening in administering certain entities. Subsection 28AA(2)(f) is particularly relevant because it provided that an Ordinance could:-

> *"modify or supplement any enactment or rule of law appertaining to the management, control and ownership of any person or entity including, for the avoidance of doubt, its assets and liabilities."*

22. It is to be noted that the enabling power is in very wide terms. Turning to the 2008 Ordinance, Section 1 gives the Court power to make administration orders. Subsection 1(1) provides:-

"Subject to the provisions of this section, if the Court –

(a) is satisfied that a relevant person –

(i) after the commencement of this Ordinance, has performed an act or made an omission, or

(ii) will or is likely to perform an act or make any omission that would cause undue risk to investors, and

(b) considers that the making of an order under this section would be for the protection of investors,

*the Court may make an order under this section (an **"administration order"**) in relation to the relevant person."*

23. Subsection 1(2) provides for the appointment of an administration manager to manage the affairs, business and property of the relevant person.

24. It is pursuant to section 1 of the 2008 Ordinance that the Orders were made by me back in April 2015 and it is important to stress that at that stage I was not making any findings of fault or deciding that anything necessarily had gone wrong; what I was concerned about was the risk to investors and whether to make orders for the protection of investors.

25. The present application before me on this occasion is brought under Subsection 4(3) of the 2008 Ordinance which provides that-

"(3) The administration manager may apply to the Court for directions in relation to –

(a) the extent or performance of any function, and

(b) any matter arising in the course of his administration,

and on such an application the Court may make such order, on such terms and conditions, as it thinks fit."

26. It is perhaps important to point out that I am not dealing with an administration under the Companies Law. An administration management order under the 2008 Ordinance is a different kind of animal, it is an order that only the GFSC can apply for and clearly the purpose of it is to protect investors. In that sense it is different from the type of administration order under the Companies Law with which we are more familiar. I say "more familiar" because I believe this is the first time that the 2008 Ordinance has ever been invoked and considered by the Royal Court or if there have been other instances they have not been referred to me.

27. Advocate Wessels addressed me as to the Court's role in the Application. He drew an analogy with applications made by trustees under the *Public Trustee v. Cooper* jurisdiction where a trustee may come before the Court not asking the Court to exercise a discretion but merely to bless a momentous decision made by the trustee.

28. By way of further analogy he also referred me to the decision of Snowden, J, sitting in the Chancery Division Companies Court *In the Matter of Longmeade Limited (in liquidation) and in the Matter of the Insolvency Act 1986* [2016] EWHC 356 (Ch) Thursday 25th February 2016 where the applicants were the joint liquidators of Longmeade Limited. At paragraphs 61 to

66 of that judgment there is a helpful reference to a number of cases in which the English Courts had made clear that commercial decisions and administrative decisions are matters for the administrators of companies and whilst they may in certain circumstances apply to the Court it is not for the Court to substitute its own discretion. As Neuberger, J, expressed it in *Re T&D Industries Plc (2000) 1 WRL 646 at 657-*

> *"… a person appointed to act as an administrator may be called upon to make important and urgent decisions. He has a responsible and potentially demanding role. Commercial and administrative decisions are for him, and the court is not there to act as a sort of bomb shelter for him."*

29. And likewise in *re MF Global UK Limited* [2014] Bus LR 1156 at paragraph 41, David Richards J observed -

> *"In commercial matters, administrators are generally expected to exercise their own judgment rather than to rely on the approval or endorsement of the court to their proposed course of action."*

30. These authorities were summarised by Snowden, J, at paragraph 66 where he said the following:-

> *"I consider that the established legal principles outlined above can and should be applied to the modified regime concerning the commencement of proceedings by a company in compulsory liquidation post 26th May 2015, I would therefore summarise the position as follows:*
>
> *(i) A decision by liquidators appointed by the court as to whether to commence proceedings in the name of the company is essentially a commercial decision which the liquidators are entrusted to take without obtaining sanction from the court or the liquidation committee;*
>
> *(ii) In taking that decision, the liquidators should act in what they believe to be the best interests of the insolvent company and all those who have an interest in its estate;*
>
> *(iii) The liquidators may, but are not obliged to, consult the creditors (or contributories) who have an interest in the estate;*
>
> *(iv) The liquidators should normally give weight to the reasoned views of the majority of such creditors (or contributories), provided that they are uninfluenced by extraneous considerations;*
>
> *(v) If all those who are interested in the insolvent estate are fully informed unanimously of the same view, the liquidators should ordinarily give effect to their wishes;*
>
> *(vi) The court should not generally become involved in giving directions to liquidators on how to make commercial administrative decisions; and*
>
> *(vii) The court should not generally interfere with a commercial or administrative decision of liquidators after the event, unless it is a decision that was taken in bad faith or was a decision that no reasonable liquidator could have taken."*

31. The circumstances in that case are very different from what we are considering here but nevertheless I accept the general principle. My approach to the Application has been that it is not for me to interfere with the commercial administrative decisions taken by Grant Thornton unless such decisions were taken in bad faith or were decisions that no reasonable person in their position could have taken. In other words, I am approaching it in a similar way to how I would approach an application by Trustees under the *Public Trustee v. Cooper* jurisdiction. My approach is that Grant Thornton have come to me seeking the Court's blessing which would normally be forthcoming unless it was taken in bad faith or is irrational or otherwise unreasonable.

Exit Strategies

32. Those are the principles that I have applied in deciding the Application. Part of the Application deals with what were referred to as *"exit strategies"* designed to ensure that the funds could be taken out of administration management. The approach that Grant Thornton took was to look at each of the funds individually and to attribute to each a red, amber or green status; the difference between them is explained in paragraph 89 on page 27 of Mr. Toynton's first affidavit and conveniently summarised in the Report to the Royal Court and Investors at paragraph 4.1:-

> *"4.1.1 Red funds - funds with as yet unresolved connections to the Relevant Connected Parties;*
>
> *4.1.2 Amber funds - certain aspects of enquiry in relation to part of a fund remain extant;*
>
> *4.1.3 Green funds - we no longer have any concern that the connections or other matters prevent the funds from exiting the Administration Management subject to their chosen exit route."*

33. In reviewing the status of each fund Grant Thornton started with the approach that the Court made when granting orders in April. That is to say, each and every fund should be considered red unless, on investigation, it was found that it could be reclassified either as amber or green. In my view that is a reasonable rational approach for Grant Thornton to have taken and hence I approve it, in so far as I am required to approve the general approach.

34. Advocate Wessels referred to appendix 3 of the Report to the Royal Court and investors (which is pages 258 to 284 of the exhibit to Mr Toynton's affidavit) and looked at each fund in turn. He reviewed them all and I accept that in each case Grant Thornton's classification was reasonable.

35. Advocate Wessels looked particularly closely at the Brand Investments Fund (page 261) because the fund had been referred to by Mr. Cosgrove in paragraph 24 of his affidavit where he advised that investors had agreed that they would like the assets of that fund to be transferred to themselves either in specie or as the proceeds of the redemption of the underlying investments. In other words, they objected to its classification as a red fund.

36. The reason Grant Thornton had classified it as red was because there are twelve nominee holdings in the fund held by a relevant connected party, namely Citygate Securities Limited, totalling 74.6% of the value of the fund. Also, the fund held investments in other, connected, funds based either in the Cayman Islands or in Mauritius where the local Financial Services Commission had suspended Lancelot Global PCC's authorisation to act as

a collective investment scheme and had revoked the Category 1 Global Business Licence of the Brand Overlay Fund. It had other concerns concerning another two funds.

37. In my judgment, there were sufficient connections with relevant connected parties to fully justify the classification of the Brand Investments Fund as a red fund on the basis that further investigation was required before these funds could be exited notwithstanding that there is a relatively small investment of $591,000 in blue chip/listed or untainted investments.

38. I will not review all of the funds and all the classifications but I just draw attention by way of example to the one at page 282, the Astra Fund, where there are three nominee holdings totalling a 100% interest in the fund all received through Citygate Securities Limited. There are also a number of other funds where a small percentage of the investments were introduced either through Citygate or other relevant connected parties acting as nominees. In some cases those funds have been classified as amber or green where Grant Thornton are satisfied that the related party investment is small enough to justify the reclassification.

39. As I understand it, the concerns about investors' monies introduced through Citygate and other nominees is that Grant Thornton do not know in every case the identity of the beneficial owner of the investment. It is a little surprising to me that KYC information is not held in Guernsey but I am told that is because reliance was placed upon the introducers who were responsible for carrying out appropriate due diligence. Where the introducers are not within the jurisdiction, I understand that Grant Thornton have not yet been able to obtain all necessary information, so they were relying upon the nominees and are awaiting further information as to the identity of those investors before they will consider reclassifying those funds.

40. In conclusion, I accept that there is a rational basis for Grant Thornton's approach to the exit strategy, their classification of the funds and the analysis they have undertaken. It has been reasonably carried out and there is no evidence before me of any bad faith on their part, hence there is no reason for me other than to bless what they are proposing by way of exit strategy.

Allocation of Fees

41. The next issue is the allocation of fees. In the Act of Court of 24 April 2015 appointing the administration managers (page 293 of the exhibit to Mr. Toynton's first affidavit), at paragraph 11, I ordered:-

> *"11. That the fees and expenses of the joint Administration Managers be payable from the assets of the Funds and the underlying cells in such proportions as there are assets available to meet such fees and expenses and as the joint Administration Managers deem appropriate."*

42. The reason for making an order in those terms was that, at the time, the full extent of the problems identified by the GFSC was unknown. It was not known how many funds might be tainted in some way or other nor how much work would be involved, nor what assets would be available to pay those expenses, but Grant Thornton needed to be confident that their expenses would be paid. At the time I took the view that I had the power to make an order in those terms and nobody has subsequently challenged my power to do so. I also considered that in the exercise of my discretion it was an appropriate order to make as there was no better practical or pragmatic order that I could have made in those circumstances.

43. In the present Application, Grant Thornton are applying for directions from the Court as to how to give effect to paragraph 11 of the Act of Court. There were objections from certain

investors and from Lumiere (represented by Advocate Adkins) regarding Grant Thornton's proposals, which I describe in further detail later but at this point I note that no one has applied to set aside or vary the Order despite the fact that under Section 11 of the 2008 Ordinance there is power for an investor, a creditor or the GFSC to apply to the Court for various relief including the discharge or variation of orders made. Also, under Section 11(5) a person other than those I have mentioned could apply with the leave of the Court if they wished to do so. None of the persons who are entitled to apply to set aside my costs Order have done so. Grant Thornton are entitled to rely upon the Order made and they are entitled to come before the Court to seek the Court's blessing as to how to give effect to it.

44. To explain the proposed allocation of fees I was taken to page 285 of the exhibit to Mr. Toynton's affidavit. The approach proposed by Grant Thornton was first of all to allocate specific costs to the specific cells in respect of which those costs have been incurred where fund-specific costs could be identified. Grant Thornton had incurred further substantial costs that were general or common in nature and could not be allocated to a specific fund or cell. In relation to those expenses, the proposal was to allocate the further costs equally to all the funds concerned. That approach had been challenged as to whether it was correct and I will address the challenge below.

45. The fees incurred by Mourant Ozannes and the GFSC were considered to be general non-specific costs which were proposed to be allocated on a per fund basis. Certain management administration and trustee fees had been charged by the providers of those services namely, Lancelot, Lumiere, Deutsche Bank and RBC on a fund basis and they were proposed to be allocated to the funds to which they related. Having allocated total specific and non-specific costs of just over £1,000,000 in that way, Grant Thornton had looked at the assets available in the individual funds to pay the fund's allocation. In most cases there were sufficient assets either in cash or other form to pay what had been attributed to each fund subject to one qualification. The Strategic Growth Funds had each spawned a liquidity fund to hold liquidity on behalf of the fund in relation to each of which, costs had been allocated to the relevant liquidity fund.

46. Having done that exercise Grant Thornton had identified four funds in respect of which there existed a shortfall, the Optimiser Global Property Fund, the RGTO Optimiser Fund, the Astra Fund and the London Asset Management Alternative Class Fund. The total shortfall was £93,061.41, the great bulk of which related to general or common costs rather than cell specific costs. Grant Thornton proposed to re-allocate the shortfall to the other funds where there existed sufficient assets on a per fund basis.

47. Next, Grant Thornton had looked at future costs as at December last year, much of which has now been paid. These represented their estimate of the costs required to liquidate or exit each fund, some central core costs, future legal fees and some specific service provider fees. The proposal was to allocate them on a similar basis: fund specific costs to the relevant fund; costs of a central nature across all funds; and a provision for recovery from the funds that could afford to pay a share of costs which the funds with a shortfall could not afford to pay. That is my understanding and summary of what Grant Thornton were proposing which is all set out clearly in the Report to the Royal Court and Investors.

48. In correspondence put before the Court, objections were raised to that method of allocation. It was suggested that rather than allocating the common costs on a per fund basis they should be allocated in proportion to net asset values. That proposal had been considered by Grant Thornton but rejected because of the uncertainty or unreliability of the net asset values in relation to certain funds. I am satisfied that is a good example of a commercial administrative decision which it is for Grant Thornton to take and not one in which the Court will interfere unless it is not rationally based or if it is taken in bad faith which, in my judgment, it was not. I am therefore persuaded that it was well within Grant

Thornton's powers to allocate those costs on a per fund basis and their decision is not one with which I should interfere.

49. The next objection was one taken to the proposed allocation to the funds with sufficient assets of a share of the shortfall of costs relating to funds that do not have sufficient assets. Mr. A.S. Collier, who describes himself on his notepaper as a stockbroker in personal investment and estate planning, had made the point, in correspondence, that the innocent should not be subsidising the costs of the guilty who are unable to pay. Advocate Adkins on behalf of Lumiere made a similar point on behalf of investors generally. He said that to do so would defeat the object of the PCC legislation. In summary, his submission was that the purpose of the PCC legislation is to protect the integrity of individual cells and their assets so that any one cell does not have to pay liabilities incurred by any other cell. Advocate Adkins referred to the potential reputational damage to the island and its funds industry; he said that the proposal put forward by Grant Thornton could undermine confidence in our PCC legislation.

50. His concerns were not shared by the GFSC according to Advocate Nicol-Gent, who submitted that the purpose of Section 28AA of the 1987 Law and the 2008 Ordinance was to give the Royal Court the power to override legislation in exceptional circumstances such as the circumstances that have been identified in this case. I accept that, for the reasons I have given, this is such an exceptional case. In short, what is exceptional is that we have here a whole group of companies with numerous conflicts of interest and a risk to investors identified by the GFSC as a result of which these companies were placed in administration management or liquidation because of the risks arising from the conflicts of interest and the systemic failures and weaknesses endemic in the structure. The costs order I made in April 2015 was in my view the only practical pragmatic order that could have been made at the time and the only basis upon which Grant Thornton or indeed any other person would have accepted the role that they were being asked to undertake.

51. There are well recognised instances of pooling of costs in the liquidation of group companies or related companies and although those instances are not directly relevant because we are not dealing with a liquidation or administration under the Companies Law, nevertheless they can be considered analogous. As I previously said I had the power to make the order that I made on 24th April 2015; that order has not been challenged; nobody has sought to set it aside; the order stands; and in my view what is being proposed by Grant Thornton is a practical way of giving effect to my order. I note in passing that as a matter of fact, the amount of fund specific costs having to be re-allocated to other funds is negligible in relation to the total costs incurred.

52. If the order were not to be made as proposed, who else would pay? One suggestion was that Grant Thornton could simply bear the costs themselves but in my opinion that would be unreasonable when they have taken on the responsibilities on the understanding that their costs would be paid. I see no reason why Grant Thornton should have to bear the costs.

53. It was also suggested that the GFSC could pay. Advocate Adkins submitted that as a matter of their own policy they should do so. However, this case is not an occasion for me to review the GFSC's policies or the policies laid down by the States of Guernsey under which they operate as laid down both in legislation and in the States' oversight (such as it is) of the GFSC's activities.

Investor Communications

54. Advocate Wessels drew my attention to investor communications. All investors had been notified through Lumiere of the application and over the months they had received several updates from Grant Thornton. The responses received were disclosed to the Court and they

are summarised at paragraph 19 onwards of Mr. Toynton's second affidavit. I refer briefly to paragraph 22 where Mr. Toynton said:-

> *"About 50% [of responses received] were merely confirmations of receipt, requests for clarification as to how to access the Notification Materials, or general update requests."*

55. At paragraph 23:-

> *"Investors in the Strategic Growth Funds formed 50% of the correspondence and apart from the three noted above, the thrust of this correspondence was that their investment advisor (**DeVere**) was being unresponsive and/or had provided bad investment advice."*

56. At paragraph 24 he said there had been a representation concerning the Assethouse Wealth Accumulator Fund which is currently classified as a red fund but I am told that Grant Thornton are confident that it can progress towards exit in the relatively near future.

57. A further complaint was made as to why costs had not been allocated on a NAV basis, which I have dealt with above. He also described Mr. Collier's concerns which I have addressed in one way or another during the course of this judgment.

58. In conclusion, I am persuaded that investors' concerns (such as they were) have been taken into account by Grant Thornton.

59. Advocate Nicol-Gent on behalf of the GFSC supported Grant Thornton's application.

60. Advocate Adkins for Lumiere raised three issues; one was in relation to Lumiere's own fees. It was explained to him that their fees would be paid as a priority so Lumiere need have no ongoing concern. He raised the proposed re-allocation of fees which I have dealt with and he also raised other ongoing issues which he wanted to have aired and noted by Grant Thornton but as they are not relevant to the Orders I am asked to make, I do not need to address them in any detail in this judgment.

61. I believe I have covered every relevant issue raised during the hearing and for the reasons I have given I grant the orders, as sought.