Arasbridge Liquidation
Royal Court
18th August 2017

JUDGMENT
37/2017

Seeking blessing on a number of a specific decisions to wind up the Fund

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

IN THE MATTER OF THE ARASBRIDGE UNIT TRUST (the "AUT")

Between: **KLEINWORT BENSON (GUERNSEY) LIMITED** **(Applicant)**

and

ARAS INVESTMENT MANAGEMENT LIMITED **(First Respondent)**

as Manager of the AUT ("AIML")

and

ACTIVE FUND SERVICES LIMITED **(Second Respondent)**

as Administrator of the AUT ("Active")

and

JEREMY LE TISSIER **Representative of the Unit Holders**

in his capacity as Representative of the Unit Holders of the AUT

Judgment handed down: 18th August 2017
Before: Sir Richard Collas, Bailiff

Advocates for the Applicant: **Advocate J P Greenfield and Advocate N Kapp**
Advocate for the Second Respondent: **Advocate S Brehaut**
Representative of the Unit Holders: **Advocate Jeremy Le Tissier**

Introduction

1. A number of applications to the Royal Court concerning the Arasbridge Unit Trust ("Arasbridge" or the "Fund") have been made over the last six years. The present application before me is dated 21st July 2017 (the "July 2017 Application") and is in the form of an application dated 13th April 2016 (the "April 2016 Application") which has been amended to include two new sub-paragraphs, 2.3 and 2.4, together with a small amendment to the sub-paragraph which is now numbered 2.5.

2. The main purpose of the July 2017 Application (as with the April 2016 Application) is to enable Kleinwort Benson (Guernsey) Limited as trustee of the Fund (the "Trustee") to seek the blessing of the Royal Court to its decision to wind up the Fund. If that is approved, the Court is also asked to bless a number of decisions taken by the Trustee on specific issues which need to be determined before the Trustee may progress the winding-up.

3. The April 2016 application was heard on the 18th July 2016 and on the following day I handed down a judgment in which I ordered that there be an adjournment to give an opportunity to investors in the Fund to identify an independent liquidator to conduct the liquidation. Further adjournments followed while unsuccessful attempts were made to identify a suitable liquidator. Finally, an application for the appointment of the Public Trustee was dismissed by me in a written judgment handed down on 17th March this year.

4. Paragraph 1 of the April 2016 Application is repeated in paragraph 1 of the July 2017 Application. It sought confirmation of the appointment of Advocate Jeremy Le Tissier as the representative of *"all of the beneficiaries, subscribers and other applicants for subscription of or to the [Fund]"*. His appointment had been confirmed in respect of the April 2016 Application and paragraph 1 is repeated in the July 2017 for the avoidance of any doubt as to the validity of his representation of those to whom I will refer generally as "Investors" or "Unit holders". At the oral hearing, the main issues of contention were those set out in the amended paragraphs 2.3 and 2.4. Most of the oral submissions by Advocate Greenfield on behalf of the Trustee and by Advocate Le Tissier concerned those two sub-paragraphs. Advocate Brehaut appeared on behalf of Active Fund Services Limited (the "Administrator") and adopted a neutral stance. Once again, Aras Investment Management Limited ("AIML" or the "Manager") did not appear and was not represented as it continues to have no directors and is thus in no positon to act in any way.

5. At the conclusion of the oral hearing, I invited counsel to make further written submissions on an issue which had arisen but had not been fully addressed during the hearing. I subsequently received a written argument for Advocate Le Tissier dated 4th August and a reply by Advocates Greenfield and Kapp dated 11th August. The issue is whether the "trigger" for winding up the Fund relied upon by the Trustee had in fact occurred. That is to say, whether AIML had ceased to be the manager of the Fund.

The Application

6. Paragraph 2 of the July 2017 Application seeks the following order:

> *"2. That the Trustee be permitted in exercise of its powers under the AUT, to implement and give effect to the Trustee's decision to proceed with the winding up of the AUT in the most efficient and cost effective manner available in the best interests of the Unitholders and creditors of the AUT, and for the Court to bless the Trustee's decisions in order to progress the winding up process:*
>
> *2.1 To treat all valid Unitholder redemption requests received prior to the suspension of the AUT on 23 January 2009 (the "Suspension Date") for redemptions on any Dealing Day which occurred prior to the Suspension Date as creditors of the AUT;*
>
> *2.2. To disregard Unitholder redemption requests received prior to the Suspension Date for any Dealing Day falling after the Suspension Date and to treat those Unitholders as investors in the relevant sub-funds;*
>
> *2.3 To treat the 10 subscription requests processed for the December 2008 dealing date into the Arasbridge Enhancd Return Fund as creditors of the AUT;*

2.4 To treat the 9 subscription requests processed for the September 2008 and October 2008 dealing date into the Arasbridge Absolute Return Fund as creditors of the AUT;

2.5 With the exception of the subscription requests set out in 2.3 and 2.4 above, to process valid outstanding subscriptions and redemption requests for the November 2008, December 2008 and January 2009 Dealing Days at prices based on (i) the October 2008 NAVs determined, but not published by, Nerine Fund Administrators Limited, (ii) adjusted on each such Dealing Day for price movements in the underlying target holdings, and (iii) adjusted on each such Dealing Day for any compensation due from Nerine; and not to levy any Early Encashment Charge which may otherwise apply to redemptions for the November 2008 Dealing Day;

2.6 To disregard all outstanding "switch" requests received prior to the Suspension Date; and

2.7 To make no further payment to AIML in respect of Management Fees."

7. Paragraph 3 seeks an order enabling the Trustee to be paid *"the fees, costs and expenses reasonably incurred by the Trustee"* in winding up the Fund from the remaining assets of the Fund and to have a first charge in respect thereof. Paragraph 4 is concerned with the costs of the July 2017 Application. Neither paragraph was opposed other than in relation to how the costs will be allocated between the various sub-Funds of the Fund before finalising the winding-up. Advocate Greenfield advised that in due course the Trustee would consult with other parties before, if necessary, returning to Court for approval of the costs allocation.

The Law

8. The July 2017 Application is brought under the provisions of section 69 of the Trusts (Guernsey) Law, 2007 (as amended) enabling a trustee to seek directions from the Court in relation to matters relating to a trust and the property of the trust, specifically section 69 (1)(a)(iv) of the Law. The Trustee seeks the blessing of the Court under the Public Trustee v Cooper [2001] WTLR 901 jurisdiction and the second category of applications identified in the judgment of Hart J.

9. The Royal Court's supervisory jurisdiction over trusts has been considered by the island's Courts in a number of cases. Advocates Greenfield and Le Tissier both cited the judgment of Martin JA in In Re F [2013 GLR 388] in which he explained at paragraph 10, that the second category of application *"is an application by trustees for the "blessing" by the court of a "momentous" decision which the trustees are proposing to make".* He further explained, at paragraph 11, that:

> *"In the second type of application, however, the court is not exercising a discretion. What it is doing is in effect making a declaration that the trustees' proposed exercise of the power is lawful; in other words, that the proposed exercise is within the proper ambit of the power, that the trustees are acting honestly, and that in reaching their decision the trustees have taken into account all relevant matters, have taken into account no irrelevant matters, and have not reached a decision that no reasonable body of trustees could have reached. The effect is to protect the trustees from any challenge to their decision by persons interested in the trust, and to make clear that the trustees are entitled to indemnity from the trust assets in respect of the costs or other financial consequences of their decision. It is immaterial that the court, had it been exercising a discretion of its own, would have exercised it in a way different*

from that proposed by the trustees. To the extent that the court has any discretion, it is in whether or not to admit the application: if, for example, the court considers that the trustees' decision is of insufficient moment, it may refuse to entertain the application at all. Once it has decided to deal with the application, however, it has no more discretion than in the making of any other declaration, and will make it once satisfied of the propriety of the proposed exercise of the power. It may nevertheless be that the court will sometimes engage in a dialogue with the trustees as a result of which the trustees' decision is modified; but, properly analysed, that is no more than a process by which the court identifies the circumstances in which it will be satisfied that the proposed exercise of the power is within the proper range of such exercises. It is not indicative that the court is exercising a discretion; and any attempt by a court to do so in circumstances where the trustees had not surrendered their discretion would infringe the general principle that a court will not enforce the exercise of a power against the wish of the trustees."

10. There is no disagreement that the decision to wind-up the Fund is a 'momentous decision' and hence a matter on which it is permissible for the Trustee to apply to the Court to 'bless' the decision. However, the Court is not compelled to entertain the application; it has a discretion to refuse to do so. Advocate Le Tissier urged me to consider carefully whether it is appropriate to entertain the July 2017 Application. A reason why I might refuse to do so is that the decisions I am asked to bless as to how certain Investors are to be treated will benefit some of them at the expense of other Investors. If I were to approve the proposals before me, those who are disadvantaged will have no right of recourse against the Trustee at a later date as the Trustee will have the protection of a Court order for the action it will have taken.

Has there been a "trigger event"?

11. There has been an assumption for some time that the Fund will be wound up and the focus of the parties and of the Court has been on who should be appointed to conduct the winding up. It is however necessary to consider whether the Trustee has the power to take the decision to wind up the Fund and hence whether the Court would be in a position to bless the decision. The power relied upon by the Trustee is in paragraph 10 of the Trust Instrument constituting the Fund, the material parts of which are:

> ***"10 TERMINATION***
>
> ***10.1 FORTHWITH*** *upon the happening of any of the events specified in paragraph 10.2 hereof the Trustee shall cease the creation and cancellation of Units, the Manager shall cease the issue and redemption of Units and the Trustee shall proceed to wind up the Trust in accordance with the Rules.*
>
> ***10.2*** *The events referred to in paragraph 10.1 are:-*
>
> ……
>
> *(f) The Manager ceases to be the Manager, and no new Manager is appointed;"*

12. In his oral submissions, Advocate Le Tissier submitted that because the Manager continues to exist as a legal entity and because no other entity has been appointed as Manager in its place, the Trustee cannot rely upon paragraph 10.2 (f) of the Trust Instrument as a 'trigger event' empowering the Trustee to wind up the Fund. Furthermore, if it is such a trigger event then because the Trust Instrument requires that the Fund be wound up **forthwith** upon the happening of such event, it should have happened some years ago.

13. In his subsequent written submission, Advocate Le Tissier has developed the point by reference to correspondence from the Trustee exhibited to the second affidavit of Glyn Carré, a director of the Trustee, sworn on 11th July 2016 written after the suspension of AIML's licence by the GFSC in late April 2013. On May 1st, Carey Olsen wrote on behalf of the Trustee to AIML to inform it that *"The suspension of your licence by the GFSC is not of itself a "trigger event" for the Fund to be wound up under the Trust Instrument"* and *"The Manager remains the Manager of the Fund either until it is removed by the Trustee giving notice to it in writing (following the happening of an event as set out at paragraph 5 of Appendix G of the TI), such notice being "forthwith", or it retires in favour of a replacement (paragraph 8 of Appendix G of the TI)."* The letter made clear that the Trustee was not seeking to remove AIML at that time. It advised that *"The Trustee has contacted the GFSC who have confirmed it is permissible for the Trustee to decide not to exercise its discretion under the TI to remove the Manager at this stage."…. "we are instructed to advise that the Trustee has decided to take no steps to remove [AIML] as Manager at this time. This decision will be subject to constant review depending on future developments."* In a letter of 7th May to AIML, Carey Olsen wrote to clarify the position at the request of the GFSC and added that *"The GFSC did not give its approval for the Trustee not to exercise its discretion under the TI. Rather, the GFSC confirmed that no action would be regarded as necessary to be taken by it, nor would it hold a point, should the Trustee decide to exercise its discretion not to remove the Manager immediately."*

14. A week later, on 14th May, Carey Olsen wrote to Advocate Le Tissier noting that the two remaining directors of AIML had resigned their positions rendering the Manager incapable of taking any action although the company continued in existence. The letter asked if the Unit holders had any proposals or suggestions regarding the steps they may wish to take to keep the Manger in place. It added *"Pending receipt of those proposals (if any), the Trustee does not intend to take any steps at present which would result in a winding up of the Fund".* The GFSC were advised of the Trustee's position in a letter from Carey Olsen of 15th May: *"pending receipt of [Unit holders'] proposals (if any), and/or receipt of the Commission's views on this development, the Trustee does not intend to take any step at present which would result in a winding up of the Fund".* Advocate Le Tissier contends that as between the date of that correspondence in May 2013, there has been a *volte face* by the Trustee which is unexplained.

15. In its response to Advocate Le Tissier's submission, the Trustee states that he has overlooked evidence contained in Mr Carré's first affidavit in the proceedings sworn on 14th April 2016. The evidence in that affidavit shows that there have been ongoing discussions both with Advocate Le Tissier and with Mr Paul Schram, the attorney of a large number of Unit holders, regarding the winding up. The discussions have tended to focus on who should be the liquidator and on decisions that will have to be taken during the course of the winding up. All have been working on the assumption that the Fund will be wound up. It has therefore come as a surprise that the issue of whether a trigger event has occurred is being raised at this stage in the process.

16. I have looked carefully at the documents exhibited to the Court in order to understand which "trigger event" the Trustee had in mind when it resolved to wind up the Fund. Minutes of meetings of the Trustee were exhibited to the first affidavit of Mr Carré. The first minutes are dated 25th November 2015 (pages 229-232 of the exhibit). Paragraph 4.3 noted that one purpose of the meeting was that on 13th October the Trustee had received a letter from the GFSC in which the GFSC commented that *"the Trustee should consider putting the Fund into liquidation".* In paragraph 6.1(b), the Trustee resolved that: *"Carey Olsen be instructed to prepare a response to Mr Schram noting the unitholder's desire to wind up the Fund, noting the Trustee's willingness to resign if that is what the unitholders require and confirming that the Trustee is giving careful consideration to the most efficient and cost-effective manner for*

the winding up of the Fund to proceed". The minute discloses that as at 25th November 2015, the Trustee had not yet resolved to wind up the Fund.

17. The next minute exhibited is of a meeting held on 10th December 2015. It noted at paragraph 4.8 that a reply from Mr Scram was still awaited. Also, at paragraph 4.9, that a meeting was to be held between Advocates the following week after which *"Carey Olsen hoped then to be in a position to discuss and agree with Jeremy Le Tissier the winding up of the Fund by the Trustee".* The Trustee resolved to await the response from Mr Schram and further developments from Carey Olsen. So, as at that date, I conclude there had been no resolution to wind up the Fund. A meeting on 18th December dealt with the matter of some fees and made no mention of any proposal to wind up the Fund.

18. The next meeting was held on 27th January 2016 (pages 244-246). It noted that a response had been received from Mr Schram confirming the winding up should proceed but conducted by Grant Thornton as liquidator, not the Trustee. It noted the content of correspondence passing between Carey Olsen and Mr Schram on the subject of who should be appointed, the details of which are not material and do not need to be repeated here. The Trustee also noted, at paragraph 4.5, inter alia, that: *"The Trustee remained of the view that it was in the best interests of the unit holders and creditors of the Fund for it to proceed with the winding up as proposed by it as the most cost effective and efficient manner to wind up the Fund".* The Trustee than resolved to wind up the Fund, as recorded in paragraph 4.6 of the minute: *"**IT WAS RESOLVED** to proceed with the winding up of the Fund and the payment of creditors and the realisation of underlying assets".*

19. On 11th February, the Trustee met again for the purpose of making *"decisions, where practical and appropriate, on how to achieve the winding-up of the AUT in the most cost-effective and efficient manner in the best interests of the investors".* So, by that date the Trustee was proceeding on the basis that a decision in principle to wind up the fund had been made.

20. From those minutes, I conclude that the possibility of winding up the Fund had been under discussion for some time (I believe from memory that the possibility had also been mentioned in Court prior to that date) but the decision by the Trustee was not taken until 27th January 2016 following agreement in principle from Mr Schram (but with no agreement as to who should be the liquidator). The minutes of the 27th January meeting make no reference to any trigger event in the Trust Instrument. It seems to have been accepted by the Trustee that it had grounds for winding up the Fund and the only issue had been trying to secure the agreement or, at the very least, support for the decision from Mr Scram and/or from Advocate Le Tissier. As soon as Mr Schram had indicated his support, the decision was taken to wind up without considering the provisions in the Trust Instrument that would enable such a decision to be taken.

21. The Trustee submits that it is clear that a trigger event has occurred. AIML is unable to carry out its functions as Manager when its licence has been suspended and it has no directors or officers and remains in existence only as a shell spared from being struck off at the discretion of the Companies Registrar following a request from the Trustee not to strike off the company whilst the Trustee pursues litigation in the Royal Court in which the Manager is named as a defendant. However, the initial stance taken by the Trustee was that AIML would continue as Manager until its position was formally terminated in writing by the Trustee. I have seen no evidence of a written notice to terminate its appointment.

22. It is a fact that Mr Schram has encouraged the Trustee to wind up the Fund and has agreed that it needs to be wound up in the interests of the Unit holders. With his support and encouragement, Advocate Le Tissier made applications for different persons to be appointed

as liquidator. The impression now given is that there is an element of opportunism in pointing out what appears to be a technical slip or oversight in the decision making of the Trustee and thus that their decisions are so fundamentally flawed that they cannot be blessed by the Court. Nevertheless the Court must be satisfied that the decision was taken lawfully and in accordance with the provisions of the Trust Instrument.

Paragraphs 2.3 and 2.4

23. The most controversial parts of the Application during the oral submissions of counsel were paragraphs 2.3 and 2.4 seeking the Court's blessing of the decision:

> *"2.3 To treat the 10 subscription requests processed for the December 2008 dealing date into the Arasbridge Enhanced Return Fund as creditors of the AUT.*
>
> *2.4 To treat the 9 subscription requests processed for the September 2008 and October 2008 dealing date into the Arasbridge Absolute Return Fund as creditors of the AUT."*

24. The Trustee's decision was taken at a meeting on 21st July 2017. The minutes of the meeting record that:

> *"Active has recently confirmed that in respect of the Absolute Return Fund subscriptions for September and October 2008 and in respect of the Enhanced Return Fund, subscriptions for December 2008, were in fact not invested in the underlying funds. Written advice has been sought from Carey Olsen as to how to treat these subscriptions."*

25. The minutes record that advice had been received from Carey Olsen dated 13th July 2017 and the letter of advice was tabled after consideration of which the Trustee resolved:

> *"5.1 .....to treat the subscription requests for the December 2008 dealing date into the Arasbridge Enhanced Return Fund as creditors of the Fund.*
>
> *5.2 To treat all subscription requests for the September 2008 and October 2008 dealing date into the Arasbridge Absolute Return Fund as creditors of the Fund."*

26. The letter of advice from Carey Olsen was exhibited to Mr Carré's seventh affidavit at pages 11 and 12. I was told that the instructions from the Trustee on which the advice was prepared were given orally and hence are not exhibited with the letter. The facts on which the opinion was based are, I was told, as set out in the following paragraphs of the letter:

> *"**AUT Enhanced Return Fund***
>
> *10 subscription requests totalling €633,990.98 were received and credited to the fund in respect of the December 2008 dealing date but were never invested in the underlying target fund. It is not entirely clear why, but it is presumed that this was because of the AUT's suspension very shortly thereafter.*
>
> ***Absolute Return Fund***
>
> *9 subscription requests totalling €68,887.72 were received and processed for the September 2008 and October 2008 dealing date and were invested in the target fund at first, however, the amounts were returned to the fund by the underlying target fund which itself was suspended on 17 December 2008.*

Advice sought

The trustee has requested me to advise on the treatment of these subscriptions and whether it remains appropriate that these be included and treated in accordance with paragraph 2.3 of the application."

27. The application there referred to was the April 2016 Application, paragraph 2.3 of which was in substance identical to paragraph 2.5 of the July 2017 Application save that it did not include the exclusion for paragraphs 2.3 and 2.4 of the July 2017 Application.

28. Carey Olsen's advice is contained in a section headed ***"Discussion"***:

> *"These subscription requests and the affected Investors should, in my view, not be included within paragraph 2.3 of the Application. Instead they should be treated in a similar way to the so called "Interim Investors" and the "Last Investors" in the Legal Lending Funds "LLF"), i.e. as creditors of the fund.*
>
> *Pursuant to his judgment of 15 January 2015 on the Trustee's previous application dated 23 June 2014, the Bailiff directed that "Interim Investors" and the "Last Investors" in the LLF whose subscription moneys had not been invested in the underlying target fund should have their subscription monies returned to them and that they are to be treated as creditors of the fund rather than investors. The Bailiff considered this as the manner in which a reasonable trustee would be expected to act in those circumstances.*
>
> *As these Investors are in materially exactly the same position as the LLF Investors, it would be reasonable for the Trustee to treat them in a similar fashion and for their subscription monies to be returned to them rather than for them to be treated as Investors of the fund."*

29. Advocate Le Tissier highlighted the need to consider the evidence and the Trustee's decision making process because of the significant impact the decision will have on other investors in the sub-funds concerned. Certain Investors will have their subscriptions returned to them in full (subject to how the Trustee treats the 12% establishment charge deducted at source by the Manager) and subject to any decision on costs which might be deducted. In his oral submissions he said that the question involves a declaration as to the legal status of the investors concerned which is not a matter to be determined and resolved through a category 2 type application under the Public Trustee v Cooper jurisdiction. He was also concerned that the advice did not indicate that all options had been properly considered and it would appear that there had not been full and frank disclosure made by the Trustee to enable the Court to be able to scrutinise the decision and give its blessing to what the Trustee had resolved.

30. Advocate Le Tissier said that it was impossible to discern what the Trustee had in mind when it made its decision. I do not agree. The minute of the meeting makes very clear what the Trustee considered; it was the advice received from Carey Olsen in the letter tabled at the meeting. The Trustee resolved to accept the advice and to act accordingly. What troubles me is whether the instructions given to Carey Olsen were sufficient to enable a definitive view to be reached on which the Trustee could fairly reach a decision. In Carey Olsen's advice and in the Trustee's decision, it was concluded that the investors were *"in materially exactly the same position as the LLF investors"*.

Discussion

31. The position of the "LLF investors", that is to say subscribers in the Arasbridge Legal Lending Fund was considered by me in a judgment of 15th January 2015, quoted in the Carey

Olsen advice. The facts on which I reached my decision are set out in the judgment starting at paragraph 12. LLF was a class fund of the Fund and like the other class funds or sub-funds, investments were made in other funds described as "target funds". In the case of the LLF, the target fund was Puritan International Fund PCC Limited which suspended trading on 30th October 2007 and went into liquidation on 28th February 2008. During that period, investors continued to subscribe in LLF and were allocated units in LLF based on prices calculated by the Administrator. In my decision I took account of the fact that after trading in Puritan had been suspended, it should not have been possible for the Administrator to calculate the price of any units to be allocated in the LLF and the prices that were calculated were not, or may not have been correct and hence the allocation of units in the LLF to these subscribers was wrong or might have been wrong. It was an agreed fact that trading in LLF should have been suspended as soon as Puritan suspended its trading. If that had happened, the subscribers would never have invested in LLF. I therefore sought to put the subscribers in the position they would have been had things happened as they ought to have happened by ordering their subscription monies be returned to them as creditors.

32. The Carey Olsen advice does not indicate that either of the target funds of the Enhanced Return Fund or the Absolute Return Fund had ceased trading before the subscription monies were received by Arasbridge. Instead it says that in respect of the Absolute Return Fund the target fund was suspended on 17th December 2008. So it was still trading on the September and October dealing dates when subscription monies were received. In the case of the Enhanced Return Fund, the advice said it is not entirely clear why the monies were returned but presumed it was because of the suspension of the "AUT" i.e. of Arasbridge shortly thereafter, there is no indication that the target fund of the Enhanced Return Fund had been suspended or had ceased trading.

33. On the brief facts set out in the Carey Olsen advice it is not possible to say what should have happened to the subscription monies. One possibility that cannot be ruled out was that each of the target funds were trading and hence the monies received from the Investors could have been fully invested in which case they would now have to be treated the same as any other investors in the Enhanced Return Fund or the Absolute Return Fund.

34. In relation to paragraphs 2.3 and 2.4 of the July 2017 Application, Carey Olsen were not given sufficient information to enable them to advise that the Investors concerned were in the same position as the LLF investors in my decision of 15th January 2015. I am therefore unable to bless the Trustee's decision. The matter will have to be sent back to it for further consideration and, I would suggest, for further investigation of the facts. It may be that the evidence they are able to assemble will be incomplete but I am not persuaded that all steps have been taken to establish as much as possible. In his submissions, Advocate Le Tissier outlined some further facts that might be able to be found. It is a matter for the Trustee to decide how to proceed. What is important is that in reaching its decision the Trustee must take account of all relevant matters and be able to demonstrate to the Court that it has done so if it should ask the Court for its blessing. I am mindful that if I were to bless any of the decisions of the Trustee, I would be deciding issues that may have significant financial implications for some of the Investors who will not subsequently be able to seek any redress through the Courts in respect of the decisions. I must therefore proceed with caution as advised by the legal authorities cited.

Conclusion

35. For the reasons I have given, I decline to bless the Trustee's decision in paragraphs 2.3 and 2.4 of the July 2017 Application. The matter will have to go back to the Trustee for further consideration. In view of that, I also decline to bless the decision to wind up the Fund at this stage. I am certain that a "trigger event" has occurred but the Trustee must be clear in its

decision as to which event it is relying upon and why it has decided that such an event has indeed happened.

36. I am of course available to hear any further applications or to give any further directions arising from this judgment if required although I will not be available until after 4th September 2017.