Neutral Citation Number: [2021] EWHC 1240 (Ch)

Case No: CR-2019-MAN-000858, 000859 & 000860

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN MANCHESTER
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF CELTIC CONSULTANCY & ENTERPRISES LIMITED
AND IN THE MATTER OF CELTIC PMC LTD
AND IN THE MATTER OF HAOMA (UK) LTD

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 12 May 2021

Before :

HIS HONOUR JUDGE CAWSON QC
SITTING AS A JUDGE OF THE HIGH COURT

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Between :

SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY	**Petitioner**
- and -	
(1) CELTIC CONSULTANCY & ENTERPRISES LIMITED	
(2) CELTIC PMC LTD	
(3) HAOMA (UK) LTD	**Respondents**

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- -

Lucy Wilson-Barnes (instructed by **Womble Bond Dickenson**) for **the Petitioner**
Edward Davies QC and Patrick Harty (instructed by **Richard Nelson LLP**) for the **First and Second Respondents**
The third Respondent was not present or represented

Hearing dates: 20-22, and 26 April 2021

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, and by release to BAILII.

The date and time for hand-down is deemed to be 10.30 a.m. on Wednesday 12 May 2021

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HHJ CAWSON QC

His Honour Judge Cawson QC:

Introduction

1. I am presently concerned with three petitions presented by the Secretary of State for Business Energy and Industrial Strategy ("**the Secretary of State**") seeking the winding-up of Haoma (UK) Ltd ("**Haoma**"), Celtic Consulting & Enterprise Ltd ("**CCE**") and Celtic PMC Ltd ("**PMC**") pursuant to s. 124A of the Insolvency Act 1986 on the basis that it appears to the Secretary of State that it is expedient in the public interest that these companies be wound up, and that the Court ought to find that it is just and equitable that these companies be wound up.

2. CCE and PMC each defend the petitions presented as against them respectively. Each of these companies has, at all relevant times, acted at the direction of their sole shareholder and director, Mr Clive Howells ("**Mr Howells**").

3. Notwithstanding having been duly served with the petition presented as against it, Haoma has not responded thereto and has thus offered no defence.

4. The Secretary of State was represented before me by Miss Lucy Wilson-Barnes, and CCE and PMC were each represented by Mr Edward Davies QC and Mr Patrick Harty. I am grateful to them for their helpful written and oral submissions.

The Evidence

5. The petitions were supported by the following evidence:

    5.1. The witness statements of Ms Karen Clarke ("**Ms Clarke**"), a Senior Investigator at "Company Investigations", dated 25 July 2019 and 30 April 2020; and

    5.2. The witness statement of David Lennox Hope ("**Mr Hope**"), a Chief Investigator with "Company Investigations", dated 22 August 2019.

6. "Company Investigations" carries out investigations on behalf of the Secretary of State, and is part of the Insolvency Service. Ms Clarke was authorised pursuant to s. 447 of the Companies Act 1985 ("**CA 1985**") to investigate the affairs of Haoma, CCE and PMC, and also Celtic Wealth Management and Financial Planning Ltd ("**Celtic Wealth**") and Simple Pension Administration Ltd ("**SPA**"). It is from Ms Clarke's report that it has, for the purposes of s.124A CA 1985, appeared to the Secretary of State that it is expedient in the public interest that Haoma, CCE and PMC be wound up.

7. Ms Clarke was cross-examined. I found her to be a perfectly honest witness, and quite properly regarded her role as being simply to present the evidence that had been collected and produced as a result of her investigations rather than to comment on the merits of any particular aspect of the Secretary of State's case.

8. The function of Mr Hope's witness statement was to confirm that, in view of the matters set out in the petitions and Ms Clarke's first witness statement, it appeared to the Secretary of State expedient in the public interest that Haoma, CCE, and PMC be wound up.

9. Mr Howells made three witness statements dated, respectively, 20 March 2020, 24 April 2020 and 6 February 2021, in opposition to the petitions presented against CCE and PMC. He was cross-examined on his witness statements. I found him to be a frank and honest witness doing his best to assist the Court.

10. There was one particular matter put to Mr Howells by the Secretary of State in cross examination as calling Mr Howells's honesty into question. Celtic Wealth has been investigated by the Financial Conduct Authority ("**FCA**"). CCE and PMC rely upon a report produced by the FCA consequential upon those investigations which is dated 13 February 2017, and which was expressed to be *"signed off"* on 18 February 2017. This report sets out that the FCA intended to take no further action *"at present"* as against Celtic Wealth, and a handwritten postscript at the end of the report reads: *"Agree with closure on basis that consumer contact exercise has not uncovered any reg activities by firm. They appear to be operating within scope of Art 33 exemption. No ongoing activity."* In the body of the report it was noted that Celtic Wealth (i.e. Mr Howells) had commented that its agreement with Active Wealth Ltd ("**Active Wealth**") had been terminated. It was put to Mr Howells that he had deliberately misled the FCA because there was clear evidence of dealings with Active Wealth having continued after February 2017, and up to November 2017.

11. Mr Howells disputed this, maintaining that the FCA report had been mis-dated, having in fact been produced in February 2018, and under cross examination Mr Howells asserted that the investigation of Celtic Wealth and had only begun in November 2017. It was then put to Mr Howells that he had never sought previously to correct any incorrect date on the report.

12. However, I am satisfied from documentation put to Mr Howells in re-examination that the explanation he provided was correct, and that the report had been mis-dated, as is not infrequently done in writing a date on a document at the beginning of a new year. In particular, Mr Howells was taken to the reference in the FCA's report to Active Wealth having been *"VREQ'd"* during the course of their enquiries, and also to the FCA's website that shows that the relevant action on the part of the FCA was taken so as to be effective from 24 November 2017, in which case the report must have post-dated these actions. Further, paragraph 22 of Ms Clarke's first witness statement also refers to action having been taken such that Active Wealth's regulatory authority was suspended by the FCA with effect from 24 November 2017. In addition, Mr Howells was taken to paragraph 17 of his first witness statement where he had, in fact, referred to the FCA report as having been completed in February 2018, albeit not expressly correcting the erroneous date on the face of the report.

13. To my mind, this line of cross examination, rather than undermining Mr Howells's credibility does, if anything, lend support to it. Nothing else was put to Mr Howells in cross examination that did, in my judgment, undermine his honesty and integrity as a witness, and in closing Miss Wilson-Barnes did not seek to suggest otherwise than that Mr Howells was a truthful witness.

14. I have considered whether Mr Howells might have been deliberately evasive in some of the answers that he gave to questions that one might have expected him to have been able more fully to answer. However, I do not find that to have been the case, and I consider that he was doing his best to assist the Court in an open and honest way and that, if anything, his answers were tinged with a degree of naïveté so far as his dealings with Mr

Darren Reynolds ("**Mr Reynolds**"), and the arrangements that Celtic Wealth, CCE and PMC made in consequence thereof, are concerned.

The Background

Active Wealth, SPA and Haoma

Active Wealth

15. Active Wealth was incorporated on 20 July 2014 and, at all times until it entered into creditors' voluntary liquidation on 5 February 2018 and was subsequently dissolved on 14 May 2018, its sole director was Mr Reynolds. Active Wealth carried on business as an Independent Financial Adviser ("**IFA**") regulated by the FCA. The focus of Active Wealth's business was upon providing advice to pension holders, and in particular holders of defined benefit pensions, as to alternative pension arrangements and the making of investments in connection with the latter. The advice was provided on behalf of Active Wealth by Mr Reynolds himself, and also by Mr Gary Porter ("**Mr Porter**") and Mr Andrew Deeney ("**Mr Deeney**").

16. Active Wealth's business was, to a significant degree, generated by introducers of pensions business, including Celtic Wealth. This business included introductions to Active Wealth, made by Celtic Wealth, of employees of Tata Steel in South Wales who were members of the British Steel Pension Scheme ("**the BSPS**"). The BSPS closed to future accrual in March 2017, giving some scheme members the right to transfer their pensions. Whilst one option was to transfer to a new British Steel Pension Scheme, a significant number of pension holders accepted the advice of Active Wealth to move to self invested personal pensions ("**SIPPS**").

17. A move to a SIPP necessarily led to the need to invest the relevant funds that had been transferred. This was arranged by Active Wealth. Although the precise mechanism and nature of the arrangements are by no means clear, the position appears to be that the relevant investments were entrusted to discretionary fund managers ("**DFM's**") who then decided upon particular investment funds run by various investment companies ("**the Investment Companies**") into which the monies transferred into the SIPPs that required to be invested were placed. Some of the investment funds into which monies were invested were regulated, others may not have been

18. Active Wealth charged a fee to those pension holders who took up its advice to transfer to another pension arrangement, typically £1500, which was then split with the introducer of the business to Active Wealth. It is not in dispute that there are sensitivities at least with regard to the receipt of fees or commissions by IFAs and their disclosure to the client. On any view, there was no difficulty in respect of this fee because it was expressly agreed with the client.

19. Further payments were made by the Investment Companies. The Secretary of State has questioned what these payments represent, but I do not consider there to be any real doubt that they represented some form of commission paid by the Investment Companies in respect of investment business introduced in respect of pension funds transferred into SIPPs. The precise basis for the payment of this commission is not clear, but I do not understand the Secretary of State to suggest that there is anything unusual or intrinsically

objectionable with regard to the payment of commissions by investment companies such as the Investment Companies to those who introduce investment business to the latter.

20. So far as investment business deriving from pension transfers effected on the advice of Active Wealth is concerned, the commission payments in question were paid to SPA, Haoma, and another entity, Hiero Limited, a company incorporated in the British Virgin Islands ("**Hiero**"). Payments were then made by the latter out of the monies received to, amongst others, Mr Reynolds, Mr Porter, Mr Deeney, CCE and other introducers of pensions business to Active Wealth as described in more detail below. None of these payments was made to Celtic Wealth, and it was Mr Howells' evidence that this was because he had decided that CCE should be the recipient of the relevant monies.

21. As already touched upon, Active Wealth was suspended by the FCA from accepting any new clients in respect of pensions business on 24 November 2017, only to enter into creditors' voluntary liquidation and to be dissolved shortly thereafter. Active Wealth's suspension resulted from concerns and complaints in respect of the advice given by Active Wealth with regard to the transfer of pensions into SIPPs. These concerns and complaints have ultimately led to the Financial Services Compensation Scheme ("**FSCS**") paying compensation to former clients of Active Wealth in relation to *"negligent investment or pensions advice"* given by Active Wealth and said to place the latter in breach of COBS (Conduct of Business Sourcebook FCA) 2.1 and 9.2. This compensation has been paid to, amongst others, BSPS pension holders who had transferred from their defined benefit pension scheme into a SIPP. The evidence suggests that compensation was paid on the basis that SIPPs were unsuitable due to the nature of the accrued benefits which could have been carried forward to a new British Steel Pension Scheme, but which were unlikely to be matched by a private SIPP arrangement. The most recent information, as contained in paragraph 46 of Ms Clarke's second witness statement, is that the FSCS has paid £9,511,839.32 to some 284 former clients of Active Wealth, the total claimed loss being £23,325,621.08, with claims being capped at £50,000 each. Compensation was calculated on the basis of the difference between what the value of the relevant pensions holder's pension fund would have been had the defined benefit been carried forward, and the actual value of the fund held in consequence of the transfer into a SIPP. Of the successful claims made by pension holders on the FSCS, approximately 65% were by clients who had been introduced to Active Wealth by Celtic Wealth.

22. Although the Secretary of State claims that a number of the investments made following the transfers into SIPPs were made into high risk and/or unregulated investments, including, so it is alleged, Dolphin Trust GmbH in relation to German real estate investment opportunities, there is no evidence before the Court that any clients have suffered loss as a result of the making of inappropriate investments.

SPA

23. SPA was incorporated on 16 July 2008, and Mr Reynolds and his wife were recorded as being the directors thereof until July 2017, when forms were returned to Companies House recording their resignation as directors on 1 December 2016. Records at Companies House show Mr Simon Reynolds ("**Simon Reynolds**"), Mr Reynolds's brother, as having been the sole director of SPA from and after 12 January 2017. SPA entered into compulsory liquidation on 8 August 2018.

24. The petitions allege that the investigations carried out pursuant to s. 447 CA 1985 show that SPA received fees from Investment Companies and paid fees to (unregulated) introducers as a result of investments made by Active Wealth's clients. Further the petitions alleged that SPA's bank statements for the period 21 June 2013 to 8 August 2018 showed income of nearly £3.2 million including the receipt of over £3.1 million from various Investment Companies, and over £24,000 in relation to pension administration fees. A breakdown of the amounts received from Investment Companies and otherwise is to be found at paragraph 348 of Ms Clarke's first witness statement. By far the most significant sum received was £1,987,462 received from Best Asset between 7 May 2014 and 4 March 2016. The other monies received from Investment Companies included £544,183 from Advantage Alliance, and £292,555 from Dolphin WTUK Ltd.

25. So far as expenditure by SPA is concerned, this is, again, particularised in paragraph 348 of Ms Clarke's first witness statement where £1,581,207 is described as representing *"Introducer Payments"* as further particularised in paragraph 307 of the witness statement, and in excess of £500,000 is referred to as having been paid to Mr Reynolds. So far as the further particularisation in paragraph 307 is concerned, this comprises a list of 18 payees including CCE in an amount of £424,780.83, Mr Deeney in an amount of £147,475.34, and Mr Porter in an amount of £121,090. The other significant payees include The Curious Guys Ltd in an amount of £338,673.73 and Total Finance in an amount of £262,041.89.

26. Mr Reynolds has provided various descriptions to the s. 447 investigation as to the role played by SPA as detailed in Ms Clarke's first witness statement, and summarised in paragraph 31 of the petition relating to Haoma. In essence, he described SPA as having some form of facilitator role between the Investment Companies and introducers, in respect of the payments received by SPA from the Investment Companies and relating to investment products which Active Wealth's clients invested in following advice from Active Wealth or its representatives. Mr Reynolds described the payments made to Mr Deeney as representing a *"bonus"* paid as a result of investments made by Active Wealth's clients. So far as the payments made to Mr Reynolds himself are concerned, whilst Mr Reynolds had initially suggested that no loans had been made, he subsequently suggested that the payments made to him represented loans made by SPA.

Haoma

27. Haoma was incorporated on 14 June 2016 and was initially known as Simple Financial Administration Ltd. Records at Companies House show Denise Webb ("**Mrs Webb**") to have been the sole shareholder and director of Haoma from incorporation to date.

28. Mrs Webb is Mr Reynold's sister, and apart from any role that she may have had in respect of Haoma, Mrs Webb also appears to have had some role within Active Wealth, in that various *"Payway Statements"* sent by Active Wealth to Celtic Wealth referred to Mrs Webb as *"Finance Officer"* of Active Wealth to whom any queries should be directed.

29. The evidence suggests that Haoma carried out a similar role to SPA, receiving monies from the Investment Companies, and paying sums on to introducers as a result of investments made by Active Wealth's clients.

30. So far as Haoma's bank statements are concerned, these show that in the period between 14 July 2016 and 6 October 2018, income of in excess of £1.67 million was received, including £1.63 million received from various Investment Companies and over £20,000 received in relation to administration services. Sales invoices were issued to the Investment Companies which typically referred to *"introduction of finance"* or *"commission"*. A breakdown of the monies received is contained in paragraph 382 of Ms Clarke's first witness statement, with a detailed breakdown of the sums received from Investment Companies being set out in paragraph 395 thereof. This included £745,857 received from *"Hiero UK"* and £73,975 from *"Cherry Management"*.

31. Haoma's expenditure over the same period amounted to an excess of £1.67 million. Again, a breakdown is contained in paragraph 382 of Ms Clarke's first witness statement which refers to £456,152 being paid out in respect of *"Introducer Activity"*, £590,002 to Mr Reynolds and £408,138 to CCE.

Celtic Wealth, CCE, and PMC

Mr Howell's background and Celtic Wealth's incorporation

32. Mr Howells is a former police officer. He joined Dyfed Powys Police in 1977 and rose to the rank of superintendent. In this role he was appointed as the head of the force's Professional Standards Department. In 2001 Mr Howells was awarded the Queen's Medal for Good Conduct and Long Service. He retired as a police officer in 2005.

33. Following his retirement from the police force, Mr Howells qualified as a mortgage advisor and subsequently became involved with pensions.

34. Mr Howells caused Celtic Wealth to be incorporated on 28 November 2013 and has been Celtic Wealth's sole shareholder and director from incorporation to date.

35. It was Mr Howells's evidence that Wealth was established to pursue a business idea of his to allow the owners of small businesses to use their pensions to provide loans to their businesses, and that the Welsh Government was sufficiently impressed with Mr Howells's idea to provide a grant to support it.

Celtic Wealth's involvement with Active Wealth

36. Mr Howells says that notwithstanding the support from the Welsh Government, he was unable to grow his intended business in the way that he had hoped, essentially because he was not regulated and many pensions companies were not prepared to deal with an unregulated business. This caused him to change tack and to focus Celtic Wealth's activities on acting as an introducer of business to regulated IFAs.

37. It was in these circumstances that Celtic Wealth began to introduce business to Active Wealth, after Mr Howells had been introduced to Mr Reynolds through an acquaintance, Chris Jones of Vantage, in 2014. Mr Reynolds was a regulated Chartered Independent Financial Adviser, which Mr Howells considered to be the *"gold standard"* when it came to advice on financial planning. As an IFA, Mr Reynolds, through Active Wealth, was permitted to offer advice on all types of pensions business.

38. Mr Howells has explained that the way the introductions business as between Celtic Wealth and Active Wealth operated was that he/Celtic Wealth would introduce people who needed pensions advice to Mr Reynolds who would then provide his recommendations and advice. Where a client chose to transfer their pension on the basis of such advice, they would pay Active Wealth a fee, normally, but not necessarily, £1,500 as referred to below.

39. Given that Active Wealth was providing advice to the clients that were introduced by Mr Howells/Celtic Wealth, it was a key element the relationship between Celtic Wealth and Active Wealth that Mr Reynolds was an FCA authorised and regulated IFA able to advise pension holders. On the other hand, acting as an introducer of business is not a regulated activity and does not require any form of authorisation. The mis-dated February 2018 FCA report in respect of Celtic Wealth noted that: "*All consumer responses indicated that the process of referral to an IFA was completely compliant and therefore Celtic* [Wealth] *are able to rely on the introducer exemption*". Further, they closed their investigation on the basis that: "*They appear to be operating within scope of Art 33 exemption".*

40. It was Mr Howells's evidence that he had no reason to doubt the quality of advice given by Mr Reynolds and Active Wealth, not least because he regularly received new business through referrals from previous clients.

41. The relationship between Active Wealth and Celtic Wealth was governed by the terms of an agreement dated 1 December 2014 ("**the Introducer Agreement**"). Under this agreement, amongst other things:

    41.1. By clause 3.1.2, Celtic Wealth agreed to comply with *"any limitation or requirement imposed on* [Active Wealth] *by the FCA or any other appropriate regulatory body, and notified to* [Celtic Wealth] *in writing"*;

    41.2. Clause 6 provided for the payment by Active Wealth of *"Fees"* as provided for by Schedule 2;

    41.3. Schedule 2 provided that :

    > *"*[Celtic Wealth] *will be entitled to invoice for 50% of any earned fees agreed between* [Active Wealth] *and any client introduced by* [Celtic Wealth].
    >
    > *This includes initial and ongoing fees and will be disclosed to clients prior to their agreement to appoint* [Active Wealth]*."*

42. Consequently, pursuant to the Introducer Agreement, Celtic Wealth received 50% of the fee charged by Active Wealth, which normally equated to £750. The way this worked was that Active Wealth would send to Celtic Wealth on a regular basis so-called *"Payaway Statements"* providing details in respect of the clients who had transferred to other pension arrangements such as SIPPS, and detailing 50% of the fee charged by Active Wealth. On the basis thereof Celtic Wealth prepared invoices to invoice Active Wealth in respect of the fees to which Celtic Wealth was entitled.

43. The evidence suggests that the first referral for which Wealth was paid was made in March 2015, and that Celtic Wealth had received introduction fees in respect of around

62 individuals referred to Active Wealth by the end of 2015 and a further 85 referred by the end of 2016.

CCE and back-end payments

44. It was Mr Howells's evidence that fairly shortly after Celtic Wealth had started to work with Active Wealth, he was informed by Mr Reynolds that there might be an entitlement to what Mr Howells described as "back-end payments" arising as a result of the introductions made by Celtic Wealth. As Mr Howells put it in paragraphs 61 to 63 of his first witness statement:

> *61. As I understood it, the back-end payments were commission that was sometimes payable to introducers by the investment companies upon the investment of the pension funds. Accordingly, if a client acting on Active Wealth's advice, chose to purchase an investment product, we might later find that we were entitled to further commission in the form of a back-end payment. ...*
>
> *62. It is important to understand that these back-end payments were not paid out of any fees charged by Active Wealth to clients for its advice. As I understand it, the back-end payments were not a function of the advice given by Active Wealth; they were a function of decisions as to which underlying investments should be purchased. I believe that these investment decisions were taken by a discretionary fund manager.*
>
> *63. In essence, therefore, the back-end payments were commissions that were designed by the investment companies as payable to unregulated introducers further down the chain."*

In short, it was Mr Howells's evidence that his understanding was that the back-end payments were commissions that were designated by the Investment Companies as payable to unregulated introducers further down the chain.

45. It was further Mr Howells's evidence that he was informed by Mr Reynolds that it was possible for these back-end payments to be received by another company other than Celtic Wealth given that they represented a separate income stream from the fees payable pursuant to the Introducer Agreement. On this basis, Mr Howells says that he decided to designate CCE, which was incorporated on 10 February 2015, as the recipient of these back-end payments given that there were, as he saw it, advantages in separately designating the monies received, and treating CCE something of a *"savings bank"*, as he put it.

46. Approximately £1.4 million was subsequently received by CCE by way of these back-end payments, of which £424,780.83 was received from SPA, £408,132 from Haoma and £605,872 from Hiero, these monies being received in circumstances that I will describe in more detail below. Of the £1.4 million odd that was received:

    46.1. CCE subsequently paid on £850,000 thereof to PMC;

46.2. £500,000 thereof was paid to other companies of which Mr Howells is the sole director and shareholder, the payments being in respect of what were described upon invoices as *"consultancy fees"*.

Steelworkers

47. In 2016, Tata Steel, based in Port Talbot and Llanelli, indicated that it was intending to make around 2,000 redundancies. Further, as referred to above, BSPS closed to future accrual in March 2017, giving some active scheme members the right to transfer their pensions. Celtic Wealth's office are located close to Port Talbot and Llanelli, and Celtic Wealth began to receive enquiries from employees at both plants. Mr Howells's evidence was to the effect that many of the employees were distrustful of both Tata and the trustees of the BSPS and did not wish to leave their pensions under the control of Tata or the trustees of the BSPS, at least if other suitable investments were available.

48. It was in these circumstances that a significant demand for pensions advice arose, to which Celtic Wealth and a number of other introducers and financial advisers responded. It was Mr Howells's evidence that Celtic Wealth did not adopt the aggressive sales strategies adopted by some other firms, but rather relied on its strong ties to the area and good reputation. Mr Howells says that he believed that, in referring clients to Active Wealth, they would be looked after properly and receive appropriate advice from Mr Reynolds and Active Wealth as a regulated IFA.

49. Thus Celtic Wealth introduced a significant amount of work to Active Wealth, which resulted in a significant number of clients switching their pensions to SIPPs on the advice of Active Wealth, leading to the payment to Celtic Wealth of the introduction fee provided for by the Introducer Agreement. The switching by clients into SIPPs led to the investment of funds from the pension funds of the switching clients into investments sold by the Investment Companies. This, in turn, led to the receipt by CCE of the back-end payments by way of commission, the monies being received by CCE rather than Celtic Wealth because Mr Howells had designated CCE to receive such payments.

PMC

50. PMC was incorporated on 8 July 2015, on Mr Howells's evidence as part of a remuneration trust arrangement entered into for tax planning reasons which required him to have a *"personal management company"*, namely PMC. The relevant trust is known as the Buckingham Wealth Umbrella Trust of which Buckingham Wealth are the administrators. Under the trust structure, PMC operates in a fiduciary capacity to determine how the funds within the trust are to be deployed.

51. Bank statements of PMC for the period 28 September 2015 to 27 October 2018 show receipts of over £2.2 million including receipts of £850,000 from CCE and £1.2 million from two other companies of which Mr Howells is the sole director and shareholder. As against that, expenditure of £907,000 is shown by these bank statements, including payments of £767,000 representing loans made to 5 other companies of which Mr Howells is the sole director and shareholder.

Suspension of Active Wealth and the end of the relationship

52. Celtic Wealth's relationship with Active Wealth came to an end once Active Wealth was suspended by the FCA from accepting new clients with effect from 24 November 2017. Celtic Wealth no longer provides introductions to IFAs for those requiring pensions advice.

Circumstances behind the receipt by CCE of back-end payments

53. It was Mr Howells's evidence that having been told about the back-end payments that were payable by Investment Companies in consequence of the introductions that had been initiated by Celtic Wealth, he was initially told that payments would be made by SPA, which he was led to believe was one of Mr Reynolds's companies, to whom invoices should be addressed. He says that he was later told to address invoices to Haoma (or to Haoma under its old name, Simple Financial Administration). In each case, he would be told, generally over the phone, the amount to include in the invoice for payment, and also the description that should appear on the invoice, being either *"Intermediation Commission"* or *"Marketing Fees"*. It was suggested to Mr Howells under cross-examination that CCE had also been told the number to put on the invoices, but Mr Howells was unable to say one way or the other whether this had been the case explaining that detail such as this had been left to those dealing with administration within his companies. The invoices were then submitted, and paid by SPA and Haoma in the amounts referred to above. According to Mr Howells, no documentation originated from SPA or Haoma in respect of these payments, and Mr Howells frankly accepts that he did not know the basis upon which the amounts that CCE had been asked to invoice for had been calculated, including his not knowing the identity of the particular clients whose introduction had led to the investment business leading to the relevant payments.

54. The position in respect of the payments received from Hiero shortly prior to Active Wealth being suspended was rather different. Mr Howells was required to submit two invoices to Hiero. The first was dated 15 November 2017 in an amount of £500,888.14, in respect of which Mr Howells was asked to add the description *"Introduction of finance into 5 Alpha Conservative/Adventurous UCITS to 31 October 2017 "*, and the second was dated 22 November 2017 in an amount of £104,984.37, with the same description save for being described as: *"To 15 November 2017"*. Further, although possibly preceded by a telephone call, the instructions were provided by two emails purporting to been sent by Mrs Webb dated 15 November 2017 and 22 November 2017. The first of these emails asked if Mr Howells could possibly *"produce an invoice for Octobers (sic) intermediation fees"*, saying that it needed to be addressed to Hiero, and that it should set out in the body of the invoice the description referred to above. As well as providing a total amount, the email then set out by reference to *"Account Reference"* the various net amounts which made up the total of £500,888.14, having stated that the *"amount above is to cover the following"*. The various *"Account References"* have been redacted by Mr Howells/CCE for client confidentiality reasons. The second email simply asked Mr Howells to produce a further invoice in the same format as the last *"for the following investments"*, again providing details (redacted) by reference to *"Account Reference"* and *"Net Amount payable in respect thereof"*.

55. Mrs Webb's email dated 15 November 2017 had also said that: *"The agreement is to follow as soon as completed for you to sign"*. A draft unsigned agreement has been produced as between Hiero and CCE bearing the date 12 November 2017 which, according to Mr Howells's third witness statement, was provided to him on 14 November 2017. Mr Howells believes that the reference to an agreement in the email dated 15

November 2017 was a reference to a further draft. In his first witness statement, Mr Howells had referred to a draft agreement as between CCE and Hiero and suggested that this draft agreement had been acted upon by the parties. However in evidence in chief, Mr Howells deleted from his first witness statement reference to any such draft agreement having been acted upon, and in his third witness statement Mr Howells clarified that no back-end payments had been received after the provision of the first draft.

56. The draft agreement referred to CCE as the *"Introducer"*, and to Hiero as being the *"Promoter"*. The recitals thereto recited that Newscape Funds Plc ("the Fund") had been established as an umbrella fund structure, that Hiero had been appointed by the Fund to promote two specific sub-funds, that CCE was an introducer able to introduce clients to the sub-funds *"through a fully regulated advice process"*, and that Hiero wished to appoint CCE as a non-exclusive introducer to the sub-funds on the terms and conditions of the agreement. Although not signed or acted upon, this draft does reflect a state of affairs under which clients were introduced to Active Wealth, through a regulated advice process, and Active Wealth then advised upon the transfer of pensions to SIPPs resulting in an investment in the relevant funds, giving rise to payment of commission as provided for by clause 6 of the draft agreement. CCE is referred to as the introducer but, on CCE's case, this is because Mr Howells had designated CCE as recipient of the commission rather than Celtic Wealth, there never having been any question, in fact, of CCE being an introducer.

57. It is Mr Howell's evidence that because his involvement was limited to introducing clients to Mr Reynolds and Active Wealth, he did not know what pension products, if any, the individuals concerned ultimately purchased and therefore would not have been able to calculate the commissions due.

58. Mr Howells also explained in evidence that he does not know why the payments were made through SPA and Haoma, or indeed Hiero, but that he had no reason to believe that there was anything improper or contrary to any regulation in the way matters were arranged with the latter acting in an intermediary role.

59. The Secretary of State has challenged the reliability of Mr Howells's evidence as to the reason and purpose of using CCE as the vehicle through which to receive the back-end payments, and in particular his evidence that it was recognised that Celtic Wealth was the introducer of the pensions business, and therefore the party that might strictly have been entitled to any payment in the nature of commission, but that he had directed CCE to receive the funds because he was able to do so as sole beneficial owner of both Celtic Wealth and CCE, both of which were solvent companies.

60. In particular, reliance was placed by the Secretary of State on observations made in a written response dated 21 June 2018 to enquiries made as part of the s. 447 investigation in which an explanation was provided as to the respective roles of CCE and Celtic Wealth. This response included the following:

> *"A key part of the agreement between Celtic Wealth and Active Wealth was that Celtic Wealth would receive an agreed proportion of the initial adviser charge agreed between Active Wealth and the client. This therefore the only way (sic) in which Active World could remunerate Celtic Wealth.*

> *[CCE], on the other hand, received a different set of revenues which originated from a source which was completely separate from that generating payments to Celtic Wealth.*
>
> *These are generated as a result of allocations determined by discretionary fund managers and are payable by the fund managers. These amounts are referred to, when the funds are invested into collective investment schemes ... as a Contingent Deferred Sales Charge (CDSC) and these charges are explained in the prospectus for the scheme. I can provide you with a copy of the prospectus for the Newscape funds should you find this helpful.*
>
> *....*
>
> *In short, the revenue streams and the roles of Celtic Wealth and [CCE] were quite distinct, and warranted the allocation to separate legal entities."*

61. It is suggested by the Secretary of State that the emphasis upon the revenue streams and roles of Celtic Wealth and CCE as having been *"quite distinct"* so as to warrant allocation to separate legal entities is inconsistent with the case now advanced by Mr Howells that he designated CCE as the entity to accept payments that Celtic Wealth might otherwise have been entitled to.

62. Further, the Secretary of State relies upon the fact that the explanation given in the response dated 21 June 2018 referred to the relevant funds as payable by the DFM's, rather than the Investment Companies, and to the sum payable as being a Contingent Deferred Sales Charge rather than commission. A Newscape Funds Plc prospectus that has been obtained by the FCA and provided to the s. 447 investigation referred to a Contingent Deferred Sales Charge as something rather different than that suggested by the response dated 21 June 2018, namely a sum which became payable upon a subsequent realisation of the investment. It is said that this is inconsistent with the present explanation that the back-end payments or commission were payable by the Investment Companies, and were payable as a form of commission to introducers.

63. However, I consider that a considerable degree of caution requires to be applied in respect of the response dated 21 June 2018, and the significance to be attached to it. It was prepared on behalf of Celtic Wealth/CCE by one Rob Rogers ("**Mr Rogers**"), who had acted as a Compliance Consultant not only to Mr Howells's companies, but also to Mr Reynolds's companies, and he also had an interest in Cherry Management, which had, as an Investment Company, paid significant sums to Haoma as referred to above. He was therefore wearing a number of hats at the relevant time, and to the extent that he was representing Mr Reynolds's companies was, it would seem and as is reflected in the answers he prepared given in the response dated 21 June 2018, anxious to distance Active Wealth and Mr Reynolds, acting as an IFA advising pension holders, from the revenue stream represented by payments by Investment Companies. I consider that such caution in respect of the response dated 21 June 2018 is warranted notwithstanding that Mr Howells might subsequently, when questioned further in November 2018, have sought to stick to the answers given in the response dated 21 June 2018. I consider that it is likely that he did so out of concern that he would prejudice himself if he departed from what had been written on behalf of Celtic Wealth/CCE by a compliance expert who at that stage he, and Solicitors that he had instructed, were relying upon.

64. Of more significance, in my judgment, is what Mr Howells independently and contemporaneously said in response to the s. 447 investigation without reference to Mr Rogers or the response dated 21 June 2018. I note, in particular, the following:

    64.1. At an early meeting with Ms Clarke, as I understand it on 1 May 2018, Mr Howells explained receipt of back-end payments, which he referred to as commission, by reference to a diagram which showed Celtic Wealth introducing clients to Active Wealth, with a fee being split 50/50, funds derived from the transfer into a SIPP being invested on the recommendation of a DFM into a fund so as to lead to the payment of commission that was paid to SPA, Haoma, and Hiero, with CCE then invoicing the latter so as to receive a share of the commission. This is essentially consistent with the explanation now provided by Mr Howells. However, it is to be observed that the page containing this diagram explanation does, in answer to the question *"Why was this commission due to [CCE]"*, give the answers: *"Provided general management consultancy"*, and *"Oversight and one company providing another with consultancy"*.

    64.2. On 6 June 2018, responses were provided to queries dated 25 May 2018, in the course of which it was explained, amongst other things, that:

> *"4. As a result of investments made by clients of [Active Wealth] we were informed by [SPA] that introducers may be eligible to a payment. This was completely separate to the client/adviser fee split received by Celtic 12. Due to being advised that this was a separate revenue stream, the payments were made to [CCE]".* [my emphasis]

65. The point here is that Mr Howells explained that he had been informed that *"*introducers*"* may be eligible to a payment, and the only introducer as between Celtic Wealth and CCE was the former, albeit that it was perfectly open to Mr Howells to designate the latter as recipient of the payments. This strikes me as entirely consistent with his present position that the relevant payments represented payment of commission by the Investment Companies, paid through SPA and Haoma acting as intermediaries, to which Celtic Wealth, as introducer, might have been strictly entitled, but which Mr Howells designated CCE to receive given that it emanated from a different revenue stream than the introduction fees payable by Active Wealth.

66. In paragraph 61 of his first witness statement, Mr Howells had said that he now believed that the commissions in the form of back-end payments were referred to as *"intermediation commission, or contingent deferred sales charge*s", but he went on to say that these are not terms that he recognised at the relevant time. Further, from answers to questions under cross examination, it was quite clear that Mr Howells had no understanding of what a contingent deferred sales charge actually was, and simply went along with descriptions provided by others.

The Secretary of State's Case

Introduction

67. I intend to consider the case as advanced by the Secretary of State in the petitions presented against Haoma, CCE and PMC respectively, before considering the Secretary of State's case as refined and advanced at trial, in particular as against CCE and PMC.

Connected Companies allegation

68. It is however first necessary to make one initial observation with regard to the case as pleaded. Each of the petitions contains a paragraph headed *"CONNECTED COMPANIES"* wherein it is alleged that: *"the Companies are connected and have been involved in or benefited from investments made by clients of [Active Wealth], an independent Financial Adviser … as set out below." "Companies"* had earlier been defined in the petitions to mean Haoma, CCE and PMC.

69. Notwithstanding how it is put in this paragraph, at trial, it was clarified that the Secretary of State does not allege that there was any formal connection between Haoma on the one hand, and CCE and PMC controlled by Mr Howells on the other hand. There is no commonality of ownership, and Haoma has no interest in CCE or PMC, or vice versa. It was recognised that the only *"connection"* was the relationship under which Haoma made payments to CCE as referred to above.

The Petition presented against Haoma

70. The first ground for the petition as set out therein is headed *"LACK OF COMMERCIAL PROBITY/LACK OF TRANSPARENCY"*. Paragraph 49 immediately thereunder then alleges as follows:

> *"Haoma has, together with other companies, been involved in a wider scheme, involving investments being marketed and sold to investors and unexplained fees or other payments paid to such companies, which lacks transparency and is objectionable and contrary to the public interest as set out below."*

71. There are then a series of sub-headings.

72. The first of the sub-headings: is *"Day to Day Control of Haoma"*. The essential allegation made thereunder is that it is unclear who has had day-to-day responsibility for the control of Haoma and/or as to the roles and responsibilities of Mr Reynolds. A number of matters are then relied upon including:

    72.1. Mrs Webb, the sole recorded director of Haoma, and Mr Reynolds's sister was only able to provide limited information to the investigators with regard to Haoma's trading activities;

    72.2. Whilst Mr Reynolds had suggested to investigators that he had little or no involvement with Haoma, representatives of companies that had dealt with Haoma, including a representative of The Curious Guys, had presented a different picture suggesting that Mr Reynolds was the main point of contact.

    72.3. Mrs Webb had received substantially less by way of financial benefits from Haoma than had Mr Reynolds, who had received payments totalling £613,855 from Haoma between July 2016 and September 2018.

    72.4. Mr Deeney had informed investigators that: *"it's sometimes very difficult to separate Active Wealth from [SPA] or Haoma"*.

73. The second of the sub-headings is: *"Fees Received/Services Provided by Haoma"*. The allegation is summarised in paragraph 51 where it is alleged that:

> *"51. There is a total lack of transparency in relation to the fees of over £1.6 million received by Haoma from various investment companies, in connection with or funded/derived from the investments being marketed and sold to investors. Specifically, there is a total lack of transparency as to:*
>
> *51.1 The investor clients and their investments which resulted in the fees being paid and which, if any, IFA advised those clients.*
>
> *51.2 What, if any, services were provided by Haoma in consideration for those fees."*

74. A number of specific matters are then relied upon by the Secretary of State, including that:

    74.1. Mrs Webb had informed the investigators that income received by Haoma was for *"Financial marketing"* and that Haoma had *"passed marketing materials from the investment companies to introducers"* and *"received a proportion of the eventual take-up from investors",* yet Mrs Webb was unable to produce documentation that might have been expected to be produced including copies of the agreements between Haoma and 8 (of 15) companies from which it had received fees, and copies of the marketing materials said to have been passed on by Haoma, records of the investors and their investments which resulted in fees being paid to Haoma and which IFA had advised them, and further she had been unable to provide a clear explanation, in the absence of documentation, as to how Haoma ascertained and/or verified the amounts invoiced to investment companies.

    74.2. The investigators had been unable to verify whether Haoma had performed its obligations under agreements with investment companies that had been produced.

75. The third of the sub-headings is: *"Payment of Fees and Other Payments"*. It was then alleged in paragraph 55 as follows:

> *"55. There is a lack of transparency in relation to the fees and other payments made by Haoma of over £1,259,345, including:*
>
> *55.1 The nature of payments made to parties closely connected to Active Wealth, and IFA.*
>
> *55.2 What, if any, benefit Haoma received in relation to these payments."*

76. Reliance is then placed by the Secretary of State upon payments made to Mr Reynolds, CCE, Mr Deeney, Mr Porter, and to introducers. So far as the payments to CCE are concerned, it was alleged in paragraph 60 that the investigators were *"unable to establish what, if any, services were provided by CCE in respect of the fees paid by Haoma."* A number of specific matters were relied upon, including:

    76.1. The sales invoices issued by CCE having referred to *"intermediation commission"* (online invoices) and *"marketing fees"* (on one invoice);

    76.2. Mrs Webb having informed investigators that payments were made because CCE was an *"Introducer"*;

76.3. Mr Howells' explanation that payments to CCE were as a result of investments made following the referral of prospective clients by Celtic Wealth and/or other introducers (rather than CCE) to Active Wealth, and these payments being made to CCE: *"Due to being advised that this was a separate revenue stream"*.

76.4. The investigators having found *"no evidence of CCE providing any genuine services to Haoma"*.

76.5. As set out in paragraph 60.6: *"By inference, in particular from the explanation of the fees as "a separate revenue stream", the Petitioner is concerned that fees have been connected with or funded/derived from investments marketed and sold to investors. However, the source, basis and justification of such fees, together with the reasons for such fees being rooted through SPA, Haoma, and Hiero BVI to CCE, remain opaque and unexplained."*

77. The fourth of the sub-headings is: *"Undisclosed Fees"*. The allegation, as set out in paragraph 66, is as follows:

> *"66. Given the lack of transparency in relation to the fees received by Haoma and the fees and other payments made by Haoma (see paragraphs 51 to 65 above), the Petitioner is concerned that:*
>
> *66.1 Haoma was part of a contrived scheme to facilitate the payment of additional undisclosed fees in relation to investments which Active Wealth, an IFA, had advised their clients on;*
>
> *66.2 The undisclosed fees may have compromised the independent financial advice given to prospective investors."*

78. Reliance is then placed by the Secretary of State on a number of matters including:

78.1. Records of the clients and their investments which resulted in fees being paid to Haoma, and which IFA had advised them, not having been produced.

78.2. Mrs Webb having suggested that Haoma's role was required because there could not be any *"link"* between the Investment Companies and the IFA's which she assumed was due to statutory regulations as *"they're just not allowed"*.

78.3. Mr Reynolds having, in the course of an interview with the FCA, confirmed that he did not tell clients of Active Wealth about his relationships with the introducers or the payments made to them, and in particular an observation by Mr Reynolds that: *"Everything should be disclosed and obviously some of it hasn't been"*.

78.4. Mr Reynolds having acknowledged in the course of this interview with the FCA that it was unfair for him not to have disclosed to Active Wealth's clients that both he and his colleagues were being paid for products that the clients were being advised to enter into.

79. The fifth sub-heading is: *"Participation in and/or Benefit from Sale of Unsuitable Investments"*. The allegation, as then set out in paragraph 74 is that:

> *"74. There is a lack of transparency in relation to the fees received by Haoma (see paragraphs 51 to 54 above) but the Petitioner is concerned that Haoma may have participated in and/or benefitted from the marketing and sale of unsuitable investments (including high risk and/or unregulated investments) to investors in circumstances where those investors were not advised either adequately or at all."*

80. Reference is then made to the fact that Haoma has received fees in respect of investments made by the clients of Active Wealth, an IFA, and to the fact that, in respect of those clients, the FSCS has paid compensation of (at the date of the petition) at least £1.8 million on the basis of Active Wealth having acted in breach of COBS 2.1 and 9.2. Further, it is alleged that Haoma: *"appears to have received fees in relation to the marketing and sale of high risk and/or unregulated investments"*.

81. The second ground for the petition as set out therein is: *"FAILURE TO FILE ACCOUNTS/CONFIRMATION STATEMENT"*.

82. The allegation in this respect is that Haoma's accounts for the year ending 30 June 2018 should have been filed by 31 March 2019, but have not been filed and remain outstanding, and that its Confirmation Statement to 13 June 2019 should have been filed by 27 June 2019, and remains outstanding.

The Petition presented against CCE

83. There is only one ground relied upon in the petition as against CCE, namely *"LACK OF COMMERCIAL PROBITY/LACK OF TRANSPARENCY"*.

84. This ground is formulated in in paragraph 47 of the petition in the same terms as the like ground formulated as against Haoma as referred to in paragraph 70 above. There are then a number of sub-headings matching a number of those in the Haoma petition. I will deal with these rather more briefly than in the case of Haoma because there is considerable repetition between the petitions, and also because I will be dealing below with how the case was put on behalf of the Secretary of State at trial, and the emphasis of the case advanced against CCE and PMC thereat.

85. The first of the sub-headings is: *"Fees Received/Services Provided by CCE"*. Paragraph 48 of the petition refers to CCE's bank statements for the period 26 August 2015 to 14 December 2017 showing income of over £1.4 million, and the same typically having been described on CCE's sales invoices as *"Intermediation Commission"*, *"Marketing Fees"* or *"Introduction of Finance"*.

86. Paragraph 49 then goes on to allege as follows:

> *"49. There is a total lack of transparency in relation to these fees of over £1.4 million received by CCE from SPA, Haoma and Hiero BVI in connection with or funded/derived from the investments being marketed and sold to investors. Specifically there is a total lack of transparency as to:*
>
> *49.1 The investor clients and their investments which resulted in the fees being paid and which, if any, IFA advised those clients;*

49.2 What, if any, services were provided by CCE in consideration for those fees."

87. The second of the sub-headings is simply: *"Payments"*. The allegation as set out in paragraph 57 is as follows:

> *"57. There is also a lack of transparency in relation to the consultancy fees and other payments made by CCE to companies closely connected to Mr Howells including:*
>
> *57.1 The nature of payments made to companies closely connected to Mr Howells;*
>
> *57.2 What, if any, benefit CCE received in relation to these payments."*

88. The matters relied upon included the payment of £850,000 by CCE to PMC, the allegation appearing to be that it was not clear what, if any benefit, CCE had received in respect of this payment.

89. The third of the sub-headings is: *"Undisclosed Fees"*. The allegation, as set out in paragraph 62 is that given the alleged lack of transparency in relation to fees received by CCE and the payments made by CCE, the Secretary of State is concerned that:

> *"62.1 CCE was part of a contrived scheme to facilitate the payment of additional undisclosed fees in relation to investments which Active Wealth, an IFA, had advised its clients on.*
>
> *62.2 The undisclosed fees may have compromised the independent financial advice given to prospective investors."*

90. Much the same matters are relied upon by the Secretary of State as are relied upon in respect of the similar allegation made as against Haoma.

91. The fourth and final of the sub-headings is *"Participation in and/or Benefit from Sales of Unsuitable Investments"*. The allegation, as formulated in paragraph 72, is that:

> *"There is a lack of transparency in relation to the fees received by CCE (see paragraphs 48 to 56 above) but the Petitioner is concerned that CCE may have participated in and/or benefited from the marketing and sale of unsuitable investments (including high risk and/or unregulated investments) to investors in circumstances where those investors were not advised either adequately or at all."*

92. Again, the Secretary of State broadly relies upon the same matters as are relied upon in respect of the similar allegation made in respect of Haoma.

The Petition presented against PMC

93. This petition includes the same sole ground for the petition as in the case of CCE, namely: *"LACK OF COMMERCIAL PROBITY/LACK OF TRANSPARENCY"*. Paragraph 47 of the petition then contains the same allegation as contained in paragraph 48 of the petition relating to Haoma save for the substitution of a reference to PMC. Again the petition then contains a number of sub-headings.

94. The first of the sub-headings thereunder is: *"Fees Received by PMC from CCE"*. The essential allegation, as set out in paragraph 48, is that there is a total lack of transparency in relation to payments of £850,000 received by PMC from CCE. The Secretary of State then relies upon much the same matters as referred to under the first of the sub-heading in the CCE petition.

95. The second of the sub-headings thereunder is *"PMC-Trust Arrangement"*. It is alleged thereunder that it is not clear what, if any benefit, CCE has received in respect of the £850,000 paid by CCE to PMC, and then it is alleged in paragraph 59 that it appears that the payments were made by CCE, and that payments were made by other companies connected to Mr Howells, to PMC as part of a tax avoidance scheme.

96. The petition then contains sub-headings in the same terms as the third and fourth of the sub-headings in the CCE petition, and reliance is placed by the Secretary of State on the same matters as had been relied upon in the CCE petition.

Emphasis of the Secretary of State's case at trial

97. The particular focus of the Secretary of State's case at trial as against CCE and PMC was upon alleged lack of transparency on the part of CCE and PMC in having received very substantial sums of money derived from the Investment Companies, but being unable to explain, in particular:

    97.1. The legal basis upon which CCE, or indeed anybody else, including Celtic Wealth, was entitled to the sums that had been received;

    97.2. How the various sums that had been received by CCE had been calculated or ascertained, and in particular which particular investment by which particular introduced client had resulted in the making of the relevant payments, and on what basis.

98. Reliance was placed upon paragraph 14 of Ms Clarke's second witness statement in which she had suggested that Mr Howells has not explained or provided any contracts or other documentary evidence to show why the back-end payments were due to Celtic Wealth or CCE from the Investment Companies, whether the back-end payments were derived from the funds invested by clients introduced by Celtic Wealth to Active Wealth, how the back-end payments were calculated, for example whether the payments represented a percentage of the amount invested by each client, or the identity of the Investment Companies.

99. Miss Wilson-Barnes submitted that the case came back to a basic point that a company ought to be able to explain what it does, and she submitted that it was *"extraordinary"* that a company receiving monies in the circumstances in which CCE had received money had not been able to explain in any clear, detailed and cogent way, why it had received those monies.

100. Miss Wilson-Barnes submitted that the explanations as provided by Mr Howells were simply not good enough in that, in particular, it was not good enough simply to be able to explain that monies had been received and amounts thereof, without being able to explain the basis upon which they had been received. Relying in particular on the response dated 21 June 2018, Miss Wilson-Barnes maintained that Mr Howells had not

initially suggested that Celtic Wealth was entitled to the relevant monies, or that Mr Howells had simply directed that CCE should receive monies to which Celtic Wealth might otherwise have been entitled. It was submitted that that Mr Howells ought to have been able to give a clear, cogent and logical explanation from the start of the s. 447 investigations, but had failed to do so.

101. So far as lack of commercial probity is concerned, and why the conduct of CCE and/or PMC in question should be regarded as inherently objectionable so as to render it just and equitable that these companies should be wound up in the public interest, Miss Wilson-Barnes relied, in particular, upon:

    101.1. CCE being responsible for documents that were *"seriously wrong"* as to the descriptions that they provided in relation to transactions, particular reliance being placed upon the invoices that CCE had provided to SPA, Hoama and Hiero.

    101.2. What was said to be the lack of scrutiny that CCE had employed in respect of the monies that it had received, particularly bearing in mind that although CCE was, itself, unregulated, it was receiving monies emanating from a regulated environment concerning pensions and investments, and where there were particular sensitivities with regard to the receipt of fees and commissions by those providing advice in this context. In particular, it was suggested that CCE, by Mr Howells, ought to have been alert to the fact that the monies received from the Investment Companies were being administered by companies associated with the IFA, Mr Reynolds/Active Wealth, that provided advice in respect of the transfer of pensions. It was suggested that, in the circumstances, Mr Howells either knew, or ought to have known that there was at least a possibility that investment monies were being misapplied by Mr Reynolds benefiting from the payments.

102. As to the suggestion that Mr Howells knew or ought to have known of the possibility of Mr Reynolds benefiting in an impermissible way from the investment monies, particular reliance was placed upon answers given by Mr Howells under cross examination recorded in the transcript at Day 3/pages 79-80.

103. I put to Miss Wilson-Barnes during the course of closing submissions whether naïveté part of Mr Howells, the directing mind of CCE and PMC, would be sufficiently demonstrative of lack of commercial probity, or the carrying on of business in an inherently objectionable way. Whilst not directly answering this question, Miss Wilson-Barnes's response was to the effect that the present case did not involve naïveté on the part of Mr Howells, but rather *"wilful blindness"* on his part, and that such wilful blindness most certainly did demonstrate a want of probity.

104. Miss Wilson-Barnes recognised that the allegations require to be considered separately and distinctly in respect of each of Haoma, CCE and PMC, and that as between CCE and PMC, different considerations did apply in the case of PMC bearing in mind that it was simply the recipient of funds from CCE. Miss Wilson-Barnes realistically did not seek to place any reliance upon the fact that the payments of £850,000 to PMC had been paid as part of a tax planning scheme and subsequently applied by PMC in connection therewith. In particular, it was not suggested that there was anything improper in relation to the tax planning arrangements in question despite apparent suggestions to the contrary in the PMC petition.

105. So far as Haoma is concerned, it is plain from the petitions that there are further and wider allegations relating thereto. Not only is there the additional ground relating to the filing of accounts and a confirmation statement, but the various sub-headings under the Lack of Commercial Probity/Lack of Transparency ground contain wider allegations of lack of transparency by reference to further matters than those identified in the case of CCE and PMC. Miss Wilson-Barnes, in her closing submissions, identified a number of particular points in relation to Haoma, namely:

    105.1. The alleged lack of transparency with regard to the payments out to Mr Deeney and Mr Porter, and one might add to that the payments made to Mr Reynolds himself;

    105.2. The alleged lack of transparency as to who was, in fact, in control of Haoma as between Mrs Webb and Mr Reynolds;

    105.3. The alleged lack of transparency with regard to agreements that Haoma had entered into, and inconsistencies between documentation that has been produced and oral explanations that have been provided on behalf of Haoma; and

    105.4. The failure to file accounts and a confirmation statement.

106. Miss Wilson-Barnes submitted that the key question was whether the conduct complained of by the Secretary of State demonstrated that it was just and equitable to wind up the relevant companies as being in the public interest to do so. Whilst she accepted that the Court must be able to identify the aspect or aspects of public interest which in the view of the court would be promoted by the making of a winding up order in the particular case, she rejected any suggestion that it was necessary for it to be demonstrated that winding up would achieve some purpose, such as stopping continuing inherently objectionable conduct, going beyond marking the seriousness of the conduct in question which made it just and equitable to wind up the relevant company. Further, Ms Wilson-Barnes rejected any suggestion that it should be necessary to demonstrate that the conduct complained of had actually been harmful to the public.

CCE's and PMC's defence to the petitions

107. CCE and PMC emphasised that the Secretary of State has:

    107.1. Confirmed that it is not alleged that Mr Howells failed to cooperate with the s. 447 investigation;

    107.2. Confirmed that it is not alleged that CCE or PMC, under Mr Howells direction, have failed to keep adequate accounting records in accordance with s. 386 of the Companies Act 2006 ("**CA 2006**") which requires, amongst other things, that a company should keep records that are sufficient *"to show and explain the company's transactions"*;

    107.3. Not identified any specific FCA or other rule or regulation that might have been breached by, for example, the way that the monies paid by the Investment Companies were paid and applied, or in relation to the disclosure thereof by or to any party;

107.4. Not suggested otherwise than that Celtic Wealth made referrals to Active Wealth genuinely in the belief and on the basis that clients would receive proper advice, or that Celtic Wealth was aware, at the time, that Mr Reynolds or Active Wealth might be giving bad or inappropriate advice.

107.5. Not suggested that there is any evidence that the value of investments has been reduced by any payment of commission or otherwise, Mrs Clarke having been informed by FSCS in an email dated 9 April 2020 that it has not seen any evidence to that effect.

107.6. Not presented a winding up petition against Celtic Wealth notwithstanding that it was the company introducing clients to Actual Wealth, in respect of whose investments commission was received, and was a company bound up with the activities of CCE and PMC.

108. CCE and PMC deny that there has been any lack of transparency on their part given that there is no suggestion of Mr Howells having failed to cooperate with the s.447 enquiry, and no suggestion of any breach of s. 386 CA 2006.

109. CCE and PMC maintain that the true gravamen of the complaint is not of lack of transparency, but rather that Mr Howells is not able to *"explain"* transactions that the relevant companies were involved in. As to this, it is said that:

109.1. The Secretary of State's case is founded upon the existence of some supposed obligation to explain transactions, that apparently exists over and above the established rules and principles governing the need for transparency in relation to companies, and that no basis for any such obligation has been identified; and

109.2. In any event, Mr Howells has explained the transactions, namely that the funds received by CCE were commissions emanating from the investment companies, which such commissions were paid for introductions made by Celtic Wealth. It is said that that explanation is true, and that the basis for treating it as inadequate in any way is entirely unclear.

110. So far as the ability of Mr Howells to explain matters is concerned, it is submitted that:

110.1. Celtic Wealth was merely an introducer, and CCE and PMC were merely recipients of introducers' commissions. None of these entities had any involvement with the Investment Companies. Mr Howells was informed by Mr Reynolds that back-end payments might become due in respect of introductions made by Celtic Wealth, depending upon the investments that were ultimately chosen. This explanation is true, and it is unclear why Mr Howells should be criticised for not having had a better understanding of the terms of the underlying investments, or of expressions such as *"contingent deferred sales charges"*;

110.2. From CCE's perspective, the position was simply that SPA and Haoma operated as intermediaries in relation to the payment of back end fees. Mr Howells has been clear about this, and he has always openly acknowledged that he did not know why SPA and Haoma were used in this way, but there is simply no basis for the proposition that he was obliged to obtain a more detailed understanding of their role in operations.

111. CCE and PMC refer to the fact that the Secretary of State's apparent case is that Mr Howells had some form of actual or constructive notice of wrongdoing by Mr Reynolds or Active Wealth, such as the channelling of payments to Mr Reynolds through the use of SPA and/or Haoma. It is submitted that this is a misconceived attempt to impose some form of accessory liability on CCE and PMC, misconceived because:

    111.1. There is, it is submitted, no credible basis for the proposition that Mr Howells knew or should have known that Mr Reynolds was using SPA and Haoma to obtain improper payments;

    111.2. Perhaps more fundamentally, the Secretary of State does not actually allege that commissions were wrongly paid to Mr Reynolds or Active Wealth, simply that they may have been, as made clear in opening on behalf of the Secretary of State (see the transcript Day1/page 4/lines 25-28); and

    111.3. In the circumstances, there is simply no possibility of any case based on any form of knowledge, whether actual or constructive, and it makes no sense for the Secretary of State to complain that Mr Howells did not take some step or ask some question when the Secretary of State cannot say that doing so would have made any difference because he has not alleged any wrongdoing which could have been uncovered.

112. It was observed on behalf of CCE and PMC that the Secretary of State had sought to rely on documents and evidence which contained statements as to applicable FCA rules and regulations, and to treat those documents as if they were a substitute for making a positive allegation and the Court making a decision based thereupon. It was submitted that this was the wrong approach, and that if the Secretary of State had wanted to allege that any particular FCA rule or regulation applied and had a specific effect, then a clear allegation should be made to that effect, and submissions made on the point so that the Court could rule thereupon. None of this, it was said, had been done.

113. Particular concern was expressed at the reliance that the Secretary of State had placed on the response dated 21 June 2018 prepared by Mr Rogers, and his analysis therein of some FCA rules. It was submitted that Mr Howells's understanding of the regulatory position was straightforward, namely that, as he explained: *"As far as I was concerned, the rules were merely to act as an introducer and not overstep the mark"* (transcript, Day 3/ page 8/ lines 17-18). It is submitted that this was correct given the express exemption for introducers in article 33 of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001, and that the Secretary of State had not sought to contend otherwise.

114. It was therefore submitted that the Court should not be drawn into making findings on the regulatory regime, the only relevant points being that Celtic Wealth, CCE and PMC were not regulated, did not need to be regulated and had no disclosure obligations, matters that are beyond dispute.

115. In his closing submissions, Mr Davies QC, on the half of CCE and PMC, suggested that to describe the Secretary of State's case as having a strong whiff of innuendo was an understatement, the whole case being put in terms of *"concerns"*, the most serious concern, underlying the whole case, being the suggestion that there had been some wrongdoing on the part of Mr Reynolds in which Mr Howells had in some way been

complicit. It was submitted that this was an inappropriate way to run a case, a point that could be tested by a consideration of the suggestion made on behalf of the Secretary of State in closing submissions that Mr Howells had *"turned a blind eye"*. Mr Davies QC rhetorically asked - *"to what?"* He submitted that it cannot properly be maintained that somebody had turned a blind eye to something without asserting a positive case that the *something* was illegal, impermissible or inappropriate. However, no such positive case was asserted.

116. Mr Davies QC further relied upon the fact that it had not actually been put to Mr Howells in cross examination that he knew that Mr Reynolds was failing to disclose commissions to his clients.

117. As to the cross examination of Mr Howells as to whether he had knowledge that Mr Reynolds might be getting money out of SPA, Mr Davies QC took me to the detail thereof (Transcript Day 3/page 80), which was as follows:

> *"JUDGE CAWSON: I think the question you were asked is, did it occur to you at the time that Mr Reynolds might be taking money out of these companies?*
>
> *A. There is a possibility, but I don't know, my Lord. It's a possibility. He was the director of both companies, so there is a good possibility that the director of two companies will be taking money out of possibly both, yes, my Lord.*
>
> *MS WILSON-BARNES: so, it occurred to you ---*
>
> *A. I Sorry, I'm not being- I don't want to guess. I want to be fair ---*
>
> *JUDGE CAWSON: I think the question was whether it actually occurred to you at the time that this might be happening.*
>
> *A. I don't know what occurred to me at the time or not, but it's a possibility that he would be. And it might be at the time - I might have thought, yes, he's getting money out of SPA, he's a director of both.*
>
> *MS WILSON-BARNES: and on the basis that you might have thought yes, he's getting money out of them, on that basis, you'd have known that that was improper, wouldn't you?*
>
> *A. No"*

118. Mr Davies QC submitted that if I were to accept Mr Howells's evidence, there is no proper basis for any finding that Mr Howells knew or should have known that Mr Reynolds was doing anything improper in any event, in particular that Mr Reynolds was taking commissions to which he was not entitled, even if, which it is not, it had been positively alleged by the Secretary of State that he was.

119. CCE and PMC went on in their submissions to deal with the detailed allegations under the various sub-headings in the petitions against CCE and PMC, developing in relation thereto the more general points referred to above advanced on behalf of CCE and PMC, and making the point that a number of the allegations appeared to have been abandoned. Given the focus of the Secretary of State's own submissions, is not necessary for me to say any more about these submissions on behalf of CCE and PMC at this stage.

120. In conclusion, it was submitted on behalf of CCE and PMC that the matters relied upon by the Secretary of State were nowhere near enough to justify seeking to wind up either of CCE or PMC on public interest grounds, and it was submitted that there was not even any allegation that the relevant companies' businesses were contrary to any specific public interest, Ms Clarke having been unable to identify any specific public interest to which the activities of either CCE or PMC were contrary. Mr Davies QC suggested that this appeared to reflect the fact that the petitions had been presented on the misconceived basis that a winding up order would allow an investigation to be conducted as revealed by an answer to a request for further information. He submitted that this was not a proper basis for seeking or making a winding up order as s. 124A IA 1986 required a focus on the conduct of the relevant company. It was further submitted that the absence of evidence of any harm to the public was also fatal to the petitions, reliance being placed upon observations made by Asplin LJ in *Secretary of State v PAG Asset Preservation Limited* [2020] EWCA Civ 1017, [2020] BCC 979 ("**PAG 2**") at [61].

Section 124A and how it should be applied

121. Section 124A provides that where it appears to the Secretary of State from any of the sources referred to in s. 124A(1) (a)–(d), which includes a report produced as a result of an investigation under s. 447 CA 1985, that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up *"if the court thinks it just and equitable for it to be so"*.

122. The relevant principles to be applied are not in dispute, and they are helpfully summarised by Norris J in *Re PAG Management Service Ltd* [2015] EWHC 2404 (Ch); [2015] B.C.C. 720 ("**PAG 1**") at [5], where he said:

> *"5. There was a large measure of agreement about principles to be applied in the exercise of this jurisdiction. The principles I shall apply are these –*
>
> "*a) Even if the SoS thinks it expedient in the public interest to wind up a company, the Court still has a discretion whether or not to make an order.*
>
> *b) Before making an order the Court must be satisfied that it is just and equitable to wind the company up.*
>
> *c) The burden of proof lies on the SoS to persuade the Court (having proved matters of fact to the requisite civil standard) that it is just and equitable to wind the company up.*
>
> *d) The Court must balance competing reasons why the company should be wound up and why it should not be wound up upon a consideration of the totality of the evidence (per Nicholls LJ in Re Walter L Jacob & Co Ltd (1989) 5 B.C.C. 244 at 251C–E).*
>
> *e) As a result of undertaking that exercise the Court must be able to identify for itself the aspects of the public interest which would be promoted by making a winding up order in the particular case (ibid at 251F–G);*

f) It is not necessary for the business of the company to involve illegality. As Millett LJ said in Re Senator Hanseatische Verwaltungsgesellschaft mbH [1997] 1 W.L.R. 515 at 522h; [1997] B.C.C. 112 at 117B:—

> *'On the contrary the phrases used (namely "expedient in the public interest" and "just and equitable") to my mind indicate that Parliament did not intend to impose such a restriction but instead simply decided to leave to the Secretary of State to form a view as to what was expedient in the public interest and the court then to decide on the material before it whether the justice and equity of the case dictated that the company concerned should be wound up'.*

g) Where the business of the company does not involve the commission of illegal acts or breaches of regulatory requirements the company may nonetheless be wound up if its business is "inherently objectionable" because its activities are contrary to a clearly identified public interest. So in Re Abacrombie & Co Ltd [2008] EWHC 2520 (Ch) the company operated a debtor advisory service. David Richards J explained:—

> *'The purpose of the company's business as it related to clients with equity in their residential property was, prior to the client's bankruptcy, to sell the equity to the client's spouse or partner at as low a price as possible and to use the proceeds to fund the company's charges which were both excessive and unjustifiably charged to the debtor client. The effect, as the company…well appreciated, was to deprive the debtor's estate of any substantial return or value from the debtor's beneficial interest which was likely to have been the only asset of any substance. The effect was detrimental to creditors and undermined the proper administration of the bankruptcy of the debtor' (see paragraph [60]).'*

He had earlier at paragraph [15] held:—

> *'The arrangements, as operated by the company, in my judgment, subverted the proper functioning of the law and procedures of bankruptcy'.*

h) Such conduct is sometimes described as disclosing 'a lack of commercial probity', and whilst this frequently might involve preying on the public and inducing individual members of the public to participate in transactions which are without benefit to them, it can also involve prejudice to the public generally (for example by casting burdens on the general body of tax payers). An illustration of this may be found in Secretary of State for Business, Innovation and Skills v PGMRS Ltd [2010] EWHC 2983 (Ch); [2011] B.C.C. 368 in which four companies traded at the expense of HMRC (by not paying either VAT or PAYE) until such time as they were insolvent, conduct that the judge held represented a lack of commercial probity.

i) However in making the judgment whether a business is inherently objectionable "the court has to be careful of being priggish" (see Re Forcesun Ltd [2002] EWHC 443 (Ch) at [26], a point which Mr Chivers QC reinforced with a submission that this was a court of law and not a court of morals. If this is simply a submission that I am bound to decide the case according to law and by reference to principle and

> *precedent I unhesitatingly accept the submission. If this is a submission that the law in this area is devoid of moral content, then I disagree. Concepts such as 'inherent objectionability' or 'want of commercial probity' are bound to have some moral content, though that content is not the subjective moral perception of the individual judge, but must be informed by any discernable policy of the law and guided by the view of other judges in other cases.*
>
> *j) Finally, to wind up an active and solvent company is a serious step, and the Court must be satisfied that reasons of sufficient weight have been advanced to justify taking that course (Re Walter L Jacob & Co Ltd (1989) 5 B.C.C. 244 (above) at 252C–E).*"

123. This summary of the relevant principles was approved by the Court of Appeal in PAG 2 at [39]. Asplin LJ went on at [40] to note that:

> "*It is important to bear in mind, therefore, although the opinion of the Secretary of State that it is expedient in the public interest that a company should be wound up is the prerequisite to the presentation of a petition by him or her, it is for the court to carry out a balancing exercise based upon all the circumstances and all the evidence before it. It must weigh the factors which point to a conclusion that it would be just and equitable to wind up the company against those which point away from it. In order to carry out the balancing exercise, where the petition is based upon the public interest: "the court must be able to identify for itself the aspect or aspects of public interest which, in the view of the court, would be promoted by making a winding-up order in the particular case." See Re Walter L Jacob & Co Ltd (1989) 5 B.C.C. 244 at 251F–G."*

124. Asplin LJ later went on to say at [61] that:

> *"... when determining whether it is just and equitable to wind up a company under s. 124A, the court is required to identify for itself the aspects of the public interest which would be promoted by making a winding up order. In this case, however, there is no challenge to the judge's finding that there was no evidence of harm to the public and in oral submissions before us, Mr Chaisty was unable to identify any class of the public who were or might be harmed. An essential element, therefore, is missing."*

125. Contrary to the submissions on behalf of CCE and PMC, I do not read this passage as requiring that in every case specific harm to the public requires to be established in order to found the jurisdiction to wind up. I consider that Asplin LJ was concerned with the particular facts of that case in which the public interest that the Secretary of State submitted would be promoted by the winding up of the company in that case was dependent upon a finding of harm to the public. Consequently, I consider that conduct that does not cause specific harm to the public might, in an appropriate case, found the basis for a winding up petition in the public interest if the Secretary of State can properly identify some public interest that would be promoted by the winding up of the company.

126. As made clear by Asplin LJ in PAG 2 at [62], a judge, provided that he or she evaluates all the evidence and carries out the required balancing exercise, has a discretion as to whether or not to order the winding up of a company on a petition brought under s. 124A.

Discussion

127. The present case raises the question as to whether, and if so when, lack of transparency in respect of the conduct of the company's affairs, and explanations given in relation thereto, might form the proper basis of a petition to wind that company up in the public interest pursuant to s. 124A IA 1986, and in particular, so far as the case against CCE and PMC is concerned, as to whether, and if so when, lack of transparency sufficient to justify winding up might be demonstrated by an inability to explain the basis upon which monies have been received by the relevant company in the course of its business.

128. As referred to above, the key point made on behalf of CCE and PMC is that whilst a company's obligation to explain transactions may be prescribed by certain particular statutory provisions such as s. 386 CA 2006 relating to company accounts, whilst particular obligations might be imposed by particular regulatory regimes such as that applicable to an IFA, and whilst a company might reasonably be expected to cooperate with an investigation such as one under s.447 CA 1985, there is no freestanding requirement or obligation to explain transactions. Consequently, so it is argued, a failure simply to explain the basis upon which monies are received cannot properly form the subject matter of a winding up petition presented on public interest grounds.

129. There is force in this point, and in the main I consider that this must be right, but I do not consider that one can exclude there being circumstances in which a failure to explain might, in itself in the particular circumstances of the case, be indicative of the relevant company operating in an illegal or otherwise inherently objectionable way, or should be taken to be so indicative, such that the Court is entitled to proceed on the basis that the affairs of the Company have been, or are being, conducted in an inherently objectionable way so as to disclose a lack of probity.

130. An extreme example might be where a company had failed, or been unable to explain where money that it had received had come from in circumstances where the only fair inference, on the particular facts, given the absence of an explanation or the inadequacy of such explanations as had been given, was that the monies in question represented the proceeds of crime or of money laundering. In those circumstances the Court could, as I see it, potentially at least and dependent on the full facts, properly proceed on the basis that the company's activities were inherently objectionable and that there was a clearly defined public interest in winding the company up, and that the public interest would be promoted or fostered by winding up the company, even if the relevant activity had ceased, in order to prevent any future occurrence and/or to mark the relevant conduct and send out an appropriate message.

131. Further, to develop this example, the same approach of the Court would, as I see it, be perfectly justifiable, in appropriate cases, if the fair inference on the particular facts, was that the monies that had been received by the company *might* represent the proceeds of crime or money laundering so as to give rise to a legitimate concern in that respect absent a cogent explanation, and either no cogent explanation had been provided, or such explanation as had been provided failed to alleviate those concerns, in circumstances where one might have expected a proper explanation to have been provided by a company acting honestly and giving honest explanations. In those circumstances there might well be, as I see it, a clearly identifiable public interest in winding up the company, and a proper basis for finding that the public interest would be furthered by winding up the company in order to prevent, or prevent the re-occurrence of, the activity that the concern

related to, and to send out an appropriate message. In these circumstances, the failure of the company, and those behind it, to provide an explanation sufficient to dispel the concerns could, in appropriate cases, be taken to be indicative of the company's affairs having been conducted in an inherently objectionable way on the basis that persons acting with propriety and honesty might have been expected to provide an explanation that would have dispelled the concerns.

132. I have used the extreme example of monies received that, absent an explanation, were, or at least might be taken to be the proceeds of crime or money-laundering. However, I see no reason in principle why the same logic would not apply where the legitimate concerns related to some other nefarious or potentially nefarious activity, provided that one could properly conclude that, in the circumstances, if those behind the company had been acting with honesty and propriety, then an explanation alleviating the concerns would have been provided. In these circumstances, the Court could, as I see it, properly conclude, on appropriate facts, that the affairs of the all company had been conducted in an inherently objectionable way so as to enable a legitimate public interest to be identified that would justify winding up the company on public interest grounds pursuant to s.124A.

The petition against CCE and PMC

133. It is not in dispute that it is necessary to consider the evidence in respect of, and the case against the three companies the subject matter of the present petitions on a separate and individual basis with a view to considering whether it is appropriate to make a winding up order against any of them. Although separate considerations do exist as between CCE and PMC, it is convenient to firstly deal with them together before considering the case as against Haoma, in respect of which very different considerations do, in my judgment, arise.

134. As detailed above, in respect of CCE and PMC, the essential complaint is that Mr Howells was unable to explain the legal basis upon which either CCE or Celtic Wealth had been entitled to receive back-end payments, and in relation to which investments, by which individuals, and with which Investment Companies the back-end payments had been received and on what basis, and that the explanation that Mr Howells had designated CCE to receive the monies to which Celtic Wealth might otherwise have been entitled to as an introducer was inconsistent with what had earlier been said on behalf of CCE and Celtic Wealth. Further, it was suggested that Mr Howells had *"turned a blind eye"* to the fact that Mr Reynolds might be receiving out of the monies paid by the Investment companies, monies that it would be improper for him to receive.

135. Even if it could properly be said that there were legitimate concerns regarding the propriety of, or the way in which the monies paid by the Investment Companies were paid and applied, or otherwise in respect of the matters raised by the Secretary of State in the petitions, I do not consider that there is anything in relation to CCE's or PMC's conduct, by Mr Howells, in relation to the receipt of such monies or otherwise the points to any lack of honesty or impropriety on the part of Mr Howells, and thus of CCE or PMC, that properly leads to the conclusion that the affairs of either of these companies was being conducted in an inherently objectionable way, or such as to disclose a lack of probity, and certainly not so as to lead to the conclusion that there was, having regard to all the relevant circumstances and considerations, any identifiable public interest in winding up these companies, or that the public interest would be promoted by winding them up.

136. I have already stated that I found Mr Howells to be a frank and honest witness doing his best to assist the Court.

137. Mr Howells has provided an explanation as to the circumstances, and basis upon which CCE began to, and thereafter continued to receive back-end payments from SPA, Haoma, and Hiero. That explanation has been essentially consistent throughout, namely that he was informed by Mr Reynolds that as a result of Celtic Wealth introducing clients to Active Wealth, and these clients subsequently, having transferred their pensions into SIPPS, investing monies with Investment Companies, back-end payments in the nature of commission would be payable, at least in some instances. It is not uncommon for commissions of this kind to be paid by Investment Companies, and the Secretary of State has not suggested to the contrary, or that there is anything inherently objectionable in the practice of Investment Companies paying commissions to introducers. Further, it has not been suggested that the level of payments made in the circumstances of the present case were in themselves unusually large so as to excite suspicion.

138. Whilst Celtic Wealth was introducing pensions business to Active Wealth, Mr Howells had no inclination that Active Wealth or Mr Reynolds might have been giving inappropriate or wrong advice with regard to the transfers of pensions into SIPPS, and the Secretary of State has not sought to suggest otherwise. Mr Howells and his companies were not involved in any way in the circumstances in which clients came to invest with particular Investment Companies, and although it has been suggested, albeit not positively alleged, that inappropriate investment advice was given, and that investments were inappropriately made in unregulated and high-risk investments, Mr Howells had no knowledge thereof, or reason to believe that investment advice was not properly being given by whoever ought to have given it. Further, there is no evidence that the value of investments has been reduced by the making of unregulated high-risk investments, or the payment of commissions.

139. Given that the back-end payments represented a separate revenue stream to the share of the advice fee received by Celtic Wealth, Mr Howells, having been informed by Mr Reynolds that he could do so, decided to receive the monies through a different company CCE. Celtic Wealth and CCE were both solvent companies under Mr Howells's control, and he was perfectly entitled to arrange matters in this way. This did not alter the fact that Celtic Wealth was, ultimately, the introducer, but one can, perhaps, understand why, as between SPA, Haoma and Hiero on the one hand, Mr Howell and his companies on the other hand, CCE might have been described as *"introducer"* in certain documentation given that CCE has been designated by Mr Howells to receive payments referable to introductions.

140. Further, in this context, CCE having been designated by Mr Howells to receive the payments, whether or not CCE performed services in return for the payments received is irrelevant, and any concern on the part of the Secretary of State that it has not been explained what services were provided is, as I see it, misplaced.

141. As explained by reference to the diagram produced on Mr Howells's first meeting with Ms Clarke, SPA, Haoma and Hiero, at least from Mr Howells's not unreasonable perspective as informed by Mr Reynolds, acted in an intermediary role for the payment of the relevant monies. Again, there is not, as I see it, anything inherently wrong in this particularly bearing in mind that, as revealed by Mr Howells's diagram, he understood that the commission was being split in some way. Some of the descriptions on the

invoices that CCE was asked to provide are somewhat unusual, but all are essentially reflective of the fact that the investments entered into with the Investment Companies are derived from an introduction by Celtic Wealth, a company under Mr Howells's control. In this context, explanations such as *"intermediation commission"* and even *"marketing fees"* are, as I see it, entirely understandable. Mr Howells did give evidence that no marketing had been involved, certainly on the part of CCE, but looking at matters more widely, Celtic Wealth did clearly market in the sense that it advertised for pensions business that it could refer to Active Wealth, and so, in a sense, the business written by the Investment Companies could properly be described as derived from marketing activities. At the end of the day, the description on the invoices was as suggested by SPA and Hoama, and Mr Howells placed his trust in Mr Reynolds to do what was right, but there was, as I see it, nothing in the description on the invoices that ought to have alerted Mr Howells to the fact that anything untoward was going on, even if it was.

142. As to this question of Mr Howells placing trust in Mr Reynolds, Mr Howells was asked how he knew that the correct commission was being paid by SPA and Hoama, and indeed by the Investment Companies themselves, given that Mr Howells had no visibility in respect of the underlying transactions and data. Mr Howells replied that he trusted Mr Reynolds, and was no doubt more than satisfied by the very considerable sums that were being received on an ongoing basis. Mr Howells and his companies were not regulated, and did not pretend to be, and Mr Howells explained in his evidence how he was very anxious to distance himself and his companies from being involved in any activity that might have crossed the line between acting as an unregulated introducer with exemption so far as financial services regulation was concerned, and acting in respect of a regulated activity. On the other hand, Mr Reynolds was an IFA regulated by the FCA, and appropriately qualified. In this context Mr Howells was, I consider, entitled to place considerable trust in Mr Reynolds so far as compliance by Mr Reynolds and his own companies with FCA rules and regulations was concerned relating to the regulated activities that they were involved in, including dealing appropriately with any fees or commissions that might be received.

143. As to the legal basis upon which the Insurance Companies might have been obliged to, or otherwise did make payments in the nature of commission, when asked about this, Mr Howells's response was that he would not have expected anybody to have made payments unless obliged to do so, and trusted Mr Reynolds's explanation that the payments were due.

144. There may have possibly been some element of naïveté involved on Mr Howells's part in respect of the way that he placed his trust in Mr Reynolds in the circumstances referred to above, but I do not accept Ms Wilson-Barnes's submission that this placing of trust in Mr Reynolds by Mr Howells was, itself, indicative of a want of probity.

145. So far as the contention that Mr Howells was aware, or ought to have been aware that Mr Reynolds was receiving monies improperly, or indeed otherwise responsible for or involved in the misapplication of monies, and was turning a blind eye thereto, there are, I find, a number of difficulties with this allegation:

    145.1. Firstly, it is difficult to accuse somebody of turning a blind eye to something if one cannot clearly identify the wrong that it is said that the blind eye is being turned to. The Secretary of State does not actually allege that Mr Reynolds has received monies that have not been properly disclosed to those to whom the

receipt of these monies ought to have been disclosed to, or that Mr Reynolds has received monies that he is not entitled to, and the Secretary of State has not even identified what particular regulatory rules or regulations might have been breached. The Secretary of State has merely asserted that there are concerns that Mr Reynolds might have acted in an inappropriate way.

145.2. Secondly, Mr Howells was clear that whilst he frankly accepted that he might have been aware that Mr Reynolds or his companies might have been receiving some part of the monies received from the Investment Companies, his clear evidence was that he did not know that this was improper (even if it was) - see the exchange in cross examination referred to in paragraph 117 above. I accept that evidence. Again, this was down to the trust that he placed in Mr Reynolds, but, at worst, there was, as I see it, a degree of naïveté involved, rather than any impropriety or want of probity on Mr Howells's part.

146. The position in respect of PMC, and the payment of monies by CCE to PMC has been explained by Mr Howells on the basis that CCE passed the monies on so that they could be applied for the purposes of the remuneration trust that had been set up, with PMC acting as the fiduciary thereof. The apparent criticism in the petition that the monies were applied as part of a *"tax avoidance scheme"* was, realistically, not pursued at trial.

147. Other relevant considerations are, as I see it, that:

147.1. It is not alleged that CCE, PMC or Mr Howells failed to cooperate with the s. 447 investigation; and

147.2. it was specifically confirmed on behalf of the Secretary of State that it is not alleged that Mr Howells or CCE or PMC has failed to keep adequate accounting records in accordance with s. 386 CA 2006.

148. Stepping back, and having regard to the totality of the evidence, I am simply unable to conclude that the conduct of the affairs of either CCE or PMC has been such as to demonstrate any inherent impropriety in relation thereto, or any want of probity or other conduct sufficient to allow there to be identified any, or any sufficient public interest in winding up either CCE or PMC, or sufficient for the Court properly to conclude that the public interest would be promoted by the winding up of either of either of these companies.

149. I therefore decline to make a winding up order in relation to either CCE or PMC.

The petition against Haoma

150. The Secretary of State has raised what I consider to be a number of legitimate concerns with regard to the conduct of the affairs of Haoma, in respect of which I consider the Secretary of State to be correct to say that no cogent, or certainly full or satisfactory explanation has been provided.

151. In short, the principal matters of concern as more fully expressed in the Haoma petition and the evidence in support thereof are as follows, namely:

151.1. As to Mr Reynolds's role in Haoma and as to why Mrs Webb was the sole de jure director and shareholder thereof despite Mr Reynolds being, according to those dealing with Haoma, including Mr Howells, the main point of contact and the person to go to;

151.2. Linked to this, as to why, as described by Mrs Webb, Haoma was established supposedly to be separate and distinct from Active Wealth/Mr Reynolds;

151.3. As to why and on what basis Mr Reynolds received some £613,855 from Haoma over a comparatively short period of time which, contrary to earlier suggestions, was said by Mr Reynolds to be a loan to him;

151.4. As to why and on what basis Mr Deeney and Mr Porter received substantial sums of money from Haoma, if employed by Active Wealth to advise clients in respect of their pensions;

151.5. As to how and on what basis Haoma received the monies that it did from the Investment Companies. Although Haoma has been able to explain the amounts received from the Investment Companies, it has not been able to explain how the amounts were calculated, and by reference to which clients introduced by Active Wealth, and although some contractual documentation has been produced in relation to some of the Investment Companies, this is by no means complete, and presents an unclear picture. As I see it, the position is rather different from that of CCE which was receiving the monies from Haoma. Haoma had a direct relationship with the Investment Companies as intermediary, and yet was unable to provide the relevant explanations notwithstanding the apparent connection with Mr Reynolds/Active Wealth and that it was the latter's clients who had transferred to SIPPs that were introduced, via the DFM's to the Investment Companies;

151.6. As to why CCE was asked to add the descriptions that it was to the invoices that it issued to Haoma;

151.7. Against the background of the above considerations, as to whether Haoma was being used as a vehicle for the payment of undisclosed fees to Mr Reynolds or companies under his de facto control, having regard also to Mr Reynolds's admissions referred to in paragraphs 78.3 and 78.4 above.

152. The Secretary of State's concerns are, I consider, justifiably exacerbated by the fact that Haoma, and those behind it, have had the opportunity to answer the evidence relied upon in support of the petition presented against Haoma and thereby provide explanations in relation to the above matters, but have not done so.

153. It is perhaps unfortunate that the Secretary of State has not made specific allegations with regard to Mr Reynold's conduct, or as to the propriety of Haoma receiving the monies that it did from the Investment Companies, and thus the manner in which those monies might subsequently have been applied in favour of Mr Reynolds and his associates, or even identified the aspects of the regulatory framework for IFA's that might have been breached by the latter receiving undisclosed commissions.

154. However, Mr Reynolds himself recognised the need for disclosures to be made that were not made as referred to in paragraphs 78.3 and 78.4 above, and the evidence suggests that

the very purpose of Haoma, nominally at least owned by Mrs Webb, taking over from SPA as recipient of the funds from the Investment Companies was to create an apparent, but false, separation and distinction from the receipt of those monies by a company controlled by Mr Reynolds.

155. Against this background I am driven to conclude that if those behind Haoma had been acting with honesty and integrity in relation to the subject matter of the Secretary of State's concerns, then explanations would have been provided answering those concerns which, as we have seen, relate to serious matters concerning the application of monies paid to Haoma following the investment of funds of clients of Active Wealth.

156. On this basis I consider that I am entitled to proceed on the basis that this lack of transparency is, on the present facts, demonstrative of the affairs of Hoama having been conducted in an inherently objectionable way, and with a want of probity. Further, the seriousness of the position is, in my view, compounded by the fact that Haoma failed to file accounts and a confirmation statement in 2018, or indeed at any time thereafter.

157. I would add that, in relation to Haoma, the Secretary of State has made no concession that Haoma has complied with its accounting obligations under s. 386 CA 2006, or that those behind Haoma had cooperated with the s. 447 investigation.

158. In the circumstances, balancing the various factors that I am required to take into account, I am satisfied that the Secretary of State has identified a specific public interest in Haoma being wound up, and that the public interest would be promoted by the making of a winding up order, not least as a mark or recognition of the objectionable conduct that I have found.

159. Consequently, in the exercise of my discretion, I will make an order winding up Haoma on public interest grounds pursuant to s.124A of the 1986 Act.

Conclusion

160. I will make an order that Haoma be wound up.

161. I will dismiss the winding up petitions presented against CCE and PMC.