

# Work and Pensions Committee

## Oral evidence: Norton pension schemes and the Fraud Compensation Fund, HC 145

Wednesday 13 March 2024

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Members present: Sir Stephen Timms (Chair); Debbie Abrahams; Siobhan Baillie; Neil Coyle; Marsha De Cordova; Nigel Mills; Dr Ben Spencer; Sir Desmond Swayne.

Questions 1-73

### Witnesses

I: Sean Browes, Senior Trustee Representative, Dalriada Trustees; and Ben Fairhead, Partner, Arc Pensions Law.

II: Kristina Kicks, Joint Trustee in Bankruptcy of Mr Stuart Garner, Interpath Ltd; and Lee Causer, Joint Liquidator of Norton, BDO.

Written evidence from witnesses:

[Dalriada \(NPS0008\)](#)

[Pinsent Masons LLP \(NPS0009\)](#)

[BDO \(UK\) LLP \(NPS0014\)](#)

[Interpath Ltd NPS0013\)](#)



## Examination of witnesses

Witnesses: Sean Browes and Ben Fairhead.

**Chair:** Welcome, everybody, to this meeting of the Work and Pensions Committee inquiry into the Norton pension schemes. I particularly welcome the two participants in our first panel. May I ask each of you very briefly to tell us who you are?

**Ben Fairhead:** I am a partner at Arc Pensions Law. I am a pensions litigator, so I have quite a lot of experience in dealing with pension scam matters.

**Sean Browes:** I am a senior trustee representative of Dalriada Trustees, a professional independent trustee company, which has been appointed by the Pensions Regulator to a number of schemes similar to the Norton schemes.

Q1 **Chair:** Thank you both very much for being with us. Can each of you tell us the role of your organisation in relation to pension schemes like Norton's being used in a scam? To what extent do you think the Norton case is an example of a wider problem?

**Ben Fairhead:** I should probably start by saying that I have only been with my current firm for about six weeks, but I have worked quite a lot on schemes like this. I have been instructed by Dalriada in relation to about 100 different pension schemes—large-scale occupational pensions schemes that have been used to facilitate pension scams. Sorry, could you remind me of the second part of your question?

**Chair:** To what extent is Norton an example of a wider problem?

**Ben Fairhead:** It is an example of a wider problem, but—I am sure we will come on to this—these types of scam have probably been significantly diminished in number. There may not really be the scope for these types of scam to happen so much now, but certainly in the early 2010s, up to 2015 or so, there were a lot of pension schemes like this being set up. It was very easy to set up occupational pension schemes without an awful lot of checking around how that was done. It was very easy for large numbers of members who had perfectly good pensions to get transferred into these schemes and then fall victim to scams.

Q2 **Chair:** In cases like this—the 100 or so that you are dealing with—what is the role of a law company?

**Ben Fairhead:** I am a litigator, so in many of these cases I have been brought in to see what we can do to recover assets, and to give advice and guidance around what to do with these schemes. Often, quite a lot of questions are thrown up around fairly unorthodox elements of these schemes. They are set up with the normal scheme documents that you would have for an occupational pension scheme, but very often the wording in them is unusual. We have been to court to get directions

around whether these really are occupational pension schemes. My firm's role has been assisting with that process, giving general advice and then actually trying to recover some assets, where we have been able to do that.

**Sean Browes:** As Ben says, there are a number of these schemes to which Dalriada has been appointed. The Pensions Regulator has a number of powers, one of which is to appoint a professional trustee, where it has concerns as to how a pension scheme is being managed or how it has been wrong.

It is important to note that these are all occupational pension schemes. Clearly, when the regulator gets notice or concerns about a scheme or set of schemes, it would go through its usual tender process to appoint a professional trustee off its panel, who would fundamentally be put in place to manage those schemes, putting in place the necessary skills and knowledge to manage that. To the extent that a scheme is a scam, you curtail that scam.

Q3 **Chair:** Ben referred to 100 schemes. Is that roughly the number that you are dealing with?

**Sean Browes:** Yes. We got our first regulatory appointment in 2011. It is fair to say that we were on a very steep learning curve—to a certain extent, so was the regulator—as to the nature of these schemes, how they operated and the modus operandi of the perpetrators. As a consequence, we developed a specialism in this area, if you like. Consequently, we picked up appointments between 2011 and our latest appointment, which was probably last year some time. We are trustee to over 100 schemes, yes.

**Chair:** It hasn't entirely stopped?

**Sean Browes:** It has not entirely stopped, but, as Ben alluded to, we are hopeful that with the various changes that have taken place over the last 10 years or so, this particular type of scam should become less of an issue in future.

Q4 **Neil Coyle:** How do you explain Norton pension schemes being able to register with HMRC and the Pensions Regulator, when directors of T12 were already under investigation by HMRC for tax fraud in another case?

**Sean Browes:** I think it comes down to a change in legislation and in process that took place post 2006: what was called pension simplification. Part of that was a change to the registration process of pension schemes. Historically it would have been quite an involved process, with submission of docs to the Superannuation Funds Office, and you would eventually get some sort of communication as to a scheme's approval. But that was now all done online, so you could effectively go on to the HMRC website, put in some basic details and register your scheme—that was really all you needed to do.



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It was almost a law of unintended consequences. Simplification in and of itself was seen as a positive development, in sweeping away a lot of the legislative complexity around pension schemes, but it went the other way.

**Q5 Neil Coyle:** With that in mind—going the other way—was it oversimplification, as you seem to be suggesting? Does that mean that HMRC bears any liability or responsibility to those who were scammed? I have lots of constituents affected by IR35 and other issues, where HMRC seems to have been recommending an approach, or endorsing a registration approach in this case, that has left people vulnerable to scams.

**Sean Browes:** I think that that is a question best put to HMRC.

**Neil Coyle:** You're allowed an opinion.

**Sean Browes:** It is what it is. There have been changes made subsequently to that, which over the course of the past five to 10 years have looked to close down the opportunity.

**Neil Coyle:** And people accuse of us of avoiding answering questions! Ben, is there anything further that you would like to add? There is no pressure if you don't want to.

**Ben Fairhead:** I was not even practising in that area in 2006 when the change came in. I would say that it became apparent fairly quickly around 2012 or 2013 that it was too easy to register pension schemes. In fairness, changes were made. We can always sit here and ask whether things were done as quickly as they could have been. That is debatable.

There are plenty of other things we could talk about with HMRC around the tax charges that are being levied on members. I do not know how much criticism can be levied at it around how easy it was to register a pension scheme. Presumably, at some point there was a policy decision taken to make it that easy. Obviously, with hindsight, it became apparent that these schemes were being used for scams, and it made a lot of sense to make it more difficult.

**Q6 Neil Coyle:** Was that an HMRC-level lack of awareness, or was there just a general lack of awareness in the sector with other changes and the simplification processes? It is not as if this is the first pension scam ever.

**Ben Fairhead:** No. As Sean said, 2011 was the first time that a large-scale occupational pension scheme came on the radar as being used as a scam. Even then, at that stage, there was an evolution in the models. We can look between 2011 and 2013-14 and there were quite a few different types that were using large occupational pension schemes. The first ones that were used around that time were operating in a way where the people who set them up were trying to be—if I were being generous—slightly entrepreneurial. They were thinking that they had found a way of working around the tax rules and enabling members to take some of their pensions out. It probably took a while for that knowledge to gain some momentum.



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Certainly, when I first became involved in 2011, pension liberation and pension scams were not something I was familiar with, or not on that scale. Technically, pension liberation had been an issue—you can find leaflets from the regulator going back quite some time—but I think it is fair to say that on this sort of scale there had not been anything like this until 2011 and beyond.

**Sean Browes:** I would concur with that.

Q7 **Neil Coyle:** Concerns were raised with the regulator about the individuals specifically. Do you think it should have had more of a role to take action at that time, or did it just not have the powers? The Pensions Regulator was aware of the specific individuals; there is a record of that. So did it have a duty to have done more to try and prevent the scam or the registration?

**Ben Fairhead:** I suppose there are two separate points there. Registration would fall to HMRC, but then spotting the involvement of individuals who were possibly named as being involved in other scams was maybe a matter for the regulator. The regulator has had this power to appoint an independent trustee like Dalriada.

It is quite difficult to judge. I think the difficulty is that the regulator has always had, and still has, a fairly high threshold to justify making an appointment. It has to go to its determinations panel to support the appointment, and it will need quite a lot of information before it wants to do that anyway. Historically, the regulators try to collect information about the schemes and what the asset position might be. It will get a certain amount of information from whistleblower reports, but there is still quite a lot of work involved to get to the point of making an appointment. I do not know enough of the specifics and the timeframe to say, "Should something have been done earlier?", but I think it is not unusual to have a little bit of a time lag.

I also think that if you go back to that time, it was very different. There is a lot more evolution of thinking around this. There is a building up of the resources and the teams at the regulator and with HMRC, having to adapt their processes to get used to the fact that there were a lot of these types of schemes out there and making sure they are able to move more quickly and act to stop this sort of activity.

Q8 **Neil Coyle:** That brings me neatly to my final question. The people affected will be aware that the regulator and HMRC knew that these individuals were under investigation but did not act. Would the 2014 changes, Operation Scorpion and the fit and proper test now prevent a similar situation? Sean, you have just mentioned that scams of this nature have not entirely stopped.

**Sean Browes:** Again, I would not want to speak for the regulator, but I would say that its actions would be different if it happened now rather than 12 years ago. Having said that, I know that the regulator is due to present to the Committee next week, but there is quite a bit of history as



to the regulator's involvement in the Norton schemes, up to the point where we got involved and were subsequently appointed.

**Q9 Marsha De Cordova:** Good morning. Sean, these questions are addressed to you. The regulator received reports about the Norton pension schemes from a whistleblower back in 2013, and took a risk-based decision not to investigate further. As far as you are aware, did anything happen between 2013 and 2018, when the regulator started its investigations?

**Sean Browes:** Clearly we were not involved with Norton until we were first approached in 2018. To the best of my knowledge, there was an ongoing criminal prosecution tied to one of the introducers to the Norton schemes, which I think was run by South Wales police. Sorry, was that clear?

**Marsha De Cordova:** Yes. And is that all you know?

**Sean Browes:** I think there might have been another whistleblower report in about 2017, potentially around the employee-related investments.

**Marsha De Cordova:** So a year before they decided to investigate.

**Sean Browes:** Certainly when we were appointed we were aware that the regulator was in dialogue with Mr Garner, shall we say.

**Q10 Marsha De Cordova:** You guys were appointed in May 2019, so that was a year after the regulator started its investigation into the schemes. Could that have been done more quickly?

**Sean Browes:** Possibly. The question is whether it would have made a massive amount of difference. I do not think it would, because one of the problems, as happens quite often with these types of appointment, is that it is almost after the event. If the moneys have gone, if the scam has happened, our role is always going to be to put ourselves in to look at what options there are for recovery, to act in the financial interests of the members and to do what we can to recover assets.

The regulator can act, and has acted in the past, where there is a genuine threat of dissipation of assets and it needs to act quickly to prevent further dissipation, but in this case the moneys had been invested way back in 2012 or 2013.

**Q11 Marsha De Cordova:** In your opinion, would the delay to your appointment have had an effect not just on your ability to get redress for members, but on the experience that they had to endure as a result of the delays?

**Sean Browes:** Ordinarily, yes: the quicker we can get involved, the quicker we can identify the issues and take action to move things forward.

Norton was slightly unusual, compared with many of these types of appointments. It was evidencing scam-like tendencies—it had the



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liberation element, it had the involvement of T12, so it shared many characteristics with other appointments—but Norton in and of itself was an active trading business, which is not usually the case. The money has usually gone off overseas or to some opaque investment, but here we had a trading business.

At the point when we were appointed, leaving aside the fact that the Fraud Compensation Fund was on the horizon, the best chance we had of any meaningful recovery for members was seeing Norton as a successful trading business. That is really how our dialogue with Mr Garner started, immediately after our appointment. Those were the avenues that we were going down. I am not sure that it would have made that much difference whether we were appointed in 2018 or 2019, given where he was in getting funding and growing his business, if that makes sense.

**Marsha De Cordova:** So you don't think it made any difference?

**Sean Browes:** I don't think it would have, because we would still have been having the dialogue with Mr Garner in 2018 about what he was doing to obtain funding for Norton, make Norton successful and effectively get to a point where he had sufficient assets in the business to be able to repay the moneys back to the schemes. I do take your point, and normally, yes, the sooner we are involved or appointed, the quicker we can get on to it.

**Marsha De Cordova:** It is about the experience of the scheme members, but obviously getting redress has had an impact on them as well.

Q12 **Chair:** Were the members of the Norton scheme all people who had transferred their pensions in from elsewhere, or were there some Norton Motorcycles employees in that scheme as well?

**Sean Browes:** Certainly the vast majority were people who transferred in. Whether there were some who transferred in who happened to be Norton employees as well, it was never run as what you would perceive to be a traditional occupational pension scheme where the employer was putting the money in. The employer was not even Norton; the employer was Manorcrest, if you remember.

Q13 **Sir Desmond Swayne:** Scheme members have told us that they reported evidence of wrongdoing and dishonestly to the police, but the police told them that they could not investigate unless such reports came from you—BDO or Dalriada. Were the police correct in telling them that? Where does the primary responsibility lie?

**Sean Browes:** Certainly I am not aware that criminal prosecutions have to be driven by the trustee. We were in dialogue with the police. Maybe I will come to the other point of your question: who was responsible for this? Our role as trustee is fundamentally to act in the financial interests of the members and do what we can, on appointment, to work out what the issues are, where the money has gone and what our prospects of recovery are, and to get as much of that money back as we can. Latterly, the best chance of success has been through the Fraud Compensation Fund and will be through the Fraud Compensation Fund.

Leaving aside who is accountable and who should be brought to account, there is the question of who is responsible for bringing people to account. I think that responsibility is shared across industry, members, the regulatory bodies and the police. Everybody should take a part in making sure that these perpetrators are brought to book.

How does bringing somebody to book manifest itself? In the context of pursuing the recovery of funds, we participated in the Pensions Ombudsman's action against Mr Garner. We saw through the determination that saw him being liable for a £15.7 million repayment. We pursued that, we challenged him on that, and eventually it led to his bankruptcy. To that extent we have done our bit to pursue the recovery of assets. But criminal prosecutions are better led by other bodies with the appropriate prosecutorial powers that we do not have. That would be the regulator and the police. In this case, as you alluded to, there was an insolvency of the Norton entities and there were liquidators and administrators put in place. They are duty-bound to investigate the actions of directors and report any wrongdoing.

You asked me about evidence and what happened to it. While, as I said, we would not necessarily drive criminal prosecution, wherever we have had evidence that we have received from members, we have shared it with the bodies that we think could do something more meaningful with it from a criminal prosecution point of view.

**Q14 Sir Desmond Swayne:** But it strikes me as bizarre that the police would say that they can't investigate unless credible evidence comes from a particular source, and the members are not that source.

**Sean Browes:** I just don't know why they would have said that, because that is not my understanding.

**Q15 Sir Desmond Swayne:** Is there anything that can be done to improve the way that members can be informed about what action is being taken on the concerns they have raised, and who should do that?

**Sean Browes:** Communications is an interesting one. For these types of scheme, communication is probably one of the biggest challenges that we have, beyond actually trying to recover assets. You will experience the whole range of human emotion—you will have anger, frustration, despair—and they can be very challenging conversations and communications to have with members. Equally, you will quite often find that there will be a cohort of members who will be very communicative and vocal, but that the vast majority of members will not engage at all, for whatever reason. You have to balance how you deal with the communications and how you manage it.

Over the course of our appointment, I think we have issued 13 announcements in total, including a series of announcements by the Pensions Regulator updating members on their prosecution of Garner for the employer-related investment charges. We have a dedicated member email address, and a dedicated member phone number that they can and do use if they want to contact us.





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You are right: they need to be kept informed. Again, there is an issue of balancing the cost of a communication exercise. If you are repeatedly sending out communications, then that is just building up costs that, on the face of it, might have to come from the assets of the schemes. There is a bit of a cost-benefit: you have to tell them something meaningful—there is no point in just repeating; you need to have some meaningful update to give to members—but equally there is also the potential issue that members are frustrated by the perceived lack of progress, or just don't necessarily agree with what we are saying.

**Q16 Chair:** When you took over responsibility as trustee, were there some assets there?

**Sean Browes:** No. That is another point to make. When we get appointed to these types of schemes, we can never be certain what, if any, assets there are. Certainly, in the later appointments, almost invariably the money has gone. I think that, when we were appointed to Norton, there was about £600 in the scheme, across the three scheme bank accounts; the rest of the money had been either paid away in fees to T12 or invested in Norton.

**Q17 Siobhan Baillie:** The Pensions Ombudsman found that Mr Garner had committed multiple dishonest breaches of trust and maladministration. Scheme members have questioned why TPR did not allege dishonesty in its prosecution. How do you explain this? I will come to Ben first.

**Ben Fairhead:** I am bound to say that you need to ask the regulator, but I think it is fair to say that there are different evidential standards of proof. It is one thing for the ombudsman to make findings of dishonesty; for the regulator to turn that into an action where they are prosecuting and going for an offence that involves dishonesty is another thing.

I can say this much: in the work we have done, we have had a lot of interaction with the regulator, and they are repeatedly looking at where they can take action and what criminal action they can take. That is very much in their interests, because they want to deter people from carrying out this kind of activity, and, if they can, they will be looking for custodial sentences.

I don't know enough about the specifics, but I would be pretty confident that they would have looked at this closely, taken appropriate advice and decided that the offence that they pursued Mr Garner for was the appropriate one. It could have achieved a custodial sentence; it was just that the decision of the judge was to give a suspended sentence. Obviously, I know that some members are going to be disappointed about that. As I say, you would need to ask the regulator a bit more about that, but that is my view on it.

**Q18 Siobhan Baillie:** We will. In your experience, what impact did the decision not to prosecute on the basis of dishonesty have on the application for FCF compensation?



**Ben Fairhead:** I would say very little, really. It is helpful to have these things—it is helpful to have judgments and decisions of the ombudsman that make findings of dishonesty—but the PPF, who operate the Fraud Compensation Fund, are able independently to assess the evidence and we are seeing schemes where we have not had prosecutions or independent decisions of courts or ombudsmen where findings of dishonesty are still being made. I am sure it was helpful in this case that we had the ombudsman decision, but it is not the be-all and end-all.

Obviously, Dalriada and other independent trustees in that situation, as Sean said, are coming at this from a slightly different perspective from regulators and prosecutors. Clearly, that part is important, but their focus is more around trying to collect the assets. Sometimes, taking prosecuting action might help with recovery of assets—it might lead to a confiscation order, or it might just put added pressure on somebody and yield a result—but the two are distinct, really. Coming back to your point, as I say, it certainly was not the be-all and end-all not to have a dishonesty finding or a dishonesty offence being pursued in a criminal context as regards getting the compensation from the Fraud Compensation Fund.

**Siobhan Baillie:** Sean, do you have anything to add on the decision of TPR not to include dishonesty, and its impact?

**Sean Browes:** I would agree with Ben. You would need to ask TPR what advice they took and what decision process they went through in determining what action they were going to take against Garner and why, and if they considered fraud or why they went down the ERI route. But fundamentally, I agree with Ben: it would have made no difference to the outcome on the Fraud Compensation Fund. The FCF will form their own view on whether there are losses attributable to dishonesty from the evidence that they have, and certainly in that context the ombudsman's determination would have helped. But the lack of a criminal prosecution for fraud, if that is the question—

**Siobhan Baillie:** That is my next question.

**Sean Browes:** It would have had no impact on the decision in this case.

Q19 **Siobhan Baillie:** You can see why scheme members are struggling to understand why fraud and dishonesty are not thrown into the mix as well. It is my understanding that TPR said that the employer-related investment offence, which I think is a strict liability offence, was the strongest case they could pull together and gave them the best opportunity for moving forward with the prosecution. Do you agree? Does TPR have the powers to prosecute for fraud?

**Sean Browes:** It does. I am not trying to dodge the question, but you would really need to ask TPR—and I am sure you will, whenever you see them—what the process was and how they decided to take the action that they did against Garner. All I would say is that everything would need to be considered on the facts of the case—on the evidence and the strength



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of the case. It is all going to be driven by advice and legal advice, and the prospects of success.

**Ben Fairhead:** And they certainly have prosecuted people. They have got some fairly high-profile convictions and they have ended up with some pension scammers in prison, so they have had some success there. There might be a resourcing issue for them as well, but, as I say, it is a higher threshold to meet, so they will not want to be going off and prosecuting right, left and centre if the prospects of securing a result are not high. There will be a lot going on behind the scenes before they launch any of these actions to decide whether they have enough evidence there.

I take your point completely that it is really difficult for the members seeing that. They are victims of scams. Sometimes, when you try to connect things up and look at the picture overall, coming at it cold, it looks very much like a scam, and it is then difficult to rationalise why these cases do not all lead automatically to criminal convictions and people in prison. Unfortunately, it is often quite difficult to make those cases stick, and it is difficult to pull all the information together.

Q20 **Debbie Abrahams:** Good morning. Sean, can I clarify some of the points you have raised? Dalriada was appointed in May 2019. You said that this was one of many schemes. Can you confirm how many schemes since 2020 that you are aware of have been appointed?

**Sean Browes:** How many schemes we have been appointed to since 2020? Not that many. Probably about half a dozen, I would think.

Q21 **Debbie Abrahams:** Okay. I think you said that the scheme had £600 left in it, and you thought that the scheme could possibly be recovered if Norton Motorcycles was a continuing going concern. Is that right?

**Sean Browes:** Yes. The scheme's investment was in Norton Motorcycles UK—

**Debbie Abrahams:** I know, but you said that there was nothing left of that.

**Sean Browes:** No, there was nothing left in the pension scheme. There were no liquid assets in the pension schemes.

**Debbie Abrahams:** Yes, but I think you did say that you judged that by keeping Norton going—

**Sean Browes:** The scheme's investments, or funds, were in Norton Motorcycles, so the only way that those schemes were going to see any return on their investments or recovery of funds was for Norton to be a successful trading business, which, at the point that we were appointed, it was not.

Q22 **Debbie Abrahams:** When did you determine that it was not going to be, and that the only reason it had operated was because all the money was being siphoned off from the pension scheme into Norton Motorcycles? When did you determine that?



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**Sean Browes:** It wasn't quite that straightforward. There were definitely moneys that went off to the introducers to the schemes, but how that manifested itself through Norton's account is not something that we would be privy to. Fundamentally, you had the Norton business trading there, so we were talking to Garner from 2019 onwards about what his plans were for the business, how he was going to grow it and what his funding opportunities were. We were having conversations with Mr Garner right up until the point when BDO were called in by Metro Bank.

Q23 **Debbie Abrahams:** With hindsight, do you think that he hoodwinked you?

**Sean Browes:** Did he hoodwink us?

**Debbie Abrahams:** Yes, in terms of thinking that this sham of a company that was breaking down motorbikes to use for new parts—

**Sean Browes:** I don't think we were ever completely sold on his business projections and the financial models that he shared with us, but you have to understand that we really had no viable alternative, because there were no assets with which we could have looked at any alternative means of recovery. We were dependent, at that point, on making Norton a success. Certainly, he was in dialogue with an entity in December/January 2020, right up to the point—

Q24 **Debbie Abrahams:** Who was that? He was in dialogue with what, to do—

**Sean Browes:** It was with an Indian firm, to provide funding to the business.

**Debbie Abrahams:** What is their name? Sorry, I can't hear you very well.

**Sean Browes:** TVS, I think, was the entity involved. Don't not quote me on that.

**Debbie Abrahams:** And they were going to invest in the company?

**Sean Browes:** Yeah. I mean, there were ongoing negotiations—so I was told by Mr Garner—whether it was going to be for a capital injection or an equity investment.

Q25 **Debbie Abrahams:** So the scheme has nothing. You have been working on this. It is now obviously bankrupt. In terms of creditors, where does the scheme rank in the pecking order?

**Sean Browes:** Within Norton? We are pretty low down the list of creditors in the Norton liquidations.

**Debbie Abrahams:** Low down as in fifth or sixth?

**Sean Browes:** Well, we stand as preference shareholders, so we are behind unsecured creditors.

Q26 **Debbie Abrahams:** How much has Dalriada been paid over this period?

**Sean Browes:** How much has it been paid? Nothing.



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**Debbie Abrahams:** So where do you get your income from?

**Sean Browes:** On these schemes? We would be reliant now on the Fraud Compensation Fund. Up until the point where the schemes had an eligible claim on the Fraud Compensation Fund, we were at risk of not getting paid at all, which is not an uncommon position.

Q27 **Debbie Abrahams:** How successful have you been in securing compensation for the scheme members?

**Sean Browes:** For Norton members?

**Debbie Abrahams:** Yes.

**Sean Browes:** We have put the applications in. We have had the finding of dishonesty from the Fraud Compensation Fund. As of three days ago, we have the first compensation payment into the schemes—of £9.4 million.

Q28 **Debbie Abrahams:** What is the relationship between you, BDO and Interpath? How do you work? What are the different responsibilities that you each have?

**Sean Browes:** BDO are the liquidators of the Norton entities. To the extent that we have put in creditor claims in relation to those entities, that is the extent of our relationship. Similarly, Interpath were appointed as trustees in bankruptcy to Mr Garner.

Q29 **Debbie Abrahams:** Some of the scheme members say that when you were appointed trustees, this was with exclusive power to seize assets. Do you have such power, and did you use it?

**Sean Browes:** In the context of assets, that is scheme assets, so we couldn't have just gone in and seized the assets of Norton Motorcycle Holdings, if that is the question. But clearly the assets were limited when we were appointed.

Q30 **Debbie Abrahams:** Out of the money that you have from the compensation—I'm thinking about the total pot—how much will Dalriada get?

**Sean Browes:** The total costs to the end of January, I think, were about £950,000, including VAT—but that is all costs, including third-party costs and legal costs. I think Dalriada's share of that is probably about £550,000 plus VAT, but—I think this is important—those costs are compensable to the extent that they are attributable to the act of dishonesty, so to the extent that the FCF has found dishonesty and that the scheme has suffered losses, those costs are compensable separately to any compensation to the members. In other words, our costs are not going to impact on what the members will get back ultimately through the schemes.

**Debbie Abrahams:** You are saying that your fees are completely separate—that that will not have any impact in terms of the allocation and reduced benefits that members will get.



**Sean Browes:** There is a slight caveat to that, in that the FCF won't compensate for what are called business-as-usual expenses—what you might reasonably expect to expend in running a pension scheme. But of that half a million in round terms, the vast majority—95% or more—are costs that are directly attributable to the dishonesty, and will be compensable.

Q31 **Debbie Abrahams:** I want to follow up on your response to Sir Desmond about communication. I understand the difficulties that this will have, and clearly, the sensitivities that you will have had to deal with. Have you been able to review how you communicate with scheme members who have had their future catapulted into—absolutely destroyed? Have you been able to review how you have done this, and to learn anything from it? Is there anything that you will be doing differently, both with these scheme members and with future schemes that you assist?

**Sean Browes:** As I said, it is a constant learning curve with members. How members react and express their feelings is quite often different across the piece.

**Debbie Abrahams:** Is that a no? Some members of the Committee have met with scheme members, and to be honest, their futures are absolutely diminished. Some have tried to take their own life. The importance of communication is essential.

**Sean Browes:** I absolutely agree that it is. As I said before, communication is one of the biggest parts of these types of appointments. Dealing with members is second only to recovery of assets. If there are lessons to be learned, we will definitely listen and take those points on board.

**Debbie Abrahams:** I am sure that will give some comfort to the members.

**Sean Browes:** Would it be possible to share the views—are we talking about the session you had with members last week? The roundtable?

**Debbie Abrahams:** Yes, it was two weeks ago.

**Sean Browes:** Can you share that feedback with us, and let us see the comments they are making?

**Debbie Abrahams:** I am sure you are already aware of it, but we can provide a summary.

**Chair:** We will be publishing a record of it.

Q32 **Nigel Mills:** I thought I was following, but then I got lost. You were appointed five years ago, give or take. You have 600 quid in liquid assets and you have some preference shares in Norton Motorcycles. That is about the sum total of the assets, from what I understand. You did not own a stately home in Leicestershire or anything, as some people seem to think. When did you realise that Mr Garner was being dishonest? Was



that straightaway?

**Sean Browes:** I think from the point we were appointed, as I said at the start. To take it back another step, the regulator does not look to intervene and exercise its power to appoint a professional trustee unless it has concerns about the way a scheme or set of schemes is being managed. There were clearly issues. Once we started to understand how the schemes were operated, you could see that they were effectively liberation schemes. The members were enticed to put money into the scheme on the back of a promise of some sort of payment.

**Nigel Mills:** It was fairly apparent because he was not allowed to use this pension scheme to invest in preferences shares in his business. That was a clear hint, wasn't it?

**Sean Browes:** But he would argue that he was told that it was all fine and above board, and he had taken advice on it.

**Nigel Mills:** But you knew that was not allowed. I suppose there is something that I am slightly unclear on. Presumably, you gave him some time to try to prove that the handful of motorbikes he ever made might be enough to repay the millions and millions of pounds you were owed. I think you said that you helped a bankruptcy claim that got you an award of £15 million against him, or something.

**Sean Browes:** That was on the back of the Pensions Ombudsman's determination.

**Nigel Mills:** There was never any realistic prospect that this business could repay that.

**Sean Browes:** There was certainly never any realistic prospect that Mr Garner himself was going to have £15.7 million, but it was a means to an end, because it gave us the ability to then pursue him for that money, and ultimately end his bankruptcy.

Q33 **Nigel Mills:** What I am struggling with is why it has taken five years. You have now finally got some initial payments from the Fraud Compensation Fund five years on, but you are saying that 95% of your fees relate to dealing with the dishonesty rather than trying to run the scheme in a normal, business-as-usual sort of way. Why has it taken five years?

**Sean Browes:** For the first year and a half of those five years, we were in a position where Norton was still trading, and we were trying to see whether Mr Garner could come up with some appropriate funding to make the business successful and enable Norton to repay the preference shares. Mr Garner, on the face of it, accepted that he needed to repay the moneys back to the schemes. Through his dialogue with the regulator, he accepted that the way the funds had been used was inappropriate and they needed to be repaid.

It was all predicated on the idea that he was going to put the company into a financial position that would enable him to repay the moneys into



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the schemes. As I said, we were sceptical, to say the least. I won't say it was the only show in town, but we had to let him run with it and see where it ended up. Unfortunately, the banks called in the administrators before we reached the end of those negotiations. To an extent, the Fraud Compensation Fund had been ongoing through discussions generally for a number of years, so from that point we were looking at the Fraud Compensation Fund as a potential avenue not just for the Norton schemes but across the piece.

You may or may not know that there was a court judgment in 2020. There was a set of proceedings where effectively we and the PPF went to court to determine whether the Fraud Compensation Fund could be used to provide compensation for schemes like the Norton schemes, and there was a positive outcome. By that point, we are in January '21; Norton has gone, so we are now focusing all our efforts on the Fraud Compensation Fund as the best chance that the members have for any meaningful recovery.

**Nigel Mills:** And there is no way that could be done quicker?

**Sean Browes:** It is not that it couldn't be done quickly. Again, it was a massive learning curve, because even once we had the decision that the schemes were eligible to make claims on the Fraud Compensation Fund, unfortunately the legislation that drove all that wasn't really designed with these types of schemes in mind. We very much had square pegs in round holes, and we were trying to plot a way to get to a point where we could efficiently put in claims for 100-odd pension schemes.

One of the issues was what they call the last resort point. For schemes to be eligible for compensation, they have to be at a point of last resort, with all potential recoveries having been exhausted. Through 2021 and '22, we were still pursuing Mr Garner both through claims into the liquidations and through his bankruptcy, and working with Interpath on that.

As I am sure you have picked up in some of the papers, one of the things the FCF was looking at was potential for assignment, so that we wouldn't need to sit and wait to get all the recoveries—all the i's dotted and the t's crossed. But that was not the case then, so we were of the view that we had to see them through to the point where we could then put the claims in for the three schemes.

Q34 **Nigel Mills:** Okay. I'm trying to get my head around the fact that you had to do all these things before you could do the fraud compensation scheme, but 95% of your work is related to dishonesty so you get 95% of your time back. I suppose it is for the fraud compensation scheme to work through whether they agree. Can you tell us what members will get? Will they get back everything they have lost or is there some caveat?

**Sean Browes:** There is no provision for the potential for lost investment return. The position that members should end up in is broadly whatever they paid into the schemes. Bear in mind that these were transfer values,





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so it is whatever the transfer value was into one of the schemes, less a small adjustment for the business-as-usual costs that we talked about.

**Nigel Mills:** So you deduct the remaining 5%.

**Sean Browes:** Yes, it would come off the net compensation.

**Nigel Mills:** In which case, we strongly agree that you are entitled to 95% back from the Fraud Compensation Fund.

**Sean Browes:** The other point is that if members have already had a benefit of some form from one of the schemes, they won't be compensated for that. They won't be compensated twice, in effect.

Q35 **Nigel Mills:** Were there some members who got a funny sign-up bonus or something, so their compensation will be less that funny bonus that they got at the start? Do you think that is the right position? They don't even get inflation on the money they put in; they effectively get a flat figure.

**Sean Browes:** Unfortunately, the formula for calculating the compensation is prescribed in legislation, so there is very little that we can do. How the loss is calculated and what the compensation will be is there in black and white. If you wanted to reconsider whether that was an appropriate level of compensation, it would have to be—

**Nigel Mills:** As far as you know, the Fraud Compensation Fund will pay people the full amount that they put in. There will be no other restrictions. Nobody else is at fault from this fraud and this won't get shared—you get paid out what you put in, basically.

**Sean Browes:** As I said, the actual mechanism for paying the compensation is through the scheme, so that will be our responsibility. The compensation is paid to the schemes, and the level of compensation is set out in the formula in legislation. Whether that is appropriate is a different debate.

Q36 **Nigel Mills:** Do you think it is fair that scheme members will effectively have lost 10 years' inflation, but you will get 100% of your fees because you will recover the 5% that you don't get back from the Fraud Compensation Fund from the members—so, effectively, they lose twice?

**Sean Browes:** It might not be 5%. I think the difference will actually be less than 5%. As I said, it's there—the formula for calculating the compensation is in legislation.

Q37 **Chair:** I have some final questions. You made it clear that for a fair chunk of the last five years, there was a risk that you would not get paid for the work you have done on this at all. From what you have said, that is fairly common across the 100 or so schemes you have been working on. Is that right?

**Sean Browes:** Certainly through the latter appointments. The way these appointments tend to work—again, these are just the options that the regulator has available to it—is that the regulator looks to appoint a



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professional trustee. It can make the fees for that professional trustee a debt on the scheme sponsor, but almost invariably scheme sponsors for these schemes are just dormant shell companies; they are not active trading companies. The fallback from there is that the fees and costs of the trustee fall on to the assets of the scheme. We may take on an appointment and determine that there are no liquid assets, or indeed no assets at all. We have an order that says that we can take our costs from the assets of the scheme, but if there are no assets—

**Q38 Chair:** I suppose my question is: why do you take on projects like that, given the quite serious possibility—and presumably the actuality for at least some of the 100 schemes—that you won't ever get paid for all of them? Presumably, nor will your lawyers either.

**Sean Browes:** That does apply to third-party providers as well. Clearly, we now have the Fraud Compensation Fund. Certainly, since that decision in 2020—

**Q39 Chair:** That will cover a fair proportion of the whole group, will it?

**Sean Browes:** Yes, and I do not know if you are getting on to the whole idea of legacy schemes and what potential schemes there might be out there where an independent trustee has not been appointed. That is going to give the regulator a bit more freedom.

**Q40 Chair:** I will come to that point in a moment. This was a pretty risky undertaking from the point of view of both your companies. You explained to us that your only hope with Norton was that the investment in it would eventually turn good—but it was always an illegal undertaking, as you have said, I think, that the proceeds of the assets of these schemes were invested in Norton. Would it be true to say that you were dependent on an illegal scheme succeeding?

**Sean Browes:** I don't think so. It was the actions—the self-investment type—where he was in breach of the regulations. He invested more than he should have done in a connected business. But the investment in and of itself—the preference share investment—was there and we had the shareholding within Norton, so really we needed to rectify and regularise that position and get that investment back out of Norton and into something more appropriate. That is how you would look at it from a general point of view.

**Q41 Chair:** Just picking up the point you made a moment ago about orphan schemes eligible for compensation where there is not a trustee, you have said that the decision about the Fraud Compensation Fund opens up a possibility there. What do you think should happen in those cases?

**Sean Browes:** I know that TPR and the Fraud Compensation Fund are in regular dialogue about these schemes. I suspect that over the course of the next few months or years action will be taken to identify schemes where members have lost out or been victims of suspected scams, and they will look to appoint a trustee. While members themselves can look to make a claim on the fraud compensation form, the actual process is not really suited to members making their own claims, so there needs to be a



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trustee in place to see the claims process through. That will evolve, I suspect, over the next weeks and months.

Q42 **Chair:** You have told us that you were appointed to a couple of schemes last year where transfers were made after the new transfer regulations were introduced. Does that imply that there is a loophole in the regulations that somebody has worked out how to get around?

**Sean Browes:** I would like to think that that was distinctly a one-off. The change in the transfer regulations in '21 should have really put the end to this type of transfer scam, if you like, where you have an OPS and people are encouraged to transfer into an illegitimate occupational pension scheme.

Q43 **Chair:** Did what happened in those one or two cases mean that somebody did not quite apply the regulations as they should have done? Who was it?

**Sean Browes:** I would have to come back to you on that. It was not one of my cases.

Q44 **Chair:** Okay. It would be interesting to know what happened there. Those regulations were introduced in part in response to the work of the Committee on pensions scams, so we are interested to hear what the outcome is. You have made the point to us that there is talk about having a professional trustee as a condition of registration of schemes in future, and that that could be helpful in stopping any of this happening in future as well. Do you think DWP should make that mandatory?

**Sean Browes:** It is a bit like turkeys voting for Christmas, isn't it? I think there is a lot to be said for ramping up the professionalism within the trustee regime. To a certain extent, the framework is there. You have got APPT and PMI now offering accreditation for professional trustees. There would potentially be a capacity issue if it were suddenly mandated to every scheme—if every scheme had to have a professional trustee.

Q45 **Chair:** Given that capacity issue, what should be done in practice?

**Sean Browes:** Develop the role of the professional trustee, and also—this is not going to be headline news—consolidation to reduce the number of skills. If you increase the supply of trustees and reduce the number of schemes that they have to be trustee to, at some point they will meet in the middle.

Q46 **Chair:** We might meet in the middle somewhere. As a final point, you mentioned this at the start, but what is your view about how HMRC approaches pursuing tax charges where there has been an unauthorised payment to somebody from a pension scheme? Have you seen HMRC sometimes exercising its discretion not to pursue such a charge? Do you think that the pursuit of those charges is an effective deterrent against tax fraud?

**Sean Browes:** I might make two points. First, to come back to the communications, we talk to members and when they are asked how and



why they got involved in schemes of this type, no member has ever answered that it was to evade or avoid tax. Fundamentally, members were not aware of the potential tax consequences of getting involved in schemes like this. Secondly, a tax system should be fair. Look at the outcome in the tax tribunal for Ark, where the tribunal decided that it was the correct application of the law, but in applying the law accepted that there were a number of unfair outcomes. I do not think that is right.

Q47 **Chair:** But they are being pursued nevertheless. Mr Fairhead, you touched on this point at the start. Have you ever seen HMRC exercising discretion in such a case?

**Ben Fairhead:** No, I don't think so. To echo what Sean said, I think the way that it is being applied is inconsistent and quite unfair. Sean mentioned the Ark schemes that went through a full tax tribunal process. The payments the members received for those schemes were quite transparent. It wasn't concealed at all. The members were all under the impression that it was done in an above-board way, so the evidence for HMRC was very clear. As Sean said, the way that has been approached does not feel very logical to somebody standing back from it and seeing how the members are taxed. They have not been taxed on the payments they have received; they have been taxed on a payment that they have notionally made to somebody else. You end up with what in itself looks like quite an unfair outcome.

You have also got other schemes where, to the best of our knowledge, liberation payments have probably been made, but we are not aware of HMRC necessarily pursuing tax charges there. That is probably because they have been a lot more concealed. It comes back to what we were saying earlier about how by 2013 the types of schemes that were being operated were a lot more clearly fraudulent. The money was going into investments, sometimes overseas, and members would be getting payments indirectly, and in a way where there was no information around that. HMRC do not have the information, so there was very little prospect of HMRC pursuing the tax charges across the board in a consistent way. I do not know what the figures are, but I doubt we are talking enormous sums in the greater scheme of things, especially bearing in mind that there has been quite a lot of cost involved in pursuing it.

I do not think there is any precedent value now, because it comes back to the point that these types of schemes should not be happening any more. There is the fear HMRC might have had 10 years ago about letting members off the hook and encouraging more schemes like this to be set up, but I just do not think that is a good argument anymore.

**Chair:** You think HMRC should exercise discretion.

**Ben Fairhead:** I do not know whether they technically would have the discretion or whether there needs to be a law change, but I worked on a paper with Margaret Snowden when I was a member of the Pension Scams Industry Group a while ago, and we have been pushing for some time for either a full amnesty on the tax charges or at least a significant softening



of the tax charges. Whether that needs a change in the law or whether HMRC would have the discretion, I do not know, but what we have got at the moment is a grossly unfair position. You have got a bunch of pension scheme members who are victims of scams. Even though hopefully a lot of them will now receive a large proportion of their pensions back, they have still had a lot of delay and a lot of worry and stress about it. I think this is just the icing on the cake. I just do not think it achieves an awful lot for anybody.

**Chair:** Thank you both very much indeed. That concludes the first panel. We are grateful to both of you.

## Examination of witnesses

Witnesses: Kristina Kicks and Lee Causer.

**Chair:** Welcome, everybody, to the second panel this morning for our evidence session on the Norton pension scheme. We are very grateful to the two people who have joined us for this panel. Let me ask you both to tell us who you are, starting with Kristina Kicks.

**Kristina Kicks:** I am Kristina Kicks. I am an insolvency practitioner and managing director at Interpath Advisory.

**Lee Causer:** Morning. I am Lee Causer. I am a business restructuring partner at BDO, and I am the lead liquidator of the Norton companies.

**Chair:** Thank you both. The first question is from Siobhan Baillie.

Q48 **Siobhan Baillie:** Thank you for coming this morning. Can you each explain the role that you have played in relation to the Norton pension schemes and how you work with professional trustees and TPR? I will start with Lee.

**Lee Causer:** My role initially was administrator—prior to this session, we did circulate a group structure chart, just to give you a bit of additional information. I was appointed as administrator of four companies that were all connected. There was the holding company, Norton Motorcycle Holdings Ltd, and its two subsidiaries, which were Norton Motorcycles UK—that was the main trading company—and Donington Hall Estates Ltd. Then there was a separate company, which was Priest House Hotel. Within that group structure, the pension schemes specifically held preference shares in Norton Motorcycle Holdings as the topco within that group. With that, the pension scheme members had invested into those schemes, which had then invested down within the Norton group. Throughout the duration of our appointment, we have been in regular communication with Dalriada and so on with regard to progress adjudicating on claims and so on and so forth that have been received into the administration and subsequent liquidation.



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**Kristina Kicks:** I am appointed joint trustee in the bankruptcy of Mr Garner, along with my colleague at Interpath, David Standish. I thought it might be useful to explain the role of a trustee in bankruptcy, because it is very different, and it is a personal appointment of me and David. The insolvency process is completely separate from the Norton companies. It is a personal insolvency appointment. My experience in dealing with this, which led to my appointment, is as a specialist in contentious matters and complex bankruptcy appointments, where assets may be undisclosed and investigations needed into them, assets might have been transferred away prior to the bankruptcy order dates, and assets may be overseas. That is where I came into this case, just shortly prior to the bankruptcy order being made in May 2021.

Dalriada is a majority creditor in the bankruptcy estate. The process for the bankruptcy order was a bankruptcy petition by Leicester City Council in May 2020. They were owed money by Mr Garner under a personal guarantee in relation to a loan that they had provided to Norton Motorcycles UK Ltd for the development of a production site at Donington Hall. They brought the bankruptcy petition and the order was made in May 2020. Once the bankruptcy order is made, as you may be aware, the official receiver is immediately appointed as trustee in bankruptcy. It is then for creditors, if they wish, to nominate those with the expertise, experience and skill to deal with the relevant bankruptcy case.

Following Dalriada and a competitive tender process, I was appointed, with my colleague, as trustee in bankruptcy on 8 July 2021. Since that date—just under three years ago—my role has been to investigate Mr Garner’s affairs, realise and maximise the assets, and report to creditors, communicate with creditors and distributing the assets to the extent that we can. The key role of a trustee in bankruptcy is to assess what steps should be taken to realise assets. To give a generic example, if we have a property in a bankruptcy estate, we would always instruct an independent valuer who has the expertise to say how much the property is worth. We would then make inquiries with the mortgage company to find out how much the mortgage is. We would then know the equity position and the costs it would take to realise. That is the assessment that we have to do because we are always acting to maximise recovery for creditors and acting in their interests.

Legal proceedings are often required to reach realisation in complex bankruptcy matters. Your question was on the role with Dalriada: as it is one of the creditors, my role has been reporting to Dalriada.

Q49 **Siobhan Baillie:** Specifically on the assets, can you explain for the record whether all assets are completely frozen and under your control from your appointment? Are you on the lookout for any loopholes that the individual might try to exploit or mess around with?

**Kristina Kicks:** On the date of the bankruptcy, all assets and liabilities vest in the estate for ever more, so all the assets and liabilities that existed at that point are always in that bankruptcy estate. The official receiver is appointed first, and they produce a report to creditors, with a



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list of the assets they are aware of. I act under the Insolvency Act 1986 and the Insolvency (England and Wales) Rules 2016, and we also have the statement of insolvency practice. SIP 2, as we call it, is the principle under which we undertake investigations into insolvency affairs. We want creditors to give us information because they have the history of the matter more than us, because we came in later. We also investigate to see where we can maximise those recoveries.

**Q50 Siobhan Baillie:** Can you just explain for the record, in general terms, the effect of your appointment in terms of assets of the company and individual, Lee?

**Lee Causer:** The moment you get appointed in the role as administrator or liquidator, you take over the role of acting as agent for the company. What that essentially means is that you take on the roles and responsibilities that the directors would have had beforehand. It does not stop the directors being directors and having the same fiduciary duties. However, they no longer have the ability to deal with any of the company assets that then vest with the administrator.

**Q51 Nigel Mills:** I guess generally, Mr Causer, you get appointed to a business—a real business—that has hit hard times and there is stuff to go and do. When you got to Norton, did it look like it had been a real business? Or did it look like a hobby that had gone wrong?

**Lee Causer:** Oh wow. Norton was a very prestigious motorcycle brand and continues to be so. Many people have asked me questions about what the factory looked like, thinking that it would be very high tech and so on—it was not. The premises from which it operated were formerly a call centre. Having been on the premises, I cannot say it was a hobby that went wrong—there was an underlying business there—but I guess the infrastructure, the environment, did not wholly correlate with a business of that nature.

**Q52 Nigel Mills:** Did you wonder how on earth it had lasted that long without ever generating very much income? Why were so many public authorities so willing to advance money when, as you say, you walked in and rather than finding a factory you found a call centre?

**Lee Causer:** In my profession, from the outset of any situation you have to be sceptical. That is something that I was taught at an early point in my career. You can look at any situation and question many things. On the position with Norton, at the outset of our involvement and our appointment as administrators, it was clear that it was a business that was heavily distressed. What precipitated our appointment was a winding-up petition that caused the bank accounts to be frozen. In that regard, that is a heavily distressed business. There had been winding-up petitions in the summer prior to that that had subsequently been dealt with and dismissed, but clearly for some period of time it had been a business that was heavily distressed.

**Q53 Nigel Mills:** Where would this rank on the strangest things you have seen? All business insolvencies are a horrible situation. I have seen a few



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where people have obviously got desperate and panicked and tried everything they can to rescue it. You look back and think, “Why on earth did you do a stupid thing like that?”, but at the time they were desperate. Is this the most ridiculous situation that you have seen in a business that was not ever really capable of making thousands of motorbikes and selling them and being anything like what it was marketing itself as?

**Lee Causer:** I think it is a leap to say that it would never be capable. With the right infrastructure there would have been an ability to gear up—

**Nigel Mills:** But it wasn’t the right infrastructure.

**Lee Causer:** But it wasn’t the right infrastructure, absolutely.

**Nigel Mills:** Without any realistic plan to have the right infrastructure.

**Lee Causer:** It is quite extreme. I have no doubt that at the end of my career this will be a matter I will look back on as very memorable.

Q54 **Nigel Mills:** Did you do a forensic report for the Pensions Regulator that set out that this is all a very unusual situation even beyond what you would normally expect to see?

**Lee Causer:** We didn’t do a forensic report for the regulator specifically. We received some requests from the regulator to support them in their investigations and to provide information, which we complied with. On the degree of forensic investigation that we did as part of our statutory obligation to investigate conduct, with this matter being very public there were areas that warranted in-depth investigation, but all of that was used for our purposes to ultimately substantiate the claim that we submitted to the bankruptcy of £2.2 million.

Q55 **Nigel Mills:** Finally from me, one of the things that struck me from the previous session was that the independent pension trustee was appointed in 2019 and thought for a while that the best chance of recovery from the members was for the business to trade its way out of it. When you were appointed, did you see any realistic prospects that there was ever any way of trading out of this? Were you a bit surprised that professional people had been convinced by that for so long?

**Lee Causer:** One of the things I have learnt from my career is that early intervention will increase the range of options available. I cannot speak for events that happened prior to my appointment or our involvement. It would not be fair to do so. However, where we were appointed, it was clear that the business was haemorrhaging cash, but with the right degree of investment it could be converted into a business that could be profitable. We ultimately sold the business some three months after our appointment and that evidenced the fact that there was significant value in the intellectual property in particular. With the right degree of liquidity and the right degree of investment, I believe it had the prospect, but the events and the circumstances were presenting that as not viable at the time.

**Nigel Mills:** You didn’t say, “And with a competent, trustworthy person





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who knew the industry running it, it might have been able to be a viable business.”

**Lee Causer:** There are degrees of competence.

Q56 **Nigel Mills:** Some scheme members have suggested that BDO has had quite a history of following Mr Garner around his various businesses. You were not aware of any—you were appointed properly and BDO was not targeting Mr Garner as a customer.

**Lee Causer:** No, there was no targeting there and I actually take great comfort in the fact that Mr Garner is not my biggest fan. But yes, BDO had had previous involvement some seven or eight years prior to our introduction from Metro Bank into Norton, so that was quite distant in that regard. It did not stop us doing our job properly.

Q57 **Sir Desmond Swayne:** How was it that, given his previous, Stuart Garner was allowed to set up another limited company and manage it? Why wasn't he stopped?

**Lee Causer:** I cannot speak for the circumstances around the previous case. However, as an insolvency officeholder, you have a duty to submit a conduct report. That is a conduct report that is then ultimately assessed by the Insolvency Service. It is the Insolvency Service that then determines what the outcome of that is. It is common that a director will have failed businesses and sometimes the circumstances of those are through naivety, making mistakes or it being more severe than that. I do not know the circumstances fully beyond what was in the publicly available information of the previous example to know exactly what steps would have subsequently happened.

Q58 **Sir Desmond Swayne:** Do you know if any evidence was presented to the National Crime Agency regarding the transfers of money out of Fireworks International before it went into administration?

**Lee Causer:** I do not know.

Q59 **Debbie Abrahams:** Kristina, can I understand your relationship? You have been appointed by Dalriada to act on their interests.

**Kristina Kicks:** No. As a trustee in bankruptcy, I am the independent officer of the court. The OR is appointed first. Then, the majority creditor can request the appointment of their chosen insolvency practitioner. If the majority creditor has that, the official receiver will then ask the Secretary of State to make the appointment. That is why my appointment was on 8 July. If there is not such a significant majority creditor in a case, there can be a decision procedure where all creditors can vote for the IP by value of the creditor claims. Dalriada was the majority creditor, so that is how this works.

Q60 **Debbie Abrahams:** That is very helpful. How much do you expect to be paid to the Norton pension scheme from the bankruptcy and insolvency process?



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**Kristina Kicks:** We have distributed £47,000 to all creditors, and Dalriada is one of those majority creditors. There are other creditors as well, including, directly, certain pension holders.

**Debbie Abrahams:** So that has gone to Dalriada.

**Kristina Kicks:** Not in full. The distribution is calculated by looking at the total quantum of the creditor claims. We have to go through an adjudication process where we have to advertise for claims. We then review all the claims that are received after advertising, and then the money that is available for distribution is worked out on a pari passu basis by creditor value.

Q61 **Debbie Abrahams:** Could Stuart Garner have paid the £15.7 million that was ordered by the Pensions Ombudsman?

**Kristina Kicks:** Not in the assets, following all the investigations and everything. They did not exist at that quantum at all.

Q62 **Debbie Abrahams:** I am conscious of the limits of the questions I can ask, but you can understand where scheme members are at the moment. In some cases, they are going to suffer poverty for the rest of their lives, and certainly they will not have the lifestyles that they had planned and saved for. It is really unfair, isn't it?

**Kristina Kicks:** I have the utmost sympathy for the pension victims here, completely. They could be friends or family. It is obviously a really difficult situation. My team and I have had extensive email communications with pension holders. It is really difficult. I have tried to explain the situation as clearly as I can in the progress reports we provide, plus the additional correspondence. It is really complicated, which is why I wanted to explain my role at the beginning of this.

I have been doing this for over 23 years, to get the skill and expertise to deal with this. The focus is on trying to maximise recoveries in the bankruptcy. Then, because of the process of the FCF, the bankruptcy procedure had to conclude before the next stage in that process, as I understand it, so there was a clear focus on making sure this was a really swift bankruptcy. There were the complexities of co-operation, legal proceedings needed to be brought, and we had to wait for a court hearing date, because we are in the hands of the court when we bring legal proceedings. We have gone through as quickly as we can, because we understand, as much as we can, the difficulties of the pension holders.

Q63 **Debbie Abrahams:** How much could he have afforded to pay?

**Kristina Kicks:** As much as I have been able to recover. In looking at it in that cost-benefit analysis, absolutely, I have done everything that I can to maximise the recoveries.

Q64 **Debbie Abrahams:** Is that because he squirrelled money away?

**Kristina Kicks:** I have looked at the assets that were transferred before and taken necessary steps to make sure there are recoveries.



Q65 **Chair:** Can both of you tell us, in general terms, what your legal and regulatory responsibilities are when you come across evidence of possible criminal activities in the course of your work, as I am sure you do from time to time? What are you required to do in those circumstances?

**Kristina Kicks:** They are different in both roles, so I will speak as a trustee in bankruptcy to start with. The official receiver always maintains the requirement to investigate and deal with that. From the beginning of my appointment in this matter, I was liaising with and communicating information to the official receiver. They had already received lots of information anyway, given all the history that came before my time; I came in just before the bankruptcy order in May '21. I communicated with them throughout.

There are options you can have with suspension of discharge of a bankrupt. The law now is that a bankrupt receives a discharge after a year. That is impossible when a bankrupt is not co-operating, so that can be difficult if a bankrupt is showing co-operation but perhaps you are still not happy with the co-operation. We are in the hands of the court in that—whether they give the order or not; obviously that is on legal advice that I have received from the OR.

I am aware that a bankruptcy restriction order was obtained against Mr Garner by the official receiver. There are other bankruptcy offences. So it is very much me communicating with the official receiver with my findings.

Q66 **Chair:** If you did come across evidence of fraud of one sort or another, your obligation would be to report that to the official receiver, not to do anything else?

**Kristina Kicks:** Yes, but I wouldn't just report it and not do anything else. I would want to understand what was happening as well. It is not just that I whisk it away, if you like. My requirements under the rules are to link with the official receiver, but if you have creditors' inquiries, you don't just shutter it off. Obviously, I was aware of the proceedings that had gone on before, because that is an important part of the investigations so that I can understand where my assets might be. Do the judgments that have happened before give a link to any assets, for example?

Q67 **Chair:** If you came across, in the course of your work of all kinds, evidence of fraud, you would report it to the official receiver and it would be down to them to report it to the police?

**Kristina Kicks:** Yes. Practically, what happens is, I regularly, in my specialism, receive requests from the police and other government bodies for information. I can't right now think of a scenario or a case where there has been a situation where I would have needed to, because I would have received the request directly anyway from the police. Obviously, as you would expect, the creditors are very vocal in these cases—rightly so.

**Chair:** So the police would come to you, rather than the other way round?

**Kristina Kicks:** Yes; and they request information, and obviously we provide the information in accordance with what we have.



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**Chair:** And maybe the police might have had a referral from the official receiver? Would that be how the chain would work?

**Kristina Kicks:** I understand the official receiver would likely go to the Insolvency Service first, but I think the official receiver would be best placed to answer exactly how they do that behind the scenes, because what they are doing is very confidential as well. Lee mentioned the directors' conduct report that we do. We can never disclose them to anyone; they are completely confidential. Likewise, when you are dealing with the official receiver, they will have confidentiality. They cannot tell me what is happening. You report what you can. There is complete confidentiality around this.

Q68 **Chair:** Mr Causer, the same question to you. If you come across instances in your work of potential fraud, what are the requirements on you?

**Lee Causer:** As I have mentioned, yes, there are the conduct reports that we are required to submit and so on, and that falls fully within the scope of our duties. In circumstances where we may spot potential fraud, that is captured by the Proceeds of Crime Act ultimately to report those submissions, so, from a BDO point of view, that would be something that would be reported to our MLRO—money laundering reporting officer. That is an internal person who would submit appropriate suspicious activity reports and so on as required.

**Chair:** And they would go to the police, or?

**Lee Causer:** To the National Crime Agency. That is something that sits there as a professional responsibility, as a regulated person operating within a regulated sector. It is highly confidential. So in circumstances where those steps are taken, it is then an offence to disclose that those steps have been taken, for instance.

Q69 **Chair:** Kristina, in your evidence, or the company's evidence to us, you made some suggestions about how the rules for the Fraud Compensation Fund could be changed in the future to speed up a process like this one. What changes do you think ought to be made? Are they changes that would require new legislation, or is it really just a matter of better co-ordination between the various bodies involved, do you think?

**Kristina Kicks:** My comments and the response there were based on my experience of dealing with financial services matters, and having the FSCS as creditor, standing in the shoes, when they have paid out the amounts that they are allowed to pay out under the compensation scheme to those who have lost money.

The Fraud Compensation Fund then not being able to stand in the shoes was just notable to me, and the distress that I was receiving and hearing from the pension victims, and them then having to try to understand the bankruptcy process, which is complicated. When I am dealing with the FSCS in matters, they generally have that knowledge and experience and they understand more. It is complicated. That is where my thoughts come from. It would then stop the pensions victims having to go through the



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process of waiting and asking, “What has happened to this asset or that asset?”, and everything like that.

Q70 **Chair:** Could you tell us the changes that you think ought to be made?

**Kristina Kicks:** I am not an expert on the FCF by any means but, from what I understand, they have to have the conclusion of whether or not there will be any realisations before they are able to pay compensation. If the FCF actually make a claim—if they were paying out and then they made a claim, and to the extent there were recoveries from the bankruptcy estates—they would then be the creditor, rather than the pension victims. That is how they would get their return back, rather than having to wait for the pension holders to get their return back, to then say, “Well, I’ve only received this.”

Q71 **Chair:** Are you saying that if you look at how the Financial Services Compensation Scheme works, it is more like that?

**Kristina Kicks:** Yes, they will pay compensation up to a limit, and then they will claim in the shoes of the person they have paid money to.

**Chair:** So something along those lines could work better.

**Kristina Kicks:** Absolutely; if you can reduce it to fewer agencies and individuals, it is obviously less stressful.

Q72 **Chair:** Are there any other changes to the processes here that either of you would suggest, given the experience you have had in this particular case?

**Lee Causer:** I would add that anything that can be done to speed up the process, I would support. These are human beings who have invested significant amounts of money into a scheme that has ultimately been deemed to be a scam.

I have personally got limited experience with the FCF and so on, so I don’t know the full process of what goes into putting in a claim and seeking its payment, but where I have tried to correlate it is in circumstances where, unfortunately, I have an appointment as an administrator and I cannot sell the business, and employees are made redundant. In those circumstances, the redundancy payments service steps in and quickly pays any arrears up to statutory limits—holiday pay, pay in lieu of notice and redundancy. That is something that sees them stand in the shoes of the employees and take that creditor position, such that the individuals are not out of pocket. While I do not know the exact steps and so on, I would support anything that could speed up the process of seeing individuals actually be repaid for what they have lost.

Q73 **Chair:** So your sense is that in the Norton case the victims were more exposed than would normally be the case in comparable situations.

**Lee Causer:** It was a very unusual set of circumstances. Ordinarily, in an insolvency, where there is a pension scheme, it is normally the scheme associated to that company, with company employees. This was separate



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in that regard, and therefore it was very unusual. As I say, anything that could be done going forward to learn from this experience, for anybody who has the misfortune to be impacted in similar circumstances, must be favourable.

**Chair:** Okay. Well, thank you both very much. That is all the questions we have for you at this stage. We are grateful to both of you for being willing to answer our questions.