



Neutral Citation Number: [2026] EWHC 2337 (Admin)

Case No: AC-2025-MAN-000462

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

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

Date: 11/09/2026

Before:

MRS JUSTICE HILL DBE

Between:

The King

Claimant

On the application of

IAN GOLDING
KAREN CUMMING
PETER DAVIES
and 48 others

- and -

FINANCIAL SERVICES COMPENSATION
SCHEME LIMITED

Defendant

George Rowell (instructed by **APJ Solicitors**) for the **Claimant**
James Cutress KC and **Gillian Hughes** (instructed by **Dentons**) for the **Defendant**

Hearing date: 14 July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 11 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mrs Justice Hill:

Introduction

1. By a claim form filed on 27 September 2025, the Claimants seek judicial review of the Defendant’s decisions rejecting their claims for compensation under section 27 of the Financial Services and Markets Act 2000 (“FSMA”) on limitation grounds (“the Decisions”). Their claims arose, in essence, from transfers of their pension funds into a SIPP and then into investments which failed, as a result of advice given by those unauthorised to do so under FSMA.
2. The Claimants proceed with permission granted by Kimblin J on 4 February 2026 on one ground, namely that the Defendant erred in law by construing the provisions entitling the Claimants to recovery of their transferred pension funds (section 27(2)(a) of FSMA) and to compensation for loss resulting from the transfer (section 27(2)(b) thereof), as giving rise to a single cause of action which always arises on the date of the transfer of the pension fund from the original scheme into the SIPP (“the Transfer”) and (“the Transfer Date”).
3. By agreement of the parties, three Lead Claimants were selected to test the issues, namely Ian Golding, Karen Cumming and Peter Davies. A further 48 claims were stayed pending determination of the Lead Claimants’ claims. The Decisions were issued in the case of Mr Golding and Mr Davies on 30 June 2025; and in the case of Ms Cumming on 27 June 2025.
4. The Lead Claimants were selected with a view to testing the Defendant’s alternative case for later dates of accrual for the Claimants’ claims in the event that the actual basis of the Decisions was found to be erroneous, namely the date of the supplemental deed to enter into the SIPP, the date of first payment of SIPP fees, and the date when the transferred fund was invested.
5. The claim was supported by witness statements from Glyn Taylor, the Claimants’ solicitor, dated 29 September 2025 and 31 October 2025 and a statement from Ms Cumming dated 29 October 2025. The Defendant relied on a witness statement from Casey McGrath, Head of Legal within the Defendant’s Legal and Recoveries Team, dated 26 March 2026 (“McGrath 1”). The Lead Claimants objected to the admissibility of certain parts of McGrath 1, as considered further under Issue (3) below. I also was provided with a core bundle of documents and an extensive supplementary bundle. I have been greatly assisted by the written and oral submissions from all counsel.
6. This judgment begins with a summary of the relevant law ([7]-[23] below) and facts ([24]-[37]). It is then structured by reference to the following issues which fall for determination by the Court:
 - (1) Did the Defendant err in law in making the Decisions on the basis that section 27(2) of FSMA gives rise to a single cause of action which accrued on the Transfer Date? ([38]-[108]);

- (2) If sections 27(2)(a) and (b) give rise to separate causes of action, would the outcome in the Lead Claimants' cases have been the same because the cause of action accrued on the Transfer? ([109]-[142]);
- (3) Should the contentious aspects of McGrath 1 be admitted into evidence and if so, what impact does the evidence have on the claim? ([143]-[160]);
- (4) If the section 27(2)(b) cause of action did not accrue upon the Transfer, did it accrue at any of the following alternative points in time:
 - (a) Execution of the supplemental deed for the Liberty SIPP by the Lead Claimant;
 - (b) First payment of SIPP fees by the Lead Claimant; or
 - (c) Investment of the SIPP fund in Ethical Forestry (in the cases of Mr Golding and Ms Cumming) or Global Plantations (in the case of Mr Davies)? ([161]-[174]); and
- (5) What relief if any are the Lead Claimants entitled to? ([175]).

The legal framework

(i): Key provisions of FSMA

- 7. Section 19(1) of FSMA sets out a “general prohibition” on carrying on, or purporting to carry on, “a regulated activity in the United Kingdom” unless the person is authorised to do so or exempt. What is a regulated activity is determined by the scheme of FSMA and relevant secondary legislation made under it, in particular the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001.
- 8. Section 26 provides as follows:

“26. Agreements made by unauthorised persons

- (1) An agreement made by a person in the course of carrying on a regulated activity in contravention of the general prohibition is unenforceable against the other party.
- (2) The other party is entitled to recover—
 - (a) any money or other property paid or transferred by him under the agreement; and
 - (b) compensation for any loss sustained by him as a result of having parted with it.
- (3) “Agreement” means an agreement—
 - (a) made after this section comes into force; and

(b) the making or performance of which constitutes, or is part of, the regulated activity in question.

(4) This section does not apply if the regulated activity is accepting deposits.”

9. Section 27 applies where a person enters into an agreement to which the Act applies in consequence of a regulated activity carried on by a third party in contravention of section 19. It provides as follows:

“27. Agreements made through unauthorised persons

(1) This section applies to an agreement that—

(a) is made by an authorised person (“the provider”) in the course of carrying on a regulated activity,

(b) is not made in contravention of the general prohibition,

(c) if it relates to a credit-related regulated activity, is not made in contravention of section 20, and

(d) is made in consequence of something said or done by another person (“the third party”) in the course of—

(i) a regulated activity carried on by the third party in contravention of the general prohibition, or

(ii) a credit-related regulated activity carried on by the third party in contravention of section 20.

(1ZA) But this section does not apply to a regulated credit agreement or a regulated consumer hire agreement unless the provider knows before the agreement is made that the third party had some involvement in the making of the agreement or matters preparatory to its making.

(1A) An agreement to which this section applies is unenforceable against the other party.

(2) The other party is entitled to recover—

(a) any money or other property paid or transferred by him under the agreement; and

(b) compensation for any loss sustained by him as a result of having parted with it.

(3) “Agreement” means an agreement—

- (a) made after this section comes into force; and
 - (b) the making or performance of which constitutes, or is part of, the regulated activity in question carried on by the provider.”
 - 10. Section 28 applies to agreements which are unenforceable because of section 26 or 27 (other than those entered into in the course of carrying on a credit-related regulated activity). It continues
 - “(2) The amount of compensation recoverable as a result of that section is —
 - (a) the amount agreed by the parties; or
 - (b) on the application of either party, the amount determined by the Court.
 - (3) If the Court is satisfied that it is just and equitable in the circumstances of the case, it may allow—
 - (a) the agreement to be enforced; or
 - (b) money and property paid or transferred under the agreement to be retained”.
 - 11. By sections 28(4)-(6), in considering whether to allow the agreement to be enforced or (as the case may be) the money or property paid or transferred under the agreement to be retained, the Court must have regard to (i) in section 26 cases, whether the person carrying on the regulated activity concerned reasonably believed that he was not contravening the general prohibition by making the agreement; and (ii) in section 27 cases, whether the provider knew that the third party was (in carrying on the regulated activity) contravening the general prohibition.
- (ii): The Financial Services Compensation Scheme*
- 12. Part XV of FSMA establishes the Financial Services Compensation Scheme, which is a scheme for compensating persons in cases where relevant persons are “unable, or are likely to be unable to satisfy claims against them”: section 213(1)(a). Under section 212(1), the Defendant is the “scheme manager”.
 - 13. The Defendant is financed by means of an industry levy. By section 213(3)(b), the Defendant has the power to impose levies “for the purpose of meeting its expenses”.
 - 14. The scheme is governed by the rules set out in the Financial Conduct Authority (“FCA”) Handbook under the section entitled “Compensation” (“COMP”). Like other rules made under FSMA and contained in the FCA Handbook, COMP is itself a form of subordinate legislation: *R (Bankole) v Financial Ombudsman Service* [2012] EWHC 3555 (Admin) at [13] per Sales J. Within COMP, the letter R denotes a rule and the letter G denotes guidance.
 - 15. COMP 3.2.1R provides that, in order to receive compensation, a Claimant must be an “eligible Claimant” who has a “protected claim” against a “relevant person” who is “in

default”. The rules set out, among other things, who is an “eligible Claimant”, what claims are protected, who is a “relevant person” and when they are “in default”. They also set out how claims must be quantified and paid by the Defendant.

16. COMP 1.1.7G describes, in broad terms, the circumstances in which the scheme is intended to operate, as follows:

“The [Defendant] will only pay claims if a firm or a successor is unable or likely to be unable to meet claims against it because of its financial circumstances. If a firm (or, where applicable, a successor) is still trading and has sufficient financial resources to satisfy a claim, the firm (or, where applicable, the successor) will be expected to meet the claim itself. This can, for example, be an amount the firm agrees with the Claimant, or the amount of an Ombudsman award from the Financial Ombudsman Service.”

17. “Claim” is defined in the relevant part of the Glossary as “a valid claim made in respect of a civil liability”, meaning that the Defendant can only uphold claims and award compensation in circumstances where it is satisfied the applicant had a valid civil claim against the firm in question.
18. COMP 8.2 sets out certain circumstances in which an application for compensation must or may be rejected by the Defendant. COMP 8.2.3R provides as follows.

“Limitation periods and claims extinguished by operation of law

The [Defendant] must reject an application for compensation if:

(1) the [Defendant] considers that a civil claim in respect of the liability would have been defeated by a defence of limitation at the earlier of:

(a) the date on which the relevant person (or, where applicable, a successor) is determined to be in default; and

(b) the date on which the Claimant first indicates in writing that he may have a claim against the relevant person (or, where applicable, a successor) unless COMP 8.2.4 R or COMP 8.2.4A R applies”.

19. The effect of COMP 8.2.3R is that time will stop running on the earlier of the date the relevant person is determined to be in default and the date on which the Claimant first indicates in writing that they may have a claim against the relevant person (subject to COMP 8.2.4R or COMP 8.2.4AR which are not material here).
20. However, once time has stopped running, in accordance with COMP 8.2.3R(1), the Defendant must consider whether a “civil claim in respect of the liability would have been defeated by a defence of limitation” on that date. The Defendant applies the ordinary civil law of limitation to determine this question.

(iii): Relevant provisions of the Limitation Act 1980 (“the LA 1980”)

21. Section 8 of the LA 1980 provides:

“Time limit for actions on a specialty

(1) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued.

(2) Subsection (1) above shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.”

22. Section 9 provides in material part:

“Time limit for sums recoverable under statute

(1) An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued”.

23. As McGee on Limitation Periods explains at paragraphs 4.015-4.020, a “specialty” includes contracts and other obligations in documents under seal, and also, traditionally, obligations arising under statutes. While the law in this area is complex and at times inconsistent, the editor’s view is that (i) section 8(2) of the LA 1980 disapplies the general 12-year rule where any shorter period of limitation is provided for by another section, and section 9 is such a section; (ii) section 9 only applies to actions to recover money due under an enactment; and (iii) other rights under a statute fall under section 8 as being actions upon a specialty and the appropriate period of limitation is 12 years.

The factual background

24. The Claimants claim they were given poor advice from an unregulated financial advisor, Avacade Ltd, which led them to transfer their existing pensions into a SIPP administered by a regulated entity, Liberty SIPP. Mr Golding transferred in an existing pension worth £17,112.95 on 2 December 2011. For Ms Cumming and Mr Davies, the relevant values and dates were £19,505.73 on 16 February 2012 and £56,640.91 on 1 August 2012.
25. Each Lead Claimant then invested the pension monies (or a material proportion thereof) in an unconventional, high-risk, pooled investment (“the Liberty Scheme”). In the case of Mr Golding and Ms Cumming, they invested in a high-risk investment operated by Ethical Forestry Ltd, involving ownership of melina trees in Costa Rica. In Mr Davies’ case, he invested in Global Plantations, involving ownership of teak trees in Malaysia. Their investments were made on, respectively, 3 February, 6 March and 11 September 2012.
26. Both Mr Golding and Mr Davies withdrew tax-free lump sums from their transferred pension. In all three cases the money in the SIPP not invested or otherwise withdrawn was used to pay the fees of Liberty SIPP throughout the period of the relationship.
27. These investments failed. In the case of Ethical Forestry Ltd, an investigation by the Serious Fraud Office has resulted in criminal proceedings being brought against those involved.

28. Between 11 December 2017 and 17 March 2020, each of the Lead Claimants advanced complaints to Liberty SIPP in relation to the handling of their investments. Liberty SIPP rejected those complaints. On 27 April 2020, Liberty SIPP went into administration.
29. Between 3 May and 20 October 2020, each of the Lead Claimants sought to recover their losses by making a claim for compensation to the Defendant under the scheme described at [12]-[20] above. The Claimants made claims for recovery of the pension funds they had transferred and lost (“the Lost Funds”) and the returns their pensions would have earned in the original schemes (“the Lost Returns”).
30. The Lead Claimants’ claims to the Defendant were assessed on the basis that Liberty SIPP had negligently failed to conduct adequate due diligence on the Ethical Forestry/Global Plantation investment. The Defendant agreed to compensate the Lead Claimants for this inadequate due diligence. This compensation sum reflected the total amount invested by each Lead Claimant into Ethical Forestry Ltd or Global Plantations as well as Liberty SIPP’s fees across the relevant period. By this route the Defendant compensated the Claimants for the Lost Funds, but not for the Lost Returns.
31. On 18 May 2021 the Defendant paid Mr Golding £12,986.74 in compensation. For Ms Cumming and Mr Davies, the relevant figures and dates were £19,700.80 on 6 July 2021 and £35,104.40 on 3 September 2021.
32. On 1 April 2021, the Court of Appeal gave judgment in *Adams v Options UK Personal Pensions LLP* [2021] EWCA Civ 474, [2021] Bus LR 1568. This had similarities to the Lead Claimants’ cases in that it also involved an unregulated third party advising a retail investor to transfer a pension fund to a SIPP, in order to invest in a high-risk investment. In *Adams*, the investment related to a “storepods” scheme, consisting of a number of disused shipping containers. The Court of Appeal concluded that although the advice to purchase the storepods was not in itself regulated activity, the advice carried with it advice to transfer out of the existing pension and into the SIPP, which in each case was a regulated activity. As a result, the SIPP administrator could be liable to the investor under section 27 of FSMA: the agreement was made in consequence of something said or done by a third party (the adviser) in the course of a regulated activity carried on by the third party (the advice to transfer out of the pension and/or into the SIPP), in contravention of the general prohibition.
33. On 4 August 2021, a differently constituted Court of Appeal gave judgment in *Financial Conduct Authority v Avacade Ltd* [2021] EWCA Civ 1206, [2021] Bus LR 1810. This decision dealt directly with the Liberty SIPP. The decisions on appeal and below applied *Adams* to find that Avacade’s actions were in breach of the general prohibition in that:

“...the sourcing of funds from pension pots, transfers into SIPPs and investments in the products producing commission, were all part of an indivisible whole in the arrangements made for each customer by... Avacade... Without the use of pension pots and transfer into a SIPP, the funds would not be available for investment in the products; and without investment in the products, Avacade would not earn its commission which was the whole point of the business venture. Neither aspect was intended to take place in isolation, and it was critical to the whole business model that there be both a pension

transfer into the SIPP and investment in the identified products from within the SIPP”: [44].

34. The combined effect of *Adams* and *Avacade* was that a person such as each of the Lead Claimants could potentially show that there had been a breach of the general prohibition, and that, as a result, a valid claim under section 27 existed against Liberty SIPP.
35. In light of *Adams*, the Lead Claimants’ claims under section 27 of FSMA were re-examined by the Defendant. The Defendant concluded that a claim under section 27 was subject to the six-year period in section 9 of the LA 1980 and that the limitation period ran “from the date when the monies were transferred into the SIPP not the date of the SIPP being opened”. This approach was explained in *McGrath* 1 at [29]-[30] and can be seen in the Defendant’s “Limitation Checklist”.
36. In Ms Cumming’s case, the Defendant set out its position as follows:

“A claim under section 27 FSMA is subject to section 9 LA 1980. The potential cause of action under section 27 was triggered by the transfer of money into the SIPP in consequence of the regulated activities being carried out by the unregulated introducer in breach of the general prohibition. The ability to obtain the return of the money in a claim under s27 FSMA arises as soon as the payment was made, because of the action of the unregulated introducer, and not when any loss may have occurred or become apparent as a result of a failure of the underlying investment. This means the six-year limitation period applies from the date of the transfer”.

37. The Defendant’s Decisions in respect of the two other Lead Claimants explained the position in materially similar terms.

Issue (1): Did the Defendant err in law in making the Decisions on the basis that section 27(2) of FSMA gives rise to a single cause of action which accrued on the Transfer Date?

38. In respect of Issue (1), the parties agreed the following overarching principles:
- (i) As the LA 1980 gives no guidance as to the date at which a cause of action under section 9 accrues, the date must depend on the construction of the particular statute under which the claim is brought: *McGee* at paragraph 11.019;
 - (ii) A cause of action is “that combination of facts which gives rise to a legal right”: *Berezovsky v Abramovich* [2011] EWCA Civ 153, [2011] 1 WLR 2290 at [59], per Longmore LJ; and
 - (iii) A cause of action accrues when the Claimant is able to plead “every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court”: *Coburn v Colledge* [1897] 1 QB 702 at 706-707, per Lord Esher MR (reflecting the test set out in *Cooke v Gill* (1873) LR 8 CP 107 at 166, per Brett J).

The parties’ competing interpretations of section 27(2)

39. The Lead Claimants contended that section 27(2)(b) creates a specific cause of action for compensation for any loss sustained by the Claimant as a result of having parted with any money or other property paid or transferred by him under the agreement. This, they argued, was distinct from a claim for recovery of any such money under section 27(2)(a), a claim for recovery of any such property under section 27(2)(a) or a claim for a declaration that the agreement was unenforceable under section 27(1A).
40. Each of these claims required different sets of facts to support them so as to satisfy the *Berezovsky* and *Coburn* tests. A claim under section 27(2)(b) in this case could only meet these tests once (1) the Claimant had entered into an agreement with Liberty in consequence of the unauthorised activities of Avacade such as to satisfy section 27(1); (2) the Claimant had paid money or transferred other property under this agreement (i.e. the Transfer); (3) the Claimant had sustained some loss; and (4) such loss had resulted from the Transfer. Accordingly, for a section 27(2)(b) claim, time would not start to run for limitation purposes until each Lead Claimant had suffered their first loss as a result of the Transfer.
41. In contrast, a claim under section 27(2)(a) would accrue once steps (1) and (2) had occurred; and a claim under section 27(1A) would accrue at step (1) alone. It followed, they argued, that the Defendant made the Decisions on an erroneous legal basis when it took section 27(2) as creating a single cause of action which always accrues on the Transfer Date.
42. The Lead Claimants contended that different limitation periods in the LA 1980 applied to these different claims: applying the principles summarised at [23] above, the limitation period for a claim for a declaration under section 27(1A) or for return of property under section 27(2)(a) would be 12 years under section 8 of the LA 1980; whereas the limitation period for a claim for return of money under section 27(2)(a) or compensation for any losses sustained as a result of the transfer under section 27(2)(b) would be the six year period set out in section 9.
43. The Defendant submitted that the Lead Claimants' "multiple cause of action" analysis was incorrect. Rather, section 27(2) creates a single cause of action for "recovery" of the sum set out in sections 27(2)(a) and (b).
44. The cause of action itself is derived from the terms of section 27(1), which specifies the legal wrong which Parliament is addressing. It accrues once each of the relevant limbs in subparagraphs (a) to (d) of section 27(1) are made out (and can, therefore, be pleaded), as soon as any money is paid, or property transferred, under the agreement. As soon as that occurs, the Claimant is able to issue a claim "to recover" under section 27(2); and the cause of action will therefore accrue.
45. Accordingly, the Defendant argued, the cause of action under section 27(2) accrues on the Transfer Date, such that time begins to run for limitation purposes on that date, irrespective of the position in respect of a claim under section 27(1A).

Submissions and analysis

46. The parties' submissions in support of their competing positions on the interpretation of section 27(2) ranged over a series of general principles and different lines of authority. They can be distilled into the following themes.

(i): The wording of section 27

47. The legislative text is the primary source by which meaning is to be ascertained: Bennion, Bailey and Norbury on Statutory Interpretation at paragraph 10.4.
48. The Defendant submitted that a natural reading of the text of section 27 suggested that it was creating a single cause of action. If the limbs of section 27(2) were themselves separate causes of action, the draftsman would not have introduced them with the single term “The other party is entitled to recover”; nor would the draftsman have distinguished between subsections (a) and (b) with the use of the conjunctive “and”.
49. Further, Mr Cutress KC argued, claims under subsections (a) and (b) will often overlap in practice, as the money transferred under (a) will form part of the loss claimed under (b), as that sub-section refers to “any loss”. This, again, suggested that what the section was creating was a single cause of action to recover one sum, calculated on the basis of subsections (a) and (b). Similarly, the wording of section 28(2) – namely its reference to “[t]he” amount of compensation recoverable” as a result of section 27 – suggested that the amount recoverable was one sum, comprising the money paid plus any loss resulting from the transfer.
50. Mr Rowell made the sensible point that the use of the same words to introduce both sub-paragraphs of section 27(2) could simply indicate a commendably economical style on the part of the draftsman. However, on balance I accept the Defendant’s submissions on the natural reading of the terms of the section. Parliament has chosen to adopt drafting that sets out in one section all the remedies a Claimant seeking to bring a claim under that section can recover. This is indicative of section 27 creating a single cause of action, albeit with different remedies. In that sense it is similar to the statutory provisions at issue in *British Coal Corporation v Ellistown Pipes Ltd (Hepworth Building Products)* [1994] RVR 81 and *West Riding v Huddersfield* [1957] 1 QB 540 described at [91] and [97] below.
51. Accordingly, the terms of section 27 suggest that the Defendant’s interpretation of it was correct.

(ii): The purpose of the legislation

52. The parties agreed the following principles of statutory interpretation, explained further in Bennion at paragraphs 12.1-12.6:
 - (i) When interpreting a statute, Courts adopt a purposive approach, having regard to the reasons for the passing of the Act and for each enactment in that Act, namely the “mischief” each was intended to address;
 - (ii) “Mischief” in this context can be a legal defect (a defect in the law for which the Act aims to provide a remedy) or a social mischief (a factual condition “on the ground” that is causing concern);
 - (iii) “Purpose” means “the outcome or real-world change that it is inferred the legislature sought to bring about through [the] enactment”. It is to be ascertained by considering the text of the enactment, read in the context of the Act as a whole, together with any admissible external aids to construction; and

- (iv) Accordingly, Courts should adopt a statutory interpretation which will suppress the mischief and advance the remedy; and it is presumed that the legislature, having identified the mischief with which it proposes to deal, intends the remedy to operate in a way that may reasonably be expected to cure the mischief.
53. The Lead Claimants contended that the purpose of FSMA and subordinate legislation, as a whole, is the protection of consumers of the regulated financial services industry from loss caused by negligence or other wrongdoing on the part of practitioners in that industry: see, for example, *Adams* at [115](i), where Newey LJ observed that “a key aim of FSMA is consumer protection”; and *Avacade* at [35], where Popplewell LJ referred to “the consumer protection inherent in the regulatory regime”.
54. Mr Rowell argued that sections 26-28 are directed at the mischief of consumers, particularly inexperienced ones, making investments as a result of breaches of the general prohibition in section 19 by those promoting or arranging the investments. Section 27 in particular deals with the mischief of consumers making investments as a result of such activities carried on by a third party rather than the counterparty to the investment agreement. It does so first by identifying agreements made in these circumstances (section 27(1)) and then by establishing a scheme of three remedies for the consumer: (a) the agreement being treated as unenforceable (section 27(1A)); (b) the consumer being entitled to recovery of any money or other property transferred under the agreement (section 27(2)(a)); and (c) the consumer being entitled to compensation for any loss resulting from the transfer (section 27(2)(b)).
55. He submitted that for this scheme to function as a coherent whole, the three remedies should be taken as separate from, and complementary to, each other, rather than as covering essentially the same ground. In other words, Parliament must have intended the remedies to cure different mischiefs, namely (i) entering into the impugned agreement, (ii) transferring money or other property under the agreement, and (iii) sustaining loss as a result of this transfer. If there was any doubt as to the interpretation of the section, it should be resolved in favour of the vulnerable consumers it was seeking to protect.
56. The Defendant contended that it is not accurate to describe the purpose of the scheme of FSMA as a whole as “the protection of consumers” and neither *Adams* nor *Avacade* are authority for such a generalised assertion. On the contrary, as the long title to FSMA explains, the legislative scheme is “to make provision about the regulation of financial services and markets”.
57. One aspect of that provision, as with any scheme of regulation, is to create protections for those who interact with the regulated sector (here, consumers). However, regulation has wider and counter-balancing aims, as was obvious from, for example, the wide range of duties and objectives sections 1B-1EB of FSMA impose on the FCA as the primary regulator.
58. In my judgment it is clear that one of the key purposes of FSMA is consumer protection: see, for example, the inclusion of “consumer protection” as a primary “operational objective” for the FCA at FSMA, section 1B. This explains the references to consumer protection in *Adams* at [115](i) and *Avacade* at [35]. It is also correct, as Mr Rowell emphasised, that personal pension savings are of a kind which deserve particular

protection for financially unsophisticated individuals against high-risk investments: again, see *Avacade* at [35].

59. However, section 1B of FSMA makes clear that there are two other primary operational objectives for the FCA, namely “integrity” and “competition”. Further, consumer protection is not an absolute objective: FSMA, section 1C explains that the objective is to secure an “appropriate” degree of protection for consumers”. Certain aspects of section 28 operate as proper limits on the consumer protection available through claims under sections 26 and 27. The same is also true of the limitation regime: as Lord Sumption observed in *Abdulla v Birmingham City Council* [2012] UKSC 47, [2012] ICR 1419 at [41], limitation “is not a technicality, nor is it necessarily unmeritorious” but “reflects a fundamental and all but universal legal policy that the litigation of stale claims is potentially a significant injustice” including because it “prolongs uncertainty”.
60. Accordingly, I do not consider that the statutory objective of consumer protection supports the Lead Claimants’ interpretation of section 27(2). Ultimately that section permits consumers, in appropriate cases, to recover money and property transferred under agreements made through unauthorised persons, and losses sustained as a result of such transfers, however the section is construed in terms of the cause or causes of action it creates.

(iii): *Diamandis v Wills* [2015] EWHC 312 (Ch)

61. *Diamandis* involved consideration of whether proposed amendments to Particulars of Claim sought to add or substitute a new cause of action. At [48], Stephen Morris QC (as he then was), sitting as a Deputy Judge of the High Court, summarised the relevant principles, including the following:
- “(2)...where it is the same duty and the same breach, new or different loss will not be a new cause of action...
- (5)...Nor is the addition of a new remedy, particularly where the amendment does not add to the ‘factual situation’ already pleaded”.
62. This reflected *Berezovsky* at [64], where Longmore LJ had explained that “it is permissible to add or substitute further losses if they all stem from an original breach of duty which has caused some loss”.
63. Applying these principles, the Defendant argued that a right “to recover” under section 27(2) exists as soon as the facts required by section 27(1) occur and transfer (of money or other property) is made, such that that payment can be recovered: the fact that later a loss or losses may increase what is recoverable under section 27(2) does not alter the legal analysis. The fact that the “factual situation” (ie. the cause of action) may give rise to different recovery remedies does not lead to the conclusion that each recovery remedy constitutes a different cause of action. All the available remedies flow from the breach of the requirements of section 27(1), with the cause of action for recovery accruing once a transfer is made.
64. Mr Cutress KC drew an analogy with personal injury claims in which a loss of earnings claim may be added to, or substituted for, a claim for pain, suffering and loss of amenity,

even after the original limitation period has expired. In such cases, there is no question of a new cause of action being added or substituted because the loss all stems from the same wrongdoing.

65. The Lead Claimants contended that this ignored the fact that section 27(2)(a) does not require proof of any loss, the remedy it provides being restitutionary rather than compensatory. They did not suggest that their claims for compensation arise from a “new or different loss” but that section 27(2)(b) is the only provision concerned with loss and cannot be engaged unless and until the first loss falling within its terms occurs.
66. Further, if a claim for compensation is made under section 27(2)(b) this would require a Claimant to plead a different “factual situation” from section 27(2)(a), namely loss resulting from the transfer, rather than just the transfer itself: accordingly, the principle in *Diamandis* at (5) would not apply and a new cause of action would be being added.
67. In my judgment, these arguments were effectively contingent on, rather than proving, each party’s construction of section 27(2). In other words, if the Defendant’s construction of section 27(2) was correct, then the *Diamandis* test for the complete and single cause of action would be satisfied as at the Transfer Date; whereas if the Lead Claimants’ approach was right, then the *Diamandis* test for a distinct cause of action for a claim for section 27(2)(b) compensation would only be satisfied as at the date of the first loss resulting from the Transfer. Accordingly, consideration of *Diamandis* did not provide assistance in determining Issue (1).

(iv): *Pegler v Railway Executive* [1948] AC 332

68. A key plank of the Lead Claimants’ argument was that the Defendant’s interpretation of section 27(2) would create potentially serious practical problems for those wishing to bring claims, in that time may start to run for limitation purposes long before any “other recoverable loss” falling within section 27(2)(b) was sustained. This could mean that the limitation period for claiming compensation was dramatically shortened, or may even expire, before the Claimant sustained any of the loss to be compensated.
69. The Defendant argued that there is nothing unusual about time starting to run before a particular loss or any loss is felt and relied on *Pegler* to support this proposition.
70. *Pegler* concerned the Railways Act 1921, which provided that employees transferred as a result of the amalgamation of railway companies should not, without their consent, be in any worse position in respect of their conditions of service as a result of their transfer. After one such amalgamation a decision was taken by the sectional railway council set up for the new system that for the purposes of promotion the seniority of a fireman was to be calculated as from 1916, whereas under the previous system it was 1913. This did not impact the Claimant directly until 1933 when someone more junior than him under the former practice was appointed as a driver, and he was not. He was not promoted until 1936 and brought a claim in 1942.
71. The House of Lords held that his claim had been brought outside the six-year limitation period because once the conditions of service under the amalgamation were settled in 1924, they could be compared with the pre-amalgamation conditions: the cause of action arose then and was not postponed until any losses had “as yet affected the man’s

pocket”: *Pegler* at 340, per Lord Uthwatt (with whose speech the other Lordships agreed).

72. As *McGee* explains at paragraph 16.005, the ratio of *Pegler* was that “the Claimant’s cause of arbitration had accrued in 1924 because it was then certain that he would be adversely affected”. Further, “[t]he point may be explained by analogy with the rules on accrual of a cause of action: once the Claimant can sue, the cause of action has accrued”. Put another way, the Claimant in *Pegler* had sustained some kind of loss at the date of the amalgamation due to the less favourable terms and conditions to which he was by then subjected.
73. Mr Rowell contended that the outcome in *Pegler* is an illustration of the agreed proposition that a loss can be sustained before it is precisely quantifiable: it does not illustrate that a cause of action for a claim for unliquidated damages may accrue before any loss is sustained.
74. Again, though, this submission only has force if the Lead Claimants’ interpretation of section 27(2), focussing on “loss” in section 27(2)(b) as creating a distinct element of the cause of action, is accepted. If the Defendant’s interpretation of section 27(2) is adopted, the analogy with *Pegler* is sound. Just as the Claimant in *Pegler* had been adversely affected by the amalgamation when it occurred, so too had the Lead Claimants been adversely affected by the Transfer as soon as it occurred. From that date they had entered into an agreement effected by an unauthorised person, with all the risks that that entailed. More pertinently for the purposes of this argument, from that date, they were entitled to all the remedies in section 27(2), including any financial losses they later sustained under section 27(2)(b).
75. In my judgment, therefore, *Pegler* is capable of supporting the Defendant’s interpretation of section 27(2).

(v): *Bourne Leisure (Hopton) Ltd v Great Yarmouth Port Authority* [2016] UKUT 44 (LC); [2016] RVR 443

76. *McGee* at paragraph 11.019 provides that:

“If the statute provides for compensation for loss suffered, then that cause of action will normally accrue when there is actual loss to the Claimant, rather than at a possibly earlier date when the work which eventually causes the loss is completed”.

77. The authority for that proposition cited in *McGee* is *Bourne Leisure*. In that case, the owners of a holiday park had sought compensation from a harbour authority under section 10(2) of the Compulsory Purchase Act 1965. The section permitted compensation to be paid where land had been “injuriously affected” by works by an “acquiring authority”. HHJ Alice Robinson, sitting as a Deputy Judge of the High Court in the Upper Tribunal (Lands Chamber), held that for the purposes of section 9 of the LA 1980, the cause of action accrued upon proof of physical damage to the Claimant’s land or substantial interference with an easement: [124].
78. The Lead Claimants drew support from *Bourne Leisure* because, they contended, it illustrated the distinction between (1) the Defendant’s actions giving rise to the claim

(works to a pier) and (2) consequent damage to the Claimant's property (coastal erosion), and the fact that the cause of action does not accrue until (2) occurs. They argued that there was an obvious analogy to be drawn with (1) the Transfers of the Lead Claimants' pension funds into the Liberty SIPP and (2) loss to the Lead Claimants resulting from those Transfers. In both scenarios, (1) is the event giving rise to a loss and (2) is the loss itself. *Bourne Leisure* shows that they are not to be treated as a single event for limitation purposes: they are separate events and the cause of action does not arise until (2) occurs.

79. However, *Bourne Leisure* arose from an entirely different context where the only cause of action being relied on was a statutory right to compensation if the Claimant's land was "injuriously affected" by works. Accordingly, there is a logic to focussing on when the loss from those works was felt by the Claimant. The position is different here when on any view section 27(2) makes provision for more than one remedy. To the extent that *Bourne Leisure* is cited in *McGee* as authority for a general principle, the text of paragraph 11.019 makes clear that it only sets out when the cause of action will "normally" accrue. It does not purport to determine the position that applies when a more nuanced and complex statutory provision such as section 27(2) is being considered.
80. *Bourne Leisure* does not, therefore, provide support for the Lead Claimants' interpretation of section 27(2).

(vi): *Bhattacharya v Oaksix Holdings Ltd* [2021] EWHC 1326 (Ch)

81. The Lead Claimants also drew support for their interpretation of section 27(2) from *Bhattacharya*. The Appellants in *Bhattacharya* sought a declaration that two loan agreements were unenforceable under section 26(1) because the Respondent did not have the authority to enter into them; as well as recovery of the interest and fees paid to the Respondent under section 26(2)(a). One of the issues in the Appellants' appeal was whether the Deputy Master had erred in finding that sections 8(2) and 9 of the LA 1980 applied to the claims, such that the limitation period was six years: [6].
82. Elizabeth Jones KC, sitting as a Deputy Judge of the High Court, considered *Rahman v Sterling Credit* [2001] 1 WLR 496. *Rahman* concerned whether the limitation period for a counterclaim to reopen a loan agreement as an extortionate credit bargain under what was then section 139(1) of the Consumer Credit Act 1974 was 6 years or 12 years from the date of the credit bargain. Mummery LJ, with whom Simon Brown LJ agreed, concluded that the right to make an application under section 139 arose out of, and only out of, the statute, such that section 8(1) of the LA 1980 applied and the limitation period was 12 years. In contrast, if a claim for repayment of sums of money already paid under the credit bargain were made, objection could be made that section 9 of the LA 1980 applied, with its six-year limitation period: [38]-[41].
83. The Deputy Judge held that it was arguable that the reasoning in *Rahman* applied to claims under section 26 and 28 of FSMA, as claims for payment of money arose "out of and only out of" FSMA, such that section 9 of the LA 1980 applied: [51]-[52] and [80]. On that basis she allowed the Appellant's appeal on this ground: [83]. The Respondent had conceded that the claim for a declaration fell within section 8(1) of the LA 1980: [52].

84. Although sections 26 and 27 of FSMA address different scenarios – namely two-party situations and third-party situations - the structure and terms of both sections are closely analogous. On that basis the Lead Claimants understandably argued that because *Bhattacharya* illustrated that section 26 is capable of generating multiple causes of action, the same must be true of section 27.
85. However, there are a number of reasons why *Bhattacharya* cannot, or can no longer, support the Lead Claimants’ case in this way.
86. *First*, *Bhattacharya* was an appeal against a strike out/summary judgment decision and so was only concerned with whether the arguments in respect of limitation met the arguability threshold.
87. *Second*, the Deputy Judge in *Bhattacharya* did not in fact address whether the provisions of section 26(2) itself gave rise to separate causes of action: on the contrary all the potential claims under section 26(2) were dealt with holistically together: [50]-[51]. Accordingly, *Bhattacharya* provides no direct support for the Lead Claimants’ case that section 27(2) creates separate causes of action for recovery of money, recovery of property and for compensation.
88. *Third*, to the extent that *Bhattacharya* addressed the claim for a declaration under section 26(1), the Deputy Judge’s finding was based on a concession as to the applicable limitation period to that claim: [52]. Even if that concession was correct, it did not assist here: there was no dispute between the parties as to when a cause of action under section 26(1) and the parallel provision in section 27(1A) accrues: if a claim for a declaration of unenforceability constitutes a cause of action (and the Defendant contended that it did not), there was no dispute between the parties that it is once the agreement was made. Further, any conclusion to the effect that section 27(1A) has its own separate limitation period does not necessarily lead to the conclusion that section 27(2) contains separate causes of action with separate limitation periods.
89. *Fourth*, the Supreme Court has recently discredited the reasoning in *Rahman* on which the decision in *Bhattacharya* was based: see *Zedra Trust v THG* [2026] UKSC 6; [2026] 2 WLR 479. In *Zedra*, the Supreme Court held that the Court of Appeal in *Rahman* had been wrong to conclude that section 8 of the LA applied to any claim which can only be brought under a statute (what the Supreme Court described as the “wider *Collin* view” (referring to *Collin v Duke of Westminster* [1985] QB 581); rather, section 8 only applied to the enforcement of obligations created by deed or statute (the “narrow *Collin* view”): [76]-[77], [81] and [114]-[117]. The Supreme Court was also critical of *Rahman* for its inconsistency with *British Coal Corporation v Ellistown Pipes Ltd (Hepworth Building Products)* [1994] RVR 81 at 90: see further at [91]-[97] below.
90. Accordingly, I do not accept that *Bhattacharya* provides support for the Lead Claimants’ case that section 27(2) creates multiple causes of action.
- (vii): *British Coal Corporation v Ellistown Pipes Ltd (Hepworth Building Products)* [1994] RVR 81
91. This case concerned the liability of the British Coal Corporation (“BCC”) to pay compensation to a company in respect of damage to land caused by coal mining subsidence and the basis on which the compensation was to be assessed. The Coal

Industry Act 1975 gave BCC a new right to withdraw support to enable coal to be worked, subject to publication of the necessary notice. Under section 2(4), where damage to any land arose from the exercise of that right, the National Coal Board was required to either “(a) pay proper compensation for the damage or (b) [with the consent of the person affected]...make good the damage”.

92. One of the issues related to the limitation period applicable to each type of claim under section 2(4). The Court of Appeal considered arguments to the effect that the limitation period for a claim for compensation under section 2(4)(a) would be six years, under the predecessor to section 9 of the LA 1980, as such a claim was a claim to recover a sum recoverable by virtue of an enactment; but the limitation period for a claim in respect of making good the damage under section 2(4)(b) would be 12 years, under the predecessor to section 8 of the LA 1980, as an action upon a specialty.
93. The Court of Appeal rejected this argument about differing limitation periods, for the reasons given by Ralph Gibson LJ on behalf of the Court, at 90, as follows:
- “I am reluctant to attribute to Parliament the intention to create in one section of the 1975 Act obligations upon BCC in respect of which two different limitation periods are applicable. I would hold that s 2(4) creates one obligation, namely to pay proper compensation for damage to land with the right in BCC at its election to make good the damage”.
94. It does not appear that *BCC* was cited or addressed in *Rahman*. Moreover, in *Zedra*, the Supreme Court was expressly critical of the Court of Appeal’s acceptance in *Rahman* that separate limitation periods can apply to one statutory subsection as illustrating a “lack of any logic”. The Supreme Court cited with approval the above passage from *BCC* at 90: [144]-[149]. It follows that the Lead Claimants’ reliance on *Bhattacharya* is undermined further by this aspect of *Zedra*.
95. More broadly, this aspect of *Zedra* amounts to a very recent endorsement from the Supreme Court of the need for reluctance in attributing to Parliament an intention to create two causes of action, each with different limitation periods, in one section of a statute. The Lead Claimants here contend for an even more nuanced approach, namely multiple causes of action with different limitation periods within one sub-section (namely section 27(2)(a) of FSMA).
96. As explained in *McGee* at paragraph 11.008, the Court of Appeal in *BCC* avoided the undesirable anomaly that would follow from one statutory section creating two incompatible limitation periods, in effect by identifying what the “primary” duty under the relevant section was: in *BCC*, it was held to be a duty to compensate, to which the six-year limitation period applied, and the duty to make good was merely an alternative, which could not arise unless the defendant specifically elected for it.
97. This was also the approach that had been taken in *West Riding v Huddersfield* [1957] 1 QB 540. At 544, Lord Goddard CJ held that the predecessor to section 9 applied because the relevant statutory provision (providing for the alteration of local government areas) “in most cases” contemplated payment of money, even if some functions could be transferred without having to make financial provision with regard to them.

98. Mr Rowell contended that this case could be distinguished from *BCC* because section 27(2) provided for cumulative causes of action (see the word “and” between section 27(2)(a) and (b)), whereas the provision at issue in *BCC* set out alternative causes of action (see the use of the word (“or” in section 2(4) at [91] above). I am not satisfied that this is a persuasive distinction, for the following reasons.
99. *First*, in *BCC* at 90, Ralph Gibson LJ was making a general observation to the effect that it is undesirable for one statutory provision to create causes of action with two different limitation periods. He did not limit his observation to cases where the causes of action operate in the alternative.
100. *Second*, the statutory provision at issue in *West Riding*, where the same approach had been taken as in *BCC*, itself involved cumulative provisions relating to both financial and non-financial claims: see section 151 of the Local Government Act 1933, set out at footnote 1 of the law report.
101. *Third*, *McGee* at paragraph 11.009 does not suggest that the fact that the causes of action in *BCC* were in the alternative is determinative. Rather *BCC* is seen as part of a wider development in the law, on the following basis:
- “[t]here is no doubt that the underlying trend...is to categorise any action which may be regarded as based on a statutory provision (to use a deliberately neutral term) as falling within s.9 and thus having a six-year limitation period. The only major exception now is the category (e) case where it is clear that no sum of money can become payable under the statute. These cases have a 12-year limitation period”.
102. *McGee* at paragraph 11.003 gives the Leasehold Reform Act 1967, which confers upon certain tenants the right to require their landlord to sell to them a freehold interest, as an example of a category (e) case.
103. Applying the approach taken in *BCC* to this case, I accept the Defendant’s submission that the primary duty under section 27(2), read as a whole, is one of recovery of money. As in *West Riding*, in most cases, including all the Claimants’ cases, there will be a payment of money: that will always be the case under section 27(2)(b) and most usually under (a). In that respect, under section 27(2)(a), in most cases the remedy will be monetary both because (i) the transfer is more likely to be one of money and (ii) even where it is a transfer of property, the usual and default remedy for breach of the obligation to transfer back property will be damages (specific performance only potentially being available in limited cases where the Claimant elects to seek it instead of damages, the relevant property is still held by the agreement counterparty, damages would not be an adequate remedy and laches does not apply).
104. Further, I accept Mr Cutress KC’s submission that identifying the primary duty is rendered easier if section 27(2) is read as a whole as creating a single cause of action. The single cause of action enables the unacceptable anomalous situation deprecated in *BCC* to be avoided.
105. Such an approach also addresses the point that under section 28(8) of FSMA, if the property transferred has passed to a third party, the reference to property “is to be read as a reference to its value at the time of its transfer”. Such a claim would then be one

for a sum due under statute. On the Lead Claimants' case, it would appear that there would be a 12-year limitation period before the property is passed to a third party but then a six-year period afterwards, which creates a further undesirable anomalous situation. It is unlikely that Parliament would have intended such a result, given that Parliament is to be taken to have acted as a rational, reasonable and informed legislature pursuing a clear purpose in a coherent and principled manner: Bennion at paragraph 12.3.

106. Accordingly, I conclude that the recent endorsement by the Supreme Court in *Zedra* of *BCC* at 90 not only undermines the Lead Claimants' reliance on *Rahman* and *Bhattacharya* but is a very persuasive indication that the Defendant's interpretation of section 27(2) as creating a single cause of action is correct.

(viii): *The "workability" issue*

107. There is a presumption that Parliament does not seek to condone through legislation consequences which are "unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief": *R v McCool* [2018] UKSC 23, [2018] 1 WLR 2431 at [23]-[26], per Lord Kerr and the authorities cited there with approval. For the reasons set out under Issue (3) below, the practical difficulties that would flow from the Lead Claimants' proposed approach are, in my judgment, further indications that it is unlikely to be consistent with the intention of Parliament.

Conclusion on Issue (1)

108. Accordingly, for all these reasons, I conclude that the Defendant did not err in law in concluding that section 27(2) contains a single cause of action which always arises on the Transfer Date.

Issue (2): If sections 27(2)(a) and (b) give rise to separate causes of action, would the outcome in the Lead Claimants' cases have been the same because the cause of action accrued on the Transfer?

109. Given my conclusion on Issue (1), Issues (2)-(4) do not strictly arise. However, I address them in case I am wrong in my conclusion on Issue (1) and because they were fully argued before me.
110. The Defendant's case on Issue (2) was that even if the Lead Claimants were correct that section 27(2)(b) constitutes a distinct cause of action, it would not change the Decisions in their case because the claims would still be time-barred on the basis that (i) any cause of action under section 27(2)(b) accrued on loss being suffered as a result of the payment being made under the agreement; and (ii) such loss occurred on the point of transfer. Accordingly, the Lead Claimants' cause of action under section 27(2)(b) would accrue at precisely the same time as under their own single cause of action analysis. In each of the Lead Claimants' cases, adoption of the date of transfer renders each of the claims limitation-barred, as the Defendant found in the Decisions.
111. On that basis the Defendant contended that it was "highly likely that the outcome for the applicant would not have been substantially different if the conduct complained of had not occurred", such that the Court must refuse to grant relief under section 31(2A)

(a) of the Senior Courts Act 1981 (“the SCA 1981”). The burden of proof in respect of this section is on the Defendant; and the “highly likely” standard of proof sets a high hurdle: *R (Cava Bien Ltd) v Milton Keynes Council* [2021] EWHC 3003 (Admin) at [52](i) and (ii), and the authorities cited therein.

Shore v Sedgewick Financial Services Ltd [2008] EWCA Civ 863, [2008] PNLR 37

112. The Defendant drew support for its position on Issue (2) from *Shore*. In that case, the Claimant sought damages for negligence and breach of section 62 of the Financial Services Act 1986 in relation to negligent advice given to him in respect of his pension. He contended that the advisers had (i) negligently failed to advise him in early 1997 to remain in his occupational pension scheme (“the Avesta scheme”) and defer drawing his pension until the age of 60 rather than transfer his accrued benefits into a personal pension income withdrawal scheme with Scottish Equitable (“the PFW scheme”); and (ii) failed to provide him with information to enable him to make a proper comparison between the Avesta scheme and the PFW scheme. 28 April 1997 was the date on which he had paid the benefits that had accrued to him under the Avesta scheme into the PFW scheme: [1] and [20].
113. One of the arguments advanced in *Shore* was that the Claimant had not suffered loss immediately on the investment in the PFW scheme, in part because the price paid for the investment in the PFW scheme was its then current market price: [34]. The Court of Appeal rejected this argument, because although the investment had the same market value, the new scheme was less advantageous, because it did not give the Claimant what he wanted, in that it was riskier: as Dyson LJ explained, giving the judgment of the Court, the Claimant had “made a risky investment with an uncertain income stream instead of a safe investment with a fixed and certain income stream which is what he wanted”: [37].
114. Similarly an investor who wished to place £100 in a secure risk-free investment such as gilts, but who, in reliance on negligent advice, purchased shares of the same value, would suffer detriment on the acquisition, notwithstanding that the shares had a market value of £100. This was because he would not have got what he wanted; and he would at least be entitled to the difference between the cost of buying and selling the shares and buying the bonds: [38].
115. At [48], Dyson LJ concluded that the transfer:

“...was a transaction under which Mr Shore obtained a bundle of rights which, from the outset, were less advantageous *to him* than the benefits that he enjoyed under the Avesta scheme. On the facts of this case, it was not necessary to wait to see what happened to determine whether Mr Shore was financially worse off in the PFW scheme than he would have been in the Avesta scheme. For these reasons, I would hold in relation to the primary claim that Mr Shore first suffered loss on 28 April 1997”.
116. He went on to say that he was fortified in his conclusion by considering the manner in which the Claimant had quantified his claim for damages. The exercise of comparison between his financial position as it was under the PFW scheme and as it would have been if he had deferred taking his pension under the Avesta scheme until the age of 60

would be “bound to yield differing results”, depending on “(i) how the PFW scheme performed, the figure at which the GAD rates were set triennially and how much income Mr Shore decided to withdraw from time to time and (ii) when the comparison was made”, such that there “was ample scope for the comparison to produce different results at different times”: [49] and [51].

117. Dyson LJ continued:

“52. In my judgment, there is no a priori or evidential reason to select one date rather than another for the purposes of conducting the comparison...

53... if one moves away from the secure rock of the date when Mr Shore was committed to the PFW, there is no proper basis for choosing one date rather than another”.

118. He observed that the first instance judge had chosen the date by which annuity rates had fallen to a new low as the relevant date. That might have been because that event made it inevitable that the income entitlement under the PFW scheme would fall at the first triennial review, although there was no evidence that this was so. Dyson LJ observed that it was difficult to see why the date by which annuity rates had fallen to a new low should fix the loss unless it was because the judge thought that there was no possibility that rates would “bounce back” to enable the Claimant eventually to be better off than he would have been if he had remained in the Avesta scheme, but there was no evidence to this effect and the judge had made no such finding. He observed that, in any event, “[h]aving regard to the vagaries of the market, it is difficult to see that such a finding could ever be made”: [52]. Put simply, this paragraph reflected the concern that an assessment of the value of the pension scheme on a comparative basis could turn negative but then positive.

Submissions and analysis

119. Mr Cutress KC drew support for the Defendant’s case that loss occurred on the point of transfer from the approach taken by the Court of Appeal in *Shore*, which was later applied by the Court of Appeal in *Williams v Lishman* [2010] EWCA Civ 418, [2010] PNLR 25.

120. Applying *Shore*, the Defendant submitted that the Lead Claimants suffered loss at the point of transfer. At that point, each of those who had made claims had left their original pension schemes for the Liberty SIPP as part of a scheme to invest in forestry or “green oil”. They did not get what they should have got had there been no breach of section 27(1), namely staying in the original scheme and retaining the value of, and rights under, their pension. From their point of view, it was a less advantageous scheme than what they had before. What had happened in the Liberty SIPP cases was a form of “wrong transaction” akin to the transaction based on negligent advice in *Shore*.

121. Not only did they have a less advantageous transaction, but the Lead Claimants were exposed to the ability of Liberty SIPP to deduct fees from the monies paid and would be liable for costs in reverting to their original schemes. These were losses also suffered which crystallised at the point of transfer. Each was a loss which took place “as a result

of” having transferred an existing fund to Liberty SIPP, which would otherwise not have been incurred.

122. The Lead Claimants challenged this analysis in a range of ways.

(i): *Attempts to distinguish Shore and/or limit its application to this case*

123. The Lead Claimants sought to distinguish this case from *Shore* on the basis that *Shore* involved a claim arising from an entirely different legal framework to the one at issue here. *Shore* was not a claim under section 27 of FSMA but a professional negligence claim involving section 62 of the Financial Services Act 1986. However, it did involve an individual seeking to recover for losses sustained when he was wrongly advised to transfer his pension into a less advantageous scheme. I do not consider that the fact that the advice in *Shore* was negligent, whereas the advice in this case was from a person not authorised to provide the advice under FSMA, or that different statutory frameworks are in issue, are material differences: both involved factually similar “wrong” advice and transactions, albeit “wrong” in a different legal sense.

124. Mr Rowell also highlighted that *Shore* was part of a group of cases where the Claimant “ha[d] been disappointed (as against what he was entitled to expect) in an asset which he acquires, whether it is a house, a business arrangement, an insurance policy or a claim for damages”: [28]. He argued that this did not apply here, because as at the date of transfer, each Lead Claimant got precisely what he or she was entitled to expect, namely an interest in a SIPP holding cash in a bank account of the same value as his or her interest in their original scheme. Again, I disagree: the “same value” argument was expressly rejected by the Court of Appeal in *Shore*: see [113] above. Further, the Lead Claimants did not get what they should have done without the breach of section 27(1), namely remaining in their original scheme, as noted at [120] above; and lost out in the other ways particularised at [121] and [130]-[135] below.

125. For these reasons I do not accept that the Defendant was inappropriately seeking to “shoehorn” this case into the *Shore* line of authority as Mr Rowell submitted: rather I agree with the Defendant that *Shore* is comparable to this case and provides clear authority for how the date of accrual is properly established.

126. In addition, Mr Rowell contended that the “secure rock” comment in *Shore* at [55] was *obiter*, because Dyson LJ had already rejected the Claimant’s proposed basis of calculation of his loss as a matter of legal principle, at [37]-[38]. On that basis it could not be said to be central to the decision in *Shore*. Even if it is right to characterise the comments in *Shore* at [55] as *obiter*, the legal principles applied by Dyson LJ [37]-[38] and [48] were the key ones relied upon for the Defendant’s case on Issue (2): see [120] above. In any event, the Defendant has provided its own evidence and argument in the particular context of this case to the effect that finding any clear accrual date other than the transfer date would increase the risk of the scheme being unworkable, due to the vagaries of the market: see Issue (3) below.

127. The net result is that the Lead Claimants were, as Mr Cutress KC argued, effectively trying to re-litigate the approach adopted by the first instance judge in *Shore* (see [2008] PNLR 10), but which was rejected by the Court of Appeal.

(ii): *The “loss” issue*

128. The Lead Claimants argued that the Defendant's analysis under Issue (2) still failed to satisfy the *Berezovsky* and *Coburn* tests in respect of two of the four elements of a section 27(2)(b) claim that they had identified (see [40] above), namely that (3) the Claimant has sustained some loss; and that (4) such loss had resulted from the Transfer.
129. As to the loss issue under (3), Mr Rowell submitted that the Lead Claimants sustained no actionable loss upon the Transfer itself: they merely exchanged an interest in the original fund for an interest in a SIPP with cash in a bank account of equivalent value. I do not accept this argument for the reasons given at [124] above.
130. Further, as Mr Cutress KC highlighted, it was not realistic to look at the transfer in isolation. The transfer occurred as a result of the advice of an authorised person. Upon the transfer the Lead Claimants lost their rights and benefits under the original schemes and instead held cash within the SIPP and were subject to the rights and obligations of the SIPP. The transfer to the SIPP was a "staging post" on the road to a high-risk investment. It was made for the purpose of and as part of an "indivisible" scheme to invest in the much riskier scheme relating to forestry and green oil: see the Court of Appeal's description of the "indivisible whole" of the scheme in *Avacade* at [33] above.
131. Although these were observations made in the context of the Court of Appeal's consideration of article 25 of the Regulated Activities Order in *Avacade* and were used to establish the necessary causal link between *Avacade*'s pre-Transfer breaches of the general prohibition and steps (1)-(2) (the Transfer) and (3)-(4) (making the SIPP Investment) in implementing the Liberty Scheme, in my judgment they also provide confirmation that the Lead Claimants were not, in fact, exchanging "like for like" at the point of transfer, but sustaining a loss.
132. In addition, as noted at [121] above, the loss recoverable at the point of transfer would include the costs necessary to re-establish the Lead Claimants' position in or rights under the previous schemes (and for Mr Golding, related investments in that scheme), by analogy with *Shore* at [38]: see [114] above. Mr Rowell contended that the Defendant would bear the burden of proving the existence and amount of any such putative costs, including any assertion that they would have exceeded a (non-actionable) negligible level. However, I agree with Mr Cutress KC that it can safely be assumed that there will be some costs, of whatever level, attributable to moving pension funds – just as there were for the Claimants transferring into Liberty SIPP. By way of example, he highlighted the documentary evidence before the Court that Mr Golding's original scheme charged 5% for an initial investment.
133. Mr Rowell contended that there would always be some costs in returning to an original scheme. As these costs would be present in any transfer, they could not be an actionable loss for the purposes of section 27(2)(b). Assuming that submission is factually correct, I confess I could not follow why any Claimant involved in a transfer as a result of an agreement involving an unauthorised person as third party could not, in principle, bring a claim to recover those costs.
134. Further, as noted at [121] above, each of the Lead Claimants was also worse off at the point of transfer than under their original schemes because they had also incurred a contractual liability to pay the initial SIPP fees. Upon the transfer, such fees could be

unilaterally deducted by Liberty SIPP, whereas before the transfer, they could not (before the transfer, at most there was merely a liability to pay fees that would never be satisfied and therefore did not constitute a loss: *Biffa Waste v Maschinefabrik* [2009] PNL R 5 at [78]-[80]).

135. Mr Rowell argued that there was a lack of evidence as to whether the SIPP fees amounted to an actionable loss on the basis that they exceeded the fees which the Lead Claimants would have paid under the original schemes had the Transfers not taken place. Further, he argued that the liability to pay the SIPP fees arose from the Lead Claimants' contractual agreement with Liberty rather than from the Transfer itself and in principle would have existed regardless of whether any money or other property was subsequently transferred into the SIPP or not. It seems to me that this point is met by the "indivisible" scheme point made at [130] above; but if I am wrong in that analysis, there are still the other elements of loss set out at [130]-[132] above sufficient to satisfy element (3).

(iii): The "as a result of" element

136. As to element (4), Mr Rowell made a series of submissions.
137. *First*, he argued that the loss could not have occurred upon the transfer because section 27(2) requires the loss to be sustained "as a result of" the transfer. The wording of the provision shows that it requires a loss caused by the Transfer to be identified. He contended that it was illogical and contrary to these words for the Transfer to be treated as both cause and effect at the same time.
138. However, I agree with Mr Cutress KC that there is no reason why the loss could not be simultaneous with, or "upon", the transfer. Had the Lead Claimants not transferred their money into the Liberty SIPP, they would have retained their more advantageous rights under their original schemes. Specifically, two of the Lead Claimants, namely Mr Davies and Ms Cumming, lost the valuable benefits of a defined benefit pension scheme. Mr Golding, whose original pension was a money purchase scheme, lost the benefit of a managed fund with a balanced risk profile.
139. *Second*, Mr Rowell submitted that reliance could not be placed on "swapping one bundle of rights for another" for a similar reason: as that "swapping" is the Transfer. The "upon" point made in the preceding paragraph applies to this submission; and in any event the significant point is that both Mr Shore and the Lead Claimants were, in essence, swapping what they had for a bundle of rights that were less advantageous, thereby incurring a loss: these were not entirely "neutral" transfers.
140. *Third*, he argued that if the Transfer itself was taken as a loss entitling the Claimant to compensation, section 27(2)(b) would serve no useful purpose, as it would add nothing to a Claimant's right to recovery of the transferred money or other property under section 27(2)(a): rather, the two paragraphs should be taken as curing different mischiefs in accordance with the coherent scheme of remedies established by section 27 as a whole. I disagree: section 27(2)(b) can cater for losses over and above those that occur immediately on transfer.

Conclusion on Issue (2)

141. Accordingly, if, contrary to my conclusion on Issue (1), sections 27(2)(a) and (b) give rise to separate causes of action, the outcome in the Lead Claimants' cases would have been the same because the cause of action accrued on the Transfer. On that basis, even if the Claimants had succeeded on Issue (1), relief would have been refused under section 31(2A)(a) of the SCA 1981.
142. The Lead Claimants suggested that the Defendant had not properly pleaded reliance on section 31 or served sufficient evidence in relation to it to meet the high standard of proof. Even if either or both of those submissions are sound – and I do not accept they are – the Defendant's analysis on Issue (2) is another way of explaining why its Decisions were ultimately correct. Accordingly, if any error of law had been identified under Issue (1), this analysis under Issue (2) shows that the error would not have been material to the outcome.

Issue (3): Should the contentious aspects of McGrath 1 be admitted into evidence and if so, what impact does the evidence have on the claim?

143. Mr Cutress KC observed that although the Lead Claimants contended that the cause of action under section 27(2)(b) accrued when the first loss was sustained, they had not identified any such dates in their individual cases nor advanced a settled position on how the dates would be identified.
144. In pre-action correspondence, the Lead Claimants had suggested that the earliest possible date for a claim for Lost Returns would be when the notional transfer value of the original scheme exceeded the value of the SIPP Investment by a more than trivial amount. Mr Rowell made clear that this was not a formal position. There were disputes between the parties as to whether either party was required to identify any alternative dates with clarity, which I do not need to resolve.
145. The Defendant sought to rely on McGrath 1 at [60]-[66] to illustrate how the Lead Claimants' proposed approach for identifying the relevant date would operate in practice. The Lead Claimants objected to the admissibility of that evidence.

McGrath 1

146. McGrath 1 at [60]-[66] sets out the significant challenges the Lead Claimants' proposed approach would cause the Defendant, because of the difficulty in establishing when the point of loss using this approach occurred. Mr McGrath's statement involved input from the Defendant's Operations Team: [64].
147. Mr McGrath described the difficulties the Defendant's staff face in calculating compensation to be paid out in successful claims, in accordance with COMP, rather than the precise legal principles adopted by a civil Court. These difficulties include (i) problems in obtaining any or any comprehensive data from the "ceding" (original) schemes in order to calculate the notional transfer value, taking into account matters such as fund growth, product and fund charges and any relevant changes to the scheme over time; (ii) for defined benefit schemes, a necessary reliance on economic assumptions which cannot be independently verified against how the individual's benefits would in fact have developed over time; and (iii) often incomplete data from the receiving SIPP.

148. Identifying the date of loss for the purposes of limitation, as proposed by the Lead Claimants, would involve application of civil law principles and would be a more complicated and uncertain exercise than that carried out by the Defendant in respect of calculating compensation, magnifying the issues described in the preceding paragraph for the reasons given in McGrath 1 at [66].

Submissions and decision on admissibility

149. The Lead Claimants invited the Court to refuse to admit this section of Mr McGrath's witness statement as evidence; or alternatively, to treat it as admissible, but afford it no, or very little, weight.
150. They observed that Mr McGrath did not claim to have attempted the necessary calculation himself; nor had he even relayed results provided by someone who did. Rather, he was providing speculative and hypothetical evidence based on unspecified input from unnamed members of the Defendant's staff. His evidence amounted to opinion rather than fact. He did not possess relevant expertise in relation to calculating pension-related loss as he was a lawyer rather than an actuary or a financial adviser. As such, it was inadmissible expert evidence, in respect of which permission under CPR Part 35 had not been given.
151. Further, Mr Rowell argued that admitting this section of Mr McGrath's witness statement would be unfair and prejudicial to the Lead Claimants. They could only potentially seek to answer it directly by calling expert evidence of their own. This was not something they had done: they had no permission to rely on such evidence and obtaining it would add significantly to the (already substantial) cost of the proceedings.
152. In my judgment it is appropriate to admit the evidence. I do not consider that these aspects of McGrath 1 constitute expert or opinion evidence. Rather they amount to factual evidence of the operational difficulties the Defendant has faced in trying to calculate compensation in section 27 cases, using precisely the method the Lead Claimants contend should be undertaken in their cases; and evidence of how the process would be even more complicated if the Defendant was required to carry out such exercises for the purposes of identifying the date of loss for the purpose of limitation. The fact that Mr McGrath provided this evidence with input from others within the Defendant organisation is not sinister or unusual for a professional witness.
153. The Lead Claimants did not challenge the factual accuracy of this evidence. Indeed, on receipt of McGrath 1, the Claimants had sought and obtained permission to provide evidence in response to it some time before the hearing but had chosen not to do so, such that they had had adequate opportunity to challenge it if they wished. They had only intimated a challenge to its admissibility in the Skeleton Argument for the hearing; and did not, for example, seek a preliminary ruling on this issue and an adjournment if further evidence was required.

Analysis

154. It is clear that the exercise proposed by the Lead Claimants or anything similar to it would require a complex "counterfactual" exercise. This would need to assess the point at which the notional current transfer value of the previous pension exceeded the Liberty SIPP value. The exercise would require accurate evidence as to the notional

and current transfer values of both funds throughout the period between the date of transfer and the date of calculation, in a context where the values of both may fluctuate daily and one or both values may be very volatile.

155. In my judgment McGrath 1 at [60]-[66] illustrates the sorts of significant practical difficulties that the Defendant would face in attempting to undertake the factual investigations necessary to conduct this exercise. These difficulties would be shared by the two other regulatory bodies, covered by FSMA, namely the FCA and the Financial Ombudsman Service. Like the Defendant these bodies would not have been party to the agreements addressed by section 27, but would also need to try and assess the application of section 27 in the exercise of their functions. These difficulties would also be shared by prospective Claimants, many of whom are vulnerable consumers which section 27 aims to protect. Overall, the Lead Claimants' proposed approach would lead to considerable uncertainty for all concerned.
156. I do not accept, as Mr Rowell contended, that the Defendant's reliance on McGrath 1 was an attempt to persuade the Court to adopt a strained construction of section 27(2) for policy reasons, namely administrative convenience.
157. Rather, the Defendant was correctly invoking the principle that when construing legislation, there is an interpretative presumption against absurdity, including unworkability or impracticability: see [107] above. A practical and workable approach is especially likely to have been intended here, given that section 27 is intended to assist Claimants in recovering losses.
158. More generally, it was appropriate for the Court to test the logic of the Lead Claimants' arguments by reference to their implications, including as regards legal certainty and practical workability: see, for example, *R (Miller) v Prime Minister* [2019] UKSC 41, [2020] AC 373 at [43].
159. I accept Mr Cutress KC's overarching submission that the fact that the Lead Claimants could not coherently and easily identify an alternative point in time from which limitation runs provided a further indication that their analysis under Issue (1) was flawed.
160. I also conclude that the difficulties and uncertainties that flow from the only valuation approach the Lead Claimants had proposed provide a further reason for finding in the Defendant's favour on Issue (2). This is because the more impractical the proposed interpretation of a statute is, the less likely it is that Parliament will have intended it.

Issue (4): If the section 27(2)(b) cause of action did not accrue upon the Transfer, did it accrue at any of the following alternative points in time: (a) execution of the supplemental deed for the Liberty SIPP by the Lead Claimants; (b) first payment of SIPP fees by the Lead Claimant; or (c) investment of the SIPP fund in Ethical Forestry (in the cases of Mr Golding and Ms Cumming) or Global Plantations (in the case of Mr Davies)?

161. For the reasons given under Issue (2), I conclude that the section 27(2)(b) cause of action accrued upon the Transfer. It is nevertheless helpful to test that conclusion by reference to the alternative points in time from which it could be said that the cause of action accrues and time begins to run, as suggested by the Defendant for this purpose under Issue (4).

(a): The date of the SIPP deed

162. There is some attraction to the argument that the section 27(2)(b) cause of action accrues upon the completion of the unlawful agreement, as this focusses on the elements prescribed in section 27(1). On that analysis, the relevant date for limitation purposes would be the date upon which the Lead Claimant entered into the supplemental deed to enter into the SIPP. For all the Lead Claimants, this would render their claims limitation-barred and the outcome would be the same: McGrath 1 at [58(a)].
163. However, there are difficulties with this approach: as the Lead Claimants highlighted, the deed would inevitably have been executed before the Transfer Date and would not, in and of itself, have involved a transfer of property from the original scheme into the SIPP. On that basis this alternative date would not obviously engage section 27(2), let alone lead to any actionable loss within section 27(2)(b).

(b): The first payment of SIPP fees

164. The Defendant observed that if the Court were to adopt the date upon which SIPP fees were first paid by the Lead Claimant as the starting point of compensable loss, the claims of Ms Cumming and Mr Davies, but not that of Mr Golding, would be limitation-barred: McGrath 1 at [58(c)].
165. However, the selection of this date is not consistent with the approach taken in *Shore*, or, as the Lead Claimants highlighted, with cases on the accrual date for a claim relating to a tax liability incurred as a result of negligent advice, such as *Integral Memory plc v Haines Watts* [2012] EWHC 342 (Ch)), which have taken a similar approach. In such cases, the cause of action accrues at the time of the transaction giving rise to the tax liability, rather than the date when the tax is eventually paid after resolving any dispute with HMRC. The same would be true of a contractual liability such as the SIPP fees.

(c): The date of the investment

166. The Defendant submitted that if the Court did not accept that the cause of action accrued on the date of transfer, the latest accrual date would be the date upon which money was paid out of the SIPP to invest into the relevant forestry (or other high-risk) investment schemes. If that date were adopted, the claims of Ms Cumming and Mr Davies, but not Mr Golding, would be limitation-barred: McGrath at [58(b)].
167. The Lead Claimants contended that there were two reasons why the SIPP Investment could not constitute a loss meeting the requirements of section 27(2)(b) of FSMA.
168. *First*, they argued that the SIPP investment did not “result from the Transfer” as required by section 27(2)(b). While the SIPP Investment would obviously not have occurred but for the Transfer, it is well-established that “but for” causation alone is not sufficient to satisfy a legal requirement for causation, whether at common law or in the context of FSMA. In *Avacade* at [76], the Court of Appeal held that the words “as a result of” in section 382 of FSMA equated to the common law test in negligence, namely that the contravention must have been “an efficient cause, but...need not be the sole or dominant cause”. Applying this test, Mr Rowell submitted that it could not be said that the SIPP investments “resulted from” the Transfer: rather, the investment and

the Transfer were merely links in a causal chain which commenced with Avacade's unlawful advice etc.

169. However, as Mr Cutress KC emphasised, the transfer of the existing pension into the SIPP and the making of the high-risk investment formed part of a single scheme. The SIPP application form or related documents signed by the Claimants make clear that the investment strategy was always to invest in forestry or green oil. Indeed, the whole purpose of transfer to the SIPP was in order to make the higher-risk investments. Accordingly, it was artificial and inconsistent with the facts to suggest that the investments did not “result” from the transfer into the SIPP. Moreover, applying the test set out in the preceding paragraph, the Court of Appeal held in *Avacade* at [75]-[76] that the transfer into the SIPP was an efficient cause of the investments made: both were part of “seamless and indivisible arrangements”.
170. *Second*, the Lead Claimants submitted that section 27 must be construed in accordance with the principles of statutory construction; and Parliament must have intended the scheme of remedies established by sections 27(1A), 27(2)(a) and 27(2)(b) to function as a coherent whole and cure different mischiefs. This indicates that a loss does not fall within section 27(2)(b) in circumstances which merely duplicate the right to recovery of the transferred property under section 27(2)(a): otherwise section 27(2)(b) would serve no useful purpose. It follows that if part of the transferred fund is subsequently lost by, for example, making the SIPP investment or paying SIPP fees, this does not give rise to a separate right to compensation under section 27(2)(b) as section 27(2)(a) already provides an entirely adequate remedy in the right to recovery of the transferred fund.
171. However, the limbs of section 27(2) are not mutually exclusive: a Claimant is entitled to a sum comprising the total of both section 27(2)(a) and (b), albeit calculated so as to ensure that there is no double recovery. A Claimant will also be able to recover additional amounts for further losses under section 27(2)(b). Accordingly, section 27(2)(b) does serve a purpose, as I said at [140] above.
172. Finally, the Lead Claimants advanced a new point in their Skeleton Argument to the effect that even if the making of the investment was a loss resulting from the transfer into the SIPP, it would amount to a second transfer, giving rise to a further or alternative claim for compensation for any resulting losses under section 27(2)(b). However there are a number of difficulties with this argument: (i) it operates on the basis of a new claim being brought under section 27 but the further “agreement” required for such a claim is not clear; (ii) it is not clear who the counterparty to any such agreement would be; and (iii) it reiterates the argument that the loss must occur subsequent to the transfer, which I have rejected for the reasons given at [136]-[140] above. Rather, as I consider it is possible for loss to occur simultaneously or “upon” the transfer, even if there was a new claim triggered by the investment date, loss would occur on the same date.
173. The high-risk nature of the investments was expressly stated in the letters of instruction signed by each of the Lead Claimants for Liberty to purchase them. The investments were flawed transactions from the outset. Accordingly, it could credibly be said that each Lead Claimant's loss had arisen “once he has made the investment, even if the true measure of his loss (without which no claim for substantial damages will ever likely be made) does not materialise and become quantifiable until later”: *Davy v*

01000654 Ltd (Formerly Heather Moor & Edgecomb Ltd) [2018] EWHC 353 (QB) at [67]-[68].

174. Accordingly, had I not accepted that the section 27(2)(b) cause of action accrued upon the Transfer, I would have concluded that it accrued on the investment date.

Issue (5): What relief if any are the Lead Claimants entitled to?

175. The effect of my conclusion on Issue (1) is that the Lead Claimants' claims fail, such that they are not entitled to relief.

Conclusion

176. Accordingly, for the reasons set out herein, I conclude that:

- (1) The Defendant did not err in law in making the Decisions on the basis that section 27(2) of FSMA gives rise to a single cause of action which accrued on the Transfer Date;
- (2) Even if, contrary to my finding on Issue (1), sections 27(2)(a) and (b) give rise to separate causes of action, the outcome in the Lead Claimants' cases would have been the same because the cause of action accrued on the Transfer;
- (3) If I had not found that the cause of action accrued on the Transfer under Issue (2), I would have concluded that it accrued on the date each Lead Claimant invested in the relevant SIPP fund.
- (4) In light of my conclusions on Issue (1), the Lead Claimants' claims are dismissed.

177. I reiterate my thanks to all counsel for their considerable assistance with this very complex case.