



Jersey Financial Services Commission

Public Statement

Mr Andrew David Treharne ("Mr Treharne"), born 9 May 1964

Former Principal Person of Horizon Trustees (Jersey) Limited (in liquidation) ("HTJL")

Financial Services (Jersey) Law 1998, as amended (the "FS(J)L")

1 Action

- 1.1 The Jersey Financial Services Commission (the "**Commission**") issues this public statement pursuant to Article 25(a) of the FS(J)L with respect to directions issued to Mr Treharne under Article 23 of the FS(J)L.
- 1.2 The Commission's actions support its objectives of reducing the risk to the public of financial loss and protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters.
- 1.3 An investigation into the fitness and propriety of Mr Treharne, in his capacity as a former principal person of HTJL, has taken place and the Commission has concluded that, in all the circumstances, Mr Treharne acted without integrity, and his displayed level of incompetence was of the most serious kind.
- 1.4 The Commission has therefore concluded that it is necessary and proportionate in all the circumstances of the case that directions are issued under the FS(J)L.
- 1.5 The directions prevent Mr Treharne from:
 - 1.5.1 performing any function at all for;
 - 1.5.2 engaging in any employment at all by; and
 - 1.5.3 holding any position at all in the business of any registered person.
- 1.6 The directions shall remain in force until such time as Mr Treharne successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions. Mr Treharne has also been issued with directions under the equivalent provisions of the other regulatory laws¹.

¹ The Banking Business (Jersey) Law 1991, as amended.
The Collective Investment Funds (Jersey) Law 1988, as amended.
The Insurance Business (Jersey) Law 1996, as amended.



2 Background

- 2.1 On 7 November 2013, the Commission issued a public statement in respect of the findings of its investigation into HTJL². The Commission's investigation focused on the period from 1 January 2008 to 30 May 2012.
- 2.2 HTJL was one of a number of related companies bearing the Horizon name ("**the Horizon Group**") and had a diverse customer base. Whilst some of HTJL's customers were sophisticated ultra-high net worth individuals ("**UHNWI**"), others were unsophisticated and, indeed, vulnerable individuals.
- 2.3 HTJL provided trust company business services to a number of private fund structures. These structures were established to provide a number of the UHNWI customers with the opportunity to invest in alternative asset classes, including shipping, property and media rights.
- 2.4 A number of the UHNWI customers had financial exposure to a UK media rights company ("**the Film Co.**"). The customers included the Film Co.'s principal shareholder and Chief Executive Officer ("**CEO**"). This exposure was either by way of direct shareholder interest or by virtue of investing in a media fund ("**the Media Fund**"): one of HTJL's private in-house fund structures which effectively operated as a joint venture with the Film Co.
- 2.5 In January 2010, the Film Co.'s AIM listing was suspended due to financial uncertainty. In April 2010, a successful bid was made for the Film Co. by a company HTJL's CEO claimed to beneficially own ("**Bid Co.**"). A significant factor in the decision to acquire the Film Co. was the protection of the interests of the UHNWI customers, a number of whom assisted in financing the bid. The Film Co.'s equity was acquired for one penny per share and its Convertible Loan Notes ("**CLNs**") for £0.55 per £1.00 nominal value.
- 2.6 Subsequent to the acquisition, HTJL, a company devoid of media or film experience, was appointed to administer the Film Co. Directors of HTJL were also appointed as directors of the Film Co. The acquisition and administration appointment created numerous conflicts of interest.
- 2.7 Shortly after the acquisition of the Film Co., a New Zealand Limited Partnership ("**Structure X**") was created. This structure, which became a focus of the Commission's investigation, was used as a vehicle, funded by investments from HTJL's wider customer base, to purchase the Film Co.'s CLNs from the Bid Co. The CLNs were each sold for £1.00 despite only recently having been acquired for £0.55.
- 2.8 In total, £3.445 million was transferred from customer structures and invested into Structure X. The monies were not routed to Structure X but were transferred to Bid Co. and were then used to discharge the Film Co.'s numerous and pressing creditors. In essence, Bid Co. became a financing vehicle to the Film Co. which is currently in liquidation with creditor claims of circa £43 million.

² [www.jerseyfsc.org/pdf/Public-Statement-Horizon-Trustees-\(Jsy\)-Limited-November-2013.pdf](http://www.jerseyfsc.org/pdf/Public-Statement-Horizon-Trustees-(Jsy)-Limited-November-2013.pdf)



- 2.9 Concerns over the serious financial position of the Film Co. were first documented by officers of HTJL shortly after the acquisition by Bid Co. Such were these concerns, placing the Film Co. into a company voluntary arrangement was considered only one month after Bid Co.'s acquisition, namely in May 2010.
- 2.10 Despite the Film Co.'s serious financial difficulties, valuations were sent to customers, during 2010 and 2011, in which their investments were recorded at cost and the financial statements of the Media Fund were signed reporting that the assets were not impaired. At no time were customers informed about the Film Co.'s serious financial difficulties.
- 2.11 HTJL's customers have not been able to recover their investments or loans and it appears that substantial losses have been incurred.

3 Role

- 3.1 As Chief Operating Officer of HTJL, Mr Treharne's responsibilities included: overall responsibility for the day to day management of the business; the Horizon Group Business Plan; the effective oversight of operational controls; and management responsibility for a number of HTJL's directors and senior team including those responsible for risk, compliance, finance and trust and fund administration.
- 3.2 While remaining as Chief Operating Officer and as a director of HTJL, Mr Treharne was appointed, in May 2010, as a director of the Film Co. He resigned from this post in September 2011. Mr Treharne accepted this appointment notwithstanding neither he, nor his fellow directors, had any experience of the film and media industry. This position was compounded during the period Mr Treharne acted as the sole director to the Film Co.
- 3.3 Mr Treharne spent the majority of his time dealing with the significant issues presented by Bid Co.'s acquisition of the Film Co. As a director of the Film Co. Mr Treharne had a full understanding of its serious financial position.

4 Summary of Findings

- 4.1 The Commission has already concluded that HTJL breached all seven principles of the Codes of Practice for Trust Company Business, including failing to conduct business with integrity, failing to ensure conflicts of interest were managed and failing to act in the best interests of customers. As a director and Chief Operating Officer of HTJL from May 2009, Mr Treharne bears significant responsibility for these failings.
- 4.2 Mr Treharne, as Chief Operating Officer, shares responsibility for the following:
- 4.2.1 a confused and ineffective corporate governance structure;
 - 4.2.2 a failure to oversee and control the business of HTJL through the implementation and monitoring of robust systems and controls;
 - 4.2.3 a failure to realise a Horizon services company was conducting unauthorised financial services business;



4.2.4 a lack of transparency over fees levied to customers; and

4.2.5 a failure to manage risk and to identify and address issues facing HTJL.

Mr Treharne's conduct lacked integrity and competence.

Structure X

4.3 Mr Treharne knew customer monies were used as an investment into the Film Co. either by equity participation or through CLNs. He also knew the Film Co. was only able to remain solvent by HTJL's ability to access customer monies to discharge the Film Co.'s significant creditors. This conduct lacked integrity.

4.4 Mr Treharne knew that customer structures purchasing the Film Co.'s CLNs paid 80% more (the difference between £0.55 and £1.00) than the Bid Co. which he understood to be beneficially owned by HTJL's CEO. The majority of these customers did not know about this significant price difference. This conduct lacked integrity.

4.5 Mr Treharne personally lent monies, on a short term basis, to the Film Co. for the purposes of discharging creditors. This loan was not documented or disclosed to his HTJL colleagues. In accepting repayment of his loan, Mr Treharne knew he was receiving monies from a customer structure which had invested in Structure X. This conduct lacked integrity.

4.6 Mr Treharne, although a director of HTJL, failed to have any regard for the duties he owed to its customers. Mr Treharne neglected his responsibilities to HTJL as a result of the time he devoted to the Film Co. Mr Treharne's conduct lacked integrity.

4.7 Mr Treharne knew HTJL customers received valuations in circumstances where questions had been raised about the reliability of the valuations. Further, Mr Treharne knew there was insufficient information available to HTJL to support the amounts recorded in the valuations. This conduct lacked integrity.

4.8 Mr Treharne acted with a wilful disregard to his fiduciary obligations. He knew that customers' assets, including those of vulnerable individuals, were used to reduce the risks to which a number of HTJL's UHNWI customers were already exposed. This conduct demonstrates a failure to act with integrity and in the best interests of customers.

4.9 As a result of the conduct of Mr Treharne and others, HTJL's customers face the loss of very significant sums of money.

Risk and compliance

4.10 Mr Treharne failed to discharge his management responsibility for HTJL's risk and compliance function. This included a failure to identify, document and manage the serious and pervasive conflicts of interest which included:

4.10.1 HTJL's provision of trust company business services to the Film Co.'s former CEO and principal shareholder;



- 4.10.2 Bid Co.'s acquisition of the Film Co. was made, at least in part, to protect some of the UHNWI customers, principally those customers who had invested in the Media Fund;
- 4.10.3 the first ranking charge over the Film Co.'s media rights was in favour of a company controlled by HTJL for the benefit of one of its UHNWI customers;
- 4.10.4 officers of HTJL acted as directors of the Film Co. and HTJL; and
- 4.10.5 HTJL's CEO claimed to be the beneficial owner of Bid Co.
- 4.10.6 Mr Treharne failed to ensure HTJL had robust arrangements for complying with the legal and regulatory regime. This conduct lacked competence.

5 Conclusions

- 5.1 The Commission has therefore concluded that, in all the circumstances, Mr Treharne acted without integrity, and his displayed level of incompetence was of the most serious kind.

6 Sanction

- 6.1 The directions prohibit Mr Treharne from performing any function, holding any position or being employed by any business licensed to conduct financial services business in Jersey.
- 6.2 The directions shall remain in force until such time as Mr Treharne successfully applies to the Commission, pursuant to Article 23(6) of the FS(J)L, for a variance or withdrawal of the directions.
- 6.3 Mr Treharne will commit an offence, under Article 23(15) of the FS(J)L, in the event he fails to comply with the provisions of the directions.
- 6.4 Pursuant to Article 23(15A) of the FS(J)L, any person who allows Mr Treharne to perform a function, engage in employment or hold a position knowing that such performance, engagement or holding is in contravention of the directions shall be guilty of an offence.

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