



Guernsey Financial  
Services Commission

## Review of Unclaimed Client Money of Collective Investment Schemes

---

*Thematic Review - 2023*



Glossary	
Term	Description
AUA	Assets under Administration
Board of the Scheme/Scheme Board	Refers to the governing body of a Scheme, i.e. it includes a general partner to a limited partnership.
CDD	Customer Due Diligence
Class B Rules	The Authorised Collective Investment Schemes (Class B) Rules and Guidance, 2021
The Commission	The Guernsey Financial Services Commission
Designated Administrator	The Designated Administrator, as defined within the POI Law, appointed to a Scheme.
The Handbook	The Handbook on Countering Financial Crime and Terrorist Financing
HMRG	His Majesty's Receiver General
IFPD	The Investment, Fiduciary and Pension Division of the Commission
Money/Monies	Cash or cash equivalents.
NAV	Net Asset Value
POI Law	The Protection of Investors (Bailiwick of Guernsey) Law, 2020
Scheme	Collective Investment Scheme, as defined within the POI Law.
Thematic Review	Refers to this Thematic Review.
Unallocated Money/Monies	Investor money amounts where no rightful owner has been determined or where the rightful owner is otherwise unknown, e.g. amounts are too small to split equitably amongst investors.
Unclaimed Money/Monies	Investor money amounts where the rightful owner is known but contact has been lost, or remain unpaid because meaningful engagement can no longer be obtained.

## Executive summary

---

During 2022 and Q1 2023, the Commission undertook a Thematic Review in order to gain a better understanding of the value of unclaimed and unallocated monies in the Collective Investment Scheme industry in Guernsey and how these monies are dealt with by the various relevant parties, primarily being the Designated Administrators, Scheme Boards and Liquidators. The Commission's objectives in undertaking the Thematic Review were to:

- determine the reasons why redemption proceeds and other client money amounts may go unclaimed or unallocated;
- determine the magnitude of the issue across the Collective Investment Scheme industry;
- understand the adequacy of licensees' internal policies and procedures regarding unclaimed client money; and
- gain an understanding of the content and consistency of scheme particulars regarding unclaimed redemptions or dividends.

The scope of the Thematic Review was limited to authorised and registered Schemes, which included Schemes whose authorisation/registration had been suspended but not those which had been surrendered. The Commission is also aware that historically it has not always been notified of Unclaimed Money during a Scheme's surrender request (pages 17-18). Consequently the Commission is conscious that this Thematic Review will have captured some Schemes currently in wind down but not others (if their authorisation/registration has been surrendered) and not captured surrendered schemes where all monies other than unclaimed monies have been distributed.

The intention of the Thematic Review, this report and the proposed consultation paper (discussed further on in this report) is to prevent issues in the future with regard to Unclaimed Money and in particular to prevent similar cases to those discussed on page six.

### **What did the Commission find?**

#### **A) As a proportion of the Collective Investment Scheme industry's overall NAV, Unclaimed Money does not represent a significant percentage.**

As at 31 December 2022, the total NAV of all authorised and registered Schemes was £291.7 billion. The total value of Unclaimed Monies identified during the Thematic Review was £16.6 million, which represents 0.0057% of the total NAV of all regulated Schemes.

Whilst in proportion the aforementioned figure seems low, it is important to note the limitations of the scope as discussed above. Further, it is important to consider it from an investor's perspective: industry-wide the figure may seem small, but it will not be small for the individual investors, some of whom will be retail.

The total number of regulated Schemes as at 31 December 2022 was 968, and with Unclaimed Money in 38 of these Schemes (3.93%).

#### **B) Unclaimed Money appears to be a more prevalent issue with open-ended, older Collective Investment Schemes.**

Unclaimed Monies are present in 11.51% of our open-ended Schemes, but only present in 2.17% of our closed-ended Schemes.

Further, the Commission identified that out of the 38 Schemes which held Unclaimed Monies, all Schemes other than one were authorised or registered by the Commission before 2017.

**C) Clear provisions within the Scheme’s constitutional documents regarding the handling of Unclaimed Money makes administration and the decision-making process considerably easier.**

There was not a consistent approach within the constitutional documents of the affected Schemes. Very few Schemes had clear provisions covering all scenarios of Unclaimed Money, others had provisions for handling unclaimed dividends only and some had no provisions at all. The consensus was that having clear provisions within the Scheme Particulars covering all scenarios of Unclaimed Money would provide a solid defensible ground for relevant parties as well as providing a quicker solution to deal with the issue.

**D) Unclaimed Money is not dealt with in a consistent manner within the Collective Investment Scheme Industry.**

In addition to Key Finding C, the Commission identified that Designated Administrators and Scheme Boards deal with Unclaimed Money differently; this is both in terms of how often they attempt to trace investors to whom they believe the Unclaimed Money belongs as well as in terms of how the Designated Administrators communicate Unclaimed Money to Scheme Boards.

The Commission is mindful that, other than in the Class B Rules, there is no guidance or rules relating to Unclaimed Money for Guernsey Schemes. The Commission will consider issuing a consultation paper which will seek industry’s views on key points which may be covered in any future guidance or rules.

## Contents

---

Executive summary .....	3
Background .....	6
Scope.....	6
Approach.....	7
Analysis .....	8
Information Required at point of Surrender.....	17
Next Steps .....	19

## Background

---

Thematic Reviews are used by the Commission as a tool to gather information on specific aspects of the Bailiwick's financial services sector. The reviews also provide a means by which the Commission can share observations with industry on good practice and areas for improvement and engage with a wide selection of regulated entities.

This Thematic Review was predominantly triggered by a case relating to Unclaimed Money which surfaced in 2021. A former regulated entity ("Company A") was compulsorily struck off from the Guernsey Registry in 2021. Company A acted as Investment Manager to a former regulated Collective Investment Scheme which was dissolved in 2012 following a compulsory redemption. Because it did not hold up to date CDD for all investors, some investors' cash redemption proceeds were held in a client account of Company A following the compulsory redemption awaiting receipt of the requisite documentation.

The Commission understands that there was no further communication with these investors between 2012-2021 and, at the time of Company A's strike off, there were unclaimed proceeds equivalent to circa. £4.5million belonging to over 1000 individuals. As Company A has now been struck off, there is no party who can easily give instructions for the movement of these monies. A small number of investors to whom it is believed some of these monies belong have approached the Commission and/or the former Administrator. In order to facilitate payments to these investors and to facilitate potential future payments, the Commission made an application on 30 June 2023 to the Royal Court to appoint an independent trustee to deal with these monies.

The Commission considers that it would not be good for the Bailiwick's reputation if other situations like this arose in the future. The Commission has also seen a small number of other cases where either licensee inaction and/or poor record keeping has led to small residual balances on account where contact has been lost, or where the Scheme has reached the end of its life but residual balances remain.

The protection of investors' money is a key objective of the Commission and the Commission considered it necessary to explore this previously unresearched area. Even where Unclaimed Monies may not represent a large percentage of total NAV, the Commission is conscious they may represent significant sums to the individual investors.

## Scope

---

The Commission sent the initial questionnaire to a sample of 41 Designated Administrators. This included the vast majority of Designated Administrators regulated by the Commission as at July 2022; the few that were excluded were for specific reasons such as being a relatively new Designated Administrator. All Schemes must have a Guernsey Designated Administrator appointed, therefore the Commission intended to capture all relevant Schemes by sending the initial questionnaire to the 41 Designated Administrators.

The Commission asked Designated Administrators to include all active Guernsey Schemes, including any whose authorisation/registration had been suspended, but excluding any whose authorisation or registration had been surrendered or revoked.

All 41 Designated Administrators responded to the initial questionnaire.

## Approach

---

The Thematic Review consisted of four stages:

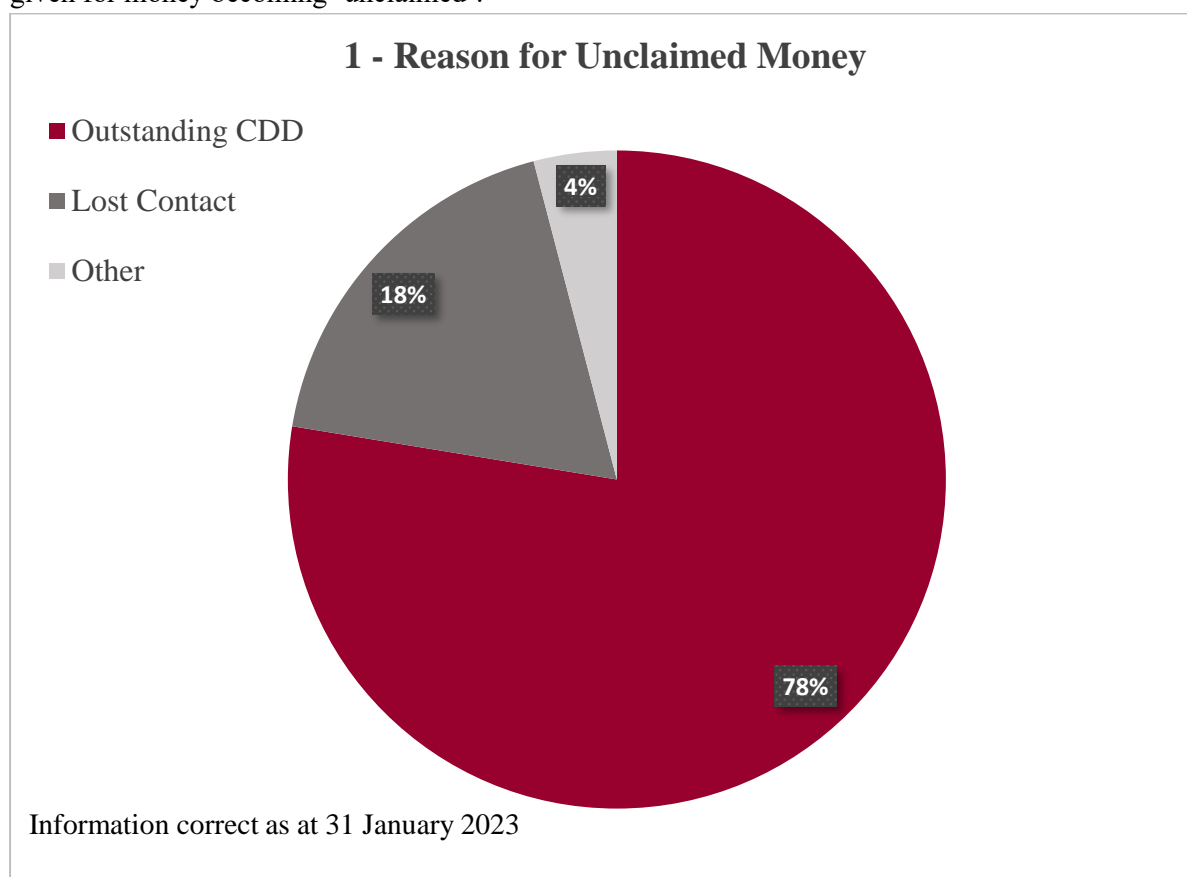
1. As an initial information-gathering exercise, a questionnaire was sent to the 41 Designated Administrators (July 2022) to establish whether they acted for any Schemes which held Unclaimed or Unallocated Money. This questionnaire also asked for the overall amount of unclaimed or unallocated redemption proceeds outstanding for these Schemes, and the total number of investors which these proceeds related to.
2. As only 11 Designated Administrators confirmed they acted for Schemes which had unclaimed or unallocated monies, the Commission engaged further with each of these between December 2022 and April 2023. The Commission held meetings with nine of these Designated Administrators and asked them a further set of standard questions as well as some more tailored questions concerning the relevant Schemes holding Unclaimed Money for which they act. The other two Designated Administrators were asked these questions through correspondence.
3. Meetings were then held with other stakeholders including two Scheme Boards and three liquidators. The Commission met with the Board of the Scheme with the largest balance of Unclaimed Money and one other randomly selected Scheme which was not a Class B Scheme. The Commission also met with liquidators whom it believed would have had previous dealings with Schemes which had Unclaimed Money.
4. Finally, the Commission considered international standards regarding Unclaimed Money, including the FCA's Client Money Rules, the IOSCO report on Good Practices for the Termination of Investment Funds and the ICAEW Clients' Money Regulations, and looked at other similar jurisdictions to see whether they have legislation concerning Unclaimed Money in relation to Collective Investment Schemes.

## Analysis

---

Following the questionnaire and meetings with the Designated Administrators, it was apparent that no Designated Administrator provided administration services for Schemes which had unallocated monies other than one which related to surrendered Schemes and therefore did not fall within the scope of the thematic review. As such the Commission will make no further reference to unallocated monies.

Unclaimed Money was more common, with eleven out of 41 Designated Administrators confirming they act for Schemes with Unclaimed Money. The below graph [1] shows a summary of the reasons given for money becoming ‘unclaimed’.



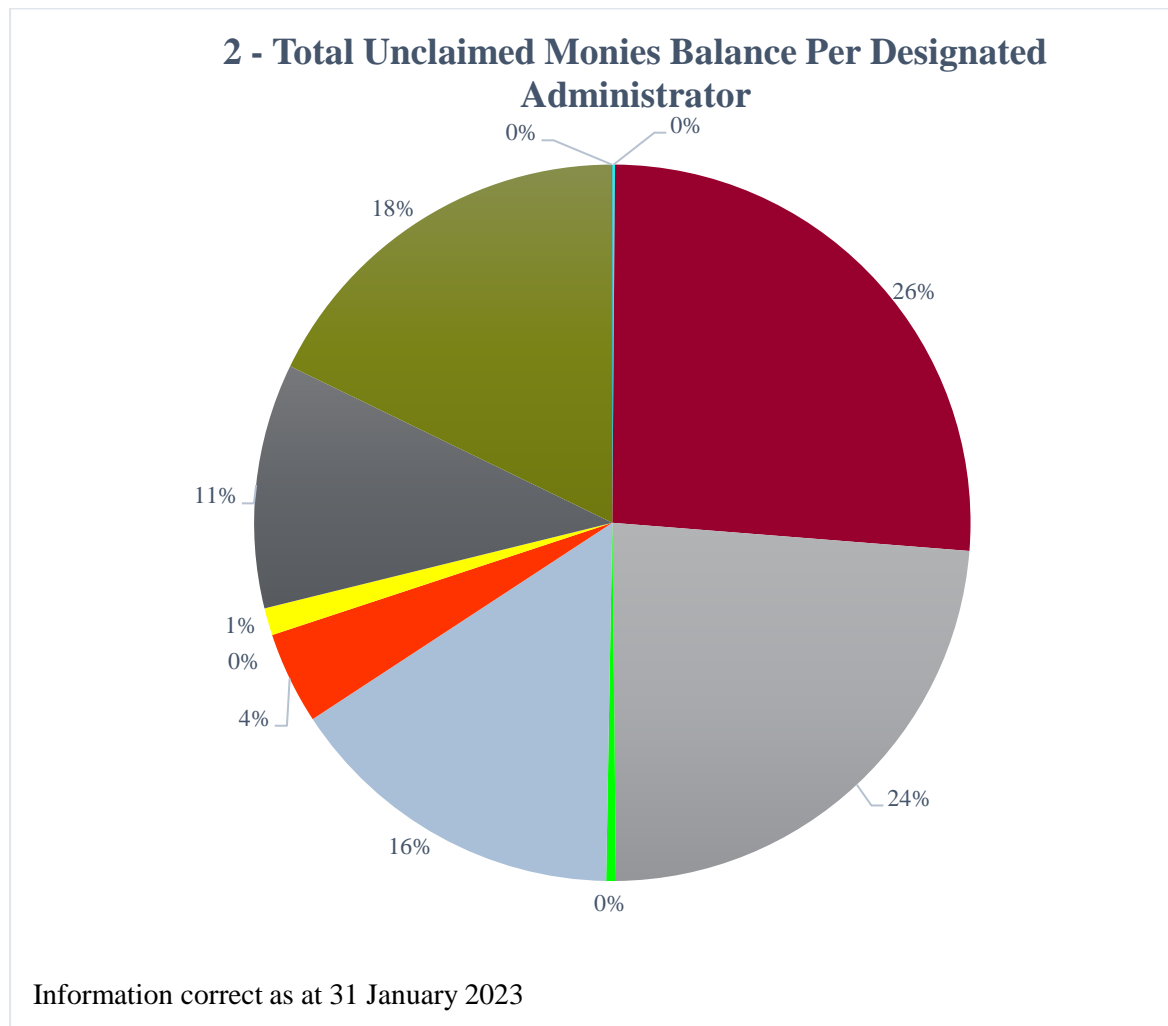
Outstanding CDD is the most significant contributing factor, though it should be noted that outstanding CDD could be as a result of the Designated Administrator having lost contact with the investor; it is also due to other reasons such as the investor either outright refusing to provide CDD documentation or the investor considering the distribution amount too small at this time to warrant the effort of providing up to date CDD. This was classified as Unclaimed Money because, in line with 4.7 of the Handbook, the money will not be paid out by the Designated Administrator until the CDD is provided, and the Commission has seen cases where the CDD is never provided therefore the money remains unclaimed at the time of liquidation. ‘Other’ reasons given were mainly linked to deceased investors, where the Designated Administrator was awaiting probate documents.



**Key Finding A: As a proportion of the Collective Investment Scheme industry’s overall NAV, Unclaimed Money does not represent a significant percentage.**

As at 31 December 2022, the total NAV of all regulated Schemes<sup>1</sup> was £291.7billion. The total value of Unclaimed Monies identified during the Thematic Review was £16.6million, which represents 0.0057% of the total NAV of all regulated Schemes.

The total number of regulated Schemes as at 31 December 2022 was 968, and there is Unclaimed Money within 38 of these Schemes (3.93%).

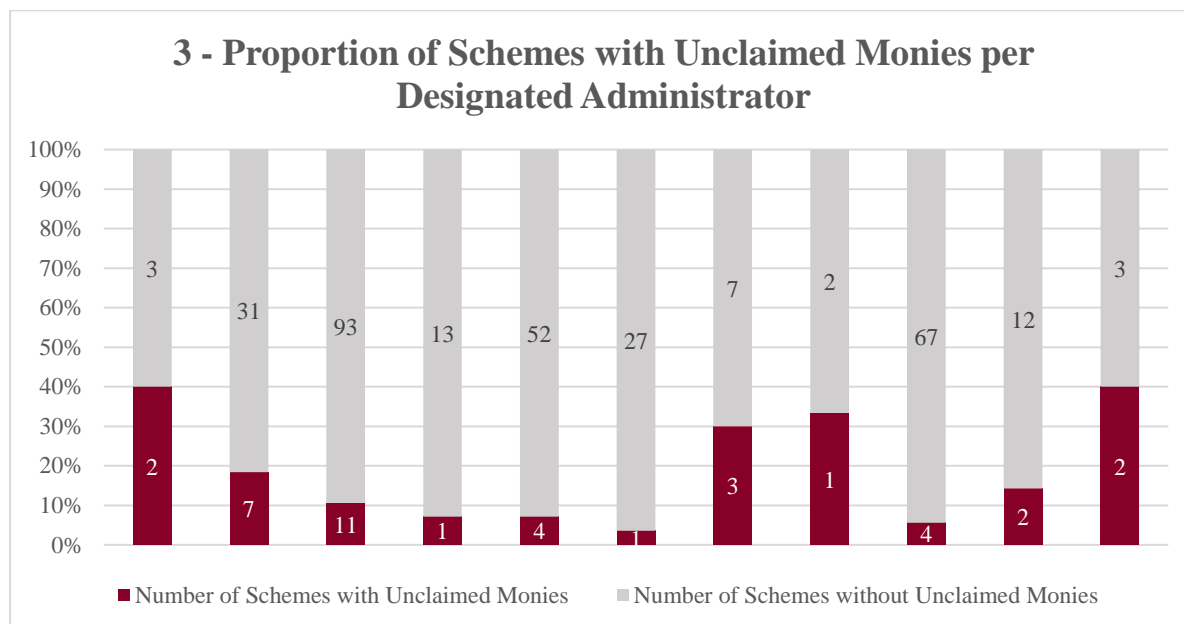


It will be noted from the above graph [2] that there are three Designated Administrators with a high proportion of the Unclaimed Monies balance; for two of these, this is to be expected in proportion as they are two of our largest Designated Administrators and represent a small proportion of their total assets under administration (less than 0.06%).

For the other Designated Administrator, whilst the Unclaimed Money still represents a small proportion of its total assets under administration (0.99%), it is the largest proportion of assets under administration compared to any other Designated Administrator. The Unclaimed Money relates to two Schemes; approximately equal in value but the Unclaimed Money for one Scheme relates to

<sup>1</sup> Suspended Schemes are included in the total number of Schemes figures but not in any of the AUA figures throughout this report. This is because suspended funds did not need to report their NAVs up until 31 December 2022 so the Commission does not hold this data. They are included in the number of Schemes figures because this data is available and they are within the scope of the Thematic Review.

nearly 200 investors, whereas the other Scheme only relates to one investor. The Unclaimed Monies were as a result of compulsory redemptions and the principal documents of the Schemes are clear on what should happen to the monies in the event they remain unclaimed.



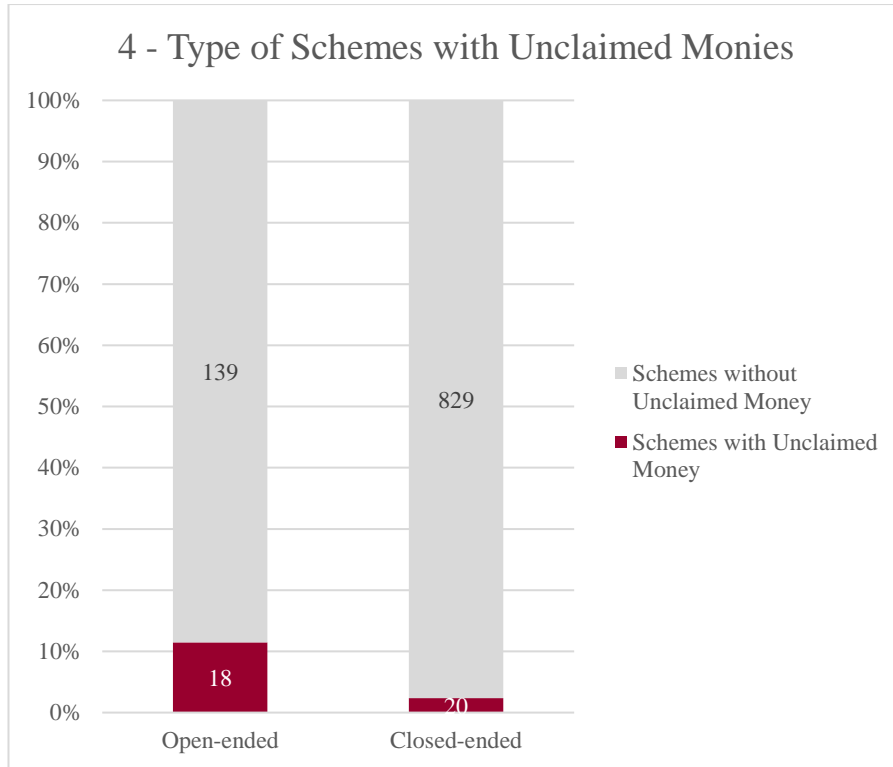
As can be seen above [3], of the 11 Designated Administrators who stated they have Unclaimed Money, some have a higher proportion of Schemes with Unclaimed Money than others. The Commission found that a majority of the smaller Designated Administrators, including the Designated Administrator with two out of five Schemes with Unclaimed Money and the Designated Administrator with one out of three with Unclaimed Money, considered Unclaimed Money within their administered Schemes as more of a risk to their overall business and were actively seeking a resolution.

Overall, based on the above, the Commission has concluded that Unclaimed Money is not a significant issue in the regulated collective investment Scheme industry in terms of relative value. However, there is a reputational risk associated with Unclaimed Monies as discussed earlier in this report and the Commission still needs to consider the protection of investors with these Unclaimed Monies; whilst they do not represent a large percentage of total NAV, they will be significant sums to the individual investors, particularly to a retail investor. Further, it has only been possible for Designated Administrators to detail Unclaimed Money they were aware of at the time of the questionnaire, which will be as a result of either a distribution or redemption, or if the Designated Administrator is blocking an investor because it has not provided the required CDD. Some Designated Administrators noted that their figures would likely be much higher if they were to wind down a Scheme.

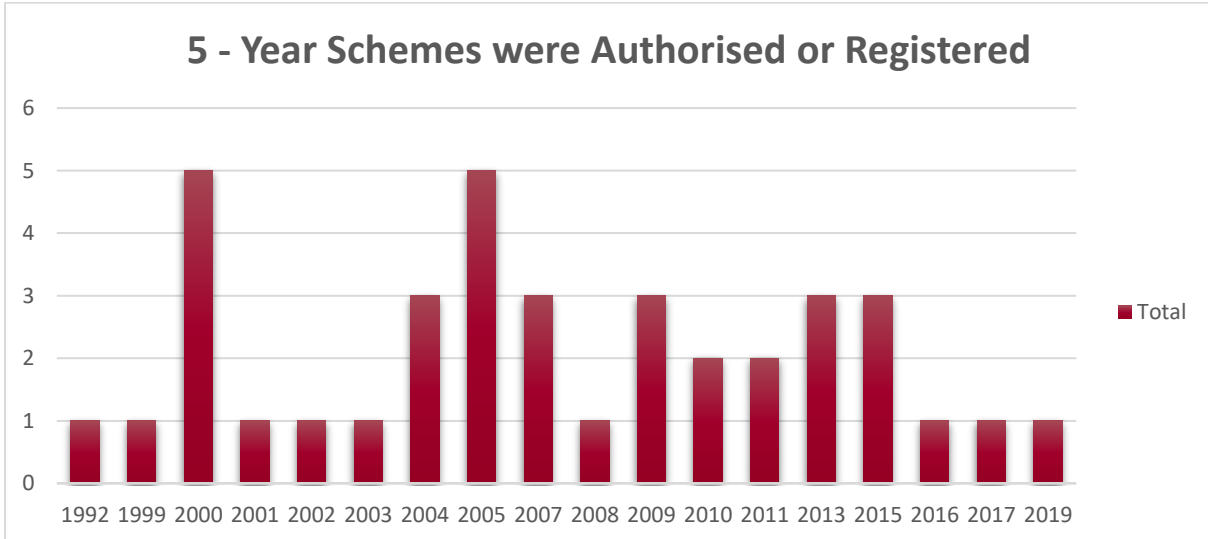
Additionally, although outside the scope of the Thematic Review, it was noted by Designated Administrators that certain POI-licensed fund managers which they administer hold unclaimed or unallocated monies in relation to non-Guernsey funds and surrendered Schemes.

**Key Finding B: Unclaimed Money appears to be a more prevalent issue with open-ended, older Schemes.**

The Commission found that Unclaimed Money is more prevalent within open-ended Schemes, as represented in the graph below. As open-ended Schemes are generally more likely to pay out dividends, it is possible that Unclaimed Money is more likely to be identified during the life of an open-ended Scheme.



Further, the Commission identified that the 38 Schemes affected were older Schemes: other than one Scheme, all Schemes which held Unclaimed Money were authorised or registered by the Commission before 2017.



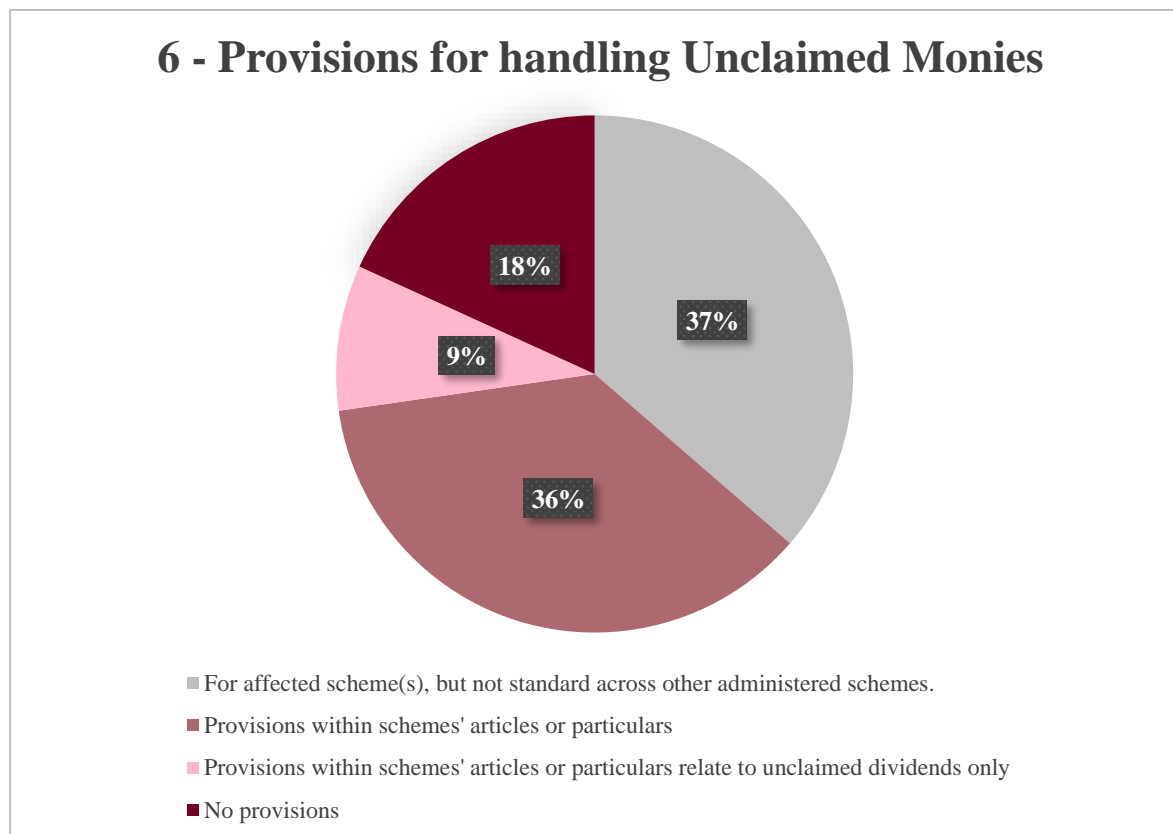
The Commission considers that these two characteristics are interlinked: closed-ended Schemes with a finite life tend to have professional, institutional investors who are unlikely to lose contact with the Manager or Designated Administrator whereas open-ended Schemes with an infinite term may now be older Schemes with a larger, individual investor base, some of which may have died during the life of the Scheme. This view was echoed by Designated Administrators during our meetings. The Commission considers that open-ended Schemes are more likely to have retail investors due to the Class B Rules in particular which permit these types of investors.

A further point to consider is that older Schemes are more likely to have had different parties appointed throughout their terms; the Commission has seen that where a Scheme has changed its Designated Administrator a number of times, there is a greater likelihood of record-keeping issues.

**Key Finding C: Clear provisions within the Scheme’s constitutional documents regarding the handling of Unclaimed Money makes administration and the decision-making process considerably easier.**

Some Schemes had provisions within the Scheme Particulars or Articles of Incorporation (or equivalent documentation) which dictated that any monies unclaimed after a period of ‘x’ years could be paid back into the Collective Investment Scheme; others did not specify a course of action that would be taken, only that after ‘x’ number of years the holder no longer had a right to the monies. The Designated Administrators and Scheme Boards found that where the process was clearly outlined in the Scheme documentation, it made the decision-making process simple in that the investor had subscribed to the Scheme on this basis, and this was a legal document which could be relied upon if challenged. The Designated Administrators and Scheme Boards found it more difficult where the Scheme documentation did not specify a particular action to be taken after the relevant timeframe or contained no provisions at all.

The Liquidators confirmed they would take direction from the Scheme documents in the first instance when considering how to deal with Unclaimed Monies during a liquidation. They also all agreed that it would be their decision as to how to deal with the monies, rather than the Board of the Scheme or Designated Administrator, by the time they are appointed to the Scheme. Nevertheless, they would tend to meet with the relevant parties prior to taking on the appointment and this matter would be discussed if there were no provisions in the relevant Scheme documentation. One liquidator gave an example of a previous case whereby the Board of the Scheme passed a special resolution regarding this matter prior to entering into liquidation.



Out of the 11 Designated Administrators, two noted that their administered schemes’ constitutional documents contained no provisions at all, one noted that the constitutional documents contained provisions for unclaimed dividends only (i.e. not compulsory redemptions), four Designated Administrators thought there were provisions within all of their administered schemes’ constitutional documents and the remaining four noted that there were provisions in the constitutional documents for the affected Schemes, but its other administered Schemes either contained no provisions at all or

they were different to the affected Schemes. To provide further clarity to the latter point, these Designated Administrators explained that the affected Schemes contained provisions due to the nature of the Schemes, for example it was always intended that they would pay out dividends through the life of the Scheme therefore it was considered appropriate to include a clause regarding unclaimed dividends.

It is worth noting that some of the Scheme Particulars demonstrated in the graph above state that Unclaimed Money will be paid back into the Scheme or cell; this is problematic where the Scheme Board has since closed the cells. The Commission is aware that this was the case for one of the affected Schemes and so the Scheme Particulars in this regard were redundant.



### **GOOD PRACTICE**

One of the affected Schemes' Particulars noted that:

*All unclaimed dividends and distributions may be invested or otherwise made use of by the Board for the benefit of the Company until claimed. All dividends unclaimed on the earlier of (i) a period of seven years after the date when it first became due for payment and (ii) the date on which the Company is wound-up, shall be forfeited and shall revert to the Company without the necessity for any declaration or other action on the part of the Company.*

Due to nearing the seven year time period, an AGM was called in 2021 whereby a Special Resolution was passed which stated that the Board of the Scheme be and hereby are authorised to donate any unclaimed dividends and distributions which remain unclaimed for a period of seven years after the payment date to one or more charities as decided by the directors in their discretion from time to time, subject to an annual overall limit of £10,000.

The Commission considers it good practice for the Scheme Particulars or other constitutional documents (whichever is applicable) to include provisions for handling all types of unclaimed balances. Such provisions could consider the timeframe before taking action with Unclaimed Monies, and detail what action will be taken. It would be prudent for the constitutional documents to take account of what would happen if the cell or Scheme closed during this time period and for there to be appropriate safeguards put in place both to protect the monies until this timeframe is reached as well as providing a mechanism through which the monies can be claimed and distributed during this timeframe. Having such a provision should not, of course, be regarded as a substitute for making good efforts to keep in touch with the investors and having up to date details for them. Where Schemes contained provisions, the timeframe for returning unclaimed balances back to the Scheme or otherwise disposing of them varied from 6-12 years. The Commission asked all 41 Designated Administrators what timeframe they thought was appropriate when reconsidering it now (at the time of answering the questionnaire). These answers are displayed below:



Those who answered ‘0’ did not hold any Unclaimed Monies, other than one Designated Administrator who did not think it was its responsibility to decide.

**Key Finding D: Unclaimed Money is not dealt with in a consistent manner within the Collective Investment Scheme Industry.**

This follows on from the above point. As well as Scheme documentation not being consistent, Designated Administrators and Scheme Boards deal with Unclaimed Money differently. For example, one Designated Administrator has made no efforts to contact investors since the initial unsuccessful distribution attempts sometime between 2011-2014. Another Designated Administrator has a dedicated employee within the firm responsible for tracing Unclaimed Money across its wider group. Several Designated Administrators were somewhere in between, whereby they would attempt to contact investors once per year with no further investigation. Most Designated Administrators thought it was their responsibility to make reasonable efforts to trace investors but a minority considered it was purely the investor’s responsibility to keep its contact details up to date.



**GOOD PRACTICE**

One Designated Administrator had an internal policy specifically for handling unclaimed client money, which details how often investors should be contacted. This is reviewed by a law firm.

Having an internal policy in place ensures consistency and independent reviews of all policies can be beneficial, whether by a law firm, internal audit or another third party.

The same firm noted that it had sought advice from three different law firms in the past and all three gave different opinions, which demonstrates this is a grey area.



**GOOD PRACTICE**

One Scheme has begun including a note within the Directors’ Report of the audited financial statements prompting investors to get in touch. This is a Scheme with retail investors only and due to the small holdings, tracing agents were not considered a viable option. It was considered by the Scheme that investors are most likely to read the Directors’ Report. Prior to this, unsuccessful individual attempts were made to contact the investors, but the Designated Administrator consulted with the board of the Scheme and this was stopped due to the high costs involved.

The above approach would appear to the Commission to be a sensible and cost-effective approach, if the Scheme is listed as the distribution of the audited financial statements does not rely upon any contact details from the investor.



### **AREA FOR IMPROVEMENT**

One Designated Administrator had not made any contact attempts since the initial unsuccessful payments between 2011-2014.

The Commission notes that the level of engagement from the Designated Administrator is likely to depend on the contents of the constitutional documentation and it would be a decision for the Designated Administrator and Scheme Board to make, and document, in conjunction with any other relevant parties. The level of engagement needs to be proportionate to the sums and type of investor involved. However, generally the Commission would expect the Designated Administrator or another relevant party to the Scheme to make reasonable, demonstrable attempts to trace the investor(s) during the relevant timeframe and throughout the Thematic Review, the Commission noted some good progress being made in reducing the unclaimed balances as a result of tracing attempts. Without being prescriptive, such reasonable attempts could include a limited number of contact attempts prior to issuing a 'final notice', including a note within the audited financial statements, or issuing a stock exchange announcement. It would be prudent to document the steps the relevant party will take within the Scheme's constitutional documentation.



### **GOOD PRACTICE**

One Designated Administrator had reduced the unclaimed balance from £350,000, which was the amount given when the initial questionnaire was submitted in August 2022, split between 77 investors, to £264,142 split between 65 investors by the time the Commission met with them in December 2022. Another Scheme had reduced its unclaimed balance from c. £3.7million split between 120 investors at the time the Commission met with the Designated Administrator in December 2022 to c. £3million split between 112 investors when it met with the Board of the Scheme in February 2023.

Whilst there were different approaches taken by Designated Administrators in terms of the work undertaken with regard to Unclaimed Money, no Designated Administrator charged extra for contacting investors; it was included within their standard administration fee. Where additional costs were involved, such as tracing agents, Designated Administrators thought this should be paid for either by the Scheme or out of the Unclaimed Money balance. The Commission concurs with the approach of not charging extra for making reasonable attempts to contact an investor, however it understands that in some circumstances the relevant party may seek to recoup funds from the Scheme or unclaimed balance to cover extenuating costs such as the use of tracing agents to avoid disadvantaging other investors.

Out of the two liquidators which the Commission met with which had experience dealing with Unclaimed Money, one stated that it charged on a time-spent basis whereas the other explained that it tends to charge a fixed fee out of the NAV of the Scheme; if work starts to exceed that fee, they may give notice to the investors who are not responding that they will take additional fees out of their remaining balances if they do not respond in, for example, 28 days. Both approaches ensure that investors who do respond are not unfairly disadvantaged, i.e. distributions can be made to them before extra fees need to be charged.

Many Designated Administrators noted that they keep Scheme Boards informed of the Unclaimed Monies as part of their quarterly administration reports, but again this was not a common approach. Nonetheless, all Designated Administrators noted that the Board of the Scheme would play a pivotal role in any decision-making regarding the Unclaimed Money.



### **GOOD PRACTICE**

One Designated Administrator noted that a full breakdown of the Unclaimed Monies is provided within the board pack at each quarterly board meeting. Coincidentally, the Commission interviewed this Scheme board and all members were able to clearly articulate the situation regarding the Unclaimed Monies.

As all Designated Administrators noted that the Board of the Scheme would play a pivotal role in any decision-making regarding the Unclaimed Money, and as it is likely that the Designated Administrator will be the first party privy to money being unclaimed within the Scheme, the Commission considers it imperative that the Designated Administrator keeps the Board of the Scheme updated on Unclaimed Money on a regular basis throughout the life of the Scheme.



### **AREA FOR IMPROVEMENT**

One Scheme Board was completely unaware of the Unclaimed Monies in relation to the Scheme until the Thematic Review.

This Scheme Board only became aware of the matter because the Commission requested to meet with members of the Board and they carried out some research ahead of the meeting.

Another area of inconsistency identified is at the end of the life of a Scheme. The Commission is aware that it is not always informed that there is Unclaimed Money when it receives a surrender request. One Designated Administrator included a surrendered Scheme within its questionnaire response; surrendered Schemes were not within the scope of this thematic, so this Scheme was discounted from the figures. Nevertheless, the Commission reviewed its records and found that when the surrender request was received in 2020, the liquidator's final statement included no reference to Unclaimed Monies and stated that all monies had been distributed. Technically this was not incorrect as the Commission understands the Manager of this Scheme is holding the money (it is in a client account in the name of the Designated Administrator, on behalf of the Manager rather than the Scheme). The Scheme Particulars for this specific Scheme state that Unclaimed Money would be returned to the company, being the Scheme, after six years but as the company has now been dissolved the Designated Administrator was unsure how it would deal with this money when the six-year timeframe is reached.

Going forward, the Commission will request details of any Unclaimed Money when considering a Scheme surrender request, as explained further below.



## Information Required at point of Surrender

---

On page six the Commission discusses a case which was a trigger for this Thematic Review and the Commission has considered how it can reduce the risk of a similar case reoccurring. Whilst this report will hopefully encourage a more consistent approach for future schemes, it is recognised that it does not wholly address existing schemes which do not have provisions in the scheme particulars that can be relied upon. It is also recognised that the Commission has only been able to obtain information on Unclaimed Money which could reasonably be expected to be known about; Schemes may not know the full extent of Unclaimed Money until the wind down process begins.

Further, the Commission is aware that it is not always informed that there are Unclaimed Monies remaining in a Scheme when it applies to the Commission to surrender its authorisation or registration. Below are examples of final liquidator's statements, which the Commission generally requires prior to considering a surrender of authorisation or registration:

### **Income and Expenditure Account 31 December 2019 to 29 May 2020**

<b>INCOME</b>	<b>Total (£)</b>
	<hr/>
	<b>0.00</b>
	<hr/>
<b>EXPENDITURE</b>	
	<hr/>
	<b>0.00</b>
	<hr/>
<b>Balance</b>	<b>0.00</b>
	<hr/>
<b>MADE UP AS FOLLOWS</b>	
	<hr/>
	<b>0.00</b>
	<hr/> <hr/>

Based on the above, the Commission would consider that all monies have been distributed to investors in the Scheme and, subject to there being no other outstanding regulatory concerns in respect of the Scheme, the Commission would proceed with the surrender of authorisation. In respect of this Scheme, the Commission did indeed proceed with the surrender in 2020.

The Designated Administrator of this Scheme included this entity within its questionnaire; technically it did not need to do this as surrendered schemes are outside the scope of this Thematic Review. Nonetheless, the Designated Administrator noted that this Scheme still has c. £718,000 client money remaining. The Commission would not have known this from the above statement. The monies in respect of this Scheme are being held by the Manager, which is still a client of, and administered by, the Designated Administrator, which is why the Designated Administrator is still aware of the issue and why the balance shows as '0.00' (because the monies have been transferred to the Manager). The Scheme Particulars for this specific Scheme state that Unclaimed Money would be returned to the company, being the Scheme, after six years but as the company has now been dissolved the Designated Administrator was unsure how it would deal with this money when the six-year timeframe is reached.

More recently the same liquidator provided the below statement to the Commission in relation to a different Scheme:

**Liquidators' Summary of Receipts and Payments**  
From 15 March 2017 To 26 September 2022

	Notes	Previous Period From 15/03/2017 To 11/06/2021 Total (€)	Current Period From 11/06/2021 To 26/09/2022 Total (€)	Cummulative From 15/3/2017 To 26/09/2022 Total (€)
<b>RECEIPTS</b>				
Cash at Bank		16,501,673.94	-	16,501,673.94
		<u>16,501,673.94</u>	<u>-</u>	<u>16,501,673.94</u>
<b>PAYMENTS</b>				
[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	1	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]
Transfer to [REDACTED] Unclaimed Distributions Account	2	-	153,051.36	153,051.36
		<u>16,086,901.65</u>	<u>414,772.29</u>	<u>16,501,673.94</u>
Balance		<u>414,772.29</u>	<u>(414,772.29)</u>	<u>-</u>

The above statement makes it clear that Unclaimed Monies remain in the Scheme, which provides the Commission with an opportunity to ask how the monies will be dealt with before considering the surrender request.

Given the above and taking account of the limited scope of this Thematic Review, the Commission expects the figure of Unclaimed Money to actually be much higher and there is nothing to suggest that the risk of a case similar to that outlined on page six reoccurring is any less.

We therefore propose to update the Form 228 (Surrender of Scheme Authorisation/Registration). It is proposed that the Form will ask whether the Scheme (or another entity on behalf of the Scheme) holds Unclaimed Money and the proposal for handling the Unclaimed Money going forward. Generally, the Commission would not look favourably on Unclaimed Money being transferred to an entity which has surrendered its licence.

## Next Steps

---

As discussed earlier, the Commission is mindful that there are limited rules and guidance for licensed entities to follow in respect of Unclaimed Money. The Class B Rules contain the following excerpt:

“Any distribution payment which remains unclaimed must be dealt with in accordance with the provisions of the principal documents or, if there are no such provisions, after a period of six years from the date of payment must then be transferred to and become part of the scheme property after which point neither the payee, the holder, or any successor in title, will have any right to except as part of the scheme property.”

Additionally, there are rules within section 9 of the COB Rules relating to client money, though these do not specifically refer to Unclaimed Money.

The Commission asked all Designated Administrators which were subject to further engagement whether they would find it helpful to have a more formal industry standard or guidance in this year. Eight answered that they would find it beneficial and three answered that they would not. Out of the three that answered that they would not find it helpful, one Designated Administrator said this was because there are currently too many different rules to follow and it would result in more work for the Designated Administrators when it is a responsibility for the Board of the Scheme, one noted that its Scheme Particulars contain enough guidance that an industry standard would not be required and the final one noted that given the size and nature of the outstanding balances, it has not felt the need to seek any guidance.

The three liquidators which were interviewed all thought it would be beneficial to have some guidance.

Taking account of the above, as well as the Commission’s findings that industry is not dealing with Unclaimed Money in a consistent manner, the Commission will consider issuing a consultation paper (“the Consultation Paper”) which will seek industry’s views on key points which may be covered in any future guidance or rules.

In drafting this report, the Commission has considered the [IOSCO Report on Good Practices for the Termination of Investment Funds](#) published in 2017 and the Commission will take account of this IOSCO Report when it drafts the Consultation Paper. Notably, the IOSCO Report states the following good practice:

- “Investment fund documentation should set out how the responsible entity will deal with investors who are not contactable at the time a responsible entity decides to terminate an investment fund.”
- “The responsible entity also should have clear procedures around trying to make contact with the investors.”
- While the investor should take reasonable care to ensure that they avoid loss of contact, the responsible entity should detail within the investment fund documentation (i) the procedure to be applied by the responsible entity when attempting to make contact with investors, (ii) how unclaimed amounts will be treated including duration for which these Unclaimed Monies will be held, and (iii) the procedure to be followed once this period has elapsed in accordance with the fund’s documentation and applicable laws and regulations.”
- “It is not considered good practice for unclaimed amounts to be transferred in a manner where they cannot be returned to the investor if he or she subsequently appears within a reasonable time period, unless such transfers are required by law.”