I would agree that any loan which is not lodged by a security of sufficient security equal to the loan and interest on a first charge basis is unauthorised. Having looked at the correspondence at the time I would advise as follows:

The charging provision was put in place following the date Mr Tierney became a participator in the Company, but the effective date of the Charge was from the date the loan facility letter became available to the Company. This is set out in the charging document.

# CHARGING PROVISIONS

The Chargor with full title guarantee charges in favour of the Charge Holders for the payment and discharge of the Secured Liabilities by way of fixed charge the Charged Shares with effect from the date of the loan facility letter.

The second issue is whether the Company was a sponsoring employer for the purposes of the Regulations at the time of the orignal loans. The Employer, Boutique Leisure was not capable of providing benefits in respect of the members of the scheme as contributions were not possible and therefore was no contractual commitment to provide pension benefits under after Mr Tierney became an participator in the firm. The position is therefore viz a viz as follows:

Loan to an Employer that was not a sponsoring employer: £100,000 and £8000  
Loan to an Employer that was a sponsoring employer: £5,000

The pension scheme return was prepared from the information given in the accounts; which did not make a clear distinction on the relationship between the Company and the Scheme at the time the loans were made. It was not until we have reviewed this matter further that the Trustees need to authorise an amendment to the scheme return; in that the loans for £100,000 and £8,000 was to an unconnected party. We therefore consider that the payment of fees in respect of the pension scheme loan represents an unauthorised payments charge; as the security lodged arises from an indirect interest in taxable property.