

CASE NO: CR-2019-BHM-000443 & CR-2019-BHM-000444

**IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS
IN BIRMINGHAM, INSOLVENCY & COMPANIES LIST**

IN THE MATTER OF LENDY LTD (IN ADMINISTRATION)

**AND IN THE MATTER OF SAVING STREAM SECURITY HOLDING LIMITED (IN
ADMINISTRATION)**

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN:

- (1) Damian Webb, Phillip Rodney Sykes and Mark John Wilson as Joint Administrators of
Lendy Ltd (in Administration)**
- (2) Damian Webb, Phillip Rodney Sykes and Mark John Wilson as Joint Administrators of
Saving Stream Security Holding Limited (in Administration)**

Applicants

and

- (1) Lisa Taylor (as a representative respondent on behalf of the Model 2 Investors and
Model 2 Transferees)**
- (2) Christine Mary Laverty, Helen Julia Dale and Trevor Patrick O’Sullivan as Joint Conflict
Administrators of Saving Stream Security Holding Limited (in Administration)**

Respondents

FIFTH WITNESS STATEMENT OF DAMIAN WEBB

I, DAMIAN WEBB of RSM Restructuring Advisory LLP, 25 Farringdon Street, London, EC4A 4AB,
WILL SAY as follows:

Introduction

1. I am a Licensed Insolvency Practitioner and Partner of RSM Restructuring Advisory LLP of the
above address and one of the Administrators of both Lendy and SSSHL.

2. This is my fifth witness statement in the administration of Lendy and SSSL (together “**the Companies**”). My first witness statement dated 1 April 2020 was filed in relation to an application to extend the administration of Lendy. My second, third and fourth witness statements dated 9 July 2020, 16 September 2020 and 28 September 2020 respectively were made on behalf of the Administrators in relation to the current directions application (“**Directions Application**”).
3. I make this witness statement, on behalf of the Administrators, pursuant to paragraph 19 of the First CMC order dated 23 September 2020, in response to the following witness statements filed on behalf of the First Respondent:
 - a. Witness Statement of Norman Melton dated 20 April 2021 (“**Mr Melton’s Statement**”); and
 - b. Witness Statement of Michael Powell dated 21 April 2021 (“**Mr Powell’s Statement**”),
(together “**the First Respondent’s Evidence**”).
4. In preparing this statement, I have had discussions with my legal team over email and video calls. Following our discussions, members of my legal team prepared a first draft of this statement which I have then reviewed and commented on.
5. Save where otherwise stated, I make this witness statement from facts within my own knowledge and/or derived from the documents and investigations referred to below. Where facts and matters are not within my direct knowledge, I believe them to be true and the source of my knowledge is identified. Where I refer to an understanding of the legal position, such understanding is derived from advice provided by Shoosmiths LLP (“**Shoosmiths**”). Any references to such advice are included only with a view to assisting the Court to understand the context in which my evidence is given, and no waiver of privilege is thereby intended. Where I refer to discussions with the remaining Lendy staff in this statement, I am referring to discussions with Alan Darling and Zaydur Rahman.
6. Unless otherwise stated, I shall use the definitions as stated in the List of Issues scheduled to the Third CMC Order dated 31 December 2020.
7. There is produced and shown to me at the exhibit marked “DW5”. A reference to a page number **in bold** within this witness statement is a reference to a page number in exhibit DW5.

8. In accordance with the Court's directions, and in order to ensure all relevant arguments are presented to the Court, the Administrators are advancing arguments on behalf of Model 1 Investors on the understanding that the First Respondent is advancing arguments on behalf of Model 2 Investors and Model 2 Transferees. The Administrators themselves have a neutral position on most of the issues, but it is necessary for someone to advance the arguments on behalf of the Model 1 Investors.
9. This statement:
 - a. responds to a number of points that are raised in the First Respondent's Evidence; and
 - b. updates the Court on factual matters which have arisen since the issuance of the Directions Application.

Sophistication Classification & Investments

10. In my second witness statement ("**Second Statement**") at paragraph 69, I state that when investors registered for the Lendy platform they had to self-certify whether they were sophisticated investors. Those that selected any of the following options were classed as sophisticated and able to apply for the Lendy Wealth product: (i) sophisticated investors (high net worth), (ii) certified sophisticated investors or (iii) self-certified sophisticated investors. If an investor did not select one of these options, then they were regulated consumers and were not entitled to the Lendy Wealth product. This fourth option was referred to as "restricted investors". I have set out below some further information in relation to how these self-certifications operated.
11. I understand from contemporaneous documents that these classifications of sophistication were introduced by Lendy in or around April 2018 as a result of the FCA requesting that this investor information be obtained (see email exchange between Lendy and the FCA at pages **1-3**).
12. For the purposes of preparing for this witness statement, the Joint Administrators requested that Lendy's IT providers provide a further breakdown on the sophistication preferences selected by each of the Model 2 Investors and Model 2 Transferees registered to the Lendy platform. A summary

of the number of investors who identified themselves as sophisticated, not sophisticated or selected neither option, is as follows:

Type of Investor	Number	Percentage
Restricted Investor (consumer)	5,355	27%
Sophisticated Investor	2,902	14.6%
No Choice selected	11,596	58.4%

I understand from Lendy's IT service providers that it is not possible to obtain a further breakdown of the subcategories of sophisticated investor selections. The above table therefore includes in the category of "Sophisticated Investor" all three subcategories of sophisticated investor noted in paragraph 10 above (i.e. (i) sophisticated investors (high net worth), (ii) certified sophisticated investors and (iii) self-certified sophisticated investors).

13. I am informed by the remaining Lendy staff that the large number of "no choice selected" investors could be as a result of the following:

- a. The tick box only came into effect in April 2018, so in the approximate 4 years that Lendy was operating prior to that date, investors had not been asked to identify their sophistication (or lack thereof);
- b. The tick box was not mandatory, and could be skipped; and/or
- c. The "no choice selected" category would also include investors who registered for the Lendy platform but may never in fact have invested.

14. Lendy's IT providers have identified from the Lendy platform data that the following sophistication options were selected by the First Respondent (Ms Taylor), Mr Powell, Mr Melton, and his wife, Anne Melton. I have also included members of Lendy's creditors committee members to provide further relevant information in relation to the Creditors' Committee which supplements the information previously provided in paragraph 233 of my Second Statement:

Name	Selection	ID	Comments
Lisa Taylor	[REDACTED]		
Michael Powell			
Norman Melton			
Anne Melton			
<i>Creditors' committee members</i>			
Alan Jones	[REDACTED]		
Adam Bunch			
Oliver Linch			
Anoop Vasishta			
Bruce Hattersley			

15. I also set out in the table at page 4, a summary of the investments of each of Ms Taylor, Mr Powell, Mr and Mrs Melton, and also (by way of further information) the members of the creditors committee, together with their recoveries to date (“**Investment Comparison Table**”).

16. In addition, I exhibit more detailed spreadsheets of investments made by Mr Melton (at **pages 5-8**) and Mr Powell (at **pages 9-15**).

Interest Payments

17. Mr Melton’s statement, at paragraph 33, states that “*The borrower always paid any interest due to me and to Ann on time.*” To assist the Court, I will clarify how the Administrators understand interest was paid to Model 2 Investors and Model 2 Transferees on the platform.

18. When Borrowers requested a loan from Lendy, the Term Sheet would set out the Loan Amount. The full Loan Amount was generally repayable at maturity as a single “bullet” payment. In addition, the full Loan Amount was not in fact paid to the Borrowers. Rather, Lendy retained part of the Loan Amount to cover interest payable during the term of the loan and Lendy’s arrangement fee (the “**Retained Interest Amount**”). Thus, to take a simple worked example:

- a. A Borrower might borrow £120 from Lendy as agent of the Model 2 Investors (such that £120 was the Loan Amount).
- b. The full £120 was funded by Model 2 Investors (as an investment).
- c. £100 of the Loan Amount was actually paid to the Borrower by Lendy.
- d. £12 was retained by Lendy in respect of interest that was in due course paid by Lendy to the Model 2 Investors during the term of the loan (such that £12 was the “**Investors Retained Interest Amount**”). £8 was retained by Lendy in respect of the arrangement fee and interest which was due to be paid to Lendy during the term of the loan (such that £8 was “**Lendy’s Retained Amount**”).
- e. The Investors Retained Interest Amount retained by Lendy was used to pay interest to the relevant Model 2 Investors (and Model 2 Transferees) during the term of the loan.
- f. The full Loan Amount (£120) would then be repayable by the Borrower at maturity to Lendy as agent of the Model 2 Investors, together with an exit fee payable by the Borrower to Lendy.
- g. If the full Loan Amount (£120) was repaid by the Borrower at maturity, then Lendy would pay that sum to the Model 2 Investors. Lendy would make no profit, but the Model 2 Investors would recover the full Loan Amount (£120) (together with the Investors Retained Interest Amount (£12) that they had already received). Lendy would recover the Lendy Retained Amount and the exit fee.
- h. If the full Loan Amount was not repaid by the Borrower to Lendy until after maturity, then Lendy would charge default interest (in addition to the standard interest due to the Model 2 Investors / Model 2 Transferees and Lendy). That default interest would (subject to the resolution of the issues before the Court on this hearing and the payment of bonus interest (see paragraph 41.b below) be payable in full to Lendy. The full Loan Amount (£120) would also be paid by Lendy to the Model 2 Investors/Transferees.
- i. If the full Loan Amount was not repaid by the Borrower to Lendy on maturity or thereafter, then the Model 2 Investors (and Model 2 Transferees) would have recovered the Investors Retained Interest Amount but would have lost the full Loan Amount.

- j. A further example, based on loan PBL196, demonstrating how the Administrators understand interest was paid to Model 2 Investors / Model 2 Transferees is attach at **page 16**.
19. As a result, during the course of the Loan term, Model 2 Investors and Model 2 Transferees were paid interest on a monthly basis from the Investors Retained Interest Amount.
20. As Lendy obtained sufficient funds at the start of the Loan to pay all interest payments due to the Model Investors/ Model 2 Transferees for the initial duration of the Loan, it was those funds (that had already been raised – i.e. the Investors Retained Interest Amount) that were passed on to Model 2 Investors and Model 2 Transferees as interest payments. To that extent, Model 2 Investors and Model 2 Transferees were not reliant on the Borrower paying interest during the term of the loan. As explained above, a return to creditors over and above the Retained Interest Amount would only be generated if and when the full Loan Amount was repaid at maturity.
21. From my discussions with the Lendy staff, I am unsure of the extent to which this arrangement was disclosed to investors. I note, however, that the section of the Lendy website headed 'Interest on Account' states: *'For in-term loans. Lendy is holding interest paid upfront by the borrower on account in order to service investor's monthly interest.'* (**page 17**).
22. I note, however, that my explanation at paragraphs 18 to 21 above does not relate to the small number of loans where the interest was serviced by the Borrower in full or partially during the term of the loan ("**Serviced Loans**"). As at 27 November 2018, there were four Serviced Loans, being PBL192, PBL199, PBL200 and DFL025. For these Serviced Loans, I understand that as the Borrower was paying interest throughout the term of the Loan, Lendy only sought to raise the net loan amount from Model 2 Investors.
23. The interest payments after the end of the loan term and in the event of a default differed. I discuss this in further detail below at paragraphs 30 - 32.

Responses to Mr Powell's witness statement

24. Most of the matters raised in Mr Powell's Statement are matters which are either accepted as accurate, or which derive from the documentation and therefore are more properly matters for either cross examination of Mr Powell, or legal submissions to be made at the hearing.

25. In particular, in relation to matters that are accepted as accurate, I am advised by the Lendy staff that, on the basis of the information and documents we have seen to date, the comments made in paragraphs 55 and 59 of Mr Powell's Statement appear to be accurate.

26. However, there are a small number of matters on which I comment below, in order to assist the Court to understand the factual position.

Retention of fee by Lendy

27. At paragraph 36.1 of his statement, Mr Powell notes that from 2016 onwards Lendy advertised that it would retain a circa 1% interest fee, which would be paid into the Lendy Provision Reserve. This is correct. I dealt with the Lendy Provision Reserve in paragraphs 23 to 28 of my Second Witness Statement. However, the Lendy Provision Reserve was not ring-fenced or held on trust for the benefit of the Investors, and (as the documents exhibited by Mr Powell make clear) its existence was expressly stated by Lendy not to provide a guarantee for repayment to investors; it was a fund that was to be used entirely at the discretion of Lendy, and therefore was a fund that could also (at Lendy's discretion) be retained for the benefit of Lendy alone.

Confirmation Box

28. At paragraph 52 of his statement, Mr Powell refers to a dialogue box which investors had to click before proceeding to investment. I attach at **pages 18 - 20** a screenshot of the box which appeared on the platform.

29. I understand that after a Model 2 Investor or Model 2 Transferee selected a loan in relation to which it wished to invest, and the amount they wished to invest, a box appeared asking the investor to confirm that they wished to fund the particular loan with £X for a return of £X per month. The confirmation box also stated that the Model 2 Investor/ Model 2 Transferee should read the "Recent Updates" information for the loan. Model 2 Investors and Model 2 Transferees were then required at that stage, i.e. after they had been directed to the relevant information, either to confirm their investment or to cancel it.

Overdue Loan Default Policy

30. Mr Powell exhibits to his statement a copy of the Overdue Loans Default Policy which was effective from 1 March 2017 ("**First Overdue Loan Default Policy**"). As stated at paragraph 73.1 of Mr

Powell's Statement, in the case of loans which were at the end of their term the First Overdue Loan Default Policy suggests that Lendy would pay the interest due to Model 2 Investors and Model 2 Transferees out of its own funds for the first 90 days following the end of the term. After the first 90 days, interest due to Model 2 Investors and Model 2 Transferees would continue to accrue but would only be paid to investors upon payment by the Borrower.

31. I understand from Lendy staff that a further Overdue Loans Policy was put in place from 1 August 2017 ("**Second Overdue Loan Default Policy**") (see pages **21-24**) when it was uploaded to Lendy's website. The Second Overdue Loan Policy differed from the First Overdue Loan Default Policy as it stated that all interest due to Model 2 Investors and Model 2 Transferees after term end would continue to accrue but would only be paid to investors upon payment by the Borrower. Lendy did not agree to pay any interest to Model 2 Investors or Model 2 Transferees from its own account, after the term end.

32. Both the First Overdue Loan Default Policy and the Second Overdue Loan Default Policy at paragraphs 7(a) & 8(a) confirm that a Loan may only be extended whilst in the Tolerance Period (defined as the period after the expiry of the first extension to the loan repayment date) if the borrower or the platform users (i.e the investors) are unable to raise sufficient funds to cover all default interest owed. In addition, at paragraphs 7(b) & 8(b), the Borrower or the platform users must also raise sufficient funds to pay standard interest during the extended term.

Recovery and Collections Policy

33. At paragraph 78 of his statement, Mr Powell refers to a First Recovery Policy. Mr Powell is unable to locate a PDF version of the First Recovery Policy. The Administrators have now located a version of the First Recovery Policy, which was attached to an email from Paul Riddell of Lendy to Liam Brooke (the director of Lendy) on 27 March 2018 (see **page 25**) with the subject heading "C&R policy – new". There is no content within the body of this email and I have therefore not been able to verify whether this version of the policy document was the final version, or whether it was uploaded to the platform.

34. The PDF version of the Collections and Recoveries Policy exhibited at **pages 26-30** includes a section headed "Priority of payments" which provides that Lendy shall utilise monies received from

a Borrower in the following order of priority: (i) capital (loan) amount; (ii) interest accrued; and (iii) bonus accrual.

35. The Second Recovery Policy (as defined in, and exhibited to Mr Powell's Statement) which was in effect from April 2018, is confirmed by Mr Powell and Lendy's records to be a final version of the Collections and Recoveries Policy. In contrast to the First Recovery Policy, the Second Recovery Policy confirms that payments received from a Borrower as a result of any enforcement action will be applied in accordance with the waterfall set out in Lendy's Lender terms and conditions, i.e. the applicable Model 2 Terms.

Default Interest Rate

36. Mr Powell's comments at paragraph 97.2(b) of his statement are correct. I amend paragraph 222(i)(ii) of my Second Statement accordingly.

37. To confirm, the Borrower is required to pay default interest on the unpaid amount at a rate of 3% per month above the aggregate Interest Rate (see clause 6.3 of the Model 2 Loan Agreement) and not 3% of the gross amount of the loan after default. The Interest Rate is defined in the Model 2 Loan Agreement as the rates detailed in the Term Sheet.

Primary & Secondary market

38. At paragraph 36.2 of his Statement, Mr Powell disagrees with certain aspects of my comments about the secondary market in my Second Statement, in particular as set out at paragraph 136 of that statement. Based on my team's investigations of the lending platform, I understand that it is correct that the 'available loans' section of the platform did not explicitly confirm whether a loan part was for sale on the primary market or the secondary market.

39. However, I am informed by the remaining Lendy staff that Model 2 Investors and Model 2 Transferees would have been able to make a reasonable assumption about whether the loan part for sale was being sold on the primary or secondary market, according to the date it was advertised for sale:

- a. If a loan had not completed and a loan part was for sale, it would have been likely that the loan part was being sold on the primary market.

- b. If a loan part was for sale several months after a loan had completed, it would have been likely to be a secondary market purchase.

40. I am also told by the remaining Lendy staff that it would have been open to Investors to have asked Lendy whether the loan part was being sold on the primary or secondary market, although I am unsure whether this happened in practice.

Update following Second Statement

41. Having had the benefit of reading the First Respondent's Evidence, reviewing the books and records of Lendy again and following further discussions with the remaining Lendy staff, there are a small number of points within my Second Statement which I would like to expand on and/or clarify, in order to assist the Court:

Bonus Interest

- a. At paragraph 118 of my Second Statement and page 314 of exhibit DW2 I explained that Lendy offered a bonus of up to 3% of the Model 2 Investors' and Model 2 Transferees' investment, on any loan repaid in full by the Borrower. The First Recovery policy (referred to at paragraph 33 above) appears to suggest that this bonus was calculated as a portion of default interest which accrues after a Loan has passed its due date.
- b. Assuming that bonus payments were actually a portion of default interest, I would like to amend my comment at paragraph 198 of my Second Statement that "investors were never paid any element of default interest". It appears that there were in fact some cases where Model 2 Investors and Model 2 Transferees were paid an element of default interest (i.e. the element which related to bonus interest). I attach at **pages 31-32** a table showing setting out the loans where bonus interest was paid. A total of £506,237,018 was paid to Model 2 Investors and Model 2 Transferees as bonus interest. Bonus interest was paid on 7 DFL loans and 28 DFL loans, ranging between £118.10 and £113,382.20 per loan.

Third Party Claims

- c. At paragraph 160 of my Second Statement, I refer to a number of third party claims which were being considered and pursued. By way of an update for the Court, I exhibit at **pages 33-34** an anonymised schedule of the status of these claims.

FCA Correspondence

- d. During the course of the lead up to the trial of this Directions Application, the FCA have remained copied to all correspondence. I exhibit at **pages 35-42**, copies of emails from/to the FCA which are not currently in evidence.

Lisa Taylor

42. I am informed by Shoosmiths that Ms Lisa Taylor ("**Ms Taylor**"), the First Respondent, has not filed any witness evidence.
43. As noted at paragraph 8 above, in order to ensure that the Court has all of the relevant information for the Directions Application, the Lendy staff have provided me with the correspondence between Lendy and (i) Mr Powell, (ii) Mr and Mrs Melton, and (iii) Ms Taylor.
44. I note that Mr Powell exhibits a lot of correspondence in exhibit MP1. For completeness, I attach any further correspondence between Lendy and (i) Mr Powell (at pages **43-63**) (ii) Mr Melton (at pages **64-67**) and (iii) Mrs Melton (at pages **68-71**) which the Administrators have been able to locate, and which is not already before the Court and a sample of the correspondence between Ms Taylor and Lendy in the period October 2015 to May 2017 (at pages **72-85**).
45. In relation to the correspondence between Lendy and Ms Taylor, I note the following:
 - a. On 27 May 2016, Ms Taylor asked Lendy whether a risk premium was paid on default loans. Lendy responded "*not at the moment, we will see how this loan plays out first, maybe for others.*"
 - b. Ms Taylor had a detailed exchange of emails with Lendy between 27 September 2017 to 3 October 2017 in relation to defaulting loans (see **pages 75-78**), including the following comments:
 - i. Ms Taylor confirmed that her professional background was over 27 years running lending and credit for both residential and commercial properties in a global investment bank.
 - ii. Ms Taylor queried Lendy's default rate at term end in comparison to other peer to peer platforms in the UK, which Ms Taylor invested in at the time. Lendy confirmed

that part of their exit strategy with defaulting loans includes allowing Borrowers further time to pay. Lendy continued to say “*the rationale behind the granting of this further time whilst default interest continues to accrue is that we would prefer to receive repayment a week or two late, rather than proceeding with enforcement action.*” (emphasis added)

iii. Lendy confirmed that they operated a discretionary provision fund and would aim to cover the capital shortfall if appropriate. In addition, Lendy said: “*as stated clearly on the Lendy platform, lenders should not rely on the provision fund when making a decision to lend. Lenders should ensure than any loan they make matches their risk appetite.*”

c. On 23 February 2018, Ms Taylor asked Lendy for information about Lendy’s projected loss severity. Lendy responded to say that they had to be cautious about publishing information so as not to prejudice recoveries.

d. Ms Taylor contacted Lendy on 21 May 2018 to share her concerns about the percentage of her loans in default and stating that there must be an issue with the valuations.

Realisations and Anticipated Recoveries

46. By way of an update to paragraphs 156, 224 & 225 of my Second Statement, I attach a **pages 86-88** a schedule of realisations and anticipated realisations to date.

47. The total gross assets realisations (for loans which have been recovered and partially distributed, or recovered but not yet distributed) is £45,506,706.50, of which £4,080,000 relates to gross Model 1 Loan realisations. There are a further 15 loans to be realised. The estimated gross realisation of the outstanding loans, based on current information is £26,002,500, of which £150,000 relates to a Model 1 Loan.

Statement of Truth

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

A handwritten signature in black ink, appearing to read "Damian Webb", is centered within a white rectangular box. This box is positioned on a larger black rectangular background.

Signed by

Damian Webb

Dated the

17 May 2021

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EXHIBIT DW5

THIS IS the exhibit marked “DW5” referred to in the fifth witness statement of Damian Webb dated 17
May 2021