IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS
OF ENGLAND AND WALES
BUSINESS LIST (ChD)

BL-2020-001343

BETWEEN:

(1) LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION)
(2) FINBARR O'CONNELL, ADAM STEPHENS, HENRY SHINNERS, COLIN HARDMAN AND GEOFFREY ROWLEY (JOINT ADMINISTRATORS OF LONDON CAPITAL & FINANCE PLC (IN ADMINISTRATION))
(3) LONDON OIL & GAS LIMITED (IN ADMINISTRATION)
(4) FINBARR O'CONNELL, ADAM STEPHENS, COLIN HARDMAN AND LANE BEDNASH (JOINT ADMINISTRATORS OF LONDON OIL & GAS LIMITED (IN ADMINISTRATION))

Claimants

- and -

(1) MICHAEL ANDREW THOMSON
~~(2) SIMON HUME-KENDALL~~
~~(3) ELTEN BARKER~~
(4) SPENCER GOLDING
(5) PAUL CARELESS
(6) SURGE FINANCIAL LIMITED
(7) JOHN RUSSELL-MURPHY
(8) ROBERT SEDGWICK
(9) GROSVENOR PARK INTELLIGENT INVESTMENTS LIMITED
~~(10) HELEN HUME-KENDALL~~

Defendants

Transcript of proceedings made to the court on

Day 18 - Thursday, 21 March 2024

The claimants are represented by Mr Stephen Robins KC, Mr Andrew Shaw & Mr Philip Judd

Michael Andrew Thompson (D1) is represented by Miss Anumrita Dwarka-Gungabissoon

Simon Hume-Kendall (D2) & Helen Hume-Kendall (D10) settled and are no longer appearing

Elten Barker (D3) settled and is not appearing

Spencer Golding (D4) is debarred from defending the claim

Paul Careless (D5) and Surge Financial Limited (D6) are represented by Mr Ledgister & Mr Curry

Russell-Murphy (D7) and Grosvenor Park Intelligence Investments Limited (D9) appear in person

Robert Sedgwick (D8) appears in person

MR ROBINS: My Lord, I now call the first --

MR JUSTICE MILES: Yes?

MR ROBINS: Sorry, I've done it again. My Lord, I now call the first of the claimants' witnesses, Mr Henry Shinners.

MR HENRY ANTHONY SHINNERS (sworn)

Examination-in-chief by **MR ROBINS**

MR ROBINS: Could you tell the court your name, please?

A. Henry Anthony Shinners.

Q. Your work address?

A. 45 Gresham Street, London.

Q. Can we look at <C1/3>, page 1, please. Has that appeared on the screen in front of you?

A. Yes.

Q. Do you recognise that as your first witness statement in these proceedings?

A. I do yes.

Q. Could we look at page 5, please. Is that your signature?

A. Yes.

Q. Are the contents of this witness statement true and correct, to the best of your knowledge and belief?

A. Yes.

Q. Could we look please at <C1/7>, page 1. Do you recognise this as your second witness statement in these proceedings?

A. Yes.

Q. Could we look at page 9, please. Is that your signature?

A. Yes.

Q. Are the contents of this statement true and correct, to the best of your knowledge and belief?

A. Yes.

MR ROBINS: My Lord, I would ask that this be admitted as Mr Shinners' evidence in chief. Mr Shinners, if you could stay there, please, my learned friend, Ms Dwarka, will have some questions for you.

Cross-examination by **MS DWARKA**

MS DWARKA: Good morning, Mr Shinners.

A. Good morning.

Q. As I understand it, you are one of the joint administrators for LCF and lead administrator who managed shareholdings in IOG held by LOG; is that right?

A. Correct.

Q. Did you get involved in this project in 2019?

A. Yes, I think that's right.

Q. Was it when your firm was appointed on 30 January 2019?

A. Yes, I was involved from the start of the LCF administration.

Q. So am I right to say that you are an experienced office holder? By that I mean an expert in dealing with your area of expertise.

A. Yes. I have long experience in restructuring insolvency.

Q. In your first statement, you describe yourself as having significant and senior experience at partner level; is that right?

A. Yes.

Q. So your job is to step in and rescue businesses from difficult situations and taking some tough decisions for the benefit of the creditors, isn't it?

A. No, I am not sure that is entirely accurate. It is not my job, in every case, to rescue a business. Very often, that's not possible.

Q. We are talking about this case --

A. Okay.

Q. -- at the moment, generally, because we are talking -- yes.

A. But the purpose of the LCF administration was not, to my memory, purpose (a), administration, but a rescue of the company as a going concern.

Q. In relation to LCF, you were the lead administrator dealing with the shareholding in IOG?

A. That's true.

Q. That was your role in that one?

A. Yes.

Q. But you and the administrators were not really oil and gas experts at the time you took on the project, were you?

A. No, I never claimed to be an oil and gas expert.

Q. So that is why you engaged Cenkos; is that right?

A. Correct.

Q. So Cenkos Securities Plc acted as an adviser with specialist knowledge in the oil and gas industry. Did I get that correct?

A. Yes.

Q. So you took professional advice like we would use an expert to assist us lawyers in taking a decision on a matter; is that right?

A. Yes. We took continuous advice during the course of the LOG administration in relation to IOG from, primarily, Cenkos.

Q. So now let's just talk about generally in IOG generally. You say in your statement, don't you, that there was a lot of optimism in the market because of the farm-out agreement with CalEnergy in 2019?

A. Yes.

Q. That something good was happening at the time, wasn't it?

A. Yes.

Q. CalEnergy is a big company. Doing business with them is a major plus, wouldn't you say?

A. Yes, I think it is true to say that was considered to be a major positive for IOG at the time.

Q. In 2019, there were some offers being made to buy the interest in IOG, weren't there?

A. Yes.

Q. You say that you weren't involved at an earlier stage when the administrators were approached by RockRose, but you are familiar with that offer, aren't you?

A. I think the -- I think the wording in my witness statement is slightly misleading there. I think what it intended to read was that I wasn't involved at the stage of Mr Orrell was assisting IOG prior to the appointment of the LOG administrators. I was involved in managing the IOG situation when the RockRose offers remained.

Q. So running past this, the administrators got an enquiry from RockRose to purchase all of LOG's interests in IOG for 14 million; is that right?

A. Yes.

Q. Now, normally, if an administrator gets an offer of that magnitude, they would not simply let it go, would they? It is quite a big sum?

A. It is a big sum, but it has to be assessed in the context of what the value of the assets it related to are.

Q. So generally, in order to assess, they would have a look at it, negotiate, try to make it work, if possible, as you are rescuing a business in difficulty after all and was brought in as an expert to deal with difficult commercial decisions. Is that correct?

A. I want to be sure that we are talking about the same thing. We weren't appointed as the administrators of IOG, we weren't acting to rescue IOG. We were representing one of its largest shareholders and a loan note holder. Our statutory responsibility was in relation to LOG and IOG was an asset of LOG.

Q. Indeed.

A. But we were not engaged, nor was it our statutory responsibility to rescue IOG.

Q. No, that is not what I meant.

A. Sorry, I just wanted to be clear.

Q. What I meant was you got involved to be able to look at the interest of LOG in IOG and you were also joint administrator of LCF, so you are in here, as an expert, to deal with the situation and try to get the best out of it in that sense?

A. Yes, that's right.

Q. You don't have the luxury of dealing with a normal operating business because anything can go wrong at this point; is that right?

A. Well, LOG wasn't an operating business at the time of the RockRose offers.

Q. In paragraph 12 of your first statement, you say that the administrators engaged in several weeks of conversations with RockRose, but, ultimately, decided not to go ahead, based on the advice received from Cenkos. Did I get that right?

A. Yes.

Q. You say "several weeks", but don't provide an actual period. That could be anything, couldn't it?

A. Well, it couldn't be anything.

Q. "Several weeks", it is not months --

A. It was, to my memory, several weeks, not several months, not a couple of weeks, it was somewhere in between those two timescales.

Q. So you refer to a meeting with Cenkos' representative on 26 March 2019. You exhibit a document within your statement which you say is your note of that meeting that is in your second statement <C1/7>, page 5. And in there, you refer to a RISC report, R-I-S-C report, that had put the value at 60 million to 290 million at the time. Is that right?

A. That's correct, yes.

Q. In paragraph 15 of your second statement, you say that you relied -- you and the administrators relied on the report in order to take a decision. Is that correct?

A. We didn't rely entirely on the RISC report, we are familiar with the RISC report, it was commissioned prior to the appointment of the LOG administrators but we were familiar with it and so we knew what was in it. We relied primarily on the advice from Cenkos, who were advising us on the value of IOG and they obviously had access to, and familiarity with, the RISC report as well.

Q. Sorry, did you say that it was commissioned by the administrators or it was not?

A. No the RISC report was commissioned pre administration.

Q. Yes, that's what I understood.

So, on that, you did say it was produced prior to the administrators' appointment, so I am assuming that was produced at some point in 2018. Is that right?

A. I think that is a reasonable assumption, yes.

Q. So this report was done when all companies were still doing business as usual, wasn't it?

A. Yes.

Q. Doesn't that mean that the valuation would be much higher than it would be in 2019, when it was done, when the business was still running normally? Doesn't it?

A. The valuation was in relation to IOG which wasn't really affected operationally by the insolvency of LCF or LOG. So I don't understand the premise of the question, sorry.

Q. You and the administrators ultimately decided not to take this offer; is that right?

A. Yes, that's right.

Q. That was a bad commercial decision taken by you and the administrators, wasn't it?

A. With the benefit of hindsight, I think it could be said that there would have been a better outcome for the LOG administration had we accepted the offer and it had proceeded to a transaction. But only with hindsight.

Q. I mean, looking at your statement, <C1/7>, in paragraph 10 of your second statement, you say: "For the majority of the period since we've been acting as joint administrators, there simply hasn't been a demand in the market, or at least there wasn't that sort of demand ..."

Do you still stand by that statement?

A. Yes, I do.

Q. Then you should have taken the offer made by RockRose, shouldn't you? Because you noticed that at the time, didn't you?

A. No, we acted in good faith on the professional advice we had received from experts in the field that the RockRose offer did not represent good value for the assets.

Q. In your statement, you informed us of what happened to IOG since October 2023. Essentially, IOG entered into administration in October; is that right?

A. That's right.

Q. We obviously won't know what will happen next, but you have all missed a great opportunity to recover a decent amount of money in 2019 because of a bad decision; didn't you?

A. Yes, it was -- with hindsight, it was a bad decision.

Q. You could have sold the interest for 40 million to RockRose in 2019, had you been more aware of the risk involved and understood that industry, couldn't you?

A. No. I don't think that any greater knowledge of the sector or information about IOG would have led to a different decision. I think we look at the very positive things that happened to IOG post our rejection of the RockRose offer, including it raising £18 million through a share issue in, I think, July 2019 and also the successful farm-out transaction. I think those things indicate that there was a lot of optimism around the prospects for IOG at that time.

Q. So the administrators have been criticised by the second and tenth defendants for not having understood the risk involved, and you know that, don't you, because you deal with that in your evidence?

A. Yes.

Q. In your second statement <C1/7>, at paragraph 8, you refer to a memorandum prepared by Cenkos, dated 30 April 2019 [as spoken], which you say shows them assessing the purpose and risk of the drilling at the Harvey exploration well, don't you?

A. Yes.

Q. In the same paragraph, you also say that you did not check all the advice that Cenkos provided to the joint administrators don't you?

A. To be clear, I say that, in the context of preparing my witness statement, I did review all of the advice that Cenkos provided to the joint administrators during the course of our dealings with IOG.

Q. But, for the sake of this witness statement, you didn't and you didn't exhibit other than that one --

A. Correct.

Q. So, from what you have said, there must have been many advice provided by Cenkos about RockRose or anything else during the period you are looking at the shareholdings?

A. Not about RockRose. Once we had been through that period where the RockRose offer was finally rejected, they weren't in the equation after that. We did get regular advice from Cenkos in relation to the strategy for maximizing the realisations for LOG from the IOG assets.

Q. But you haven't exhibited the one about RockRose here, have you?

A. No.

Q. Well, you cannot use this advice, can you, to prove that you and the administrators did consider everything before allowing a good deal to go, can you?

A. I don't believe that there are documents in the evidence that exhibit that. We did take advice from Cenkos and we acted in accordance with the advice that we were given.

Q. Now, in your evidence, you say, and the administrator says, that you have considered all the risk before taking a decision, don't you?

A. Yes.

Q. But you can't use this note to show that you did consider all the risks before taking a decision?

A. My understanding of the inclusion of the note in my evidence is to demonstrate that Cenkos, in the advice that they were providing to us, took into account the geological and other oil-and-gas-type risks that affected their valuation of the IOG shares and that was in response to criticism that the Cenkos advice did not take those things into account.

Q. I am talking about the great deal that everybody has missed right now. I am putting to you that you and the administrators took a bad decision on RockRose which has had a bad impact on this administration. You could have recovered £40 million in 2019, that's five years ago, but you didn't, did you?

A. No, we didn't.

Q. Do you think the public or the bondholders would be happy to know that you and the administrators missed such a great opportunity to sell an asset?

A. At the time of the RockRose offer, we did explain to the bondholders why we hadn't accepted the offer, and we disclosed in our progress reports what information we felt we could in relation to an asset that was, after all, an AIM-listed company as to why we didn't accept the RockRose offer. My belief is that the bondholders, at that time, were content that was the right decision. I mean, there are a lot of bondholders, so they probably weren't all of the same mind, but I think, broadly, the bondholders felt that, at the time, without the benefit of hindsight, that was the right decision.

Q. You don't need the benefit of hindsight, do you? Because you know CalEnergy, what was happening in 2019, was something good. You had said so before?

A. The CalEnergy farm-out transaction happened some time after the RockRose offer, so I don't understand how -- what I am hearing from you is that the RockRose offer was somehow taking into account the very positive news that IOG had been able to complete a farm-out transaction with CalEnergy. It didn't reflect that at all. The RockRose offer came before and was dealt with and rejected before the farm-out transaction.

Q. Well, all I am saying is that you could have taken a great offer five years ago of 40 million, and that the administration could have realised assets at a much better value had it taken a good decision. And it didn't.

A. I have acknowledged that, with hindsight, that would have been a better decision. We did recover 25 million -- it is not 40 million versus zero -- and we took the decisions that we made on the basis of the value of the advice we had which said, actually, there is a good prospect of you achieving a better outcome for the creditors.

MS DWARKA: Thank you, Mr Shinners, I have no further questions.

A. Thank you.

MR ROBINS: My Lord, Mr Shaw will deal with re-examination.

Re-examination by **MR SHAW**

MR SHAW: You mentioned, Mr Shinners, in one of your answers, that Mr Orrell was advising IOG. Can you clarify whether that was correct?

A. Yes, Mr Orrell was advising IOG prior to the appointment of the LOG administrators.

Q. Okay. You were also asked when the RISC advisory report was made and it was put to you it was in 2018, which meant it would have had a higher value. Could we please go to <MDR_POST_00000115>.

Mr Shinners, is that the report you were referring to?

A. I believe so, yes. It is difficult to be certain just seeing page 1, but I believe so, yes.

Q. Do you want to have -- can we scroll down so Mr Shinners can see. Going to the middle page, perhaps, might be of help if you read that. The middle page, please.

A. No, that is the report.

Q. Go back to the first page, please. What is the date on the top?

A. 26 February 2018.

Q. Reading the addressees of the report, what is your view of the date it was produced?

A. It must have been produced -- it is addressed to the administrators; it must have been produced post administration.

Q. So the date on it is possibly a typo?

A. Yes, it possibly is, yes.

Q. Finally, Mr Shinners, it was put to you that you didn't take any advice or you hadn't exhibited any advice in relation to Cenkos in relation to the RockRose deal. If we can go to your second witness statement, which is at <C1/7> and go to page 5, please. Down the bottom, there is a hyperlink to an exhibited document [MDR_POST_00000302], could you click on that, please. Mr Shinners, if you could just read this document?

A. I am familiar with that file name.

Q. What, then, would you say to what was put to you, that you didn't take or exhibit any advice from Cenkos in relation to the RockRose?

A. I think this file -- apologies for not remembering that this related specifically to the RockRose offer -- does evidence that we took advice from Cenkos in relation to the RockRose offer.

Q. It was also put to you that you didn't properly analyse the offer and turned down a good deal and should have known at the time it was a good deal. Is there anything you would like to comment, on the basis of that note, to amplify your answer to that question?

A. It is clear that the information I was getting, both from Cenkos, Mr Russell Cook and also from Martin Orrell, who had been engaged by IOG prior to our involvement, there were some very positive things in the pipeline for IOG, a fundraiser, which I referenced in my evidence earlier, and also the prospect of the file note.

MR SHAW: Thank you, Mr Shinners. No further questions.

MR JUSTICE MILES: Thank you for giving your evidence, Mr Shinners. You are free to leave the witness box.

(The witness withdrew).

MR ROBINS: My Lord, next I would like to call Mr Finbarr O'Connell, please.

MR FINBARR THOMAS O'CONNELL (affirmed)

Examination-in-chief by **MR ROBINS**

MR ROBINS: Could you tell the court your name, please?

A. Finbarr O'Connell.

Q. Your professional address?

A. Evelyn Partners, 45 Gresham Street.

Q. Could we have a look please at <C1/4>, page 1. Do you recognise this as your witness statement in these proceedings?

A. I do.

Q. Look at page 5, please. Is that your signature?

A. It is.

Q. Are the contents of this statement true and correct, to the best of your knowledge and belief?

A. Yes, they are.

MR ROBINS: My Lord, I ask that this stands as Mr O'Connell's evidence in these proceedings. If you stay there, Mr O'Connell, my learned friend Ms Dwarka may have some questions for you.

Cross-examination by **MS DWARKA**

MS DWARKA: Hello, Mr O'Connell.

A. Good morning.

Q. Good morning. Am I right in saying that you are one of the joint administrators of both LCF and LOG?

A. Yes, that's correct.

Q. There is potentially a conflict there, isn't there, but the administrators realised it at some point, didn't they?

A. That's correct. There was a conflict administrator in LOG.

Q. Yes. So to deal with this potential conflict, other administrators were appointed: Lane Bednash from CNB Partners for LOG; and Geoff Rowley of FRP for LCF. Is that right?

A. That's correct.

Q. Now, Mr Rowley was appointed on 30 October 2019. Is that right?

A. That's correct.

Q. But your firm was appointed on 30 January 2019, wasn't it?

A. Correct.

Q. So the conflict administrators weren't there when the decision about RockRose was taken, were they?

A. I could do with a few reminders on the date the decision was made regarding RockRose.

Q. Well, the RockRose deal was being considered around March. So the decision was made, as you have heard, within weeks. So we are not talking about October. This definitely would have been before October?

A. Yes, that's correct, but I think I would say that making a commercial decision, even a difficult commercial decision, doesn't imply conflict.

Q. I am only talking about the fact whether he was there at the time or not. So if he wasn't there at the time. Is that right?

A. That's right. That's correct.

Q. So, now, the conflict administrators, they are appointed to make sure that you and your colleagues are taking the right decisions because you act for both LOG and LCF because LOG is LCF's largest borrower; is that right?

A. That's correct.

Q. The value of that borrowing is around 122 million. You say that at paragraph 10 of your statement. Is that still correct?

A. Yes. I have seen the figure as £124 million as well. But between 122 and 124 million, yes.

Q. But in your statement, signed by a statement of truth, you said 122. So which one is it? Is it 122 or 124 million?

A. 122 is fine.

Q. So you are, in fact, one of the lead administrators of LCF?

A. Correct.

Q.Am I right in saying that your statement mainly deals with the content of the progress reports, how the progress reports were prepared and issued? Your evidence.

A. Yes. But I presume it is much wider than that because it deals with the contents of them, which gives the history of both administrations from the very beginning.

Q. I have referred to content as well. I did say content of the report and how it was produced and when?

A. Yes.

Q. Now, your latest report is found at <H1/10>. That covers the period of 30 July 2023 to 29 January 2024. But it is signed 29 February 2024; is that right? Do you recall?

A. Sorry, this is a report which isn't covered in my witness statement; is that correct?

Q. Your witness statement deals with general progress reports, so --

A. It deals with a list of progress reports.

Q. Yes, but this is the latest one. This is the latest progress report, so you were involved in it?

A. I see. So it is one which is not in my witness statement but --

Q. Yes, but you were involved --

A. Yes, of course --

Q. -- in preparing?

A. -- I was involved in the same way as referred to, yes.

Q. Exactly, yes, because I had asked you before whether you were involved in preparing the progress reports, which you confirmed?

A. Absolutely, yes.

Q. Yes? Looking at it, at paragraph -- sorry I should say the page. At [internal] page 2, [<H1/10>, page 10], fourth bullet point, you say that the --

MR JUSTICE MILES: Sorry, I think you had better get the document and make sure that --

MS DWARKA: We are there, yes.

MR JUSTICE MILES: Do you have it on the screen?

MS DWARKA: No, they are still getting it.

MR JUSTICE MILES: It is which page?

MS DWARKA: It will be the progress report itself. This section is the form, so ...

MR JUSTICE MILES: Is it further on in this document?

MS DWARKA: Yes, further down.

That's it. So page 2. Yes, this is it. Thank you. So at page 2 --

A. Is it possible to increase the size by any chance? Ah, that's brilliant, thank you.

Q. So the fourth bullet point, you say that FSCS paid 172 million to bondholders, which included money received from the Treasury. Is that right?

A. That's correct.

Q. Now if we go to page 8 of that report -- page 8 rather than point 8.

MR JUSTICE MILES: Sorry, I think it is [internal] page 8, [page 16], on the bottom right. Is that it?

MS DWARKA: Bottom right, yes. That's it. In your section 5, you say -- or it shows that the total administrative time cost for administrators is said to be 9,199,805. Is that right?

A. Yes, correct.

Q. Now, if we could go to [internal] page 12, so the little number, bottom right, "12". Looking at point 7.1, you state in there:

"... GST held a debenture containing fixed and floating charges over the company's assets ... on behalf of the bondholders."

And, essentially, you say LCF bondholders are the only secured creditors. Is that right?

A. I don't know.

(Pause).

So it says:

"... any remaining, uncompensated bondholders and the FSCS, as a subrogated creditor, are considered to be secured creditors."

Q. Yes. Because the FSCS have bought and -- are now the largest creditors anyway?

A. Correct.

Q. That's the position. Yes.

So just to be clear, is it right to say that any disenfranchised investors are, therefore, unsecured and rank after bondholders?

A. Could you ask the question again?

Q. If there are any disenfranchised investors, they are unsecured and they rank after bondholders? Because the secured creditor is LCF. The secured creditor is FSCS.

MR ROBINS: My Lord, could I just ask my learned friend to clarify the question, because I am afraid I don't understand it, at the moment.

MR JUSTICE MILES: Yes. I think that a concept you used in the course of the question was disenfranchised investors and I think, in fairness to the witness, you will have to explain what you mean by that concept.

MS DWARKA: Yes, my Lord. I can simplify. So LCF bondholders are the only secured creditors. Anybody else who has a claim will fall after LCF, if they do?

A. Will fall after LCF ...

Q. Anyone else who is potentially a creditor will be unsecured?

A. Yes.

Q. Let's then go to --

A. Sorry, they could be preferential or unsecured. Yes.

Q. Let's then go -- you then go to provide the total cost in that report at pages 19 and 20. If we can go to that.

A. I think you said the total cost, so this is the receipts and payments account which shows the cash that the administrators have received in and the payments they have paid out.

Q. That would still reflect the total cost in respect of, for example, the administration fees paid, the legal fees paid, the funding costs paid?

A. So the cost -- the administrators' fees cost is £9 million, as you said earlier.

Q. Yes?

A. The amount of administrators' fees paid is not £9 million; it is the amount which was actually paid.

Q. Yes, because there is still some that is due to be paid?

A. Exactly.

Q. Yes. That's fine.

I was just looking at page 1, so far. I have referred you to the total amount because I have noticed there is a difference that has still not been paid?

A. Yes.

Q. Yes. So what I have done is I have added the figures for the administration fees, legal fees and funding costs in respect of the LCF administrations, using the figures in those pages. And I have come

up with this: post administration, rather than pre, the fees are 6,069,865.18. The legal fees are 16,028,112.20. The funding costs are 18,575,727.20.

Adding all of that together, I get a total of 40,673,704.60.

A. Could I just ask you about the funding costs? The figure sounds very high. I just wonder how you have calculated that, because the costs are clearly the interest and the charges after the loan has been repaid.

Q. What I have done is I have added funding costs together with funding repayment, so those two figures?

A. So I think --

Q. So that is --

A. -- I think you have put the capital in there rather than just the funding costs.

Q. I have added -- there is a line called "Funding cost" of 4 million, and then there is funding repayment of 14 million. I have added those two to be able to get my figure. So funding. Maybe I shouldn't say "funding costs", funding.

A. If you borrow 10 and you pay interest of 2 and you repay 12, your funding costs are 2 not 12.

Q. Yes, but what I meant is you have taken funding rather than just the cost element. There was -- you needed funding of 14,301,527.76 to continue with the claim.

A. We borrowed money, yes.

Q. You borrowed money. Yes. When you have set this out all here, you are talking about all the costs incurred rather than funding costs being too specific. You are talking about all costs incurred and out of the 57,323,042.77, I have added legal fees, funding plus cost and post administration fees to get 40,673,704.60?

A. So I think you have added -- the administrators' fees are a cost, the legal fees are a cost, the funding costs are a cost, the funding itself isn't a cost. The funding is a loan.

Q. What I am comparing is I am taking the receipts and payment account and I am looking at the final figure that you have, the total amount of 57,323,042.77 and then I am looking at all these amounts that you have put in there specifically for legal fees and expenses, funding costs and funding repayment, together with administration fees and expenses. And I get that figure of 40 million. That is out of the 57 million. That is a lot, isn't it?

A. I am not quite sure where you are going, but I think what you are saying is wrong because, if you look at the bottom of page 19, where it says loan to LOG for 4,015,000, that figure is included in the 57 million but it is not a cost of any sort, it is a loan, and there is a lot of different figures in there. Some of them are costs and expenses, some of them are effectively capital sums which are loaned out and get repaid.

Q. Well, the point is, this schedule shows receipts and payment. What we have as a figure is that there has been a receipt of 57,323,042.77 and when I have just added the payments in respect of, very specifically, the administration costs and expenses, legal costs and expenses and added the funding which you needed to take, I have just got a figure of 40 million. I am only comparing those two figures to just show you how big it is. That is my point, isn't it?

A. I am not sure.

Q. Let's move on.

Of that -- if we move on. Of that, 5,902,219 was the only amount that was paid to the bondholders, wasn't it?

A. Up to now, that is the amount which has been paid, yes.

Q. Yes.

A. But we have got various legal proceedings, which we are pursuing, which hopefully will increase the cash amount into the dividend.

Q. So there is more cost to come, is there?

A. Well, yes.

Q. Much more, other than the one that you haven't -- from page 8, we know that there is --

A. So, there is more cost, but my point is we hope there are going to be very substantial realisations. We have various legal proceedings, which we are pursuing, which we hope are going to bring in substantial realisations.

Q. But we are talking about now. You have collected -- I am taking the progress report as it is, and you have collected --

A. It is at a point in time, yes.

Q. Yes. You have collected 57 million and spent -- I will say 43 million, because I am counting the difference between the 6 million already paid and the 9 million that was mentioned at page 8 of the report, so 3 million. So 43 million spent on cost, and only paid back 5.9 million.

Now, I am not even including the cost of LOG's administrations and prime administrations, otherwise we are looking at a total of around 77 million. Isn't that right?

A. So because this is a financial document, what it doesn't show is the value of all the work we have taken at the moment where we are taking legal proceedings and have spent many millions of pounds on those legal proceedings which are in this document, but the estimated realisation from those legal actions is not here. So I think it is a bit unfair to compare the costs which, clearly, you have to pay as you go along and not to think about the realisations which we expect to realise.

Q. Well, I will put it to that you that what is unfair is the opposite. It's the fact that you have spent so much money in this administration and collected only 57 million. And there is clearly an issue isn't there?

A. So in order to spend these monies, we have always consulted with the creditors' committee, which, at the time, was made up of the bondholders until they got compensated by the FSCS and, since then, the FSCS, as the major creditor, is working with us and effectively we sense-check all of our strategies and all the payments we make with the FSCS. So I think "unfair" is a completely wrong word. We are shoulder to shoulder with the bondholders and with the FSCS, which has taken up the banner from them.

Q. Okay, let's change the word. There is clearly an issue, isn't there? Are you happier with that?

A. No. I don't understand why you say there is an issue.

Q. All right. Let's move on to another question. When the administrators were appointed on the advice of Oliver Clive & Co -- do you remember that?

A. They weren't appointed on the advice of Oliver Clive. Oliver Clive are the accountants.

Q. Yes, on the advice --

A. Mr Thomson --

Q. Sorry, I will rephrase.

A. Mr Thomson --

Q. When LCF appointed the administrators on the advice of Oliver Clive, that is their accountant, they had the advice of the accountant and then appointed --

A. No, I don't think that is right --

Q. Okay.

A. -- because Oliver Clive are not qualified to advise the company on the appointment. We were introduced to the company by Oliver Clive. We carried out a business review of the company. We advised the company it was insolvent and that it should go into insolvency proceedings, and their solicitors, Lewis Silkin, as well, were heavily involved in those discussions and they are probably the independent party, on the company's side, which advised the company that it needed to go into formal insolvency.

Q. That is where I am getting at. I think maybe you took the word "advice" that I used in a sort of a formal way. What I meant is LCF introduced either yourself to -- Oliver Clive introduced either yourself to LCF or LCF was told to use the company, I am talking about the meeting. You had a meeting with them at the very beginning, didn't you, because you have just mentioned that you did advise them to go into administration?

A. Sorry, when you say "with them"? There was a big meeting and there was a -- Lewis Silkin/Oliver Clive & Company meeting, a very substantial, around-the-table meeting.

Q. Yes. I am talking about that day. You remember it?

A. I do.

Q. Do you remember saying at that meeting that the wind-down of the company would cost no more than half a million pounds and take about 4 years to do? Do you remember that?

A. So, at that time, we had only been involved for a few days. We had been told by the company and Oliver Clive that there had been a falling out between the FCA and the company and that they wanted to explore some type of a solvent wind-down. The alleged frauds which we are dealing with here were not on the table at all at the time. They only became clear, as we -- after we were appointed and we got underneath the skin of the company.

Q. But, at the time, you had access to all the books and records and bank statements audited accounts, management accounts, didn't you? You had a look at everything, didn't you?

A. No, it was within a few days. This is a huge -- this is a huge operation. We had seen the work Oliver Clive was doing, which was mostly in running records for each of the individual bondholders and in

deciding what those -- how those bondholders' funds were going to be allocated but we hadn't got under the skin of these alleged frauds at all at the time.

Q. Well, I put it to you that your advice at the time was not correct and unrealistic, wasn't it?

A. You said it wasn't correct and -- what was the other word?

Q. Unrealistic.

A. Can you just repeat what I said again, please?

Q. You said that the wind-down of the company would cost no more than half a million pounds and take about 4 years to do?

A. So the alleged frauds were not obvious at that time, so I was talking about a very, very different scenario. So that was my best estimate.

Q. The advice is not right, is it?

A. Sorry --

Q. Now, you can see the advice is not right?

A. -- that was my best estimate on the assumptions at the time.

Q. In reality, but for FCA's raid which stopped everything, it does look like LCF would have been successful today, doesn't it?

A. Absolutely not. Absolutely not. The example I always give is, if an investor put £10,000 in and Mr Careless and Surge effectively took 25 per cent of that out, that LCF would have to earn 44 per cent on its investments in a year in order to repay the 8 per cent. It was -- I am just saying what you have just said is completely wrong. I mean, it was -- I mean, once we started to understand those concepts -- I mean, there is a list of the entities that LCF supposedly invested its funds in, which is at page 412 of the exhibit which I have, and that is just a list of entities where Mr Hume-Kendall, Mr Elten Barker, Mr Thomson are all involved in these entities. They are not independent entities at all, they are entities linked in to all the people involved in this trial and those entities have never paid a penny back to LCF. They have been dissolved, a number of them have been dissolved, have gone into liquidation, and it was basically a complete fabrication put together as regards -- in my view, in my view, a complete fabrication put together as regards what the money had been used for.

So to say LCF could have been successful, it could never have been -- it could never. It was doomed to fail from the start.

Q. Well, Mr O'Connell, I put it to you that it is actually you and the other administrators that took some bad decisions that led to the incurrence of huge cost in the administration of LCF and that the bondholders didn't get much. You all didn't do a good job.

A. The bondholders have received a dividend so far. The bondholders were aware that we were obtaining the funds in order to take various legal proceedings, including the proceedings we are involved in now. And, as I say, the part of this receipts and payments and account that can't be seen is the estimated realisations from various legal actions, including the legal actions we are involved in.

MS DWARKA: Thank you, Mr O'Connell, I have no further questions.

MR ROBINS: My Lord, I think Mr Shaw may have one question.

Re-examination by **MR SHAW**

MR SHAW: Mr O'Connell, it was put to you that there was no conflicts administrator in place when the RockRose offer was rejected in or around March 2019. Could we go, please, to <H2/1>, page 6. Please.

Do you recognise what this document is Mr O'Connell?

A. I do.

Q. Could you describe what it is?

A. So it is the London Oil & Gas progress report -- sorry, it is the proposal's report, which is dated 14 May 2019.

Q. Could we go to page 10, please. Could you read the first paragraph, please?

A. Sorry, we are not on page 10 yet.

Q. That is page 10 of the document.

A. Oh, I am sorry.

Read the ...?

Q. The first paragraph please?

A. "We, Finbarr Thomas O'Connell" --

Q. You don't have to read it out loud, Mr O'Connell. Just read it to yourself and let me know when you are done?

A. Okay, just read the first paragraph?

Q. Yes.

A. Okay. Done.

Q. Do you want to clarify your answer about whether there was a conflicts administrator in place in March 2019?

A. Yes. When I said that, I was referring only to LCF, clearly Mr Lane Bednash was a conflicts administrator in LOG and was there at the time of the RockRose decisions.

MR SHAW: Thank you. No further questions, Mr O'Connell.

MR JUSTICE MILES: Thank you. That concludes your evidence. Thank you very much.

(The witness withdrew)

MR ROBINS: My Lord, next, I would like to call Ms Clare Lloyd, please.

MS CLARE LLOYD (sworn)

Examination-in-chief by **MR ROBINS**

MR ROBINS: Could you tell the court your full name, please?

A. Clare Lloyd.

Q. Your work address?

A. 45 Gresham Street.

Q. Can we look please at <C1/6>, page 1. Do you recognise this as your first witness statement in these proceedings?

A. I do.

Q. Have a look at page 17 please. Is that your signature?

A. I can only see part of it, but ...

Q. Let's have a look on the next page, there might be another one. Again, only part of it. Did you sign this witness statement?

A. I did.

Q. Are the contents true and correct, to the best of your knowledge and belief?

A. They are.

Q. Can we look please at <C1/9>, page 1. Do you recognise this as your second witness statement in these proceedings?

A. I do.

Q. Can we look at page 7, please. Is that part of your signature?

A. It seems to be, yes.

Q. Can you confirm that you signed this statement?

A. I did.

Q. Are the contents true and correct, to the best of your knowledge and belief?

A. They are.

MR ROBINS: If you stay there, please, my learned friend, Ms Dwarka, may have some questions for you.

Cross-examination by **MS DWARKA**

MS DWARKA: Good morning, Ms Lloyd.

A. Good morning.

Q. You are now a director of the company, aren't you? It is now called Evelyn, it used to be called Smith & Williamson; is that right?

A. I am an employee of Evelyn Partners, with my grade as director.

Q. At the time LCF entered into administration, you supported the directors and partners on various cases. You say that in your statement. Is that right?

A. Correct.

Q. LCF was one of those?

A. Correct.

Q. At the time, you were a senior manager dealing with these, rather than your new title of director. Is that right?

A. That's right.

Q. As part of your job in the administrations, did you attend many, if not weekly, meetings with LCF administrators and key advisers?

A. I did.

Q. Did you keep notes of those meetings?

A. Erm, potentially, yes.

Q. But they are not exhibited to your statements, are they?

A. No, they are not.

Q. Now, in your statement, you talk about LCF having held various floating charters within the Prime Group. Is that right?

A. Yes.

Q. And you also mentioned that the directors of Prime were not keen for LCF administrators to enforce the securities held. Is that correct?

A. Erm, I am not sure my witness statement says that.

Q. You say that in your statement.

A. Okay.

Q. Do you want us to locate it?

A. Yes, please.

Q. Sorry, my Lord, I will just have to ... (Pause).

I just need a couple of minutes, just to make sure. (Pause).

All right. So if we turn to your first witness statement, which is found at <C1/6>, and it is paragraph 16 in there.

I am sorry, that is paragraph 14, not 16. The last sentence.

A. Yes, I see that.

Q. Yes. So is that right?

A. Erm.

Q. Do you still stick to that statement?

A. Well, taking into account the whole paragraph, yes. They probably would not have been keen for us to enforce our security, as they were, at the time, still exploring a possible refinancing option.

Q. So, eventually, the administrators decided to enforce the security, didn't they?

A. When it became apparent there was no refinancing, yes.

Q. And in order to do this, they had to make use of the debentures; is that right?

A. In some and not all of the administrations in that group, yes.

Q. The debentures were, therefore, relied upon by the claimants to appoint administrators for Prime Resort Development Limited, Waterside Cornwall Group Limited, Waterside Villages Limited, International Resort Management Limited and Waterside Cornwall Operations Limited. Is that right?

A. No, Waterside Cornwall Operations Limited had no security.

Q. Okay. So other than you saying that, you enforced the debentures, didn't you?

A. No, I didn't.

Q. You relied on the debentures to be able to appoint administrators, didn't you?

A. No, I didn't.

Q. I don't mean you, but I mean the administrators, and you represent them. So the administrators did, did they not?

A. The administrators relied on the security to enforce over some of the companies, yes.

Q. So that shows, doesn't it, that the loan was valid and enforceable and that the debentures did work, does it not?

A. For that purpose, it appears so, yes.

Q. Okay. So as part of your job, you were required to look into the title, and you make quite a lot of comment about those and what you had to do in the statement and you had to sort everything out in order for the administrator to be able to sell Lakeview. I think you prefer the word "Waterside", don't you? But that was what you had to do?

A. Our legal advisers did most of the work regarding security and title, as you would expect, because they are legal documents.

Q. But you are in charge of making sure that happens? Obviously, I expected lawyers to be doing that.

A. We would engage them to do that, yes.

Q. Because you were asked to lead the investigation and the management of LCF interests in Waterside and that's why you had to do that. Is that right?

A. I was involved in taking control of those companies in order to protect the assets that were within them, yes.

MS DWARKA: My Lord, I am looking at the time, would you like to give a break?

MR JUSTICE MILES: How long do you think you are going to be with this witness?

MS DWARKA: Ten minutes.

MR JUSTICE MILES: Let's carry on and then we will take the break after the witness has finished.

MS DWARKA: Yes, my Lord. Sure.

So in order to do your -- to investigate and manage, did you have to look at a lot of papers and figure out what was going on, and what had happened in this project?

A. Over the whole course of my involvement, yes, there was a lot of papers to look at.

Q. Yes. Now, did you see, in your review of the papers, the previous planning permission that was granted to Waterside?

A. I don't remember looking at it in any detail, no.

Q. I think I have asked you, "did you see". Did you see that there was a previous planning permission rather than whether you had looked at it in any detail?

A. I know that one was in existence, but I don't recall seeing it, probably, no.

Q. There was one that was worked on in 2013, 2014, 2015 where foundations were laid in order for work to start. Did you know that?

A. As I said, I knew there was a planning permission document in existence.

Q. Well, let's call that the old planning permission where work did start.

As I understand it, Calfordseaden worked on that one. Did you see any documents in relation to Calfordseaden?

A. Not that I was aware, by those particular people, no. I don't know who they are. The name is not familiar.

Q. Okay. But there was also another planning permission which was granted on 19 December 2018, wasn't there?

A. I believe so.

Q. Do you remember it?

A. I believe it exists.

Q. I think you refer to it in your statement, don't you?

A. Yes. I believe it exists.

Q. Well, it had to be completed by 18 December 2021. Do you remember that information?

A. Yes, I do.

Q. That one was about an improvement of existing central facilities and development of 118 additional holiday lodges; is that right?

A. I believe it was, yes.

Q. So, going back to what you were required to do, part of your job was essentially to get the lawyers to manage this project and to get the lawyers to sort out all the conveyancing issues and get that asset sold as soon as possible. Is that right?

A. More or less.

Q. So, from your review of the papers, the problem was really more a conveyancing problem, wasn't it?

A. No, to say it was conveyancing is wrong. It was more about ownership and who had the ability to sell.

Q. Sorting out ownership is for conveyancing lawyers to deal with, isn't it?

A. Not necessarily, because we were looking at title documents and security documents that supported entitlements across the whole Waterside site. So it wasn't just with conveyancing lawyers.

Q. Well, I put it to you that it was a conveyancing matter that could have been sorted out and could have been dealt with quickly?

A. Absolutely not. It was very complex.

Q. There was also the need to do some remedial work; is that right? Do you remember that?

A. I do remember that.

Q. Yes. You refer to this at page 11, paragraph 40 of your first witness statement which is found at <C1/6>. So there you say that the administrators of LCF lent more money to Waterside Cornwall Operations Limited for them to undertake remedial work. Is that right?

A. That's correct.

Q. You then, in your statement, talk about the effect of Covid and what happens around that time. That is in paragraphs 26 until 29 of this statement. But, in that section, you talk about a formal valuation having been carried out and, in the last sentence, you refer to a figure of 3 million.

Now, it looks like this formal valuation was carried out around Covid; is that right?

A. Erm, I couldn't say precisely, but it would have been in -- I imagine it would be around early 2020.

Q. Well, around that time, which is around Covid, for a holiday facility, it would be a very bad time, wouldn't it, to actually go and value it, when nothing is really working? Isn't it?

A. As I said, it would be likely to be early 2020. Lockdown didn't come into effect until the middle of March.

Q. Now, you sought professional advice from a chartered surveyor, didn't you, in order to be able to help yourself with this investigation?

A. I understand that the joint administrators did, yes.

Q. So you didn't?

A. I wouldn't personally engage, no.

Q. No. So you cannot tell me whether the chartered surveyor told you if planning permissions would make a difference or not to a property, can you?

A. Sorry, can you ask that again? Someone coughed in the middle.

Q. You cannot tell me -- because you didn't seek advice from the chartered surveyor, you cannot tell me whether planning permission does make any difference to the value of a property, can you?

A. In my personal expertise, no, but we would have had people engaged by us within a team that would be able to guide us on that.

Q. So, in the end, the sale of Waterside was for 10.1 million, and you explain that there were some adjustments made. So this figure is after some adjustments were made; is that right?

A. Correct.

Q. And that sale happened on 29 April 2022; is that correct?

A. Correct.

Q. So that is after the planning permission had already elapsed, hasn't it?

A. Correct.

Q. That's not great, is it?

A. I don't understand your point.

Q. Well, planning permission does make a difference to the value of a property, doesn't it?

A. I don't think it has been demonstrated here, no.

Q. Well, I put it to you that it does and I put it to you that you didn't do the best you could to ensure that the asset was being realised at best value?

A. Totally disagree.

Q. In these proceedings, you provide a second statement -- I think that was provided last week or the week before, I cannot remember, but very recently. It is found at <C1/9>.

Do you remember that?

A. I do.

Q. Yes. In that statement, you provide an estimate calculation of total deficiency to the LCF bondholders and you set out what the value of the current deficit is said to be. Is that right?

A. That's right.

Q. Were you aware of the offer made by RockRose or that project at all?

A. Very distantly.

Q. Well, your statement would have been completely different today, had the administrators taken some good decisions instead of bad decisions in relation to RockRose or even selling of Waterside, without planning permission, don't you think?

A. Some of the numbers might be different but, ultimately, there is a huge deficit to the bondholders that won't be changed.

Q. Five years ago, they could have accepted an offer of 40 million, that would have had a major impact on the value of the deficit, wouldn't it?

A. No. As you can see, the debt -- well, it is not in front of me, but I know the deficit is in the region of some 300 million. So, in terms of 40 million. And, as Henry Shinners pointed out in his evidence, it wasn't 40 versus nil, it was 25. So if we are talking about a difference of 15 million when comparing a deficiency of over 300, then, no, it wouldn't have made a material difference.

Q. Your deficit figure would have been different five years ago, wouldn't it?

A. Marginally, potentially.

Q. Did you see the amount of costs incurred in the administration of LCF?

A. I am aware of the costs.

Q. That is quite a lot, isn't it?

A. There is a very large deficit to be recovered.

Q. Well, I put it to you that the administration and you have caused the value of the deficit to be this huge. You didn't realise the assets at the optimal time and took a lot of time to sort out technical problems that you noticed -- title, the conveyancing should not have taken that long, should it?

A. I disagree totally.

MS DWARKA: Thank you very much, Ms Lloyd. I have no further questions.

MR JUSTICE MILES: Thank you. Any re-examination?

MR ROBINS: My Lord, no re-examination.

MR JUSTICE MILES: Thank you very much for giving your evidence. That is now completed.

(the witness withdrew).

MR JUSTICE MILES: We will take the transcriber's break for five minutes.

(11.55 am)

(A short break)

(12.00 pm)

MR ROBINS: My Lord, I would like to call Mr Joe Pitt. MR JOSEPH ANTHONY PITT (sworn)

Examination-in-chief by **MR ROBINS**

MR ROBINS: Could you tell the court your full name, please?

A. Yes. Joseph Anthony Pitt.

Q. Your work address?

A. 32-33 Cowcross Street, London.

Q. Can we have a look, please, at <C1/8>, page 1. Do you recognise this as your witness statement in these proceedings?

A. I do.

Q. Can we look at page 7, please. I believe that is meant to be part of your signature. Can you confirm that you signed this witness statement?

A. Yes, I confirm I signed this witness statement.

Q. Are the contents true and correct, to the best of your knowledge and belief?

A. They are.

MR ROBINS: If you stay there, please, my learned friend may have some questions for you.

A. Thank you.

Cross-examination by **MS DWARKA**

MS DWARKA: Mr Pitt, you are a charter surveyor, aren't you?

A. I am.

Q. You provided advice on the sale of Lakeview, which I think you refer to as "Waterside", to the administrators of LCF and LOG, didn't you?

A. To the administrators of LCF, yes.

Q. Presumably, you remember when you were instructed?

A. I do.

Q. So you were instructed early on in the administration, weren't you, in March 2019? Is that right?

A. That's correct.

Q. Now, in your statement, you provided some information regarding the issue of planning permission. Is that right?

A. I did.

Q. I don't know how much information you were provided with, but did you know that the development site had other planning permission given to it prior to the one you discuss in your evidence?

A. Yes, I did.

Q. So you were aware that Calfordseaden had done quite a lot of work in order to secure the previous planning permission in 2013, 2014, leading on to 2015?

A. I was aware of the implemented planning permission relating to the addition of golf lodges and a hotel which originated from the 2013 application that you refer to, I believe.

Q. You were aware, were you, that, in order to ensure that the permission does not lapse, the foundations were laid. Did you know that?

A. Yes, I am aware of that. That is -- the implementation is the relevant point there. So that planning permission was implemented by means of the commencement of some construction activity and material operation, as it is known.

Q. Yes. In your statement you refer to the second planning permission, that is the one that was granted on 19 December 2018 and which needed to be completed by 18 December 2021?

A. Correct.

Q. That one was about an improvement of existing central facilities and development of 118 additional holiday lodges, is that right?

A. That's right. Yes.

Q. You say in your statement that you did think about extending the second planning permission, but that, ultimately, it was not pursued. Is that right?

A. Not quite. I think what I said was that we considered the potential ability to implement the 2018 planning permission in order to keep it as extant as had been with the 2013 planning permission.

Q. You talk about, in your statement, the situation with the River Camel catchment area and Cornwall Council. Do you remember that?

A. I do.

Q. You say that Cornwall Council had temporarily paused all decision-making for certain development types in the River Camel catchment area. Is that right?

A. Correct. It is the River Camel.

Q. So that would include any new application or application to vary any existing condition, would it?

A. That's correct. So including applications to discharge conditions required to enable unlawful implementation of a planning permission.

Q. So, obviously, that is not within your control. Isn't it? What is happening with this river and the temporary pause?

A. That's correct. It's not within my control, no.

Q. But what is within your control was for you to advise on the selling of the site sooner rather than later, to get the best price whilst the planning permission was valid, wasn't it?

A. Not -- no, I don't agree with that statement. My role was to assist the administrator in ensuring that the property was capable of being marketed so the precursor to commencing marketing was to ensure that the titles that were available to be sold were registered in an appropriate place, to enable them to be then transferred on to a purchaser, which was not possible until the summer of 2021.

Q. So there were some technical problems which needed to be sorted out but that is a matter of conveyancing that could have been sorted out as a matter of priority?

A. It was sorted out as a matter of priority. The reality was that the bulk of the value of the Lakeside resort, Waterside resort, sits in the holiday lodges that are built within that title, or within that boundary. And the vast majority of those lodges at inception of our involvement were not registered to entities over which LCF benefited from security as part of what I would call its security net. The transfers hadn't been registered by the Prime or related entities that had seemingly acquired them and it took a very long time and it was a very complex piece of work in order to enable those registrations to be perfected.

Q. Well, I know you say all of that, but three years is a long time to take to sort out title issues, especially in this day and age where there is support, digital support, available to make all sorts of applications; don't you think?

A. Ordinarily, it would be. But when the entities that have acquired those titles have been dissolved or the transfers are not available because they are held within firms of solicitors or have been lost or whatever, there is a forensic piece of work required in order to enable those pieces of information to be put together such that the transfers can be evidenced to the Land Registry.

Q. Well, if you told the administrator how important those planning permissions were, they may have done it much faster, wouldn't they?

A. No.

Q. You say in your statement that you don't believe the lapse of the planning permission made any difference to the sale, but that cannot be right, can it?

A. I don't think I said it made no difference; it made no material difference, in my view. The point about the planning was it was not possible to implement it to keep it alive due to the issues arising in the nitrate neutrality point in the Camel Estuary.

Q. I am just checking what you say in your statement, if you give me two minutes.

A. Of course.

(Pause).

Q. Right. So let me use what you say in your statement. You say:

"... I do not believe that" --

A. Can you just tell me where this is, so I can have it in front of me?

Q. In your statement, paragraph 28.

A. Thank you.

Q. So you say, in the first line:

"... I do not believe that the price achieved for the property was materially impacted by the planning permission having expired."

You still stick to that sentence, do you?

A. Yes, that just reconfirms what I said earlier. Yes, I stand by that.

Q. That still cannot be right, can it? Everybody knows that approved planning permissions increases the value of a property. Had that site been sold with the approved planning permission still being in place, the value would have been higher, wouldn't it?

A. It is impossible to tell, but the point is not that; the point is that it was not possible to retain the planning permission as an extant permission due to the issues associated with nitrate neutrality in the Camel Estuary. So regardless of whether the property may or may not have been worth more with the benefit of an extant planning, it was not possible to preserve that planning from 2018.

In addition, there was a planning permission, which you have referred to, from 2013, which was extant, had been implemented and which enabled the addition of an additional 30 holiday lodges to the site and, actually, if you look at the planning as it stands now, that is the permission that the purchaser has implemented, or is seeking to implement, itself -- or not "implement", but to perfect through minor amendments in order to add those lodges.

Q. The point is that you didn't do a great job at advising the administrator, did you? As a result, the public and the bondholders are suffering because the value that it was sold at is less than what it could have achieved, wasn't it?

A. No, I don't agree with you. I would be interested in the evidence that you can give me to indicate that the property would have sold for a greater value than was achieved through a formal, open, public marketing campaign.

Q. Well, Mr Pitt, I put it to you that you did a bad job at valuing the property. You badly advised --

A. Sorry, excuse me.

Q. -- the administration about the permission issue.

A. Sorry --

Q. I haven't finished.

A. Sorry, I did a bad job as what, sorry? I didn't hear you.

Q. At valuing the property and advising the administration?

A. I have never portrayed myself as a valuer. So I don't know where that question arises, but I do not agree with you in the nature and ability for me to provide appropriate professional advice to the administrators in respect of Waterside.

Q. Well, you did a bad job at telling them that planning permission is not -- how do you put it -- will not materially impact the price?

A. Where do you draw the conclusion that I gave that advice to the administrators?

Q. Mr Pitt, I am not here to answer your questions. I am here to put my case to you, which I have done. On that note, I have no further questions for you.

MR JUSTICE MILES: Let me just -- why don't -- perhaps, if you want to ask that question, just ask it in a slightly different way, which is to ask the witness whether he did give that advice. It is up to you, you may not want to pursue it. "Did he give advice that they should sell the property, despite the planning permission lapsing?", or something like that.

MS DWARKA: Yes.

MR JUSTICE MILES: The witness has said he didn't give the advice, so if you want to pursue it, I think you should ask him whether he did give the advice.

MS DWARKA: Did you give the advice, Mr Pitt?

A. Can you just ask me the question, please?

MS DWARKA: The judge has just told you the question. Did you give the advice?

A. Sorry, I thought he was asking you to ask me the question.

MS DWARKA: Did you give advice regarding the fact that the price achieved for the property would not be materially impacted by the planning permission having been expired?

A. The advice I gave was -- as you can tell, was to seek to protect that planning permission because, yes, ideally a planning in place enhances the marketability of the property. The reality was, in this circumstances, it was not possible because of the nitrate neutrality point arising in the Camel Estuary. So it isn't relevant to the facts of the price achieved for the property at the time.

Q. So you did give an advice where planning permission would increase the value?

A. No, I have said I gave -- when we were engaged and we obviously looked at the planning history associated with the property. There were a number of planning consents and applications that had been submitted. In relation to the 2018 planning permission, as I have said in my witness statement, in the early part of 2020 we investigated the ability to enable that consent to be -- lawfully implemented was the intention, in order to leave it as an extant, ie, alive, planning permission. It would be beneficial for that, if that was possible, but it was not possible because of the nitrate neutrality issue.

Q. Maybe I should ask a different question to you because you are talking about the beginning.

When the property was being sold or when they were talking nearer to the idea of it being sold, nearer to the end of the expiry, did you give any advice about the fact that they should try and sell it when the planning permission is still valid?

A. I think the point is that a planning permission is not something that you can just -- a complicated planning permission such as this is not something you can just go and implement on the last day before it expires, having not dealt, in this case, with the pre-commencement conditions associated with it, because it would not have then been lawfully implemented.

So it wasn't -- it was a combination of the timing of the registration and of the transfers which enabled the seller, Prime Resorts, in administration as a group of entities, to be able to transfer those titles. And the impact that had on the timing of being able to sell the property. So it wasn't just -- it wasn't just, "The planning is about to expire, let's get on and sell". We weren't in a position to because we didn't have title to sell.

Q. Did you give any advice about selling and trying to sell as soon as possible, or sort out the title as soon as possible, once you knew about the technical problem?

A. Erm, I am a chartered surveyor, I am not a solicitor, so the complexities of resolving the title issues such that the property could be sold were dealt with by the administrators and their legal advisers. Again, it is not -- it is a confluence of the two points in relation to the planning and the issues of the title that enabled the property to actually be sold.

MS DWARKA: Thank you, Mr Pitt. I have no further questions.

MR ROBINS: My Lord, no re-examination.

MR JUSTICE MILES: Sorry, could I just ask a question?

Questions from **THE BENCH**

MR JUSTICE MILES: You have explained, a number of times, that the problem was to do with the nitrate neutrality problem, if I can put it that way, which meant, on your evidence, that it wouldn't be possible to implement the planning permission. Can you just explain in a sentence or two, so I can understand what that actually means?

A. Yes.

MR JUSTICE MILES: I don't need many paragraphs, but just a few sentences.

A. I will try. So nitrate neutrality is an issue that has risen to the fore in the last three years and it arises as a consequence of development being permitted and, particularly, in a sensitive environment like the Camel Estuary, Cornwall Council and the Environment Agency had identified nitrate increases in the water course and that led them to seek a pause to approving planning applications, which would have included a discharge of condition applications, which we needed to make in respect of this application, which would have meant that those applications would not have been dealt with in time.

MR JUSTICE MILES: Right. Would it not have been possible to carry out what I might call the implementation works without seeking a discharge of some of the conditions?

A. No, because, in most complicated, or relatively complicated, planning permissions, there are some conditions called pre-commencement conditions, so implementation involves lawful implementation which would be the works that I think you are describing, my Lord, and they have to be implemented lawfully so they have to be implemented -- they can only be undertaken when those pre-commencement conditions have been discharged. And that was the problem. We weren't timetable discharge the pre-commencement conditions.

MR JUSTICE MILES: Because of the moratorium?

A. Because of the pause, yes.

MR JUSTICE MILES: Right. Okay.

Are there any further questions arising out of my question?

MS DWARKA: I have no further questions.

MR JUSTICE MILES: Mr Robins?

MR ROBINS: My Lord, no.

MR JUSTICE MILES: Thank you very much for your evidence. (The witness withdrew)

MR ROBINS: My Lord, I would like to call Mr David Hudson.

MR DAVID HUDSON (sworn)

Examination-in-chief by **MR ROBINS**

MR ROBINS: Could you tell the court your full name, please?

A. David Hudson.

Q. Your work address?

A. 110 Cannon Street London.

Q. Could we look, please, at <C1/1>, page 1. Do you recognise this as your first witness statement in these proceedings?

A. Yes.

Q. Look at page 17, please. Is that your signature?

A. It's part of my signature.

Q. We have the same technical issue. Can you confirm that you did sign this witness statement?

A. I did, yes.

Q. Are the contents true and correct, to the best of your knowledge and belief?

A. They are yes.

Q. Look at <C1/2>, page 1. Do you recognise this as your second witness statement in these proceedings?

A. I do, yes.

Q. Look at page 3, please. Is that your signature?

A. It is.

Q. Are the contents true and correct, to the best of your knowledge and belief?

A. Yes.

Q. Can we look, then, please, at <C1/5>, page 1. Do you recognise this as your third witness statement?

A. Yes.

Q. On page 28, is that your signature?

A. Yes.

Q. Is there anything you would like to correct or clarify in this witness statement?

A. There is, yes.

Q. What is that, please?

A. I think it is paragraph 35.2.

Q. I think it is going to be back another page or two.

A. It is in relation to funds paid by LCF to GA -- so, yes, can we go back a page, please?

Q. I think that is forward. Can we go -- did you say?

A. It's GAD, so go down to page 20, please. Yes. So it is 36.5. I say:

"During the period of 13 November 2017 and 24 May 2018, the sum of [1,634,000] was [paid] ..." It should be £16,340,000. There is an error with the comma.

Q. Subject to that clarification, are the contents of the statement true and correct, to the best of your knowledge and belief?

A. Yes.

MR ROBINS: If you stay there, please, my learned friend will have some questions for you.

Cross-examination by **MS DWARKA**

MS DWARKA: Mr Hudson, you are the main person who gives quite a lot of detailed evidence in this trial about what you say happened, aren't you?

A. Erm, I am aware of the witness statements I have provided.

Q. Yes. You have provided three witness statements setting out the position as you see it?

A. I do, yes.

Q. As part of your analysis, you must have seen documents relating to LCF's business as a lending company, did you not?

A. I was more focused on the trace -- the flow of funds and bank statements.

Q. So did you not look at any of the documents?

A. I would look at a lot of documents, but I would focus on the flow of funds, which is the Excel spreadsheets, predominantly, and the bank statements.

Q. But, before working on it, you would have a look at the what has happened, some of the documents, the lending, the bond issue, bond certificates?

A. Not particularly, no.

Q. So you haven't come across bond certificates issued to bondholders, you haven't seen that?

A. No.

Q. And you haven't seen loan documents, security documents, none of that?

A. I have seen some of -- yes, I have seen security documents between LCF and some of the borrowing entities, yes. But I haven't paid a lot of detail or attention to those.

Q. So if I was to try and summarise to you what the business of LCF is, you won't be able to confirm anything because you haven't really seen any documents. Is that right?

A. Well, I can confirm to you from the flow of funds that have gone through.

Q. Other than the flow of funds, because that is an analysis of what you say happened with the money?

A. That's correct.

Q. What about what happened before the money started moving?

A. I am not sure what you mean.

Q. So LCF issues bond to investors who become bondholders and then use the money to lend to borrowers. In that sense, can you confirm that is what happened?

A. I believe so, yes.

Q. Are you aware that Surge was used as an agent to raise money from the public? Is that something you could confirm?

A. I am, yes.

Q. They were the ones speaking to potential investors and going through applications with them?

A. I don't.

Q. You don't know that?

A. I can't confirm that.

Q. In your statement you say, don't you, that monies were never paid directly to LCF?

A. That's right.

Q. So you say --

A. Is that -- "from bonds", do you mean from bondholders?

Q. From bondholders.

A. Yes.

Q. You said they were paid from bondholders either to Buss Murton or GCEN; is that right?

A. Correct.

Q. Are you aware that the bondholders were issued bond certificates once they invested in the bonds?

A. Not specifically.

Q. Do you think that's a normal thing that would happen normally? Are you aware that that is how it happens normally?

A. I am aware that can happen, yes.

Q. Once the bondholders invest in the bonds, they are issued bond certificates. Once that is issued, the money actually becomes LCF money, doesn't it?

A. It will become funds that are secured by the security.

Q. So doesn't the money from the bondholders go into a pool of funds ready to be lent to the borrowers?

A. I am not sure of the question, sorry.

Q. Doesn't either Buss Murton or GCEN, when they are collecting it, they keep it somewhere where it is mixed with every other money, don't they?

A. I haven't had visibility of their accounts.

Q. But that would be the normal course?

A. I have only seen funds coming through from the Buss Murton accounts and the GCEN accounts into LCF bond accounts.

Q. Right. It goes to a pool of money, which is then used by LCF to lend to the borrowers. That is what happens normally, isn't it?

A. I don't know.

Q. Are you aware about anything to do with the information memorandums, brochures, of what is the issue? Did you have to look at any of that when you were doing your exercise? I know you looked at the bank statements and the spreadsheets.

A. I have seen the documentation, but I focused on the flow of funds.

Q. So you can't really comment on anything to do with Mr Thomson, how he went about to lend to the borrowers, can you?

A. No, I can tell you what happened to the money.

Q. Okay. So you haven't seen any of the documents, any of the draft documents that LCF instructed lawyers, Buss Murton, to prepare the loan documents, security documents, none of that?

A. I may have seen documents, I have seen thousands of documents, but I wouldn't have paid any particular attention to such documents.

Q. What about valuations, did you see the valuations?

A. Same thing again. I have seen various valuations throughout my investigations, but I have focused on the flow of funds.

Q. So you didn't have to -- you didn't, as part of your analysis, before you looked at the funds, where it went, where it came from, which bank account to which bank account, you didn't look at anything in respect of what this case is about?

A. I looked at numerous documents, but my instructions were to follow the flow of funds.

Q. So did you, as part of your exercise, look at the facility agreement, the actual loan agreement?

A. Which loan agreement?

Q. With any of the borrowers?

A. I would have seen the loan agreements, but, same thing again, I would have reviewed them, looked at them but I didn't pay any specific attention to them. That wasn't my responsibility.

Q. Well, in the loan agreement, it is said at clause 2.2 that the borrowers can use the money they take for its general commercial purposes. Do you know that?

A. No. As I say, I paid no particular attention to the security documents.

Q. Sorry, my Lord, I am just taking one minute to go through. I didn't realise that you didn't look at anything, just the flow of funds.

A. I looked at the information, but I didn't pay any specific attention to it if it didn't relate to the flow of funds.

Q. I didn't expect you to look at all the brochures and the IMs, but just generally, to understand how the business worked, and to look at the documents to be able to then see whether it is right or wrong?

A. That wasn't my brief. My brief was to look at the flow of funds.

Q. Did you get to see the audited accounts from PwC or Ernst & Young, did you get to look at that?

A. I looked at the accounts that were available at Companies House, yes.

Q. So you know that there were two audited accounts, 2016 and 2017?

A. Erm, not specifically. But I would have looked at them at the time.

Q. So I know, in your evidence, you say that you looked at various spreadsheets, bank accounts and statements. Is that right?

A. Correct, yes.

Q. Did you notice that it was Katie Maddock who maintained the spreadsheets?

A. There was lots of spreadsheets maintained by different people. Michael Peacock also produced lots of schedules as well.

Q. Well, as part of your review of the papers, I can see that you looked at the spreadsheet prepared by Katie Maddock, which you refer to. That is at paragraph 10.7, page 4 of your first witness statement [<C1/1>]. There, you say that the spreadsheet was circulated by Katie of LCF to Emma of Oliver Clive & Co, don't you?

A. Sorry, I haven't got the page in front of me. Which paragraph, was it, please?

Q. 10.7.

A. I do, yes.

Q. You know that the accountants were also looking at all the papers together with Katie, in the background, because it is sent to the accountant?

A. I don't know that for sure, no.

Q. Well, Ms Maddock had the support of external accountants to help her in her duties, didn't she?

A. I am not aware of that.

Q. Were you aware that Lewis Silkin was working in the background as lawyers to work on the IMs and bonds or is that also something you don't know?

A. I may have come across paperwork, I don't specifically remember that.

Q. So you are aware with Oliver Clive & Co, Lewis Silkin -- Oliver Clive & Co accountants, Lewis Silkin lawyers working on IMs and bonds, Buss Murton working on loan documents, generally, PwC and Ernst & Young, as auditors, they were audited management accounts. You are aware of all of that and you can see there is quite a lot of professionals in the background working on this matter. Did you see that?

A. Yes.

Q. Part of the allegation is that this business is said to be a facade, isn't it? Do you know that?

A. Yes.

Q. It is a bit odd, isn't it? There's so many professionals in the background, who no doubt cost a lot of money to the business, and we say -- you say, "It is a facade, isn't it?" Do you find that odd?

A. No. It is a facade.

Q. People who want to defraud others don't just go spend the amount of money that LCF had spent on setting up the structure and getting advice from professionals like they did, do they?

A. Well, it depends upon what information the company was providing to the professionals. For example, I did quite a lot of work on LOG and I was looking at the correspondence between LOG and the auditors at the time that were BDO. You could see the misinformation being provided to BDO at the time and, therefore, BDO would not go ahead with the audit on that matter.

Q. But in this case, there are two audited accounts, those were signed off --

A. (Witness nods).

Q. -- by internationally professionally known accountants, weren't they? That is odd, isn't it? That they have signed off on this business when it is said that this is a facade?

A. Mistakes are made.

Q. Over two years, by two separate professionals?

A. Yes. It happens. Our firm has issued quite a lot of successful auditor negligence claims, so we have seen this on a regular basis.

Q. So, from your review of the documents, when you are following the money, did you also follow each time, in terms of looking at the borrowers making a request to borrow the money and the corresponding records in the spreadsheets on the individual loan schedule maintained by LCF?

A. We -- I would have seen quite a lot of the drawdown requests from the various entities.

Q. Did you see requests including instructions as to where the money should be sent? Did you see that? Have you seen any of those?

A. Yes. So the instructions normally came from Elten Barker representing a number of the borrowing companies, and it was quite a basic request. It said "This is a drawdown request", for example, "for LOG. Can you please pay it to the LOG account?". They were quite basic. They didn't give any details of what the funds were to be used for.

Q. So you saw in the request where -- direction as to where the money should be paid?

A. In some cases, yes.

Q. Yes. So it means that, when LCF was asked to send money to a particular place as part of the borrower's drawdown request, it was simply processed that request, wasn't it?

A. I don't know what you mean, sorry, can you ask the question again?

Q. There is a request to send money to a particular account so LCF will just go ahead and get that done. Is that what you had seen?

A. Yes.

Q. So it just follows the requests and makes the payment?

A. Yes. The request would normally refer to the -- I think it was the loan agreement or the facility agreement.

Q. So did you see the record where they record in a spreadsheet in respect of the requests made, did you see that record?

A. No. Look, I may have seen some. I have seen thousands of spreadsheets throughout my investigation.

Q. You may have seen a record, but you can't recall?

A. I can't recall, not at all. But I can't also say I haven't seen it either.

Q. What you could see is that LCF will just follow the request and make payments? You did see that?

A. There was a request that went in and payments were made.

Q. You could see that they wouldn't look too much into why, on what basis money is being sent to which particular place. They will just action it?

A. I didn't see the email trails around that. So, I didn't have access to all the email accounts, so whether or not there could be an email that went between LCF and LOG, for example, with "We are going to request this drawdown at this date", all -- some of the documentation I focused on was the drawdown requests.

Q. To service the loan, the repayments were made by borrowers; correct?

A. To service the -- no, I don't think there was any loan servicing.

Q. So the borrowers took loans from LCF, they have to pay interest?

A. Yes.

Q. And principal?

A. Yes.

Q. So in order to service that loan to pay the interest and principal, they made payments to LCF?

A. They made payments back to LCF from additional funds that were paid to them by LCF.

Q. So I am talking about they did make payments -- we will come to your analysis.

A. Yes, payments went --

Q. You say it is LCF money that came back, but I am just asking you, did they, or did they not, make payment back to LCF?

A. Yes.

Q. They did make payment to LCF?

A. They did, yes.

Q. In order to pay interest and principal?

A. That's what the headings were described as or the descriptions on the bank statements that I have seen.

Q. Okay.

A. It would say either redemption or interest or a loan S1.

Q. Yes, I think, at the beginning, you identify in your statement that some specific reference was used, but that later changes into a general reference of interest and/or redemption is that what you are talking about?

A. Yes, because originally I think one of the first borrowing interests was Leisure Tourism & Development Limited, and they would specify the name of the individual who was going to be paid. So the funds would go from Leisure Tourism & Development Limited to LCF under the name "Smith", and then you would see "Smith" being paid through the bondholder account in LCF.

Q. Okay. So at the beginning there were some references to names?

A. Yes.

Q. But then that later changed to a general reference?

A. Correct.

Q. I think you say in your statement somewhere that, from February 2016, that is when GCEN gets involved, payments into LCF account were made in blocks, do you remember?

A. Can you refer -- can I look at the page, please?

Q. I will have to look for it. Just two seconds. (Pause)

I can't find it here. Do you remember ever saying that? I can locate it, I think we are probably going to go over to lunch anyway so I can locate that and show you where you say it.

A. Thank you.

Q. Do you remember this information? No, not off the top of your head?

A. No.

Q. I will have a look at the statement.

A. Thank you.

Q. So I think I have already established before that you did say LCF has never received money directly from bondholders; that's right?

A. I don't believe it has, no.

Q. Did you see that GCEN would pay the bondholders' money into an LCF bond account?

A. Yes.

Q. Did you see that in your analysis?

A. We saw the funds coming in from GCEN into an account that was headed "bondholder redemption account".

Q. Doesn't that mean that it now becomes LCF money? From the bondholders but it is LCF money? Didn't it?

A. LCF has a duty of care to the bondholders.

Q. You say you don't know about this but bondholders were issued a certificate once they invest in the bonds. Once they have that certificate, don't they just have a debt now?

A. As I say, I haven't seen the certificates, so I can't comment on the legal basis.

Q. So, if you had seen the certificate, would you agree then that the money is now LCF money?

A. It depends upon what the certificate says and the terms of the contract between the parties.

Q. You have done quite a lot of analysis in your first witness statement, and I think in your third witness statement, where you can see, can't you, that the borrowers did not use the money that they borrowed just to pay towards interest to LCF, did they?

A. No, they didn't.

Q. So they paid money towards other companies?

A. No, they paid a lot of money out to individuals, for -- I don't see on any commercial basis.

Q. And to companies too?

A. And to companies, yes. So LCF would pay, for example if you look at Leisure Tourism & Developments Limited, I think it took about 30 million odd being paid into that entity. A big chunk of that was paid to individuals who effectively are defendants in this case.

Q. So, in your understanding of how loan works, is it not the case that once the money is lent it becomes the borrower's money? Would you agree?

A. I don't know because I haven't seen the contract, so I can't comment on that.

Q. When a lender lends to a borrower, doesn't that money -- he has lent it?

A. But there is security, isn't there.

Q. No, we are talking about a borrower having received money from a lender, there is loan security, there is loan documents, there is security documents, but there is a lending of the money?

A. It also depends what that security document says, what those funds can be used for, for example.

Q. Yes, yes, I did refer to the loan agreement to you before.

A. For example, if I borrow money from a bank to buy a house, the documentation will specifically say these funds are for that house. Therefore, the bank will take specific security against that house.

Q. Previously in your evidence you said to me that you had a look at the documentations, the loan agreement?

A. I scanned through them, yes, but I didn't pay any particular attention.

Q. Now you are talking about if you borrow money to buy a house then obviously you have to use it to buy the house?

A. That was an example I gave you, yes.

Q. Now, the loan agreements that I was talking about in this case, refers to -- and I think I have referred it to you previously -- as to what is the purpose in clause 2.2. And I told you previously that

the borrowers had borrowed the money for its general commercial purposes. That is what I had said before, but you said you looked at the paper generally but you didn't really look too much into it because you followed the money?

A. That's correct.

Q. So now when I am saying to you the borrowers, once they have borrowed the money, there is a loan agreement -- and I have just told you that the clause relevant to these agreements says the money would be used for its general commercial purposes.

Now, doesn't that mean -- that is already borrower's money now -- that it decides what it does with the money?

A. That clause --

Q. Following that loan agreement?

A. That clause would say that but there might be other clauses in the loan agreement that could contradict that or give different meaning. I am sorry, I haven't seen in any detail the loan agreement so I can't comment on that.

Q. So the loan agreements that is the subject matter of these proceedings, are those loan agreements where it is stipulated that the money can be used for general commercial purposes. You say you haven't really thought about this and looked at that, you just followed the money?

A. Correct.

Q. But there is a problem with that, because had you looked at the underlying papers and then looked at the analysis, you would have realised that the money, once it moves from the bondholders to LCF and the bondholders were issued certificates, it is no longer bondholders' money. And then, once LCF lent the money to the borrowers under the loan agreement, which gives them the right to use the money for the reason stipulated in the loan agreement, now it is borrowers' money. So on that basis, you spent a lot of time analysing various payment, coming and going from one company to another, but it misses the point, doesn't it?

A. Sorry, is that a question?

Q. It misses the point, because it is no longer LCF's money, just like it is no longer the borrowers' money?

A. LCF will have a duty of care to the bondholders to repay that money.

Q. LCF has a duty of care to make sure it honours the bond certificate it has issued to the bondholders.

A. But it didn't. The only way it could repay borrowers was by borrowing more money from other bondholders and paying them back with those funds. That is the point.

Q. Well, we will never know this would we?

A. We will.

Q. Because LCF was still in its infancy, wasn't it? It got closed down, didn't it?

A. We do know that because funds were not used for correct commercial purposes. There was no way that ever bondholders would have been repaid.

Q. LCF doesn't necessarily know that, do they?

A. Yes, of course they do.

Q. Why would they know everything that happens with what the borrowers is doing? That is up to the borrowers, isn't it?

A. Not necessarily where there is connected parties. Andrew Thomson was -- had been or was director or shareholder of a number of the borrowing entities and received significant funds from the borrowing entities.

Q. Well, you say "connected parties", but Mr Thomson just used his network of people he knew, isn't it?

A. But he also received funds from the borrowing entities.

Q. Mr Thomson was a party to an SPA giving him the right to 5 per cent shares, the value of which could not go over a total maximum of 5 million, and he received sums in respect of those share payments, didn't he?

A. What share payments?

Q. Well, it is in respect of this SPA, the Share Purchase Agreement. He basically got paid for his 5 per cent shares via various share payment transfers from various companies, and that is actually all that he got from this. Did you know that?

A. Which is a conflict.

Q. A 5 per cent shareholding doesn't make somebody a connection.

A. It does.

Q. They are a minority shareholder, aren't they?

A. They are a connected party, yes.

Q. I put it to you that they are not.

(Pause).

In your first statement, at paragraphs 10 to 34, you set out payments from LCF to LTD, then LOG, and then finally GAD, previously known as International Resorts Group Plc. Is that right?

A. Yes. Can you take me to the page, please?

Q. Yes. So if we go to Hudson 1, that is <C1/1>. Paragraph 10 to 34.

A. Sorry, which paragraph are we referring to?

Q. I am talking generally, because I have put it all together. From 10 to 34 you spend a lot of --

A. Paragraphs 10 to 34?

Q. Yes. It is quite long, I wasn't planning to get you to go through it.

A. Right.

Q. Because, as I have said it to you, the money no longer belongs to the bondholders, or LCF for that matter; it belongs to the borrowers. So what they do with it is on them, isn't it?

A. No, not at all. They have a corporate responsibility and a duty of care to the bondholders. They have to be able to repay the bondholders with their investments.

Q. But that does not mean, does it, that they have to be held liable if it does happen that the borrowers used the money for unlawful general commercial purposes, for example, instead of lawful commercial purposes?

A. I am sorry, what was the question?

Q. That is the definition of what the borrowers can use the money for: "general lawful commercial purposes". Say it does happen that the borrowers may have used it, the borrowers' companies, they are the one who transfers the money -- my Lord, I have just realised it is 1 o'clock.

MR JUSTICE MILES: You had better finish your question. I think you were halfway through a question.

MS DWARKA: I have actually forgotten my question. I will rephrase it. The borrowers are subject to the loan agreement, and the loan agreement stipulates that they can use it for "general commercial purposes". Now, if they do happen to use it for unlawful commercial purposes, that is not LCF's fault, is it?

A. Of course it is. LCF should ensure the funds that they are paying across to the borrowing entities is for a specific purpose. It is the same thing again. LCF acts as a bank. A bank isn't just going to give people money to do what they want with. The bank has to understand what the value of the asset it is lending against, what security there is against that. There has to be -- you are not just giving money away willy nilly, you have to lend it in a correct manner, with adequate security.

Q. If a bank uses the word, "general commercial purposes", that is could be anything, couldn't it? There is no definition anywhere.

A. But it has to be a commercial purpose.

Q. General commercial purpose.

A. A commercial purpose, correct, yes.

Q. So, now, if the borrowers use the money for anything else, that's not on Mr Thomson, is it?

A. Of course it is, because they have to ensure what they are lending the money against, what security they are taking. If I am lending monies against an entity, I have to make sure that those funds are secured. What is the asset or the business I am lending those funds against?

Q. Well, I put it to you that that is not the case. It is not on Mr Thomson.

A. Of course it is. It is absolutely on Mr Thomson. He has a duty of care to bondholders. He should be lending the money and ensuring that there is specific security against the money and they are correct operational commercial businesses that actually are spending that money to generate a profit from those businesses.

Q. You said earlier that you didn't look at any of the documents?

A. I am not, I am talking to you from a general perspective.

Q. Well, how do you know he didn't? You don't, do you?

A. I can see exactly what has happened to the funds, that he has not taken any care and attention in relation to what these funds were used for.

Q. You just don't know, do you because you --

A. I can categorically tell you that, if we look at, for example, Leisure Tourism & Development Limited, I can categorically tell you £31 million went from LCF into that entity for no commercial purpose.

Q. But then you didn't understand my question previously. I am looking at the time, my Lord. Maybe we should break.

MR JUSTICE MILES: Okay, if that is a good moment for the break. We will come back at 2 o'clock.

I am sure this has been explained to you but, while you are in the course of giving your evidence, you mustn't discuss the case or your evidence with any other person.

A. Understood.

(1.03 pm)

(The short adjournment)

(2.00 pm)

MS DWARKA: Mr Hudson, before the break I had told you that, from February 2016, when GCEN gets involved, payments into LCF's account were made. You said that payments were made in blocks and you had asked me to identify. So can we look at his third statement, page 5, paragraph 14.

If you could, please, have a look at that. It is contained in the last line where it says: "As such, from the point of GCEN's involvement in February 2016, payment of bondholder monies into LCF were made 'in block payments'."

Yes?

A. Yes.

Q. All right. In your third statement -- and we are going to be using that quite a lot, so if we can leave it there, please -- in paragraphs 30 to 40 of that statement, you provide some further detailed analysis of what amount you say was paid by LCF to a particular borrower and what money you say returned to LCF from that particular borrower.

Now, we are going to have a quick look at those paragraphs, starting from paragraph 30. In there, you deal with LOG; is that right?

A. Yes.

Q. You identify LOG as LCF's largest borrower; is that right?

A. Yes.

Q. You say in your statement that LOG received £41,723,165.02.

A. Yes, we talked about paragraph 30.4, that is what I say, yes.

Q. 30.4, that is it. I am summarising roughly what you are saying in the paragraph, but please feel free to have a look at the paragraph in particular.

A. Thank you.

Q. So in that period, it paid back 10,069,403.33. You say that, I think, at paragraph 30.13, I think. Yes, 30.13. Is that right?

A. 30.13? Yes.

Q. You identify, of this figure, you say £7,954,712.81 was paid into the bondholder repayment and interest account?

A. Yes.

Q. With the majority of the fund utilising the -- being paid there using the description "redemption"?

A. Yes.

Q. Right. As you are using a specific period to do this computation, we are talking about only part of the payment lent to LOG; is that right? Because, in reality, the figure is in the region of 122 million?

A. But none of those funds went across into LOG. So, if you look at -- there was a number of direct payments that were paid to Andrew Thomson, Spencer Golding, Simon Hume-Kendall and Elten Barker that went actually direct from GCEN into their account. They were booked as a loan to LOG, so the books and records of LOG showed something different to the bank statements. So what I am referring to here is what I saw that went through the bank statements.

Q. What I was referring to is the general figure, the amount borrowed by LOG was 122 million, wasn't it?

A. That's right, yes.

Q. Whereas, when you are doing the calculation, you have a period that you looked at?

A. But what I was explaining is that that was what was shown in the books and records, the accounting records, but that cash didn't necessarily all go into LOG. I mentioned before an example, I think it was around £30 million that went directly to four individuals that was paid by GCEN but was booked in the books and records of LOG. So you won't see £120 million through bank statements.

Q. I am just looking at your analysis, your figures here?

A. This is in relation to the bank statements.

Q. Yes, that's all.

A. But you asked me the question about the 120, so I am explaining why you won't see 120 million coming from LCF into LOG.

Q. But the other explanation, which I was trying to say, is that you have chosen a period. When you have done these computations, you have chosen a period that you are looking at to decide, "This is the amount of money in and this is the amount of money out". So it is to do with that period. So it won't reflect anything outside of that period, would it?

A. No.

Q. Right.

Now, in that paragraph, you also say that LOG received money from Sands Equity and GRP?

A. Yes.

Q. Now, if we can have a look at paragraph 31 of that same statement. This is about Waterside Villages. Isn't it?

A. That's what it says, yes.

Q. In there, you identify that Waterside Villages did not receive money directly from LCF, it received money from other entities. Is that right?

A. Yes.

Q. Now, looking at paragraph 32 of your statement, this one is about CV Resorts. You say in there that there were no direct payments from LCF to CV Resorts prior to 20 November 2017. Is that right?

A. Which paragraph are you referring to?

Q. Sorry, I will get you the paragraph.

MR JUSTICE MILES: I think it is 32.2, is it?

MS DWARKA: Yes, 32.2. Thank you, my Lord. So you then say LCF paid to CV Resorts 659,499.47. CV Resorts paid back 940,152.19 to LCF.

A. Yes.

Q. In paragraph 33 of your statement, you then deal with FSES.

You acknowledge in there that FSES received payment from other sources rather than just LCF, but still concludes that it is from LCF. Is that right?

A. No, that's not exactly what I say, is it?

Q. Well, you are acknowledging there, there is money that has been received from other sources, do you not?

A. That's correct. I do, yes.

Q. So money was received from other sources other than just LCF?

A. And I have dealt with those payments as well. I have listed those payments.

Q. Paragraph 34 of your statement deals with L&TD. You say LCF paid L&TD £31,249,660.60.

A. Can I clarify that is the net amount that -- that's the cash amount which was received. So if you gross that up to 25 per cent payment that went to Surge and the 2.5 per cent commission payment that went to LCF, the figure is over 40 million.

Q. But you don't say that in your statement, do you?

A. No, because I am talking -- this is about cash.

Q. Yes. I am only talking about what you say in your statement as a figure, but now you are saying --

A. I am just clarifying that point. But this is about cash, this is all about the cash tracing. So the funds that went from LCF into -- cash into L&TD, this figure is correct.

Q. Well, you should have made that clear in your statement at some point, shouldn't you?

A. This is a cash-tracing exercise. This is dealing with the allegations of Ponzi, so this is all about how the cash went around the group.

Q. We are dealing with the cash exercise at the moment, but you felt it necessary to tell me about this point, so you should have covered it, shouldn't you?

A. No, I think this is dealing with the cash.

Q. Right. So let's go back to the cash. L&TD, on that, you say LCF paid L&TD £31,249,661.60. You also say L&TD received other payments within that statement, don't you?

A. Whereabouts? Which paragraph?

Q. 34.6.

A. Yes, I do.

Q. You set out various other payments?

A. Correct.

Q. You then explain how much money was paid back. You say L&TD paid LCF £5,010,581.96 as interest and redemption?

A. Which paragraph is that?

Q. Let me find out.

That is paragraph 34.13, the first line.

A. Sorry, I don't have that on screen.

Q. It is at page ...

MR JUSTICE MILES: Can we go over the page?

MS DWARKA: Page 17.

A. Yes.

Q. Top of the page. If we could now go to paragraph 35, you explain in there, don't you, that you say GRP had a commercial relationship with LCF but, in fact, LCF didn't have any loan agreement with GRP, did it?

A. No.

Q. So that, presumably, is payment following directions from a borrower to send to GRP, isn't it?

A. I don't know.

Q. So you say LCF pays £20,460,070.82 to GRP. That is at paragraph 35.4.

A. Yes.

Q. But you, later on, in the later paragraphs, talk about payment being made by other entities to GRP. So Waterside Village bonds, Sands Equity -- is that right?

A. Yes.

Q. If we move on to paragraph 36, that is about GAD. GAD used to be International Resorts Group Plc until November 2017. Is that the one that you had corrected the value at the very beginning?

A. Correct.

Q. That's right, isn't it?

So it should read -- instead of £1,634,025.28, it should read £16,340,025 or £16,340,250?

A. I think, yes, the comma is in the wrong place, so it is 16 million.

Q. 16 million. So that is what you say now, 16 million that LCF sends to GAD.

A. (Witness nods).

Q. In that paragraph, you also say that GAD receives funds from other entities, so L&TD.

In that, you say that you cannot be sure if the money originated from LCF, don't you?

A. Which paragraph are you referring to, please?

Q. I will tell you.

(Pause).

What you say is -- paragraph 36.7. You talk about the funds paid by L&TD to GAD and then you say it is not possible to say that that sum that L&TD paid to GAD did not include sums which originated from an entity other than LCF.

So what you effectively say is that you cannot be sure where the money comes from, isn't it?

A. I think my screen just moved. Sorry.

Q. If we go to paragraph --

A. Sorry, I haven't answered the question. The answer is funds would have come from LCF and through other entities. If you look at the 16 million that has gone into GAD and the funds that have been paid back, even if you deduct other sums that have gone into that entity, it is clear there have been funds used from LCF into GAD to repay LCF.

Q. So, in your analysis, some money must have come, you say, from LCF?

A. It did. 16 million did, yes.

Q. If we have a look at paragraph 37, that is about Sands Equity.

MR JUSTICE MILES: So, sorry, can we just go back to that page? It is jumping around. Okay. I have just noticed that, in paragraph 36.15, that same figure of 1.6 million appears which you corrected.

A. That should also be the 16 million.

MR JUSTICE MILES: But then the maths is wrong, then, in that paragraph, isn't it? Because you explain a deduction of that amount from another amount.

A. Correct.

MR JUSTICE MILES: So there, there needs to be a correction in relation to that. What should that be? Can we tell? Should it be the difference between 16.3 million-odd and 1.097?

A. We will have to look at what other funds went into it. Yes, it should be.

MR JUSTICE MILES: So what would that make the balance? It would be something in the order --

A. 4 million. LCF money.

MR JUSTICE MILES: Sorry, how much?

A. About 4 million. No, sorry. We are talking about the 16 million. I am confused.

MR JUSTICE MILES: Because you corrected the earlier paragraph, it looks to me as though a correction is needed here. Just look at it for a minute and see if that is correct or not.

(Pause).

A. No, because, originally, we only said 1.6 million went into Global Advanced Distributions. However, it was 16 million that went into Global Advanced Distributions. Other funds that went into Global Advanced Distributions were -- they only received funds from -- did not receive any funds other than LCF and Leisure & Tourism Developments Limited. So, how much was received from Leisure & Tourism Developments Limited? £1 million. So technically, of the 16 million, there was 17 million that went into GAD, but it returned the -- whatever the figure was to LCF. Where is that? Returned by GAD. Yes, the £4 million. So what we are saying is pretty much all of the funds that went back to LCF from GAD originated from LCF.

MR JUSTICE MILES: All right. But as a matter of -- without that follow-up question about the amounts, is it your evidence that that figure of 1.634 million should be the same 16?

A. It should be the 16. Correct, yes.

MR JUSTICE MILES: Sorry, I just wanted to -- counsel, sorry, I just wanted to clarify that with the witness.

MS DWARKA: Sorry, my Lord.

MR JUSTICE MILES: I don't know if there is any particular question arising out of that, but it just seemed to me that it was the same figure.

MS DWARKA: Yes, that's fine. Thank you, my Lord. If we move on to paragraph 37, you then deal with Sands Equity and you say, at paragraph 37.5, that LCF paid £258,253.39?

A. Yes.

Q. I think you also then identify further down that Sands Equity received funds from LOG. You identify that at 37.6. And then you talk about Sands Equity receiving funds from GRP at 37.10.

A. Yes.

Q. So in terms of returns, you say, at 37.21, paragraph 37.21, that Sands Equity paid LCF back £2,596,272.13. Is that right?

A. Correct.

Q. Paragraph 38, you deal with Elysian.

A. 38.3, you identify that LCF paid Elysian £54,188?

A. Yes.

Q. Once again, you also identify, further down, that Elysian received money from other sources. So you set it out in 38.6. Is that right?

A. Correct.

Q. So it receives money from GAD, GRP and Waterside Villages. But you also say, at 38.7, that Elysian received money from HMRC. Is that correct?

A. Yes.

Q. Now, you go through this process and talk about money LCF sent and received further on, in paragraphs 39 and 40, in respect of the other companies. But the obvious problem with your entire analysis is this: once mixed, it isn't possible to allocate a particular pound to a source, is it?

A. No. Because the businesses that LCF lent to didn't conduct any real business, apart from -- if you look at what entities that LCF lent to, LOG had the IOG investment and it had some investments into -- there was an entity that had an oil business, so it was called Decipher and Asset Mapping but none of the entities generated any cash other than what we have spoken about. There could have been a small amount of cash that was generated from the Waterside Village. Other than that, there was no actual operational businesses from the money that was lent out from (inaudible) to the borrowing companies. They didn't derive any income from anywhere. There was no income other than LCF.

Q. You still cannot be sure?

A. Yes, we can. I can, yes. Looking at all of the bank statements I have been through, I don't see other than what I have identified here, and if you add up all of the third party funds -- he dealt with FSES and he dealt with the HMR refund. Other than that, everything else has come from LCF funds. £24 million from all the entities went back to LCF in relation to bondholder redemption payments. That doesn't include the other bits that went back into the general LCF pot. What you cannot say is there was more than £24 million generated from any legitimate business activities. So I can categorically say, yes, I can conclude that funds that were paid back to bondholders came from other bondholders that invested into LCF.

Q. I think what really happened here is that you had already decided that there was a problem and looked for ways to prove your point, hadn't you?

A. No, not at all. When I first -- the first bank statements I went through were Leisure & Tourism Developments Limited. I couldn't believe what I was seeing. I could see all these funds coming in from LCF and almost 50 per cent or 60 per cent of those funds going out to four individuals. I couldn't believe what I was seeing. I was actually shocked by it.

Q. But that is out of Mr Thomson's control, what happens with the money, isn't it?

A. No, not at all. Mr Thomson has a duty of care, a fiduciary duty, to his creditors.

Q. Mr Thomson doesn't have the right, and doesn't have the power, to direct those companies to go and make payment to whoever he wants to. Can he?

A. He was receiving funds directly.

Q. But he doesn't know where the funds come from?

A. He does. He knows they are coming from Leisure & Tourism Developments Limited because it is on his bank statements.

Q. I put it to you that Mr Thomson cannot be held responsible for what is happening in third party companies?

A. He has to be responsible. He is lending the funds. He has a fiduciary duty to the bondholders, who keep paying money into LCF. If he is not aware of what is going on, he needs to be. He has that fiduciary duty. He has to understand exactly where those funds are going and what those funds are being used for.

Q. I put it to that you that Mr Thomson was doing his job and that there was nothing wrong in how he operated his business. He could not know what other people were doing with their business, could he?

A. He has to have -- it is his responsibility. He is taking money from vulnerable people, from pensioners, and he is using that money to pay into third party or connected companies, of which he is receiving funds back from. He has a duty of care to those people who he is taking their money from. He is a director of the company, it is his responsibility.

Q. As I have explained to you, Mr Hudson, once a certificate was issued, it is no longer the bondholders' money. They received their certificate, it belonged to LCF. And once LCF lent it to the borrowers, it then becomes the borrowers' money. What they do with it is up to them?

A. They have --

Q. Mr Thomson cannot be held responsible if the borrower did, in fact, use the money for a purpose which they weren't allowed to do?

A. He absolutely is responsible as a director of that company. He has taken these people's money.

Q. Mr Thomson --

A. He is responsible. The director is responsible to stakeholders in his business, and that is creditors. He has a duty of care to his creditors, a primary duty of care to his creditors. He has to run and operate a business with a view to being profitable to repay his creditors.

As soon as he is aware that he cannot do that, he should take steps to place that company into an insolvency process.

Q. You had a look at payment that Mr Thomson received, hadn't you?

A. He has received a number of payments from different entities, yes.

Q. Mr Thomson received money as a result of his 5 per cent shares under the share purchase agreement, didn't he?

A. I have got no idea. He is conflicted. He should not be paying money out to entities without disclosing to his creditors that he has a financial interest in these entities.

Q. He has also received money for Christmas bonuses and consultation fees. Did you see that?

A. I was looking at funds that were coming from the group entities that went back to Mr Thomson. Once again, he has a duty of care to his creditors, he should not be paying money to third parties and receiving a commission or anything from that without disclosing that to his creditors.

Q. Well, I put it to you that Mr Thomson has received payments from other companies relevant to his 5 per cent shares and in respect of Christmas bonuses and consultation fees, nothing more.

A. He should not be receiving a commission from entities he is lending money to and, apparently, has no idea what is happening with those funds. He has a duty of care to his creditors. He should be monitoring those companies, and should be receiving regular management accounts for those companies, understanding exactly what assets those companies are investing in, understanding what the profitability of those businesses is and understanding how those businesses were going to repay the liability. That is his responsibility.

Q. Let's look at it this way. Of the 237 million that is said to have been raised, he basically only received about 5 million-odd that was payment towards his share payment, Christmas bonus and consultation fees from various companies pursuant to the share purchase agreement. He received about 5 million out of 237 million that is said to have been raised. Does that sound like someone who was out there to defraud people to you?

A. Absolutely. He shouldn't have received a penny. None of that 5 million should have gone to him. If he was to receive a bonus, it should have been through profit that was generated going back into LCF. He has lent money to these third party entities; okay? They have to be able to pay that money back. In his position, any reward, commission or bonus should be based on the repayments that go back to him, not through companies that don't actually operate a commercial business and are just giving him money for no consideration whatsoever. He has to lend that money. He has to be responsible for that money to be repaid.

If, for example, some of the entities returned those funds and there was in excess of the monies that were borrowed, that creates a profit in that element, in that entity. He is, therefore, well entitled, from the profit that he has generated, subject to shareholders' sign-off on that, to take additional payments, for example, by dividends or bonuses, but not from entities that he, effectively, should be totally impartial from, because you shouldn't be lending to any connected entity whatsoever, because there is a conflict.

Q. Well, I put it to you -- because I asked you the question whether it sounds like somebody who was out there to defraud people, I put it to you that he was not out there to defraud people, that he was just doing his job and he received money which he explained clearly the reason behind he was receiving this money?

A. No, I totally disagree.

MS DWARKA: I have no further questions for you, Mr Hudson.

A. Thank you.

MR ROBINS: My Lord, no re-examination. Does my Lord have any questions?

MR JUSTICE MILES: Just one matter.

Questions from **THE BENCH**

MR JUSTICE MILES: At quite an early stage in your answers, you were asked some questions about, first of all, the monies going from the bondholders to LCF and then, separately, the loans from LCF to the borrowers. There were some questions about the loans from LCF to the borrowers and you were asked some questions about whether the records showed, or described, how the monies were treated when they came back to LCF. In the context of that, you said, "Yes, there are some records which refer to interest or redemptions". Do you remember that?

A. That is on the bank statements, that was a description on the bank statements.

MR JUSTICE MILES: Right. In relation to those descriptions, when it talks about interest and redemptions, is it your evidence that that is a reference to the interest and redemptions on the bonds or interest or repayment under the loans.

A. It doesn't break that down. It goes into the bondholder account, so you can presume from that it is in relation to the bonds. But it doesn't go into a separate account. Those payments, if it says "interest" or "redemptions", go into that bondholder account.

MR JUSTICE MILES: Right. Okay.

Any questions arising out of my question?

MS DWARKA: No, my Lord.

MR JUSTICE MILES: Any more?

MR ROBINS: My Lord, no.

MR JUSTICE MILES: Right. Thank you very much for your evidence.

(The witness withdrew)

MR ROBINS: My Lord, that concludes the claimants' factual evidence.

The updated trial timetable is at <A1/11/1>, if we could bring that up please.

Housekeeping

MR ROBINS: My Lord will see that this week is week 7. We had Mr Slade's application for a special right of audience on Monday and then a non-sitting day on Tuesday for my learned friend Ms Dwarka to prepare, then her opening submissions, which went short, yesterday. We had envisaged starting our factual witnesses after the short adjournment today. Obviously, because her submissions went short, we were able to start them this morning and we have now finished them by 2.40 pm. So the next thing for me to do is to respond to the pleading points. I was going to begin by responding to my learned friend Mr Ledgister's pleading points. I am very happy to start that now or we can start that at 10.30 on Monday morning.

MR JUSTICE MILES: Why don't we start it now? We will then lose less time.

MR ROBINS: Of course, very happy to do that.

Submissions by **MR ROBINS**

MR ROBINS: If we could start, please, by looking at what we have pleaded in respect of the knowledge of the fifth and sixth defendants, that is at <B1/2>, page 46. We make three allegations of knowledge: first, actual knowledge; second, blind eye knowledge; and, third, attributed knowledge.

The first plea of actual knowledge is in paragraph 42. We plead that Mr Careless had actual knowledge of the said fraudulent trading of LCF and/or LOG and we say that the knowledge is to be attributed to Surge. Accordingly, Surge had actual knowledge. Then we give some particulars of actual knowledge, obviously the best particulars we could provide at the time: first, that Mr Careless and Surge knew LCF was making representations to prospective bondholders; secondly, they knew

that LCF was paying 25 per cent of bondholder monies to Surge; thirdly, they knew that brochures and information memoranda did not reveal LCF was paying those commissions to Surge; fourthly, they knew that the payment of 25 per cent was not consistent with the description in the information memoranda of the way LCF funded the payment of its own overheads -- and we make various points in the subparagraphs in connection with that; fifthly, Mr Careless and Surge knew that bondholder monies were being misappropriated. That is an allegation of actual knowledge of misappropriation.

We start by dealing with the payment of Surge's commission, then we refer to the absence of a written agreement, then, over the page [page 48], we make the allegation that 25 per cent was not a bona fide fee but was obviously extravagant, disproportionate, uneconomic and/or uncommercial and that no legitimate and honest money lender would have been willing or able to pay such a fee. Then in (iv), we say:

"In the premises, it is to be inferred that Mr Careless and Surge knew or suspected that other people involved in the business of LCF were similarly involved in the misappropriation of bondholder monies". That is an important plea. It is a plea of actual knowledge or suspicion that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. It is not a plea that we had any direct evidence for at the outset of the proceedings, and so we pleaded it as a matter of inference, but the allegation was actual knowledge or suspicion of misappropriation by others.

In (v), we deal with a payment from LOG and, in (vi), we deal with the payments of money from LCF via Surge to Mr Golding.

Then in paragraph 6, we say:

"Mr Careless and Surge knew that the representation that GST was an independent security trustee which had no connection with LCF was false."

Seventh, they knew the amount and timing of LCF's repayment obligations.

Eighth, they knew that repeated requests had been made of LCF by Surge over several years for LCF to provide Surge with information about LCF's borrowers and security and LCF's accounts, but that satisfactory information was never provided to Surge by LCF when requested or at all.

Ninth, they knew that Surge's inability to provide potential bondholders with information about LCF's brothers was an obstacle to generating higher bond sales but, despite informing Mr Thomson of this and making repeated requests of him for satisfactory information as to LCF's borrowers, no such information was provided to Surge.

Tenthly, Mr Careless and Surge knew about online comments about the absence of any evidence that LCF lent monies to small and medium-sized enterprises and the fact that LCF could be a "sham".

Eleventh, they knew Mr Thomson set LCF's interest rates and payment dates not by reference to what LCF could actually afford to pay, having regard to its receipts from borrowers, but instead by reference to what would like attractive to prospective bondholders. Twelfth, they knew that the "ethical lending policy" had been plagiarised.

Thirteenth, they knew from the accounts for the year ended 30 April 2017 that, although Surge had been telling prospective bondholders for some time, on instructions from LCF, that LCF lent monies to hundreds of small and medium-sized enterprises in the United Kingdom, LCF had, in fact, lent

monies to only 11 borrowers. Secondly, the liability to pay Surge's fees was not being discharged by LCF and was, therefore, being borne by borrowers, contrary to the IMs and brochures.

In (iv):

"Mr Thomson had provided Surge with inconsistent information as to the value of the security held by LCF (having told Surge in April 2017 that it stood at £215 million, whereas [the] accounts ... disclosed a figure of £285 million)."

Finally, (iv):

"Mr Thomson was not receiving any salary from LCF which gave rise to an inference that he must be obtaining an income from LCF's business in some other (undisclosed) way."

Those, my Lord, are the pleadings and particulars of the allegation of actual knowledge.

In paragraph 43, there is then an allegation of blind-eye knowledge. It is:

"Further or alternatively Mr Careless and/or Surge had knowledge of facts which would have caused a reasonable and honest person to make enquiries, but Mr Careless and/or Surge did not make any such enquiries and instead continued to participate in the fraudulent trading ... it is to be inferred that [they] consciously and deliberately chose not to make such enquiries but instead to turn a blind eye to the fact that LCF could not have been carrying on a legitimate and honest moneylending business in order to avoid discovering the truth."

It is important to note, in the context of paragraph 43, my Lord, that there was never any request for further information under Part 18 in respect of the facts. This was always understood as a broad allegation of blind-eye knowledge that would necessitate an investigation into precisely what was known at any particular time and what allegations were made. Then, as I say, in paragraph 44, there is the allegation of attributed knowledge, in other words, the knowledge of Mr Russell-Murphy is to be attributed to Surge.

So that is the cases to knowledge which has these three limbs. The various pleading points which are taken relate to knowledge in broad terms, and my Lord can see that if we go to <A2/6/4>, where it is said, in paragraph 13:

"... the critical section dealing with D5 and D6's knowledge (in M1 to M30 of the claimants' [written] submissions) contains a large number of unpleaded allegations. In particular ..."

If I deal first with (a) and (f). (a) is: "At M14 - the allegation that D5 knew that C1 was making payments to Spencer Golding ..." And (f) is:

"At M30 - the proposed ... Isle of Wight deal ..." It is said that both of those are not pleaded. I don't think we need to go, at this point, to our opening written submissions. My Lord will recall, I think, what is in M14 and M30. We can go to it in due course, if we need to.

It is not right to say that there is no relevant hook in the pleadings on which to hang this evidence. First, my Lord has seen, in the re-reamended particulars of claim, the allegation that Mr Careless and Surge knew, or suspected, that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. That is something, as my Lord has seen, we have pleaded as a matter of inference, essentially on the basis they must have known or that, on the balance of probabilities, it should be held that they knew, even if there is no direct evidence of knowledge.

That is because we didn't have any direct evidence at that point. We had no choice but to plead it as a matter of inference.

As a matter of substance, as I say, the allegation is that Mr Careless and Surge knew, or suspected, that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. That was responded to by the fifth and sixth defendants at <B2/6>, page 27. If we can go to that, please.

At paragraph 34(4), just above the middle of the page, they said:

"Paragraph 42 (5)(iv) is denied. There is no basis for alleging or inferring that the Surge defendants were aware that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. Paragraphs 5(9)(b)(ii) and 12 to 14 above are repeated."

5(9)(b)(ii) is on page 6 of the same document, if we could turn to that, please.

What they say in 5(9)(b)(ii) is at the bottom of the page:

"As to whether bondholder monies were misappropriated by other defendants, since Surge was merely an external services provider, save in relation to the specific payments in which Surge was directly involved as pleaded to above, the Surge defendants were not and are not aware of any other payments by LCF to other individuals or companies as alleged in the reamended particulars of claim. They had no knowledge (whether actual or blind-eye) as to whether bondholder monies were being misappropriated as alleged or at all." So that is their positive case follows the denial. The same line is repeated in paragraph 12(5), which is on page 15. If we go to page 15. In subparagraph (5), the second line on the left hand side of the page: "In particular, even if LCF's business was carried on with intent to defraud and even if other defendants 'misappropriated' bondholder monies ... the Surge defendants had no knowledge (whether actual or blind-eye) of any such fraudulent ... misappropriation."

My Lord has seen the pleaded allegation, which is that they were aware that other people were involved in misappropriation. They deny that. Their positive case is that they weren't aware, there is no basis for alleging or inferring any knowledge or suspicion on their part.

That is ultimately reflected in the list of issues. If we could go to that please at <A1/2>, page 31. <A1/2/31>.

Issue 122 is:

"The knowledge of D5 and D6 of ..."

And then, if we look over the page, please, (v) is: "The payment of any monies deriving from LCF by D6 [to among others D4] ... and the basis of such payment." So that is something that has found its way into the list of issues.

I should also mention the pleaded case in respect of Mr Golding in particular, which is at <B2/6>, page 20, where, in paragraph 22, subparagraph (3), it's said: "... it is specifically denied that the Surge defendants had any knowledge (whether actual or blind-eye) of any participation of Mr Golding in any fraudulent trading [of] LCF or LOG ..." So that is the pleadings, my Lord.

MR JUSTICE MILES: Is there an allegation that Surge knew that Mr Golding was involved with LCF?

MR ROBINS: Off the top of my head, I don't know. I would need to check.

Everybody is proceeding on that basis because that is what the list of issues gives rise to. In fact, in the evidence of Mr Careless and Ms Venn, they go into detail about how they first became aware of LCF and attended the meeting at The Long Barn where Mr Golding was the key individual representing SAFE, as it was at that time. I don't think it is actually in dispute that they knew that Mr Golding was involved with LCF. That is their evidence, as I say.

We then received their disclosure, and there were two tranches. First, my Lord, they gave extended disclosure on 5 April 2023. But then we got another 30,000 or so documents by way of supplemental disclosure on 20 July 2023. If the Bates number is higher than <SUR00128928-0001>, then it means we got it on 28 July 2023 or later. We went through it and there were two discoveries relating to the pleaded issue as to whether Mr Careless and Surge knew or suspected that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. The first is what is objected to in M14.1, if we could bring that up at <A2/1/229>.

This, my Lord, will recall, at M14.1, is the exchange of messages where Mr Jones replied, in bold, at the end of the paragraph:

"No idea. Would include payments to Spencer etc as well, not just our comms."

My Lord can see from the footnotes to that paragraph that those are documents we received from the fifth and sixth defendants' disclosure.

M14.2 then refers to the payments to Spencer which LCF had made on that date, which resulted in hitting its bank payment limits for that day. Again, the footnotes set out the documents.

But the key document, of course, is the exchange of messages in M14.1. That is <SUR00032895-0001>. We don't need to go to it now, but it is something that was disclosed by Mr Careless and Surge in April 2023. It is direct evidence in support of our pleaded allegation, which Mr Careless and Surge had denied and which is reflected in the list of issues. We pleaded it, as my Lord saw, as a matter of inference because we didn't have direct evidence. The disclosure provided some direct evidence, their position now is, apparently, that we shouldn't be allowed to rely on a document that they disclosed which supports our pleaded case and undermines their denial of it.

We do submit that that is an absurd position. If it is right, what is the point of disclosure? The second thing we found in their disclosure relevant to the pleaded allegation that Mr Careless and Surge knew, or suspected, other people involved in the business of LCF were involved in the misappropriation of bondholder monies is at <A2/1/263>. That is where we explain that the evidence showing, as we say in the third line, a summary that Mr Careless and Mr Russell-Murphy were both embroiled in a plan to buy a property for £2.5 million before selling it to Prime RDL for £5 million, giving rise to a profit of £2.5 million which would then be split between Mr Golding, on the one hand, and Mr Careless and Mr Russell-Murphy, on the other. Mr Careless and Mr Russell-Murphy were both aware that Prime RDL would be borrowing the purchase monies of £5 million from LCF. In other words, D5 and D7 would be receiving £1.25 million of bondholder monies from the immediate resale of the property at an inflated price. The footnotes reveal that most of the key documents come from the disclosure of Mr Careless and Surge and also the disclosure of Mr Russell-Murphy. Again, it is an instance of finding direct evidence to support what we had pleaded. We couldn't have provided these particulars at an earlier stage because we didn't have the documents, but we got them through disclosure, we have pieced it together and we set out the detail in the subsequent paragraphs of this part of our opening written submissions.

The relevant --

MR JUSTICE MILES: Could that -- I mean, you are relying on the fact that disclosure has been given, but that doesn't really answer the pleading point, does it? Because it is no answer to pleading points to say, "Well, it is in the other side's disclosure", if the case is not properly pleaded. One objection to your argument is to say, well, it was open to you to seek to amend your pleadings to introduce this episode about the Isle of Wight deal once you had got the disclosure. You might not have known about it before, you didn't know about it before, but once you had got the documents, it was open to you to apply to amend.

MR ROBINS: Two answers to that, my Lord. First, we do plead, as my Lord has seen, that Mr Careless and Surge knew, or suspected, that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. So the relevant plea is there. What we then get from disclosure is the evidence on which we rely in support of the pleaded allegation. The second point, my Lord, is the practical one, which is my Lord knows the defendants in these proceedings continued to push back the date for disclosure, so that we ended up getting the disclosure much later than had originally been envisaged.

As I mentioned, Mr Careless and Surge gave their initial disclosure on 5 April, but we then got another 30,000 documents on 23 July. That is in the context of a case where there were almost 700,000 documents for us to review. It is simply not realistic to suggest that we could have somehow raced through that material immediately on receipt in a matter of days or weeks. It took many, many months to go through these materials and to put this together and to understand the overall chronology.

The evidence in respect of the Isle of Wight deal is something that Mr Shaw managed to pull together by going through these documents in or around November last year. The very lateness of the disclosure and the volume of it meant that it simply wasn't possible at any time to identify the evidence from their disclosure which supported our pleaded case of knowledge or awareness. But we say that the relevance of it is clear, it is evident, it supports our pleaded allegation that Mr Careless knew, or suspected, that other people involved in the business of LCF were involved in the misappropriation of bondholder monies. It undermines Mr Careless' denial of that allegation, it undermines his positive case. So it is not simply a question of our pleadings, it is a question of his pleadings as well. It undermines his pleaded position. It is not something that he has addressed in his witness statement, but my Lord saw he has previously set out his response to the allegation in a letter which he sent to the head of compliance at Northern Provident. My Lord saw that at <SUR00119759-0001> if we could pull that up. <SUR00119759-0001>.

It is on page 2 of 3. My Lord may recall the letter.

Can we go to the next page, please? It is the next page. My Lord will recall Mr Careless' response to the allegation which had been made in the media. So although it is not something that he has set out or covered in his witness statement, it is something that he has previously set out his response to. In those circumstances, it is difficult to see any prejudice from the suggestion that we should be allowed to rely on something that we have found in their disclosure that supports our pleaded case.

MR JUSTICE MILES: I mean, it could be said that it is one thing to say that you have a pleading that these defendants were aware of misappropriations by the people involved in LCF. It is another thing to rely on quite a complicated sequence of events relating to a possible property transaction involving LCF money, which is not -- in which Mr Careless is potentially interested, which is not pleaded. It is the sort of thing one might expect to see pleaded.

I am not, at the moment, clear that it is a sufficient answer to say that this arises out of disclosure given by the other party, even if it is fairly late in the day, because the rules of pleading are separate from those kind of pragmatic questions about timing. They might -- it might affect the question, for example, whether the court should give permission to amend and how that might affect other steps in the proceedings. But the pleading requirements are separate. There has to be -- particularly in a fraud case, obviously, there has to be a proper pleading of the case. I think it would be -- at the moment, looking at your pleading, I think it would be hard to spell that whole sequence of events out of what you have pleaded.

MR ROBINS: Well, if my Lord were to rule that we would need to apply for permission to amend, then obviously we would have to make that application, relying on the fact that we had got disclosure very late and hadn't stumbled upon this episode ourselves until November last year, very shortly before our opening written submissions were due to be filed.

There is, however, one further point that I should make, which relates to the fact that we would rely on this separately in any event, even if it were necessary to plead it, even if your Lordship were to refuse permission to amend, because it is relevant to the credibility of a witness, Mr Careless. We would be entitled to put to him in cross-examination that he is prepared to lie about his dealings with LCF. We would be putting that to him on the basis of documents that he has disclosed in circumstances where he has made statements in the letter to Northern Provident which we say are untrue.

He is coming to the court asking your Lordship to believe his evidence. We would be entitled to put to him that, on previous occasions, he was not providing truthful answers in respect of his dealings with LCF. Obviously, as I say, if your Lordship were to rule that we should plead it, then we will bring forward an application for permission to amend to include a reference to that transaction.

My Lord has my primary submission, which is that it is evidence in support of a pleaded allegation, rather than a separate allegation that should be in the pleadings.

If we go back to the other side's opening submissions --

MR JUSTICE MILES: Sorry, I made that point in relation to the Isle of Wight case. The other question is whether your pleading is sufficient in relation to the other matter you mentioned, which is the payments made from LCF to Mr Golding, and whether, in that regard, what you have said is sufficiently pleaded. I mean, I think your submission is essentially the same.

MR ROBINS: Yes.

MR JUSTICE MILES: It is evidence of a pleaded allegation and that no amendment is required.

MR ROBINS: Yes. And that, if an amendment is required, it is not something we could have pleaded sooner because we didn't have the evidence that came from the other side's disclosure and my Lord knows the chronology in relation to that.

If we go to the next point, which is at <A2/6/4> it is said that at the bottom of the page in (b): "At M18 - the allegation that concerns were raised on the MSE forum is not pleaded."

My Lord, I can deal with this point fairly shortly. It is pleaded. If we go back to <B1/2>, page 48, subparagraph (10):

"Mr Careless and Surge knew about online comments about the absence of any evidence that LCF lent monies to small and medium-sized enterprises and the fact that LCF could be a 'sham'."

That is in green, it is something which was introduced by way of reamendment. Kingsley Napley consented to that reamendment, on 7 October 2021, on behalf of Mr Careless and Surge. So it is something that is expressly pleaded.

Secondly, it is something that Mr Careless deals with in his trial witness statement at <C2/3>, page 90. Maybe it is not page 90. It is paragraph 90 I am looking for. I may have got the wrong reference. <C2/3>, paragraph 90. It is not going to be page 90 because it is not 90 pages' long.

There we are [page 19]. He says:

"Around the end of 2017, on Money Saving Expert a comment was made regarding LCF that was brought to Surge's attention by a bondholder. Surge's first step was to get LCF's take on the matter. I recall that Andy was quick in his response, categorically refuting the claims."

So we have pleaded it but, even if we hadn't, we would be able to make these points to test Mr Careless' evidence. It wasn't around the end of 2017; it was earlier, in February and July. It wasn't just a comment; it was very lengthy and detailed. Mr Thomson was not quick in his response and he didn't categorically refute the claims. In fact, the view within Surge was that he didn't respond particularly well. And he never actually provided any content to rebut specific threats and comments.

That deals with that one.

If we go back to <A2/6/5>.

At the top of the page, in (c), it says:

"At M20 - the allegation that D5 and D6 had knowledge of the fraud because of Mrs Venn's concerns over D6 becoming C1's appointed representative is not pleaded."

M20 is at <A2/1/243>. It is really no more than an account of a single WhatsApp exchange. My Lord will recall seeing it, it is quoted in M20.4 where Ms Venn said, "I've never felt stronger about any decision than this: it's simply wrong to be an AR of your own customer. A company that we don't trust".

As the footnote reveals, it is a WhatsApp exchange that comes from the fifth and sixth defendants' disclosure, <SUR00084244-0001>. If we could bring that up, please.

It is fourth from the end of the page, that makes the reference to "breaking the Briberies Act for Spencer", and then, in the penultimate message on the page, there is the text that we quote in section M20.

As to this, my Lord, first, we have made the clear allegation of blind-eye knowledge, which my Lord saw. The first requirement of blind-eye knowledge is a suspicion which is more than a vague feeling of unease. This is evidence as to Ms Venn's state of mind. She said she had never felt stronger than this and described LCF as, "A company that we don't trust". This is evidence we would wish to rely on to say this isn't some vague feeling of unease; it is a clear, targeted suspicion. It is a document from the disclosure of the fifth and sixth defendants which supports our pleaded case.

Their pleaded case, by contrast, is that they thought LCF was a respectable company operating a bona fide, lawful and legitimate business that, if we could go to it, is at <B2/6>, page 6.

At paragraph 9, at the top of the page, they say: "... the Surge defendants acted in good faith, in the honest and reasonable belief that Surge was providing outsourced marketing, technology and

account management services to a respectable company operating a bona fide, lawful and legitimate business."

MR JUSTICE MILES: Which paragraph is it? I can see it there, I am just seeing what the main paragraph number is.

MR ROBINS: It is 5, my Lord.

MR JUSTICE MILES: Paragraph 5(9), is it?

MR ROBINS: That's right.

On the same page, in (b)(i), it is said that -- halfway through the paragraph:

"Based on the information available to them, the Surge defendants honestly and reasonably believed that LCF was operating a lawful and legitimate lending business and they had no knowledge (whether actual or blind-eye) that the position may have been otherwise." My Lord, we say that evidence showing that, actually, LCF was, "A company we don't trust", is evidence that undermines the positive case pleaded by Mr Careless and Surge. So it is relevant to the pleaded cases of both of the parties.

It is also something that is relevant to what Mr Careless and Ms Graham -- or Mrs Venn, I should say -- say in their witness statements. In particular, relating to the authorised representative status, Mr Careless positively relies on that at <C2/3>, page 18, where he says in paragraph 85: "... we" -- is it 85? He says somewhere: "... we were considering ..."

Yes, in the middle of the paragraph:

"... we were considering seeking FCA authorised representative status for Surge. We were trying to build a best in class business that could provide outsourced services to bond issuers and so we thought gaining authorised representative status may have been useful."

He is giving evidence in relation to authorised representative status.

The document from their disclosure, <SUR00084244-0001>, which we saw earlier, we don't need to go back to it now, gives a rather different impression of their thinking at the time. It seems to have been something that was, in fact, causing a great deal of stress.

Similarly, Mrs Venn deals with it at <C2/4>, page 17, where she says, in paragraph 78: "Surge had an external compliance training function provided by Thistle who provided online training ..." She refers to the compliance analysis, and then, at the end of the paragraph, she says:

"In 2018 Surge consulted Thistle again specifically on the subject of whether Surge should become an authorised representative."

It is something that she relies on, a message showing that there was, in fact, a considerable lack of trust in LCF, and a real concern about becoming an authorised representative of LCF is something relevant to her evidence. We say we should be able to rely on a document from their disclosure which has a bearing on what their witnesses say in their witness statements.

Then if we go back to the next point <A2/6/5>. It is said in (d):

"At M21 - there is no pleaded allegation that [Mr Careless, Surge] or Mrs Venn knew that the ISA bonds were not eligible for tax-free status and the claims being made by C1 were untrue."

My Lord has seen the account of that that we give in M21 of our written opening submissions. My Lord may recall looking at some of the messages involving Roger Blears. We can have a look at it briefly at <A2/1/243>. And over on the next page, please, my Lord will recall the evidence in relation to this. The first question is, where does it fit into the pleadings? Well, first, Mr Careless and Surge rely very heavily on the involvement of Lewis Silkin, who they say had considerable experience and expertise in minibond matters. And they say that this was a source of great reassurance to them about the legitimacy of LCF. They place great emphasis on the point and they mention Lewis Silkin on no fewer then seven separate occasions in their defence. I can provide my Lord with an example at <B2/6>, page 8, where, at the bottom of the page, at (d), it is said:

"The Surge defendants were aware that LCF relied throughout on Lewis Silkin (for example in drafting and/or approving the IMs and in generally advising on legal matters relating to the bonds). Given the close ongoing involvement of reputable city lawyers, the Surge defendants honestly and reasonably believed that there were no reasons to doubt the lawfulness and legitimacy of LCF's business."

They specifically plead the engagement of Lewis Silkin in the ISA bonds, at page 8 [as spoken] of this document, in paragraph 5(3)(a), [page 3]. Look at the previous page.

No I have the wrong -- we are on 10. Okay, it is going to be page 8, please. Sorry, I have the page reference wrong. Can we go back again? Go back a page. And another. And another, please. And one more [page 3]. Yes, in 5(3)(a), my Lord will see they plead the involvement of Lewis Silkin in relation to the ISA information memoranda.

Then, at page 8, in subparagraph (10)(b), they plead that the fact that LCF had been able to launch the ISA bond was a matter which gave them further honest and reasonable comfort that LCF's business was bona fide, lawful and legitimate. They say:

"In November 2017, LCF was approved by HMRC as a registered ISA manager. Whilst the Surge defendants were not aware of the precise procedure for obtaining ISA manager status, they believed that LCF had been through a further rigorous process with the UK tax authority and had again been approved, which gave the Surge defendants yet further honest and reasonable comfort that LCF’s business was bona fide, lawful and legitimate."

The evidence set out in section M21 of our written opening submissions is relevant to the fifth and sixth defendants' pleaded case because it shows that, in fact, Kerry Graham, as she was at the time, was told that Lewis Silkin were not specialists in the area, and that Kerry Graham and Paul Careless knew that Lewis Silkin had botched the ISA bond issue by creating a bond which didn't actually qualify as an ISA and which would not result in interest being exempt from tax. That is evidence which undermines their positive case that they were reassured by the involvement of Lewis Silkin. To the contrary, they knew that the involvement of Lewis Silkin was not something from which they could take reassurance.

It also shows LCF's ISA bond cannot have been a matter which gave yet further honest and reasonable comfort that LCF's business was bona fide, lawful and legitimate. To the contrary, it showed them that LCF's business had serious problems. The evidence in M21 of our opening written submissions is also relevant when considering the witness statements of Mr Careless and Mrs Graham -- Mrs Venn, I should say. Mrs Venn says, at <C2/4>, page 9, in paragraph 35.

"We were told by John that there were appropriate checks and balances in place early on and we believed that. Lewis Silkin were often referenced by Andy as they produced the IMs. Andy would regularly refer to them in the context of things like the LCF ISA that came later on, as that IM was also

written by Lewis Silkin." She mentions Lewis Silkin a total of eight times in her witness statement. The evidence in section M21 of our opening written submissions undermines what she says about being reassured by the involvement of Lewis Silkin.

She also talks about LCF's ISA bond in

paragraphs 16, 35 and 63. In 63, for example, on page 15, she says -- at the top of the next page, I think, that Blackmore -- where has it gone? 63, the previous page, [page 15], on the right-hand side: "Blackmore invited me to meetings and I sat with them and their solicitors where I learned about their IM, what was needed to offer an ISA and how the section 21 FSMA rules worked and had tightened up over the years."

The documents we mention in section M21 of our written opening submissions show what she learned about what was needed to offer an ISA and why it undermines the contention by the fifth and sixth defendants that the ISA bond by LCF gave yet further honest and reasonable comfort that LCF's business was bona fide, lawful and legitimate.

Mr Careless deals with it at <C2>, page 23, where he says -- oh, it must be <C2/3>, page 23. In paragraph 116, he says:

"I first became aware of the FCA's concerns about LCF when the FCA went to LCF's offices in December 2018. Immediately after that happened, I also attended LCF's offices and spoke with Lewis Silkin who assured me the FCA were just concerned about LCF's ISA issue and that this was likely 'a storm in a tea cup', and LCF would be back up and running soon."

The documents in M21 of our written submissions show that he knew the ISA issue was not a storm in a teacup, so that is something that we say we should be entitled to cross-examine him about.

MR JUSTICE MILES: This seems to be a -- the points you are making here seem to be more points about being able to rely on these documents to cross-examine the witnesses rather than this, as it were, being a separate -- it doesn't seem to be, as it were, relied on as a separate particular of fraud, is that fair?

MR ROBINS: That's entirely right, absolutely right. And the reason for that, as my Lord has seen, is that LCF was apparently unaware of the problems with the ISA bond, having been advised by Lewis Silkin that the ISA bond was compliant and would qualify for tax-free status.

MR JUSTICE MILES: If one is thinking about this in terms of pleading, if the court is being invited -- one imagines the end of a trial, the court is being invited to reach a conclusion about whether or not these defendants had the requisite knowledge.

As I understand it, you are not, at this stage -- or, indeed, you are not saying, "Yes, this is, as it were, a particular of knowledge for the purposes of reaching that inference", this is evidence which goes to undermine some of the defendants' evidence about the reliance they placed on Lewis Silkin, is that really it?

MR ROBINS: That's right. That is entirely right. The next one --

MR JUSTICE MILES: How long are you going to be? I am just thinking about the break.

MR ROBINS: I am very happy to have a break at this point. I obviously have a bit more to deal with.

MR JUSTICE MILES: Let's take the break now. Five minutes. (3.28 pm)

(A short break)

(3.35 pm)

MR ROBINS: My Lord, the next point is at <A2/6/5>. This is (e):

First, the evidence relating to LCF 2 is evidence of what Mr Careless and Mrs Venn thought, or knew, about LCF 1. That is something that is of obvious relevance in the context of our general plea of blind-eye knowledge which involves an investigation into the facts as to what they knew about LCF 1.

Secondly, it undermines, or is inconsistent with, the pleaded case of the fifth and sixth defendants that LCF was a respectable company operating a bona fide, lawful and legitimate business. The evidence, as my Lord will recall, shows a considerable amount of contingency planning in the expectation of LCF being shut down by regulators in the future.

Thirdly, it is relevant to the knowledge of Paul Careless and Surge in respect of LCF's lending operations. Their positive case, at <B2/6>, page 16, in paragraph 15, is that they did not have any knowledge of anything to do with LCF's lending to connected companies. They don't admit what we say on the basis that they say it is outside their knowledge. Yet, as my Lord has seen, when they were setting up LCF 2, Mr Russell-Murphy emailed Jo Baldock and Paul Careless on 14 August 2018 to say that, "WCF needs to issue a loan to SHK/SG prior to going live and take on some decent security. This way the AMs can talk about XXXX amount of security protecting the investors". So, again, it is relevant evidence of the position in relation to LCF 1. They thought that LCF 2 was going to be making loans to connected parties. That sheds light on what they knew about LCF 1 and undermines their pleaded case.

Fourthly and finally, it is relevant to the evidence of Mrs Venn at <C2/4>, page 20, where, in paragraph 90, she gives evidence about LCF 2, or Westminster Corporate Finance, as it came to be known.

She says:

"We decided to help Simon and Spencer set up their now bond. It was going to be corporate finance lending rather than secured SME lending. I understood the material difference between corporate finance lending and SME lending to be that corporate finance was more speculative, in the sense that it could be lending on new technologies or ventures that haven't started yet and they were deals with less security. Such ventures could find it hard to obtain funding from a bank.

As we were going through the process of helping them set up that bond, we started to gather the information that would be the content for an IM. However, Spencer told me that when Andy found out Surge was working on a new bond he was upset, as he felt LCF wasn’t the focus for Surge. After that, I believe some disagreements between Spencer, Andy and Simon must have occurred as the Westminster Corporate Finance bond was taken away from us."

My Lord, in M22 and M28 of our opening written submissions we explain by reference to the documentary evidence what really happened in respect of the Westminster Corporate Finance bond. It is not what she said in paragraph 90. We are entitled to cross-examine her on her witness statement by reference to the disclosed documents. A fortiori, where those documents have been disclosed by Mr Careless and Surge, their submission seems to be that we shouldn't be allowed to rely on evidence we found in their disclosure which undermines what their witnesses say in their witness statements, which we say is obviously wrong. This is plainly an issue in the case that is going to be relevant to explore in the cross-examination of the witnesses.

My Lord, that deals with all the points raised by my learned friend, Mr Ledgister.

As my Lord has seen, our primary position is that we have pleaded enough. If my Lord thinks that we need to apply for permission to amend, then, as I said, we would, of course, wish to do that.

I don't propose to make submissions at this point in support of an application for permission to amend that we haven't made yet, unless your Lordship indicates that I should.

MR JUSTICE MILES: No.

Is there anything in relation to Mr Thomson?

MR ROBINS: Does my Lord want to deal with Mr Thomson?

MR JUSTICE MILES: Why not?

MR ROBINS: Sorry, I thought we would hear from Mr Ledgister, but I notice he is not here.

MR CURRY: Your Lordship can hear from me, if your Lordship wants to, but, equally, I am happy to wait.

MR JUSTICE MILES: Why don't you make all of your points and then I'll hear --

MR ROBINS: Fine. The next one is, I think, the only surviving point from Mr Warwick, who, as he explained, took a number of pleading points that pertained to the position of Mr and Mrs Hume-Kendall. Given that we have settled with them, his pleading points in relation to Mr and Mrs Hume-Kendall necessarily fall away. But he did develop a broader point relating to CPR 32.19 and the backdated documents. My learned friend, Ms Dwarka, said that she was adopting his points. I am assuming she is not adopting his points about Mr and Mrs Hume-Kendall, because those have gone and it would make no sense for her to adopt those. I am assuming that she is only adopting his submissions in relation to CPR 32.19.

Does my Lord have the White Book to hand?

MR JUSTICE MILES: I should have, but I don't seem to. It doesn't seem to have been -- oh, here it is. Yes. Thank you.

(Pause).

MR ROBINS: I am told it is 103, my Lord. 32.19.

MR JUSTICE MILES: Yes.

MR ROBINS: It provides, in paragraph 1: "A party shall be deemed to admit the authenticity of a document disclosed to him under Part 31 unless he serves notice that he wishes the document to be proved at trial."

Paragraph 2 deals with a notice to prove. My Lord, there are four points on this. First, CPR 32.19 doesn't apply to documents that we have disclosed to the defendants. The wording of the rule is very clear and, given that it is a rule which can have serious consequences, it should be strictly construed and strictly applied.

It provides that a party shall be deemed to admit the authenticity of a document disclosed to him. The rule expressly has no application to documents disclosed by him. And it is an important distinction. There will often be cases in which the entirety of the company documentation was stored on a server which is now in the liquidator's possession in circumstances where the defendants

themselves don't have many, or perhaps even any, documents. A liquidator might conclude that the company's records contain ten documents which he considers to be fake. The liquidator gives disclosure to the defendants. The liquidator's disclosure contains the ten documents which the liquidator has said are fake. The liquidator doesn't have to give any notice under CPR 32.19 because those documents are being disclosed by him, they are not being disclosed to him. My Lord, that remains the case if one of the defendants has a photocopy of the tenth document and discloses that to the liquidator.

Let's assume that none of the defendants has any of the first nine documents, they don't disclose any of those. We say it would be obviously wrong to suggest that the liquidator, in the postulated circumstances, would have to give a notice under CPR 32.19 in relation to the tenth document, simply because one of the defendants happens to have retained a photocopy, but is able to challenge the first nine documents without giving any notice. Such an approach wouldn't make any sense.

If you can challenge, in that example, the first nine documents without giving notice, then he must be able to challenge the tenth without giving notice. He has disclosed all ten of them.

The mere fact that one of the defendants discloses an identical copy to the liquidator doesn't give rise to a notification requirement where, otherwise, it wouldn't exist.

So, my Lord, we say that CPR 32.19 applies only where the document is disclosed to a party and not where the document is disclosed by that party. You only have to give notice under CPR 32.19 if the other side's disclosure is the sole and exclusive source of the document in question. You don't have to give a notice under that rule if you have disclosed it yourself. I have used, in my example, the case of a photocopy, but the point is even more acute when dealing with electronic documents in native format, because the version held by the claimant and the version held by the defendant may be absolutely identical in every way with precisely the same electronic data. They may be completely indistinguishable from each other. It would make no sense to say that the claimant could challenge the authenticity of the version that he discloses without having to give a notice, but cannot challenge the authenticity of the exact same native format electronic document disclosed by a defendant. If the claimant has disclosed it, then the notice requirement of CPR 32.19 doesn't apply.

As I have said, in our submission, the rule only applies where the defendant's disclosure is the sole and exclusive source. In other words, where the claimant has not disclosed the identical document himself.

In the present case, the documents identified by Mr Warwick have all been disclosed by the claimants. We don't need to go to each of these, but I will read out the references for the transcript. The L&TD facility letter is for example <MDR00071456> at page 2. It is also <MDR00005398>. There are numerous copies of it, in fact, in the claimants' disclosure. The default notification letter is <MDR00071456> at page 1. Again, it is something that has been disclosed multiple times by the claimants.

The declaration of trust in favour of Mr Ingham in relation to the shares in GRP is in the claimants' disclosure at <MDR00081548> and <MDR00081549>. It is also <MDR00090574>. The declaration of trust in favour of Mr Ingham relating to the shares in LOG is at <MDR00081546> and <MDR00081547>. The payment agency agreement involving Sands Equity is <MDR00095004> and <MDR00116013>.

The LPE SPA is at <MDR00157770> and <MDR00157772>. The MoU is at <MDR00212115> and <MDR00212118>, and the SPA is at <MDR00212306>. Those are just examples. We can, if necessary,

provide a table setting out a complete set of references to the disclosure of these documents by the claimants.

The claimants are not deemed to admit the authenticity of any of those documents under CPR 32.19 because the claimants have disclosed them. Second --

MR JUSTICE MILES: What about the other way around, though? Have they also been disclosed by -- I mean, the most important ones, for present purposes, seem to be the MoU and the SPA.

MR ROBINS: Yes.

MR JUSTICE MILES: Have those been disclosed also by defendants?

MR ROBINS: Yes. We can provide the --

MR JUSTICE MILES: I don't think I need the references.

MR ROBINS: -- table.

MR JUSTICE MILES: I should be able to -- you can just tell me.

MR ROBINS: They have been disclosed by Mr Thomson, Mr and Mrs Hume-Kendall, Mr Barker and Mr Sedgwick. But my Lord has my point on that.

MR JUSTICE MILES: Yes, I have your point.

MR ROBINS: The second point is that it is necessary to be very careful in the application of CPR 32.19. A party is deemed to admit the authenticity of a document. CPR 31.4 defines the word "document" to mean anything in which information of any description is recorded. Paragraph 5, subparagraph (3) of Practice Direction 31B provides that electronic documents include metadata and other embedded data which is not typically visible on a screen or printout. Those provisions have been replicated in Practice Direction 57AD. It is paragraph 2.2 which provides that the term "document" includes any record of any description containing information; 2.5 provides that the term "document" extends to electronic document; and 2.6 provides that the term encompasses metadata and other embedded data. Each electronic document, therefore, includes the date of its creation according to the metadata. For the electronic documents created electronically, that is the date on which the document came into existence. If we take as an example, and perhaps we could go to it, <D8-0044884>.

This was the draft MoU we looked at which has, at the bottom, a typed date of July 2015. My Lord will recall that we looked at the properties tab containing the metadata which gave the date 11 December 2018 and the time 19.32GMT. We can see that as well if we open this in native form -- if you open it as a Word document, if you know how to do that. Well, I can make the submission, my Lord has seen it before. The metadata shows it was created on 11 December 2018. So it is an authentic Word document. The embedded data shows that it was created on 11 December 2018. No one is suggesting that the metadata has been faked or that the metadata is otherwise unreliable.

My Lord can see it on the screen on the right-hand side. It is a document which authentically records in the metadata the date of its creation.

It seems odd to think that you would need to file a notice under CPR 32.19 in respect of such a document. It might say "July 2015" at the bottom of the page, but that is inaccurate information. It doesn't mean that the native format Word document containing metadata revealing its own date of creation is in any way inauthentic.

That is an approach to the rule that is supported by the authorities, if we could go, please, to <S2/115.1>, page 19.

This is the case Eco3 Capital, in which Lord Justice Jackson was describing the position.

MR JUSTICE MILES: Can we see the front of this document?

MR ROBINS: Can we see page 1, please.

MR JUSTICE MILES: Yes.

MR ROBINS: And then page 19 please. Lord Justice Jackson was dealing with the position relating to a diary entry and he said in paragraph 100 that the ground of appeal is that the judge ought to have held that the diary note was correctly dated and accurate, because the claimant had failed to serve a notice under CPR 32.19. Then, in 101, he says he has set out the relevant facts: "The claimant's case in respect of this document was two fold:

"i) Dr Shadrin wrote the diary note on a later date on two blank pages which just happened to be at the right place in his 2005 diary. Alternatively "ii) Dr Shadrin drafted the diary note on the recorded date, 12 August 2005, but he did so inaccurately. His motive was to make it look as if he told Mr Lisitsin about the two-tier structure and the differential, when, in fact, he had not done so. The judge found that one or other of those two contentions was correct, without saying which.

103:

"I have examined the original of [the] diary ... I am bound to say that the second of the two scenarios is distinctly more likely ... It would have been surprising if two blank pages had been left at exactly the right place ...

"If the second scenario was correct, then there would be no need for a notice under CPR rule 32.19. The document purported to have been written by Doctor Shadrin on 12 August 2005 and that was indeed what happened."

Transposing that to the electronic documents that we are dealing with and taking the MoU we just looked at a moment ago as an example, it purports, according to the metadata, to have been written on 11 December 2018.

MR JUSTICE MILES: It purports to have been written in 2015 on the face of the document.

MR ROBINS: But the document includes the metadata that reveals the date of creation as 11 December 2015.

MR JUSTICE MILES: But that means that any document which is electronic, which contains a false date, is authentic.

MR ROBINS: It is authentic, yes, the metadata reveals the true position in relation to the document's creation. The date that is written on the face of it is no different from the inaccurate information in Dr Shadrin's diary entry.

MR JUSTICE MILES: No, because there the assumption is that that is the correct date on scenario 2.

MR ROBINS: And the metadata is the correct date. That is an intrinsic, inseparable part of the document which reveals when it was created, and that is authentic, no one is suggesting that the metadata has been tampered with.

The fact that the electronic document is an authentic native format document is what tells you that the date of July 2015 written on it is an inaccuracy but that doesn't mean that the electronic document is inauthentic.

MR JUSTICE MILES: Yes. I mean, this seems to be a point without any authority -- I don't think there is much of an analogy with your Dr Shadrin case, but it appears it is a point where there is no authority.

MR ROBINS: The authority comes from the definition of "document" and the extension of that term to include electronic documents and, in particular, the embedded metadata.

MR JUSTICE MILES: So you say that the document that has been -- sorry, I am just going to make a note. The document that has been disclosed is an electronic document.

MR ROBINS: Yes. That's right. It is a native format.

MR JUSTICE MILES: The whole of that document.

MR ROBINS: Absolutely. It is a native format, electronic document, disclosed in its original native format. My Lord is right, there is no authority dealing with the application of CPR 32.19 to native format electronic documents but we say it follows inexorably from the definition of the term "document" and the extension of that term to include the metadata which is authentic and reveals the true date of creation. But my Lord has the submission.

MR JUSTICE MILES: It is more difficult with the other agreement, isn't it? Because, as I recall, that was a PDF. You don't have the --

MR ROBINS: You do, yes. The date of it scanning.

MR JUSTICE MILES: That's just the date of scanning, but that could be any date.

MR ROBINS: Well, the date of creation.

MR JUSTICE MILES: That could be any date in the sense that it could just be the date when the document happens to have been scanned and sent by email.

MR ROBINS: That's right. It is still an authentic electronic document created on the date revealed in the metadata.

The third point is that, if the claimants were required to give notice under CPR 32.12, then adequate notice has been given. The claimants have made clear that the authenticity of documents is in issue in the agreed list of issues for trial, for example, which was approved in July 2021. There is -- perhaps you could bring it up -- <A1/2/19>. Issue 78 is --

MR JUSTICE MILES: Is this for disclosure?

MR ROBINS: This is the agreed list of issues for trial.

MR JUSTICE MILES: For trial.

MR ROBINS: My Lord, yes. We colour coded -- because of the definition of issues for disclosure, which are those issues for trial on which disclosure will be necessary to enable the judge to decide the point, or words to that effect, the parties agreed a list of issues for trial and then they colour coded it so that the issues which would require disclosure were shaded, but the parties agreed that, effectively, the list of issues for disclosure is a subset of the list of issues for trial.

MR JUSTICE MILES: Right. Okay.

MR ROBINS: Issue 78 is:

"Did [the first defendant] participate in the backdating of agreements? What were the circumstances giving rise to the backdating of agreements?" Then issue 81 includes:

"D1's knowledge of ..."

And then, if we flick over the page, please, it is the final entry (xxi):

"The MoU and SPA purportedly dated 15 July 2015." Then, above that, more generally, in (xx): "The backdating of any agreements."

Similarly, at <A1/2/34>, issues 140 and 142 are the corresponding issues in relation to D8. If we could look over the page, please. And one more. There is the reference to, "the backdating of any agreements" in (xxii).

At the CMC before your Lordship on 29 and 30 July 2021, D1 and D8 accepted that there was a general allegation of backdating and that the claimants were challenging the authenticity of documents. They didn't seek to limit the issues as applicable to them to any particular documents, but Mr Hume-Kendall adopted a different approach. He submitted that the issue of backdating of documents applicable to him should be expressly confined to specific agreements. Your Lordship accepted his submission, it wasn't a point that any of the other defendants was making, they were accepting the general reference --

MR JUSTICE MILES: Is there a note of that?

MR ROBINS: We can see it if we look at page 23 of this document. Issue 92 is "D2's knowledge of", and the footnote 21 says:

"At the CMC on 29-30 July 2021, Mr Justice Miles adopted the claimants' formulation of wording of this issue, subject to the insertion of the specific documents in respect of which it is alleged D2 had knowledge of backdating."

So we can see, if we look over the page, [page 24], we have (xx) at the bottom of the page: "The backdating of the following agreements as defined in the [re-reamended particulars of claim]". Then, over on the next page, [page 25], we were obliged, in his case, to itemise them and we were confined to that issue.

But the other defendants accepted, as I have shown my Lord, that there was a general issue relating to backdating and authenticity and they didn't make or pursue the same point. They were happy to accept the wording.

So they can't now be in any doubt about the claimants' position on the authenticity of agreements. There is adequate notice that has been provided in the list of issues. The only thing we could have done on top of that would have been to serve a blanket notice headed "32.19" where we included wording to exactly the same effect.

That wouldn't have put them in any better position. So that is the third point. We say we have given adequate notice, save, probably, in the case of Mr Hume-Kendall, but that is not relevant now. The fourth point is that, if and to the extent your Lordship were to hold that CPR 32.19 applies and that we should have given some further notice but have failed to do so, the consequence, as my Lord saw, is a deemed admission of authenticity CPR 32.19 provides, "a party shall be deemed to admit the

authenticity of a document". In those circumstances, we would seek to withdraw the deemed admission that is something governed by CPR 14.5, which, again, my Lord will find in the White Book. That is page -- I thought it was 14.5. Hang on.

(Pause).

MR JUSTICE MILES: Is it 14.15 possibly? Is it 14.15 on page 450?

MR ROBINS: I am being told that the 2023 White Book is not the current version and that the current version of the CPR is different. We need to look online. Ah. Can I read out to my Lord what it says in CPR 14.5. I am sorry, I hadn't realised it was a recent change to the rules.

It says:

"In deciding whether to give permission for an admission to be withdrawn, the court shall consider all the circumstances of the case, including: (a) the grounds for seeking to withdraw the admission; (b) whether there is new evidence that was not available when the admission was made; (c) the conduct of the parties; (d) any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn; (e) what stage the proceedings have reached, in particular whether a date or period has been fixed for the trial; (f) the prospects of success of the claim or the part of it to which the admission relates; and (g) the interests of the administration of justice." So that is the applicable provision. It applies to the withdrawal of an actual admission or a deemed admission. And your Lordship will have to apply that test in what is now CPR 14.5.

I should make the point that this has nothing to do with relief from sanction under CPR 3.9 because CPR 32.19 doesn't impose any sanction, it deems an admission to have been made and the provision relating to the withdrawal of admissions is now 14.5. I make that point because Mr Warwick took my Lord to a passage in the book written by Mr Grant and Mr Mumford at <S3/8>, page 2, where they say in paragraph 34-015: "Failure to serve the requisite notice leaves a party unable to challenge the authenticity of a document unless the court grants permission, applying the principles for relief from sanction." My Lord, that is just wrong. It overlooks the consequence of a failure to serve a notice under CPR 32.19, which is, as I said, a deemed admission not a sanction. And it overlooks the existence of the rules in relation to the withdrawal of admissions. The correct analysis is clear from the Court of Appeal authority to which we turned earlier at <S2/115.1>, page 20.

This is the Eco3 Capital case that I took your Lordship to earlier.

In paragraph 108, Lord Justice Jackson said: "If Mr Bishop intended to hold the claimant to the deemed admission, he should have objected to that line of cross-examination. If he had done so, the judge would then have had to decide whether to allow the claimant to withdraw the deemed admission." So, as I have said, it is a question of permitting the withdrawal of the deemed admission.

As to the application of the test, if we get that far, first, the grounds for seeking to withdraw the admission, here the claimants would be seeking to withdraw the deemed admission on the basis that it was a deemed admission which arose through failure to serve a notice under CPR 32.19.

The process envisaged by CPR 32.19 is wholly unrealistic when it comes to large and complicated fraud cases such as this one, where hundreds of thousands of documents have been disclosed and where identifying 41 those which are inauthentic is not a process that can be performed simply by reading through a list of documents, but instead requires a painstaking and careful review of what has been disclosed to piece together the true facts.

In such a case, the only realistic way of complying with the rule would be to issue some sort of blanket notice to state that authenticity of documents is at issue. That wouldn't go any further than the agreed list of issues for trial but the process in CPR 32.19 is, as I have said, not really workable in a case like this. Paragraph 2 provides:

"A notice to prove a document must be served: (a) by the latest date for serving witness statements; or (b) within 7 days of disclosure of the document, whichever is later."

So it is something that only really operates satisfactorily in the simplest of cases. In a case like this, it is very difficult to envisage how it could operate in accordance with its terms.

We would also rely on the fact that the deemed admission, to the extent that it arises, is at odds with the claimants' pleaded case and the agreed list of issues. The parties have been proceeding on the footing for some years that the authenticity of all agreements is in issue and that is a highly relevant factor. If I could take my Lord to <S2/137.1>, page 1. My Lord will see the decision in a case called McGann v Bisping.

At page 7, paragraph 22, it is said:

"In considering all the circumstances of the case, it seems to me to be of particular significance that both parties prepared for trial on the basis that the authenticity of these documents was in issue and that Mr Bisping was not precluded from challenging their authenticity by any deemed admission. It follows that all the costs in relation to those issues had already been incurred by the time that Mr McGann's legal team took this point.

"In my judgment, to permit them to do so now would be unjust and contrary to the overriding objective of dealing with cases justly and in proportionate cost." The second point, (b) is whether there is new evidence not available when the admission was made. My Lord, will understand --

MR JUSTICE MILES: He seems to be applying Denton there.

MR ROBINS: Mr Shaw tells me that he was. Yes, he was applying Denton. But that is, as I said, contrary to the CPR, which --

MR JUSTICE MILES: You say that is wrong.

MR ROBINS: They contain --

MR JUSTICE MILES: Can we just go back and see whether there was any debate about that. It may just have been the agreed basis on which they approached it.

MR ROBINS: Can we turn back a few pages, please, and see if we can find this.

MR JUSTICE MILES: Sorry, go back to 6. It looks as though it might have been there.

MR ROBINS: Yes, there doesn't seem to be any debate about it.

You can see why people might assume that really the section has something to do with it, but logically it doesn't, because it is a deemed admission and it is a question of permitting the admission to be withdrawn. B is whether there is new evidence not available when the admission was made. My Lord has seen that we have had to go through the disclosure very carefully. The identification of further backdated documents has required a very careful and time consuming review of almost all the disclosed documents and their chronological ordering. Given the volume of disclosed documents, that was inevitably a very time consuming process.

In the present case, the last date for the service of witness statements was 6 December 2023 for Mr Thomson, and so that is the date at which the deemed admission would have been made; 6 December last year.

At that time, we were in an advanced stage of drafting our opening written submissions. It is likely, I think it is probably right to say, that the examples that we are dealing with that are included in our opening written submissions had been identified by that point but the precise circumstances in which the MoU and the SPA came to be backdated, and the significance in the factual narrative, was something that I pieced together during the additional time that we had available as a result of your Lordship's injury.

MR JUSTICE MILES: I don't think it was referred to in your opening skeleton, was it?

MR ROBINS: No, it wasn't. We hadn't had the time to piece it together at that point.

C is the conduct of the parties. Here, what is relevant is that the defendants repeatedly delayed disclosure because they hadn't taken proper steps to ensure they could comply with the original directions. That had the effect of compressing the trial timetable, or pre-trial timetable, very considerably. Had they given disclosure as originally ordered then there would have been a lot more time for us to carry out a review of the documents, and we might potentially have been 42 able to give any required notice earlier. D:

"Any prejudice to any person if the admission is withdrawn or not permitted to be withdrawn." We say there is no prejudice to the defendants by allowing the withdrawal of a deemed admission, which, as I have said, could only have arisen about two months ago, on 6 December last year.

The fact that we are challenging the purported date of execution of the agreements has been known for a long time, many years, and the defendants have had ample opportunity to give their side of the story on matters which are within their direct knowledge. They have relied on the MoU and the SPA, and Mr Thomson has given evidence of it in his witness statement. He says they are genuine and weren't backdated.

By contrast, if the claimants are prevented at a late stage from relying on these backdating examples, then there will be a gap in the factual narrative of the case.

E is at what stage the proceedings have reached. Obviously, we are at trial but, as I have said, the deemed admission only arose on 6 December 2023. In the decision that we are looking at on page 8, my Lord has seen what was said in paragraph 25. Actually, we haven't seen this paragraph. He says:

"I do not think it likely that Mr McGann's legal team were alive to this point from an early stage and deliberately held back from taking it in the hope of procedural advantage. On the contrary, it seems to me probable that, prior to the instruction of Mr Lawrence and Mr Roberts, they shared the ignorance of CPR 32.19 displayed by Mr Bisping's legal team. Nevertheless, for Mr McGann's legal team to take the point at this very belated stage in the hope of obtaining a windfall advantage in the litigation is, in my judgment, contrary to the spirit in which commercial litigation should be conducted."

And the judge in that case allowed the authenticity of the documents to be challenged.

In the present case, the defendants have had notice that the claimants maintained a general plea of backdating for some years. No point on CPR 32.19 was taken by any of the defendants in their opening written submissions. The case that we have made against them has been clear for some

time. We say they shouldn't be allowed to prevent us from advancing our full case at trial by taking points which they could have taken at an earlier stage.

F, the prospects of success of the claim, or the part of the claim to which the admission relates. We say that the evidence that the relevant documents were backdated is unanswerable. It has a very strong prospect of success, at the very least, and is not something that should be shut out.

Finally, G, the interests of justice. My Lord, this is a fraud case. The very essence of fraud is concealment and misdirection. We submit that a measure of latitude should be given to claimants in fraud cases, as the task of unraveling complicated and long-running frauds is a difficult and expensive one. Preventing the claimants from challenging the authenticity of these documents would also cause the court to be placed in a very unsatisfactory position. The court can see the evidence for itself and shouldn't be prevented by a procedural rule from making a finding in relation to these documents.

The court could potentially be forced into unnatural contortions to try to reconcile documentary evidence. For example, there might be a covering email which clearly shows that the document has been backdated. The court should be free to accept the evidence before it and shouldn't be forced to try to reconcile evidence of backdating with a deemed admission that the documents have not been backdated. It would be an absurd situation for the court and the parties to be in, and it would be contrary to the interests of justice because, in relation to these documents, the purpose of backdating them to create a false impression will have succeeded.

We rely on what was said by Mr Justice Walden-Smith in a case called Lionwalk, which we find at <S2/143.1>, page 1.

MR JUSTICE MILES: I think it is actually Her Honour Judge Walden-Smith.

MR ROBINS: Oh, I am sorry, I was going by what it said --

MR JUSTICE MILES: Yes, I don't think that is accurate.

MR ROBINS: I haven't appeared in front of Mrs Justice Walden-Smith.

MR JUSTICE MILES: It is Her Honour Judge, but I think that she sits -- it looks as if this is in the High Court.

MR ROBINS: It may be that she was sitting as a High Court Judge. Sorry, I was going by the report.

MR JUSTICE MILES: Yes.

MR ROBINS: At page 3, in paragraph 11, she said she: "... had the opportunity to read the skeleton arguments and, having heard submissions from both parties, [she] was able to give an early indication that, in [her] judgment, this is a matter where, albeit the defendant was right to say the claimant had failed to comply with the provisions of CPR 32.19, the court was never going to be left in a position where, potentially, it was allowing a party to exercise a fraud, such that the court itself, knowing that there was a fraudulent or forged document, would allow a claim to succeed on the basis of such a forged document. That plainly would be contrary to the interests of justice." So, my Lord, to the extent that we require your Lordship's permission for the withdrawal of any deemed admission, we would seek permission on those grounds.

MR JUSTICE MILES: Right.

There is another point I have been wondering about, and it may be that -- because it effectively goes to the whole question of this rule. It does say, in terms, that it is to do with disclosure under Part 31 and, as I recall, this may be a case where disclosure was given under the Practice Direction.

MR ROBINS: Yes.

MR JUSTICE MILES: I hadn't thought about this thought any further but it seemed to me to be a rather improbable outcome that, because it is given under a different provision, this rule doesn't apply. I don't know whether that is a --

MR ROBINS: Well, we did think about --

MR JUSTICE MILES: -- point.

MR ROBINS: We did think about that point. It is not one that I have relied on because Practice Direction 57(a)(d) is standing in for Part 31.

Practice Direction 57(a)(d) expressly replicates provisions of Part 31 and provides that, save insofar as replicated, Part 31 doesn't apply. But it doesn't go through the same exercise with Part 32. It seems to be unlikely that the CPR are intended to exclude this rule. I haven't relied on that point. If your Lordship thinks it is a good one --

MR JUSTICE MILES: No, I don't particularly. It is just for completeness. It seemed to me that there is a possible argument there but it seems rather, in the way that you have just described it, an improbable construction of the rules as a whole. We are all are required to read the rules in such a way as to give effect to the overriding objective, and it would seem surprising. Equally, the Commercial Court Guide, which of course is one of the courts which is covered by the new regime, talks about notices being given under this rule.

MR ROBINS: Yes.

MR JUSTICE MILES: So the Commercial Court Guide is clearly drafted on the footing that the rule does apply to disclosure, notwithstanding that it is generally not given under Part 31.

MR ROBINS: Yes. Well, I think the way we would construe it is that Practice Direction 57(a)(d) is applying in lieu of Part 31, and the reference to Part 31 should be construed accordingly.

If your Lordship, on reflection, thinks it is a good point, I would gratefully adopt it. But I tried to focus on what I thought were the stronger points.

MR JUSTICE MILES: Right.

It is 4.30 pm, I am just wondering what the best way of dealing with this is.

MR ROBINS: I have one more pleading point that is taken by Mr Thomson. I can deal with it now or on Monday morning.

MR JUSTICE MILES: Yes, why don't you deal with it now.

MR ROBINS: It is at <A2/3/13>, where it is said, in paragraph 31, that in our opening submissions we raised for the first time the possibility that Mr Thomson was acting as a nominee for Mr Hume-Kendall and Mr Golding. The footnote refers to section C4 of our written opening submissions, in particular C4.14 and following. That is at <A2/1/37>.

This, my Lord will recall, is the continuing role of Mr Golding and Mr Hume-Kendall. We set out in this section the evidence in relation to their continued involvement in the business of LCF. In particular, focusing on the position of Mr Golding as someone who gave instructions to Mr Thomson and who was capable of overruling him.

It is said that we haven't pleaded the point. That is wrong. We have alleged in very clear terms that Mr Golding was a shadow director of LCF. We can see that at <B1/2/>, page 34, where we say at 27.1. "Mr Golding was a shadow and/or de facto director of LCF. He was consulted on the activities of LCF, and those involved in the day to day management of LCF looked to him for approval and guidance in the conduct of LCF's affairs. Further or alternatively, he acted as a director of LCF in managing its affairs." And we give various particulars in the subparagraphs. Most of those are the points that we cover in section C4 of our --

MR JUSTICE MILES: Can we go over the page, please. Yes.

MR ROBINS: We cover those pleaded particulars in paragraph C4 of our opening written submissions.

If my Lord wants me to, I can go through, doing the exercise of showing exactly where the pleaded particulars are found in section C4 of our opening written submissions, but it is a pretty obvious point. If we look at the previous page:

"Mr Golding was kept informed of work carried out on LCF's information memorandum brochures." Well, that is covered in C4.

"Kept informed of sums raised by LCF."

That is in C4. It is all there set out. I think what maybe has happened is simply a misunderstanding of the purpose of C4. We are not alleging anything to do with nomineeship there, it is all to support the very clear pleaded allegation that Mr Golding was a shadow and/or de facto director of LCF, and that is something that has always been in issue.

As I say, I could take some time going through it but I am not really sure that I need to.

MR JUSTICE MILES: I don't think so. I will hear what has to be said on that point, if anything more, on behalf of Mr Thomson.

Housekeeping

MR JUSTICE MILES: Right. I will hear submissions from the relevant defendants on these points on Monday morning and seek to rule on them as quickly as possible, to the extent that rulings are required.

MR ROBINS: Yes. Does my Lord envisage that we may get to Mr Thomson on Monday at 2 o'clock?

MR JUSTICE MILES: How long do you think you will need to respond on these arguments?

MS DWARKA: I don't know yet, my Lord, but I have been asked to inform you about updates in respect of Mr Thomson, who will not be able to be in court on Monday. He will have to be in court on Tuesday. About his health more than anything, I have been asked to inform you about that, if I may?

Mr Thomson has had the latest review from his NHS surgeon yesterday, and was told that he risks reherniation and possible complications, up to and including paralysis, if he tries to resume his

previously normal activities too quickly. He has been told that he is already trying to do too much and that the longer he tries to rest at this stage, the better it will be for his complete recovery. So he has been advised strongly to reduce physical activity and to avoid sitting in a car for longer than 30 minutes or picking anything up. He must avoid the risk of falling or straining himself. If the sensation in his leg changes or if there is any indication of the onset of incontinence, he must go to hospital immediately. A second operation would be extremely high risk. We will be providing and serving a witness statement and an expert report on Monday, but the expert report will be from Mr Matthew Hartley, the psychiatrist, who will give evidence on Mr Thomson's mental state, and the likely influence of his evidence of the drug regime. We have not yet been able to obtain the report of an orthopaedic expert. The reason is that, first, there were some funding issues and, second, he appeared to have been recovering much more quickly and did not think that that would be necessary, so the advice from the surgeon yesterday came as a shock.

On Monday, I will invite your Lordship to consider making arrangements necessary in order to help Mr Thomson give evidence. I don't think he is suggesting that he is not coming to court, but it will be more about how can we accommodate in light of the evidence that we will propose.

I have also been told to let you know that the firm is planning to make a strike out application, which will be issued and served either this afternoon or tomorrow, and you might need to consider what directions to make in relation to it on Monday. But I have been in court so I haven't seen what the position is.

MR JUSTICE MILES: Strike out of what?

MS DWARKA: In respect of the pleadings, my Lord.

MR JUSTICE MILES: The whole case?

MS DWARKA: I don't think it is the whole case, no.

MR JUSTICE MILES: There has been a pattern here of delay and delay. Why is it necessary to wait until Monday for the evidence to be produced? Why can't be it produced tomorrow? The medical evidence.

MS DWARKA: I don't have further instructions, my Lord. I have received the email whilst I was cross-examining, so I don't really know why Monday for the expert report, but I can seek some instructions and send an email to all parties in relation to that.

MR JUSTICE MILES: Well, it is not satisfactory just to be told you need until Monday without having any foundation for that. The problem with putting things off in this way is that gaps keep creeping into the timetable. I have given you quite a lot of slack so far and I am concerned that more gaps are appearing.

MS DWARKA: Sorry, my Lord, Mr Thomson was not due to be heard until Tuesday anyway, but, in light of what has happened, that is the whole reason I mentioned it.

MR JUSTICE MILES: It sounds as though there is going to -- you are going to then be -- if you are only serving evidence on Monday, the claimants will only receive it, obviously, by definition, on Monday. If we then have to have a discussion about, you know, where that takes us and further arrangements, it is rather unsatisfactory.

MS DWARKA: I appreciate that, my Lord. I would hope arranging the necessary breaks for Mr Thomson might not be something too difficult to do, but I have not been privy to that part of the case at the moment, my Lord, so I don't really know what evidence we are putting.

MR ROBINS: My Lord, it is not particularly satisfactory, in circumstances where a month ago, on the second sitting day of the trial, Mr Slade told your Lordship that medical evidence was in the course of being prepared. He said:

"Expert reports have been commissioned and they will be laid before your Lordship in due course." The timing of this seems to be transparently tactical, calculated to cause maximum delay. The same applies to the suggestion of a strike out application. Again, it is obviously something that, if it was going to be made at all, could and should have been made many years ago. Launching it at this point seems calculated to disrupt the trial.

If it is issued then I will need to address your Lordship on case management questions. The first issue will be whether, in light of the authorities, your Lordship should deal with it substantively at all, or simply decline to deal with it and instead rule on the arguments as part of a reasoned judgment, dealing with all the evidence and making findings of fact. If necessary, I will be ready to make submissions on the case management aspect on Monday afternoon.

MR JUSTICE MILES: Well, if it is indeed issued. So far, all I have been told is that there is an intention to issue it but it hasn't been issued.

It seems to me that this question of medical evidence is something that has been in the air for a long time. I raised it with Mr Slade at the beginning of the trial and pointed out that there was no medical evidence and, as Mr Robins has just observed, he said that it was then in the course of preparation. I am concerned that if it is served only on Monday, then any consequences of that can obviously only be addressed in the light of the evidence, and that is a matter of concern.

I think what I am going to say is that if you wish to rely on medical evidence it should be served on the claimants by 5 pm tomorrow.

MS DWARKA: Noted, my Lord.

MR JUSTICE MILES: Now, how long do you think you will need to respond to the points which were made about the documents and the pleadings?

MS DWARKA: Maybe half an hour, my Lord.

MR JUSTICE MILES: Is it Mr Curry? So sorry.

MR CURRY: Yes, my Lord.

MR JUSTICE MILES: Mr Curry, how long do you think you will need?

MR CURRY: Well, my Lord, I can't know Mr Ledgister's mind but, myself, I would imagine between 10 and 20 minutes. I anticipate he will be of the same view.

MR JUSTICE MILES: All right. Thank you. Right, we will come back to the pleading points and what I call the authenticity point on Monday morning. You said before, Ms Dwarka, that Mr Thomson would not be available until Tuesday?

MS DWARKA: As I understand it, Mr Thomson cannot be in court on Monday.

MR JUSTICE MILES: Why is that?

MS DWARKA: I don't know, my Lord. I have just been sent instructions by email about the position and I have just relayed the message to you.

In terms of the timetable, we had understood that Mr Thomson will be appearing next week on Tuesday onwards, so we had already told him that.

MR JUSTICE MILES: Well, the cross-examination of the claimants' witnesses went rather shorter.

MS DWARKA: Yes.

MR JUSTICE MILES: That happens in trials. Therefore, Mr Robins was able to make his submissions about the pleadings and other related points this afternoon, so that accelerated things slightly. But there seems no reason why Mr Thomson, subject to the points about making appropriate accommodations and so on, should not be available on Monday afternoon, without there being an evidential basis for saying that he is not. It seemed, from what you are saying, that he would be available on Tuesday, so it seems unlikely that it can be a medical reason, which isn't part of the reason for accommodation to be made.

So, at the moment, it seems to me that Mr Thomson should be making himself available on Monday afternoon, subject to some further evidence, convincing evidence, to explain why that should be.

MS DWARKA: Would you like me to send an email to all parties and yourself, my Lord, if I get further instructions on the reason why?

MR JUSTICE MILES: I think you will have to present, as I say, an evidential basis for it. It is not going to be sufficient, it seems to me, simply to say that he would prefer not to be in court until Tuesday. If there is --

MS DWARKA: I was not told that, my Lord. I was just told he would not be able to be in court on Monday.

MR JUSTICE MILES: Yes, I understand that. But it doesn't -- you will understand why it is not persuasive simply to be told that he will not be here until Tuesday. His evidence is the next event in this trial and, subject to there being some good reason to the contrary, he should expect to be starting his evidence on Monday afternoon.

If there is a good reason, then of course, by all means, you and those instructing you should explain it. If necessary, I will give an appropriate direction.

MS DWARKA: Yes, my Lord. Thank you.

MR JUSTICE MILES: Right. So, subject to anything that happens in the meantime, we will adjourn until 10.30 on Monday morning.

(4.48 pm)

(The hearing adjourned until 10.30 am on Monday 25 March 2024)

Transcript originally produced by:

Epiq Europe Ltd www.epiqglobal.com Lower Ground Floor, 46 Chancery Lane London, WC2A 1JE

And converted to a more readable format using an automated process by:

Daniel Cloake www.mouseinthecourt.co.uk

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